

House of Representatives Standing Committee on Tax and Revenue
Department of the House of Representatives

By electronic transmission

31 July 2017

Dear Sirs / Madams,

Further to my recent appearance at the Standing Committee on Tuesday 18 July 2017, I offer the following comparison and comments in relation to the decision tools offered by both Her Majesty's Revenue and Customs (HMRC) in the United Kingdom and the Australian Tax Office for determining whether the relationship between an employer and a worker is that of employee or contractor.

Questions asked by HMRC

1) Which of these describes you best?

- a. The worker
- b. The end client
- c. The agency paying the worker
- d. None of the above

ATO Comparison (ATO does not ask who is using the tool, so questions may not be aimed at the right person)

2) Has the worker already started this particular engagement for the end client?

- a. Yes
- b. No

ATO Comparison (The ATO tool does not ask this)

3) How does the worker provide their services to the end client?

- a. As a limited company
- b. As a partnership
- c. Through another individual (not an agency)
- d. As a sole trader

ATO Comparison (The ATO asks who is paid to do the work, rather than the structure of the organisation providing the services)

4) Will the worker (or their business) perform office holder duties for the end client as part of this engagement?

Being an office holder isn't about the physical place where the work is done, it's about the worker's responsibilities within the organisation. Office holders can be appointed on a permanent or temporary basis.

This engagement will include performing office holder duties for the end client, if:

- The worker has a position of responsibility for the end client, including board membership or statutory board membership, or being appointed as a treasurer, trustee, company director, company secretary, or other similar statutory roles;
- The role is created by statute, articles of association, trust deed or from documents that establish an organisation (a director or company secretary, for example); and
- The role exists even if someone isn't engaged to fill it (a club treasurer, for example).
 - a. Yes
 - b. No

ATO Comparison (The ATO does not ask this question)

- 5) If the worker's business sent someone else to do the work (a substitute) and they met all the necessary criteria, would the end client ever reject them?

The criteria would include:

- being equally skilled, qualified, security cleared and able to perform the worker's duties;
 - not being interviewed by the end client before they start (except for verification checks);
 - not being from a pool or bank of workers regularly engaged by the end client;
 - doing all of the worker's tasks for that period of time; and
 - being substituted because the worker is unwilling or unable to do the work.
- a. Yes – the end client has the right to reject a substitute for any reason, including if it would negatively impact the work.
 - b. No – the end client would always accept a substitute who met these criteria.

ATO Comparison (The ATO asks this question, but does not state the criteria where HMRC does)

- 6) Would the worker's business have to pay the person who did the work instead of them?
- a. Yes
 - b. No

ATO comparison (The ATO does not ask this question)

- 7) Can the end client move the worker to a different task than they originally agreed to do? This includes moving project or location, or changing to another task at the same location.
- a. Yes – but only with the worker's agreement.
 - b. Yes – without the workers agreement (if the worker doesn't want to change, the end client might end the engagement).
 - c. No – That would need to be arranged under a new contract or formal agreement.

ATO comparison (The ATO does not ask this question)

- 8) Once the worker starts the engagement, does the end client have the right to decide how the work is done? This doesn't include general induction, or the need to follow statutory requirements like health and safety.
- Yes – the end client decides how the work needs to be done without input from the worker.
 - No - the worker decides how the work needs to be done without input from the end client.
 - No - the worker decides how the work needs to be done without input from the end client.
 - Partly - the worker and other people employed or engaged by the end client agree how the work needs to be done.

ATO comparison (The ATO does not ask this question)

- 9) Can the end client decide the schedule of working hours?
- Yes - the end client decides the worker's schedule.
 - No - the worker decides their own schedule.
 - Partly - the worker and the end client agree a schedule.
 - Not applicable - no schedule is needed as long as the worker meets any agreed deadlines.

ATO Comparison (The ATO does not ask this question)

- 10) Can the worker choose where they work?
- Yes - the worker decides.
 - No - the end client decides.
 - No - the task determines the work location.
 - Partly - some work has to be done in an agreed location and some can be done wherever the worker chooses.

ATO comparison (The ATO does not ask this question)

- 11) What does the worker have to provide for this engagement that they can't claim as an expense from the end client or an agency?

These are things that:

- the worker has to provide to complete this specific engagement.
- aren't provided by the end client.
- could place the worker at financial risk if the cost isn't regained.

They don't include expenses incurred by being based away from home for the engagement.

Select all that apply:

- a. Materials - items that form a lasting part of the work, or an item bought for the work and left behind when the worker leaves (not including stationery, and most likely to be relevant to substantial purchases in the construction industry).
- b. Equipment - including heavy machinery, industrial vehicles or high-cost specialist equipment, but not including phones, tablets or laptops.
- c. Vehicle - including purchase, fuel and all running costs (used for work tasks, not commuting).
- d. Other expenses - including significant travel or accommodation costs (for work, not commuting) or paying for a business premises outside of the worker's home.
- e. Not relevant.

ATO comparison (The ATO asks a much simpler variant of this question)

12) What's the main way the worker is paid for this engagement?

- a. An hourly, daily or weekly rate.
- b. A fixed price for a specific piece of work.
- c. An amount based on how much work is completed.
- d. A percentage of the sales the worker makes.
- e. A percentage of the end client's profits or savings.

ATO comparison (The ATO asks a simpler variant of this question, without as many choices)

13) If the end client isn't satisfied with the work, does the worker need to put it right at their own cost?

- a. Yes - the worker would have to put it right without an additional charge, and would incur significant additional expenses or material costs.
- b. Yes - the worker would have to put it right without an additional charge, but wouldn't incur any costs.
- c. No - the worker would put it right in their usual hours at the usual rate of pay, or for an additional fee.
- d. No - the worker wouldn't be able to put it right because the work is time-specific or for a single event.
- e. No - they wouldn't need to put it right.

ATO comparison (The ATO does not ask this question)

14) Is the worker entitled to any of these benefits from the end client?

- Sick pay;
- Holiday pay;
- A workplace pension;

- Maternity/paternity pay; and
- Other benefits (such as gym membership, health insurance, etc.).

These don't include benefits provided by a third-party or agency.

- a. Yes
- b. No

ATO Comparison – The ATO only asks if the worker is entitled to superannuation.

HMRC also comes up with this disclaimer on the results screen.

"HMRC will stand by the result given unless a compliance check finds the information provided isn't accurate."

"HMRC won't stand by results achieved through contrived arrangements designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance with associated higher penalties."

"HMRC can review your taxes for up to 20 years."

The ATOs disclaimer states *"Provided your responses accurately reflect the working arrangement, you can rely on the result provided by the tool. It is a record of your genuine attempt to understand your obligations for your worker and would be considered if we review your working arrangement in the future."*

I trust this helps clarify the way HMRC helps businesses decide who is an employee and who is a contractor.

If you wish for any further information in regards to the United Kingdom's tax system with comparison and comment to the Australian system, please do not hesitate to contact me.

Yours faithfully,



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