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## TERRITORY REVENUE MANAGEMENT

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### Purpose of this circular

1. This circular provides information regarding employment relationships and guidance as to the definition of "employees" for Northern Territory pay-roll tax purposes and how the Commissioner of Taxes will consider certain subcontracting arrangements. These arrangements include:
  - a) a contract between a principal and the individual who performs the services; and
  - b) a contract between a principal and a company, partnership or trust that is related to the individual who performs the services.
2. The circular also outlines the treatment of workers engaged under labour hire arrangements under the pay-roll tax legislation.
3. Revenue Circular RA001 is incorporated and is to be read as one with this circular.

### Introduction

4. Legal precedents have established a set of indicia for determining whether an employment relationship exists. The Courts have evaluated detailed information about the relationship against these indicia to reach a determination as to whether or not an employment relationship exists.
5. While the process is well settled, it is recognised that in some cases the application of the legal principles to a particular set of facts can be difficult. Accordingly, in these cases there is no easy answer to the question of "who is an employee?" and it may be necessary to seek legal advice.
6. As the legal principles require all circumstances of the parties' relationship to be taken into account in determining whether or not an employment relationship exists, each case must be considered on its own facts. For this reason, this Revenue Circular is only provided as guidance to assist employers and their representatives.

### Employer/Employee Relationships

7. The term "wages" in section 3 of the *Pay-roll Tax Act* is defined to mean:  
*"wages, salary, commission, bonuses or allowances paid or payable... to, or in relation to, an employee as such..."*
8. In accordance with section 3, payments liable to pay-roll tax include payments made to an employee under an employer/employee relationship. Where an employer/employee relationship does not exist between a principal and a worker, no pay-roll tax is payable unless otherwise provided in the legislation. (Unlike some jurisdictions, the Northern Territory pay-roll tax legislation does not include specific provisions to capture contractor arrangements).
9. The relationship between an employer and an employee is a contractual one and is referred to as a "contract of service". The Act does not define the terms "employee" or "contract of service"; therefore, case law is relied on to determine the relationship.

10. In contrast to the employer/employee relationship is the principal/independent contractor relationship (referred to as a “contract for services”). In general terms, an employee contracts to provide his/her labour for and as part of the employer’s business, whereas an independent contractor works in his/her own independent business and in the course of his/her business, contracts to achieve a result for the principal.
11. In most cases, distinguishing between an employee and an independent contractor is relatively simple. However, over time, a change in work practices has, in some cases, tended to blur the traditional distinctions between the two.

### **Background to Employer/Employee Relationship Determinations**

12. The courts have established a number of tests that can assist in determining whether an employer/employee relationship exists. However, in *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR16, the High Court made it clear that there is no single test that can be relied on and it is the totality of the relationship between the parties which must be considered in reaching a determination.
13. Accordingly, to reach a determination, each case must be considered on its own facts using the various tests identified by the courts as a guide.
14. Some of the more significant factors that have traditionally been considered by the courts as key indicators of whether an employer/employee relationship exists are outlined below:
  - a) Contract and practical relationship
  - b) Contracts to achieve a "given result"
  - c) Control and direction
  - d) Independent business
  - e) Power to delegate
  - f) Integration

#### *Contract and Practical Relationship*

15. The terms of the contract provide evidence of the nature of the relationship between the parties. However, it is necessary to consider all of the facts and circumstances of the parties’ relationship, including their conduct towards each other at the time they entered into the contract and subsequently.
16. Little weight can be given to a particular term of the contract if it contradicts the effect of the agreement as a whole, or the practical relationship between the parties. Moreover, there is considerable authority for the proposition that the parties’ labelling of their relationship as one of independent contractor and principal **will have no effect** where that relationship, in practice, is really one of employment.
17. In particular, a clause in a contract that states that the relationship between the parties is that of “independent contractor and principal”, is not conclusive and must be considered in the context of all the other terms of that contract together with the practical relationship that exists between the parties.
18. Similarly, a clause in a contract that describes the contract as one to “produce a result”, is also not conclusive and the contract will not be regarded as a contract between an independent contractor and principal unless supported by the facts.

### *Contracts to Achieve a “Given Result”*

19. A contract to produce a “given result” is one in which the focus is on what ultimate result the contract requires, rather than what must be provided when performing the contracted task.
20. If the facts behind a contract support that its purpose is to achieve a “given result”, then it is an indicator that the relationship is one between principal and independent contractor. This is particularly the case where the contract is for a fixed price, where payment is made subject to meeting various milestones specified in the contract, or at its completion.
21. If the contract is not to achieve a “given result” but is really for the labour of the worker, this is an indication that the relationship is one of employer/employee. An example of this type of arrangement would be where a worker provides “labour only” pursuant to a contract and is paid at an hourly rate, or set rate of pay, per pay period.

### *Control and Direction*

22. It is accepted that an important test of whether an employer/employee relationship exists is that of ‘control’. The power or right to control or to direct (eg. through a supervisor) how, where, when and who is to perform the work in question, is a strong indication of an employer/employee relationship. For example, if a worker is required to work with one or more others (eg. as part of a team) or, if his/her work is coordinated with the work undertaken by others, it is likely that the employer would exercise or have the right to exercise some degree of control and direction over the worker. Similarly, if the worker works on a project that is subject to quality control measures, it is likely that the worker will also be subject to some degree of control and direction.
23. The absence of control may indicate that the relationship is not one of employer/employee, however, this is not necessarily conclusive. In the High Court judgement in *Stevens v Brodribb Sawmilling Co Pty Ltd* (supra), it was noted that control is not the sole determinant of the nature of the relationship. It is merely one of a number of indicia to be considered in making that determination, and therefore, it is the totality of the relationship between the parties that must be considered.
24. This “multi-factor” approach is illustrated in more recent judgments such as *Vabu Pty Ltd v Federal Commissioner of Taxation* (1996) 33 ATR 537. In that case, it was held that while Vabu exercised a measure of control over its couriers, they were not employees because they supplied their own vehicles, were at risk of loss if they did not make enough deliveries and were paid to produce a result. Clearly, in this case other factors have outweighed the importance of control. Nonetheless, the control test is still an important guide as to whether a person is contracting independently or working as an employee.

### *Independent Business*

25. If a worker is engaged by a person in the ordinary course of operating their own independent business, then this is indicative of an independent contractor and principal relationship, particularly if the person works for a number of clients.
26. For example, if the worker was engaged as a result of advertising his or her services to the public as a normal part of carrying on a business, or as a result of winning a tender, then this will be indicative of an independent contractor and principal relationship.
27. Where the worker is exposed to making a loss as a result of the work undertaken, rather than the employer incurring all the risk, the worker is more likely to be considered as an independent contractor. A similar position holds if the worker has an opportunity to create his/her own goodwill. Moreover, the greater the expenditure incurred in earning the

income and the greater the physical assets (eg. materials and equipment) supplied by the worker, the more likely it is that the worker will be considered an independent contractor.

28. If a person simply provides their labour to an employer, it is unlikely that the person will be considered to be operating an independent business.

#### *Power to Delegate*

29. The power to delegate work (ie. the power of the worker to engage another person to undertake the work) is indicative that the worker is an independent contractor. However, in a principal and independent contractor relationship the power to delegate will generally be implicit, as the focus is on achieving a result rather than obtaining the services of a particular person.
30. Consequently, delegation clauses in contracts are considered in the context of the total arrangement between the parties to ensure that they accurately reflect what occurs in practice. Accordingly, a delegation clause in which a replacement worker must be approved by the principal may not be regarded as establishing a power to delegate when in actual operation the practice is otherwise.

#### *Integration*

31. If the worker is an integral part of the principal's business, then this is indicative of an employment relationship. For example, if the services provided by the worker are of a type that are ordinarily required in the course of the principal's business, this is indicative of an employment relationship, particularly if the engagement is for a lengthy period. Similarly, if the worker is required to work in conjunction with employees or other workers engaged by the principal (eg. as part of a team), this would also be indicative of an employment relationship.

### **Guidelines on Employer/Employee Determination Process**

32. In reaching a determination as to whether an employer/employee relationship exists, the Commissioner of Taxes would normally obtain documentation and seek responses to a number of questions which would draw out sufficient information on which to base a decision.
33. This approach, based on legal principles which require the totality of the relationship to be taken into account, requires that each case be considered on its own particular facts. However, in order to provide employers and their advisers with some guidance in respect of the Commissioner's position on employer/employee relationships in general, a short list of factors has been developed from judicial precedents.
34. Where all those factors exist in a relationship between a worker and the person for whom the services are provided, it is likely that the Commissioner will accept that the relationship is one of independent contractor/principal. These factors are as follows:

The worker:

- a) undertakes to produce a "given result" for a fixed fee rather than to simply do work (ie. the worker is paid for the result of the labour and not for the labour itself);
- b) provides the materials and/or equipment necessary to undertake the task. The equipment should be more than "incidental" to the person's services (ie. should be more than tools of trade);
- c) has an unfettered discretion to delegate the work;
- d) bears the risk of making a loss in running a business through incurring significant expenses related to the income earned; and

- e) provides services to the general public.
- 35. Where all the factors identified in paragraph 34 above are not present in an arrangement, it will be necessary for the Commissioner to examine the totality of the relationship, before making a determination as to the nature of the relationship.
- 36. Where all the factors identified in paragraph 34 are not present in an arrangement and that arrangement is simply “to do work” for an hourly, or other time based rate of pay, it is likely that the Commissioner will determine that the arrangement is one of employer/employee.
- 37. Should there be any doubt as to whether an arrangement would attract pay-roll tax, a written approach should be made to the Commissioner specifying the details and attaching the relevant documentation or independent legal advice should be obtained.
- 38. At Schedule 1 is a list of questions which when answered, will give an indication as to whether an employer/employee relationship is likely to exist.

### **Contracting Through a Company, Partnership or Trust**

- 39. Section 11A(1) of the *Pay-roll Tax Act* provides that:-

*“Where a person enters into an agreement, transaction, or arrangement ....., whereby a natural person performs or renders, for or on behalf of another person, services in respect of which a payment is made to some other person related to or connected with the natural person performing or rendering the services and the effect of such agreement, transaction, or arrangement is to reduce or avoid the liability of a person to the assessment, imposition, or payment of pay-roll tax, the Commissioner may-*

- a) *disregard such agreement, transaction, or arrangement;*
  - b) *determine that any party to the agreement, transaction, or arrangement shall be deemed to be an employer for the purposes of this Act; and*
  - c) *determine that a payment made in respect of the agreement, transaction, or arrangement shall be deemed to be wages for the purposes of this Act.”*
- 40. The effect of this provision is that where a person’s services are provided through an arrangement with an entity such as a company, partnership or trust, the Commissioner can disregard the interposed entity and determine the pay-roll tax liability as if the worker had been directly engaged by the principal. In making a determination, the Commissioner will have regard to indicia described above for determining the relationship between the principal and the worker.
  - 41. If it is determined that an employer/employee relationship would have existed, the payments will be deemed to be wages liable to pay-roll tax regardless of the fact that they are paid to a company, partnership or trust.

### **Labour Hire Firms**

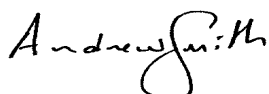
- 42. Generally speaking, a pay-roll tax liability arises where wages are paid in respect of the traditional relationship between an employer and its employee. However, in some instances, judicial decisions have cast doubt on the existence of this relationship between a labour hire firm and its workers.
- 43. With effect from 1 July 2000, the pay-roll tax legislation was amended to ensure that payments to or in relation to a worker engaged under a labour hire arrangement are wages for the purposes of pay-roll tax.

44. A labour hire arrangement exists where a labour hire agent enters into arrangements with its clients to engage workers to provide, in whole or in part, services for the client. The labour hire agent receives a fee for these services and pays the worker for the services provided to its client.
45. For example, Employment Specialist Pty Ltd keeps a database of skilled people willing to provide their services to third parties. ABC Pty Ltd asks Employment Specialist Pty Ltd for a computer programmer. Employment Specialist Pty Ltd contracts with John to do work for ABC Pty Ltd. Employment Specialist Pty Ltd is liable to pay-roll tax in relation to the payments it makes to John.
46. The labour hire provisions apply to payments made **to or in relation to** a worker engaged by a labour hire agent. This means that where a labour hire agent has engaged an entity (eg. company or trust) in respect of services to be provided by a worker under a labour hire arrangement, pay-roll tax will still be payable on the payment to the worker.
47. However, pay-roll tax will not arise where a labour hire agent engages the services of a truly independent contractor. As such:
- a) where a person is engaged by a labour hire agent on the basis that the performance of services by the person is not, in whole or in part, for the client of the labour hire agent; **and**
  - b) the person meets the criteria as set out in paragraph 34,
- the payment made by the labour hire agent to the person under the arrangement will not be liable to pay-roll tax.
48. For example, Cameron is a builder and contracts with Elsa to build her home. He subcontracts Chris for the carpentry work. Under the arrangements, Chris bears all the risk for completion and quality of the result, provides all the materials and is able to delegate all or part of the required work. This arrangement is not a labour hire arrangement as Chris is performing the work directly for Cameron as an independent contractor and not performing work directly for Elsa.

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Note this circular is provided only to give an **indication** as to whether an employment relationship may exist. Should an employer be uncertain as to whether an employment relationship exists, professional advice should be sought or contact the Commissioner of Taxes office.

For assistance, please contact the Returns Officer on telephone (08) 8999 7949 or facsimile (08) 8999 5577.



COMMISSIONER OF TAXES

## SCHEDULE 1

The following is a list of questions which, when answered, will give an indication as to whether an employer/employee relationship exists.

If the answer to most of the questions is 'yes', it is a strong indication that the person providing the services is an employee and payments made to that person will be subject to pay-roll tax:

- Is the person providing the services paid on a time basis (eg. hourly rate) rather than on a per job basis?
- Is the contract wholly or principally for labour?
- Does the person requiring the services have the authority to control or direct the manner in which the work is to be performed?
- Is the person providing the services prevented from delegating or subcontracting his/her work to another person without approval?
- Is the person providing the services engaged for a lengthy period or on a continuing basis?
- Are the services provided by the worker ordinarily required by the person requiring the services in the normal course of their business?
- Is the person providing the services performing work similar to work carried out by an employee in the organisation?
- Are the work hours defined?

### IMPORTANT

These questions are provided only to give an **indication** as to whether an employment relationship may exist. Should an employer be uncertain as to whether an employment relationship exists, professional advice should be sought or contact the Commissioner of Taxes office.

**ADDENDUM TO  
REVENUE CIRCULAR PRT007**



### **Introduction**

1. Following compliance investigations undertaken by Territory Revenue Management ('TRM'), it has become apparent that some business operators may not be correctly applying the guidelines in Revenue Circular PRT007-*Employer/Employee Relationship*. These guidelines are intended to assist business operators in considering whether the workers they have engaged are independent contractors or employees and, in turn, when deciding whether payments made to, or in relation to, such workers are liable for pay-roll tax.
2. This addendum provides additional guidance on the characteristics of:
  - a) employer/employee relationships; and
  - b) principal/independent contractor relationships,and should be read in conjunction with Revenue Circular PRT007.

### **The status of all workers engaged as "contractors" should be considered**

3. Many different types of workers are engaged by business operators as 'contractors' including tradespersons (such as welders, boilermakers, fitters, carpenters), concreters/steelfixers, trades assistants, draftsmen, architects, riggers, site supervisors, various types of installers and executive/managerial staff.
4. Whenever one or more workers are engaged as 'contractors', the business operator should be aware that if the workers are actually employees from a legal perspective, the payments made to the workers may be liable for pay-roll tax. A worker may actually be an employee from a legal perspective where:
  - the worker is not engaged to produce a given result for a fixed fee and accordingly is paid an hourly/daily rate or a piece work rate;
  - the worker performs services required by the business operator either at the business operator's place of business or at a site specified by the business operator;
  - payment is wholly or principally for the labour of the worker; or
  - the worker is not conducting a business that is independent from the business operator's business.

**Note:** For the purpose of assessing pay-roll tax, the fact that the worker is paid or engaged through their interposed entity or business such as a company, partnership or trust may be disregarded by the Commissioner of Taxes if tax would otherwise be payable (see paragraphs 39-41 of Revenue Circular PRT007).
5. Where, after examining all aspects of the relationship between the business operator and the worker, the combined elements at paragraph 4 are considered to be satisfied, TRM would generally be of the view that an employer/employee relationship was in existence and that payments to the worker should be included in the business operator's pay-roll tax returns.

### **All features of the relationship must be considered**

6. From TRM's experience in conducting compliance investigations, some of the more common reasons given by business operators as to why they considered their workers to be independent contractors include:
  - the worker has an Australian Business Number (ABN);
  - there is a written contract with the worker;
  - the worker operates through a company, partnership or trust;
  - the Australian Taxation Office has indicated that the worker is an independent contractor;

- the worker works for or has worked for other businesses;
  - the worker is not entitled to superannuation or leave entitlements;
  - the worker provides their own tools;
  - the worker provides their own vehicle;
  - other workers of the same type are regarded in the industry as independent contractors;
  - the worker was engaged for a particular project and was not engaged on a permanent basis; and
  - the worker has their own insurance cover (eg. income protection, accident, public liability etc.).
7. However, none of these reasons on their own would necessarily provide sufficient grounds to conclude that the worker is an independent contractor and, on this basis, to omit the payments made to such a worker from pay-roll tax calculations. To determine whether payments made to a worker should be included for pay-roll tax purposes, it is necessary to examine the complete working relationship between the business operator and the worker. The decision to include or omit a worker cannot be made on the basis of only a few features of the relationship. As explained in Revenue Circular PRT007, in each case it is necessary to consider the totality of the relationship between the business operator and the worker and this involves considering a very wide range of factors.
8. Some of these factors may suggest that the relationship is one of employer/employee, while other factors may suggest that the worker is an independent contractor. If the position is not clear-cut (as will often be the case), it is recommended that professional advice be sought as there are complex legal issues to be considered. Alternatively, it is recommended that TRM be contacted for further information.
9. Before consideration can be given to the legal issues, it is necessary to ascertain the factual circumstances of the business operator's relationship with each worker. In every case this is a detailed process and it can take some time to obtain a complete and accurate picture of the relationship. A decision as to whether a worker is an employee or an independent contractor should not be made on the basis of a superficial examination of the relationship.

### **Given result**

10. If a worker is engaged to produce a given result, this may be indicative of a principal/independent contractor relationship (see paragraphs 19-21 of Revenue Circular PRT007).
11. For a contract to be a contract to produce a given result, generally both the required outcome and the contract price will be known at the start of the contract.
12. Where a worker is engaged to perform services (for example, engineering services) on a project and is paid an hourly and or daily rate, this would not be considered to be a contract to produce a given result for a fixed fee, even if the number of hours required to be worked on the project could be reasonably estimated at the commencement of the engagement.

#### **Examples**

A construction company enters into a contract with a property developer for the construction of a building for an agreed fee of \$3 million. The company has entered into a contract to produce a given result for a fixed fee.

For the purpose of carrying out the work required by the contract, the company engages various construction workers to perform tasks required for the construction of the building and the company pays the workers an hourly rate. The construction workers are not entering into a contract to produce a given result but rather are entering into a contract to provide services for an hourly fee.

The construction company engages a landscaper to carry out the landscaping required for the building for a fixed fee of \$10 000. The landscaper has entered into a contract to produce a given result for a fixed fee.

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The owner of a mango farm engages a number of workers to prune trees. The workers are paid per number of trees pruned and are free to work whatever days and or hours they wish. The workers are not entering into a contract to produce a given result but rather are entering into a contract to provide services on piecework rates.

### **Labour**

13. Where a worker is paid wholly or principally for their labour and is not engaged to achieve a given result, this is an indication that the relationship is one of employer/employee (see paragraph 21 of Revenue Circular PRT007).

14. In this context, labour is not restricted simply to *physical* exertion. A worker may be engaged to provide services of a non-physical nature (for example, drafting services) because of their skills, knowledge, experience or abilities and does not bring anything of a tangible nature to the job in the form of materials and equipment. In this instance, the Commissioner of Taxes will almost certainly consider that the contract under which the worker is engaged is a contract wholly or principally for labour.

**Examples**

A business engages a computer programmer to develop a computing system pursuant to a contract and the business provides all of the computer equipment required. The programmer is essentially providing labour only.

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An electrical contracting company engages an electrician to install security alarm systems for its clients. The company provides all of the materials required for each job. The electrician collects the materials, takes them to the client's premises and installs them. Although required to use his own tools of trade, the electrician is essentially providing labour only.

**Control**

16. The right to control or direct a worker in the manner they perform their work is a strong indication of an employer/employee relationship (see paragraphs 22-24 of Revenue Circular PRT007).
17. With some businesses, the business operator does not actually exercise much (if any) control, direction or supervision over a worker in practice. For instance, a business operator who operates a plumbing business, and who is himself a plumber, engages a worker who is an experienced plumber. The business operator is confident that, as the worker is a skilled and experienced plumber, there is no need to supervise him or to give him instructions or directions on how to do the work.
18. However in this context the issue to be considered is whether the business operator has the *right or authority* to exercise control or direction over the worker - not whether such control is actually exercised.
19. In considering whether the business operator has the right or authority to exercise control over how the worker performs the work, it is important to recognise that in certain circumstances there may be very *limited scope* to exercise control. For instance, where a worker is engaged in a professional or managerial capacity or is a highly skilled tradesperson, and the business operator does not have those qualifications or experience, the business operator will have little scope to exercise control over how the worker routinely goes about their tasks.

Although in cases such as this, there may be little scope for the business operator to control or direct the worker in relation to carrying out his or her tasks, there may be scope to exercise control in relation to *incidental or collateral* matters and this will be sufficient to satisfy the element of control.

**Examples**

A project management firm engages a worker as a site supervisor. The site supervisor is responsible for overseeing all things that happen on site. In this example the site supervisor could be either a professional or a highly skilled or experienced tradesperson. The general manager of the firm may not have the technical skills and experience to be able to tell the site supervisor how to actually go about performing the work. However, the project management firm may be able to control or direct the site supervisor in relation to incidental or collateral matters such as the hours of his attendance at the work site, the records he must maintain and the format of his reports on progress.

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The owner of a fishing boat may engage a worker to captain the boat. The owner remains on shore, the captain has the day to day control over the boat and the crew whilst at sea and there is very little scope for the boat owner to control how the captain carries out his work while the boat is at sea. However, there is scope for the boat owner to give the captain directions on incidental or collateral matters such as safety procedures on the boat, how the catch is to be processed and stored while at sea and what areas are to be fished.

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In both of these examples the fact that the business operator has the right to exercise control in relation to incidental and collateral matters satisfies the element of control.

20. When considering whether a business operator has the right or authority to exercise control or direction over a worker, it is important to consider this issue in the context of the entire period that the worker has worked for the business operator and not simply concentrate on the recent history. For example, the worker may perform the tasks in accordance with the instructions he or she was given when they first commenced working for the business operator. Similarly, the worker may carry out the tasks in accordance with manuals or other written instructions provided by the business operator.

### **Power to delegate**

21. Revenue Circular PRT007 explains that the power to delegate work may be indicative of a principal/independent contractor relationship (see paragraphs 29-30).
22. Where a business operator claims that the workers engaged have the power to delegate their work, TRM will usually look behind such a claim in order to ascertain whether there is evidence that the delegation power is actually exercisable in practical terms.
23. For example, if the worker has actually engaged other persons to assist in the completion of the work, and pays remuneration to these other persons, it will generally be accepted that the worker has the power to delegate. However, if the worker performs all of the work and in practice does not engage others to assist with the performance of the work, a claim that the worker has the power to delegate may require closer scrutiny.

#### **Example**

A worker is engaged on a contract by a steel fabrication firm and is paid an hourly rate. It is claimed that under the terms of the contract the worker has the power to delegate. If, on the occasions when the worker has been unable to attend work (for example, due to illness), the worker has provided a replacement worker and has paid that worker, then this would support the claim that the worker has the power to delegate. However, if on such occasions the steel fabrication firm has allocated the worker's work to someone else, then this would indicate that there is no power to delegate.

### **Integration**

24. If a worker is providing services that are of the type that are ordinarily required in the course of the business operator's business, then this may be indicative of an employer/employee relationship (see paragraph 31 of Revenue Circular PRT007).
25. It is therefore relevant to consider whether there are employees performing the same type of work as the worker. Similarly, it may be relevant that the worker was formerly an employee (and is still doing the same work).

#### **Example**

A firm sells air conditioning units. The firm has a number of salaried employees who are sales people and also has several commissions based sales people. The commission based sales people do work that is almost identical to the work of the employed sales people. As the business of the firm is the selling of air conditioners, the commission based sales staff are considered integral to the business.

### **Independent business**

26. If a business operator engages a worker who conducts their own independent business, then this is indicative of a principal/independent contractor relationship rather than an employer/employee relationship (see paragraphs 25-28 of Revenue Circular PRT007). The issue to be considered here is whether the worker is conducting a business on his or her own account as distinct from participating in the business of the business operator.
27. In *Hollis v. Vabu Pty Ltd* (2001), the High Court examined the relationship between a courier company and its bicycle couriers. In concluding that the bicycle couriers were employees and not independent contractors, the Court examined whether the bicycle couriers were running their own independent businesses:

"Viewed as a practical matter, the bicycle couriers were not running their own business or enterprise, nor did they have independence in the conduct of their operations. ..."

... A bicycle courier is unable to make an independent career as a free-lancer or to generate any 'goodwill' as a bicycle courier. The notion that the couriers somehow were running their own enterprise is intuitively unsound, and denied by the facts disclosed in the record".

28. Some of the features usually regarded as indicating that workers are operating their own independent business are:
- they have their own business premises;
  - the business is able to generate goodwill of its own;
  - they incur business expenses on a job;
  - they have staff that are engaged in the principal work of the business;
  - they work for a number of clients;
  - they own and maintain significant capital equipment and assets (not just hand tools);
  - they bear the commercial risk of making a profit or loss on a job;
  - they advertise to the general public; or
  - they bear the liability and responsibility for any poor workmanship or injury.

**Examples**

A transport company operates a fleet of trucks in the transport industry. Due to staff shortages they require assistance to meet their delivery demands and they supplement their staff with additional workers. If they engage a driver who is paid an hourly rate to drive the transport company's truck on a full time basis it is unlikely that the driver would be regarded as operating his own independent business. Alternatively, if they engage a driver who supplies and maintains his own truck and who works for others as well as the transport company, it is likely that this driver may be regarded as operating his own independent business.

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A number of fruit pickers are engaged by an orchard owner to pick fruit. They are free to work whatever days/hours they wish and are paid per bin of picked fruit. The fruit pickers would not be regarded as operating their own independent businesses.

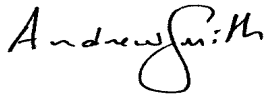
29. In project based industries, a business operator may only need a small core of permanent employees. When undertaking a large project, the business operator may engage additional workers as needed for the duration of the project on the basis that the services of those workers will be terminated at the completion of the project. In such circumstances, the mere fact that a worker is only engaged for a few months (or even weeks) will not be conclusive as to whether the worker is operating an independent business or not – even though the worker may work for a number of business operators over the course of the year (or even work for more than one business operator at the same time).

**Summary**

30. In determining whether payments made to a worker should be included for pay-roll tax purposes, the entire working relationship between the business operator and the worker should be considered in detail, and no worker should be included or omitted on the basis of only a few factors or on the basis of a superficial examination of the relationship.

**IMPORTANT**

This addendum to Revenue Circular PRT007 is provided to assist in determining whether payments to workers are liable for pay-roll tax. Should a business operator be uncertain as to their liability for pay-roll tax, professional advice should be sought or TRM contacted for further information. A comprehensive Contractor Questionnaire is also available from TRM to assist business operators and advisers in determining the status of their workers. The Contractor Questionnaire is available on the TRM web site or by telephoning (08) 8999 5165.



Authorised by the Commissioner of Taxes  
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