

EMPLOYEE VS. INDEPENDENT CONTRACTOR

1. Economic Reality or Entrepreneur Test

- **Control** – over factors such as: hours worked, location in which the work is performed, what and how the job is to be completed)
- **Ownership of tools** – who owns the tools used to complete the work?
- **Chance of profit and risk of loss** – does the person need to cover expenses; break even etc.

2. Integration or Organization Test

- The integration or organization test examines whether the tasks performed by an individual **form an integral part of the business** (i.e. an employer-employee relationship exists) as opposed to merely being accessory to the business (i.e. the individual is an independent contractor).
- The test will also determine whether the individual is in business in his or her own right and provides services to another business as an independent contractor.
- The argument here is that a business will not hire a contractor to be a person who is integral to the company; for instance, a company's senior managers will likely not be contractors.

3. Specific results test

- is the individual providing services for a specified period of time to accomplish a particular result (design the new IT system for the company) or on an ongoing basis (internal IT help desk)?

Facts of these tests needs to be considered together; therefore, no single test is decisive in establishing employee vs. independent contractor.

Tax Implications of Employee vs. Independent Contactor

Advantages of Independent Contractor Status

- independent contractors are treated like businesses; therefore, they get more deductions (CCA, rent, interest on loans).
- Source deductions are mandatory for employees, T4's must be filed for employees; while independent contractors do not need to pay withholding tax (remember they may still be required to make installments)
- No requirement to make EI payments

Disadvantages of Independent Contractor Status

- May need to collect and remit HST and file HST Returns
- Need to pay double CPP (employee and employer portion)

How to handle Employee vs. Independent Contractor Issues on Cases (SOA/UFE)

- Use case facts to support both sides (employee and independent contractor)
- Make an overall conclusion on the facts
- Provide some implications (advantages/disadvantages) for more depth