# *IT 2129 - Tax instalment deductions from payments of salary or wages*

This cover sheet is provided for information only. It does not form part of *IT 2129 - Tax instalment deductions from payments of salary or wages*

This document has been Withdrawn.
There is a Withdrawal notice for this document.

# Income Tax Ruling - IT 2129

F.O.I. EMBARGO:
- May be released

LEGISLATE. :
-221A(1)
-221A(2)(b)
-221C

OTHER RULINGS ON TOPIC
-IT 235 . Timber Industry Workers - Contract Tree Fellers
-IT 2009 . Earnings of Authors and Feature Writers
-IT 2014 . Fees Paid to Members of Governmental Commissions of Councils
-IT 2077 . Earnings of Freelance Writers/Authors
-IT 2108 . Earnings of Attendants to Disabled Persons
-IT 2121 . Family Companies and Trusts in Relation to Income from Personal Exertion
-IT 2128 . Directors Fees

SUBJECT :
-SALARY OR WAGES :
-EMPLOYEES,
-CONTRACTORS, ETC. :
-TAX INSTALMENT DEDUCTIONS :

**TAXATION RULING NO. IT 2129**

TAX INSTALMENT DEDUCTIONS FROM PAYMENTS OF SALARY OR WAGES

PREAMBLE

The Income Tax Assessment Act 1936 ("the Act") provides different systems for the collection of tax by deductions of tax at source in respect of various types of payments.

Two of the systems are known as the Pay As You Earn (PAYE) and the Prescribed Payments System (PPS). These systems are contained in Division 2 and Division 3A of Part VI of the Act respectively.

2. The purpose of this ruling is to set down guidelines to assist in the identification of the payments, described as "salary or wages", to which the PAYE system applies.

3. At the outset, it is appropriate to comment on some aspects that arise from legislative amendments which have been made to the PAYE provisions of the law.

4. Firstly, effective on 1 September 1983, paragraph (a) of the definition of "salary or wages" in sub-section 221A(1) which included payments made under a contract wholly or substantially for the labour of a person to whom the payment was made, was replaced with a revised paragraph which differed in two respects.

5. Firstly, the revised paragraph (a) contains a less rigorous test by providing that payments which are wholly or principally for a person's labour are included in "salary or wages" for PAYE purposes. (The meaning of "principally" is discussed at paragraph 35 hereunder). Additionally, the combined effect of sub-paragraphs (i) and (ii) of paragraph (a) of the definition of "salary or wages" is to exclude from the term "salary or wages" payments made to persons who are not employees as such, where the payments are wholly or principally of a private or domestic nature. That is, payments made by a householder for occasional services such as those provided by contract plumbers, electricians, etc., although they may be wholly or principally for labour, will fall within the private or domestic exclusion and accordingly will not be subject to PAYE deductions.

6. A further amendment to the definition of "salary or wages" was made to clarify the boundary between payments that are subject to PAYE deductions and those that are subject to deductions under PPS. This change, when read in conjunction with the PPS provisions of the law, means that, to the extent that a payment is prescribed for PPS purposes, and is not a payment of salary or wages to an employee as such, the PPS provisions of the Act apply rather than the PAYE provisions.

7. Another amendment, by which a new sub-section 221A(2) was inserted into the Act, overcomes technical deficiencies in the definition of "salary or wages" that were exposed by two court decisions: Neale v Atlas Products (Vic) Pty Ltd (1955) 10 ATD 460 and Deputy Commissioner of Taxation (Com) v Bolwell (1967) 1 ATR 862.

8. Paragraph (b) of the new sub-section 221A(2) is designed to correct the technical deficiency identified in the Atlas case. In that case the Court held that, for a payment to fall within the definition of "salary or wages", it was necessary that the relevant contract require the person to whom the payment was made to personally perform the work and, if that contract left it open for the person to engage someone else to perform it, it was not a payment caught by the definition.

9. Under paragraph (b) a payment is now classed as "salary or wages" if the person actually performs the whole or principal part of the labour before the payment is made or, in a case where the payment is made before the labour is performed, if the person making the payment can reasonably be expected to believe that the person who receives the payment will perform the whole or principal part of the labour.

10. The insertion of paragraph (c) of sub-section 221A(2) is intended to overcome the decision in the Bolwell case. It was held in that case that the definition of "salary or wages" did not apply to payments made to musicians, who were not employees as such, because the payments were not for labour, but for the exercise of creative talent to produce an artistic work.

11. By the insertion of paragraph (c), the extended definition of "salary or wages" now includes payments that are wholly or principally for the labour of a person where they are made for the performance, presentation by a person of, or the participation by a person in, any music, play, sport, entertainment, exhibition or like activity, or for the performance of services in connection with the making of a film tape, disc or television or radio broadcast.

12. The final amendment which is relevant for purposes of the definition of "salary or wages" is the insertion of paragraph (d) into sub-section 221A(2). This paragraph, together with sub-paragraph (a)(ii) of the definition, ensures that it is only private or domestic payments of householders (other than payments to employees as such, e.g., housemaids) which are excluded from the definition of salary or wages. Payments made by a natural person that, but for paragraph 221(2)(d), fall within the private or domestic category will not be taken to be of a private or domestic nature if made in the capacity of

trustee of a trust estate or as a member of a religious, charitable, social, cultural, recreational or other organisation or body.

13. Other recent amendments to the penalty provisions of the Act, which became effective on 14 December 1984, are intended to ensure that the obligation to deduct amounts at source is met. Breaches of the PAYE system for failure to deduct a tax instalment from salary or wages, failure to forward a deducted amount or failure to affix tax stamps now carry severe statutory penalties for the offence, as well as 20 percent per annum penalty on the amount to be accounted for. Similar penalties apply under the PPS system.

14. The prosecution provisions for offences against the PAYE provisions of the Act have also been extended to significantly increase the maximum level of court imposed penalties and to implement a tiered structure of penalties, including prison sentences, for multiple or recurring offences.

## RULING

15. The words in the title of the Division in the income tax law containing the PAYE provisions - Collection by Instalments of Tax on Persons other than Companies - make it clear that the scope of the PAYE provisions is limited to income, described as "salary or wages", derived from the personal exertion of an individual. Income derived by a company, by a person in his or her capacity as a partner in a partnership or a trustee of a trust estate would not, unless the arrangements can be said to be a sham, come within the PAYE provisions.

16. The system of collection by instalments of tax from individuals is based primarily on the definition of "salary or wages" contained in the PAYE provisions. Under sub-section 221A(1), "salary or wages" means, inter alia, "salary, wages, commission, bonuses or allowances paid (whether at piece-work rates or otherwise) to an employee as such, and, without limiting the generality of the foregoing, includes . any payments made - (a) under a contract that is wholly or principally for the labour of the person to whom the payments are made,...."

17. The definition of "salary or wages" excludes payments of exempt income, as well as prescribed payments within the meaning of Division 3A of the Act (the PPS provisions).

18. Given the legislative framework as described, there are three basic and sequential questions to be answered in determining under which of the systems (PAYE or PPS) deductions of tax, if any, are required.

19. The first question is whether the individual to whom the payment is made is an "employee as such". This depends upon the determination of whether a master and servant relationship exists. If the answer is in the affirmative, the payment (where it relates to some incident of service by the employee) is a payment to which the PAYE provisions apply. The factors to be considered in determining whether a master and servant relationship exist are discussed in detail at paragraphs 25 to 32 of this ruling.

20. Where the situation is such that the recipient of a payment is not an "employee as such", it is then necessary to consider whether the payment is a prescribed payment under the PPS provisions. The PPS provisions apply if it is such a payment.

F.O.I. EMBARGO: - May be released

21. Finally, where a payment is made to an individual who is not an employee as such, and is also not a prescribed payment, then the application of paragraph (a) of the definition of "salary or wages" must be considered. It should be noted that paragraph (a) operates independently of any other part of section 221A and is, in effect, an extension of the meaning of "salary or wages". The application of paragraph (a) is discussed in detail at paragraphs 33 to 49 of this ruling.

22. It is emphasised that the PAYE provisions do not apply to a payment which constitutes "salary or wages" under paragraph (a) if the payment is a prescribed payment for the purposes of the PPS provisions contained in Division 3A of Part VI of the Act. Put another way, paragraph (a) cannot, and must not, be applied to a payment that is a prescribed payment.

23. It should be noted that the answer to any of the basic questions posed above is normally dependent upon the application of certain criteria against the facts of a case. In doing so, each criterion should be weighted according to its relative importance in the particular situation, bearing in mind that the weight to be attached to a particular criterion turns on the nature of the arrangement and the importance of the relevant factors in the particular case.

24. A diagrammatic overview of the 3 basic elements which constitute the system of deduction at source is set out at Appendix A to this ruling. Employee as such (master and servant relationship)

25. If a master and servant relationship exists, the recipient of the payment is an "employee as such" for the purposes of section 221A and tax instalments must be deducted at the prescribed rates from the remuneration of the employee.

26. The primary test of whether a master and servant relationship exists is "control". The presence of a right to control how, where, when and who is to carry out the work in question points very strongly (and usually conclusively) to employee status. The greater the obligation on the individual to obey the orders of the principal as to the manner of the performance of the work, the greater the relative weight to be attached to the control criteria, and, the more certain it is that the individual is an employee.

27. Where the result of the 'control test' is inconclusive, the 'integration test' may be used as an adjunct in order to determine whether an individual is an employee as such.

28. The primary purpose of the 'integration test' is to establish whether the individual is performing the relevant services as an individual carrying on business on his own account or is, in his activities, part and parcel of the principal's business organisation. A person could be said to satisfy the integration test where :

    (a) the relationship is a continuing one;

    (b) the individual's activities are in effect restricted to providing service to one principal; and/or

    (c) the individual would not generally profit commercially from sound management in the performance of his tasks, i.e., the individual is so inextricably integrated in the business organisation of the principal that any benefit arising from the individual's work would flow to the principal.

29. In the course of considering whether a master and servant relationship exists it is necessary to consider any contractual agreement which evidences the terms and conditions under which one party agrees to pay for the work which another party agrees to perform.

30. Particular consideration is required to determine whether the parties in fact operate according to the express or implied terms of a contract. Instances have been encountered in which contracts that purport to be other than for employment are not indicative of the true nature of the activities carried on, e.g., activities demonstrably carried on under a master and servant relationship. Generally speaking, if the evidence points to a master and servant relationship, the contract (including any terms which purport to otherwise define the status of the parties to the contract) will not avoid the requirement for instalments to be deducted.

31. Appendix B to this ruling sets out a series of practical working tests which may be applied to determine whether a master and servant relationship exists. These tests are not exhaustive and the weightings applicable to each may vary according to the particular circumstances. Examples of persons who on application of these tests are considered to be employees for the purposes of sub-section 221A(1) are :

    (a) share fishermen - where, amongst other things, work is performed under the direction and control of the owner and/or operator of a fishing vessel, it is considered that crew members (including the skipper) paid on a share, or share of the catch basis are neither carrying on business in common nor in receipt of income jointly. This matter is considered in detail in Taxation Ruling No. IT 2137.

    (b) timber workers - where the work is performed under the direction and control of the mill management or a principal contractor and the nature of the work is prescribed by the principal.

    (c) fruit and vegetable pickers - where the grower or principal contractor has the right to control how, where, and when the work is to be performed. In the usual case the pickers are paid at piece-work rates and do not carry on business on their own account.

    (d) mining and exploration field workers - where the work is performed under the direction and control of the principal and there is little or no freedom in the performance of tasks.

    (e) shearers - where the work is performed under the direction and control of the wool grower or the principal contractor, who have the right to hire and fire.

32. Where, in the cases such as those described above, the evidence indicates that a master and servant relationship does not exist tax instalments are still considered necessary in most instances. This is because the payments are considered to be wholly or principally for the labour of the person in terms of paragraph (a) of the definition of "salary or wages".

F.O.I. EMBARGO: - May be released

**Persons in Receipt of Salary or Wages by Virtue of Paragraph (a)**

33. As mentioned earlier, paragraph (a) of the definition of "salary or wages" is seen as extending the normal meaning of "salary or wages". However, it must be emphasised that paragraph (a) does not apply to:
    (i) payments made to employees within the ordinary meaning of that word;
    (ii) payments which are prescribed payments for the purposes of the PPS;
    (iii) payments of a private or domestic nature made by householders; or
    (iv) payments of exempt income

A diagrammatic overview of the operation of paragraph (a) is set out at Appendix C to this ruling.

34. In determining whether a payment falls within paragraph (a) of the definition of "salary or wages" consideration must be given to the words "principally" and "labour" which are key elements of the paragraph. "Principally"

35. The word "principally" assumes its commonly understood meaning, i.e., for the most part, chiefly or mainly but not exclusively. As a rule of thumb, the word "principally" is generally met where the labour content under the contract exceeds 50 per cent of the value of the contract. For example, if the proper value of labour performed under the contact is only 40 per cent while the supply of materials, hire of plant or equipment, etc., is 60 per cent of the contract value, the word "principally" would not be met and paragraph (a) would not be applicable.

**"Labour"**

36. The word "labour" must be considered in its proper perspective in the context of the PAYE provisions in Division 2 of Part VI of the Act.

37. The focal point of those provisions is section 221C which requires employers to deduct from the salaries or wages of their employees amounts of tax instalments at prescribed rates. Section 221A defines "employee" as a person who receives, or is entitled to receive, salary or wages and "employer" as a person who pays, or is liable to pay, salary or wages. The definition of salary or wages is central to the scheme of the Division.

38. The addition of the words "as such" in the opening passage of the definition of "salary or wages" in sub-section 221A(1) is designed to encompass the individual who is an employee according to the ordinary or common law meaning of that word. The definition of "salary or wages" is then extended in paragraphs (a) to (k) to encompass payments made to persons who may not be employees in the normal sense but who in fact are not very distinguishable from employees, and others to whom it is intended the benefits of the instalment scheme should be extended.

39. In this connection, the purpose of paragraph (a) is to encompass payments to any individual who, although a contractor, is virtually in the position of an employee. This is supported by the explanatory memorandum which accompanied the legislative amendments (Act No. 58 of 1941) to paragraph (a) in 1941 .

40. The word "labour" is designed to exclude contracts which are not contracts to perform work but which, in the main, provide for payments in respect of the supply of goods, materials, or hire of plant or machinery and any other related costs incurred by the recipient of such payments in the course of

performing work under the contract. In effect, "labour" is a word which is capable of including all the kinds of work which may other wise done by a servant for a master.

41. In deciding whether a payment is made to an individual who is virtually in the position, or analogous to, that of an employee the following points need to be considered:
    (a) whether the individual performs tasks under similar general conditions as an employee, including similar working conditions, performance requirements and financial arrangements; and

    (b) whether the individual is integrated in, as distinct from an accessory of, the business organisation of the principal.

**Similar working conditions**

42. Individuals who are provided or furnished with the necessary facilities, such as accommodation, furniture and equipment, by the person making the payment are, in terms of physical or working conditions, no different to that of an employee as such. This is contrasted to a case where, for example, an individual acquires and maintains special accommodation, i.e., an office, workshop or studio from which activities are to be carried out and from which the activities may in fact be publicly advertised. Cases have been brought to attention where on becoming "contractors" individuals simply retain the use of accommodation and/or other facilities provided by an employer under a pre-existing contract of employment. In such cases these individuals are to be treated as having satisfied the "similar working conditions" criterion, i.e., the activities are carried out under similar physical or working conditions to that under which an employee as such would perform the work.

**Similar performance requirements**

43. Where an individual who, as in the case of most employees, is paid to work towards achieving a result pre-conceived, determined or defined by another then that payment falls within the definition of "salary or wages" in sub-section 221A(1).

44. By way of explanation, work of this nature, sometimes described as task orientated, is concerned with the doing or performance of tasks rather than the conception of the objectives or proposed results from which the tasks would flow. For example, an individual working to pre-existing plans or specifications, an individual engaged to perform specified tasks including the application of standard processes or in the evaluation or execution of ideas. The work may be skilled or unskilled, and either physical or mental.

45. Essentially, this category encompasses the individual who is performing duties under directions or duties which merely require some form of task oriented decision-making. It does not include the individual who has the freedom to structure or define the desired end result without a degree of accountability comparable to employee status.

**Similar financial arrangements**

46. The third criterion pointing to the work of an individual being analogous to that of an employee is whether the work is performed under similar financial arrangements. Where the costs incurred by an individual in performing the work do not significantly exceed those which an employee would be expected to incur the "similar financial conditions" criterion is satisfied.

F.O.I. EMBARGO: - May be released

47. In determining whether this criteria is satisfied account is to be taken of any specific investments for special accommodation, plant and equipment, raw materials, finished goods, consumable stores, etc. Factors such as the degree or quantum of investment would then determine the relative weight to be placed on financial criteria. In some cases physical or working considerations may outweigh financial considerations. For example, the fact that a clothing machinist invests in a sewing machine is not on its own conclusive. In that example, paragraph (a) would apply where the machinist performs work under performance requirements, at piece-working rates or otherwise, which amount to conditions similar to those of an employee as such.

## Integration

48. As indicated previously (paragraph 27) where the result of the control test is inconclusive, the primary purpose of the integration test is to assist in determining whether a master and servant relationship exists. Where it is concluded that a master and servant relationship does not exist, a secondary purpose of the integration test is to facilitate the evaluation of criteria from the perspective of paragraph (a).

49 The more an individual's activities are integrated with that of the principal the greater the prima facie inference that the individual, while perhaps not an employee as such, is, in the work performed virtually in the same position as an employee as such. Payments for work performed by such individuals would constitute "salary or wages" for the purposes of sub-section 221A(1).

## Business or Professional Income

50. Where an individual is carrying on a business or professional practice and through that business or practice earns income from rendering services to the public or a section of the public, the payments made to that individual do not constitute payments to which paragraph (a) of the "salary or wages" definition applies.

## Family Companies and Trusts in Relation to Income From Personal Exertion

51 Taxation Ruling No. IT 2121 refers to arrangements involving interposed entities as regards both income tax liability generally and the liability of employers to deduct tax instalment deductions for the purposes of section 221C. No further comment in connection with that matter is necessary for present purposes. However, it is noted that where there is a purported change in relationship which does not involve an interposed entity, and the payee continues to work for the same overall remuneration and under similar general conditions to those which existed prior to the revised relationship, the terms of this ruling are to receive full force.

COMMISSIONER OF TAXATION 19 March 1985

F.O.I. INDEX DETAIL REFERENCE NO:
- I 1131904

H.O. REF:
- 84/2730-5
- J237/4/3

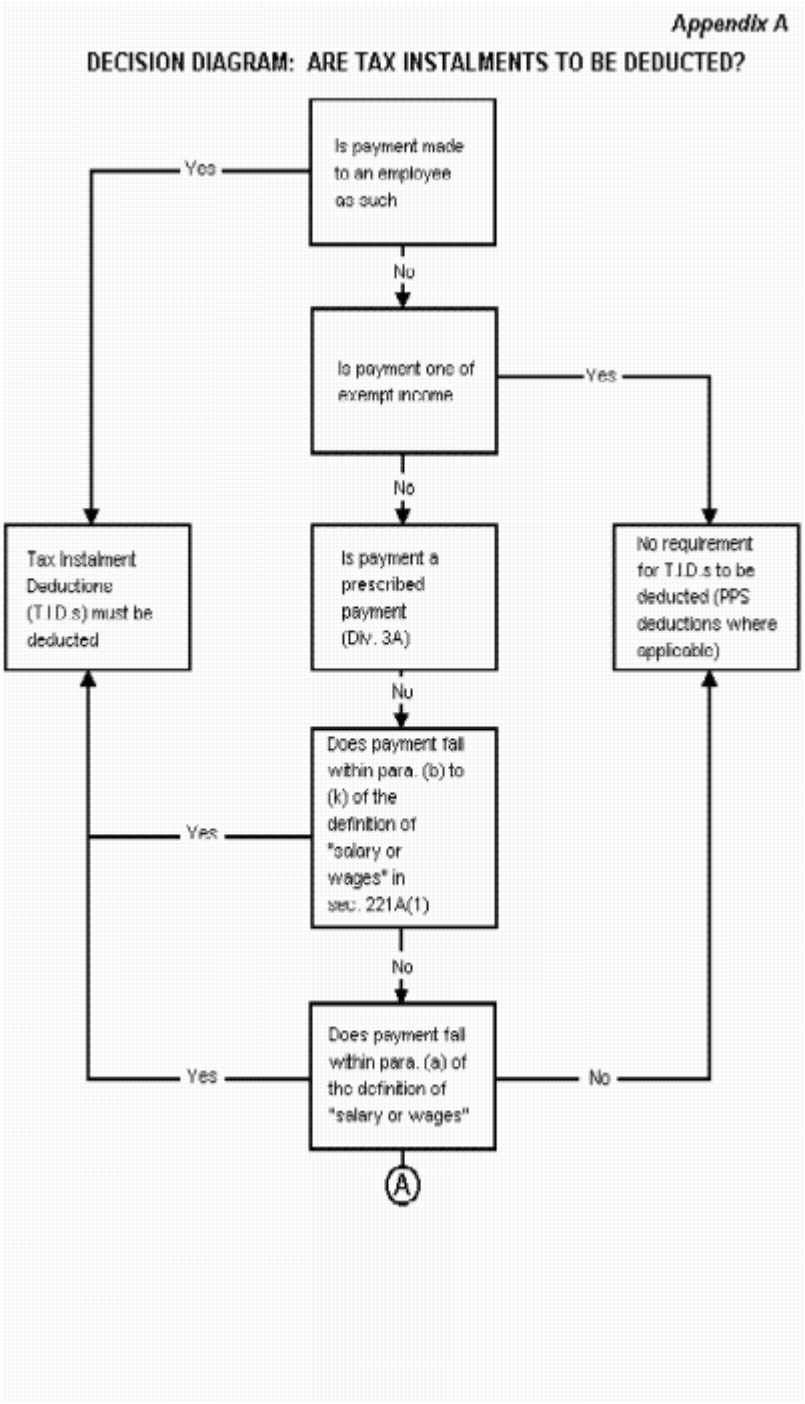
B.O. REF:

F.O.I. EMBARGO: - May be released

Appendix Section

APPENDIX A

DECISION DIAGRAM : ARE TAX INSTALMENTS TO BE DEDUCTED?




Appendix Section

F.O.I. EMBARGO: - May be released

APPENDIX B

## STATUS

| | | MASTER SERVANT RELATIONSHIP | INDEPENDENT CONTRACTOR |
|---|---|---|---|
| 1 | Is the arrangement evidenced in writing? | . the arrangement is not normally evidenced by written contract<br><br>. any written agreement will usually relate to the employee rather than the particular work to be executed | . any written contract will usually relate to the particular work to be performed e. g. specifications, time for completion or work, contract costs, liability or person performing the work |
| 2 | Are the terms of the arrangement supported by the facts? | . the actions of the parties, notwithstanding contract provisions purporting to provide for independent status, are consistent with a master and servant relationship. | . the terms of any agreement will govern the way in which the parties operate |
| 3 | How is the work performed? | . an employee as such will usually be engaged to work on a continuing basis and at the direction if the employer | . the agreement will require the performance of a specific task |
| 4 | Where is the work performed? | . the work is normally performed at the place of business of the employer or wherever the employer or otherwise directs | . the work is usually performed at a place identified in the contract or otherwise agreed to by the parties |
| 5 | Who provided the plant and equipment and materials? | . plant and equipment is usually provided by the employer although the employee may provide basic hand tools<br><br>. the employer would provide materials incidental to the performance of the duties of employee and it would be rare for the employee to incur significant expenditure on materials, plant or equipment | . the contract will specify who is required to provide plant and equipment but this is usually the responsibility of the contractor<br><br>. the contract may be either for supply of labour and materials. The contract normally specifies the terms upon which materials are supplied |
| 6 | Who provides the floor space, power, telephone etc? | . floor space, power, telephone etc is normally provided by the employer.<br><br>. a telephone facility may in appropriate circumstances be provided by the employee at a place where contact may be made after hours | . floor space, power, telephone etc is normally the responsibility of the contractor but this may depend upon the nature of the services provided |

| | | | |
|---|---|---|---|
| 7 | Who is responsible for exercising control over the manner in which the work is to be performed? | . the employer will normally direct, or have a right to direct the manner in which the work is to be performed<br><br>. there is an obligation on the employee to obey the directions of an employer | . the work may be subject to inspection and supervision as provided for in the contract<br><br>. the contractor normally has freedom in the way tasks are performed subject to job specifications in the contract |
| 8 | Does the contract require the work to be performed personally? | . there is an implied or express agreement that work allocated is to be performed personally by the employee<br><br>. there may be a power of delegation of duties to other employees of the employer | . the contract may contain a provision allowing work to be performed by persons other than the contractor e.g. sub-contractors or employees of the contractor. However, a token provision to this effect which the parties do not, or do not intend to implement, or which confers on the principal the right to approve substitute workers will not generally be sufficient. |
| 9 | Who is responsible for scheduling the work? | . the employer will determine or control the time-frame within which the work is to be performed | . the work will be executed in accordance with agreed schedules and consistent with the obligations under the contract |
| 10 | Does the arrangement relate to a specified period within which a job is to be performed or is it of continuing duration? | . a master and servant relationship usually requires a person to perform work on a continuous basis. A fixed term contract may be indicative of a master and servant relationship where it relates to the person performing the tasks rather than any specified tasks. | . the contract would normally describe or specify the work and the time within which it is to be performed |
| 11 | What is the arrangement with respect to leave of absence from work? | . the granting of leave of absence is subject to the discretion of the employer, and may be subject to a persons entitlements under an award or statute. | . a contractor does not require leave of absence, arrangements would be made to ensure that relevant work is performed within the time specified in the contract |

| | | | |
|---|---|---|---|
| 12 | Are there any payment entitlements over and above those relating to work performed? | . there is an entitlement to payment or leave and holidays as prescribed by award statutory provisions or the contract of service<br><br>. where entitlements are waived compensation in a monetary form may be paid | . there is no entitlement to payment for leave or holidays |
| 13 | What is the basis for calculating the payment for work performed? | . payment is often fixed by or based on the relevant award for the time actually worked. This may be on the basis of hourly, daily, weekly etc or piece rate<br><br>. Payment is normally made on a regular basis i.e. weekly, fortnightly, monthly. | . the contract will provide for the specified work to be performed for an agreed sum or other sum ascertainable by reference to the contract. The contract may also provide for payment of the agreed sum by instalments or progress payments calculated on a time basis or by reference to the value of the work actually executed. |
| 14 | Are invoices required to be submitted by the person performing the work? | . payment is made by reference to an award rate or agreed contract of service rate<br><br>. the requirement to present invoices to an employer would be unusual and, in any event, would normally be based upon non-commercial considerations e.g. to alter the tax status of employees. | . a contractor would normally render invoice or payment request an account payable by the principal. This is particularly the case where progress claims are made on a periodical basis pursuant to the contract or agreement. |
| 15 | What are the provisions relating to termination of arrangements between the parties? | . the services of an employee can be terminated providing the relevant notice and/or any other requirements under the award or contract of service agreements are met. | . the contract will normally contain provisions in the event of default by either party.<br><br>. the contract will be discharged by performance. |

| | | | |
|---|---|---|---|
| 16 | Who has responsibility for losses occasioned by poor workmanship or negligence? | . the responsibility for losses occasioned by poor workmanship or negligence are usually accepted by the employer. The employee may be subject to disciplinary action at the discretion of the employer.<br><br>. the employer is liable for the act of default of his employees committed within the scope of his employment. | . the contractor bears the responsibility and liability for losses<br><br>. the contractor is responsible for producing the agreed work to a reasonable standard or to that otherwise specified in the contract<br><br>. the principal is generally not liable for default by a contractor, except in circumstances such as<br>(i)where the work is unlawful or is required by statute to be performed in a certain way and the contractor fails to perform it in that way<br>(ii)where the work is likely to cause injury, the principal is bound to see that necessary precautions are taken, or<br>(iii)where he engages an incompetent contractor |
| 17 | What remedy is available if the person performing the services fails to carry out the work in a satisfactory manner? | . the services of an employee may be terminated | . the contract may be terminated in the event of failure to execute the work in a proper and/or workmanlike manner |
| 18 | Is cover required for workers' compensation? | . at law an employer is liable to cover his employees for workers' compensation insurance. Provision of workers' compensation insurance, therefore, is a strong indication of an employer-employee relationship. | . a principal is generally not liable to cover a contractor for workers' compensation. |

| | | | |
|---|---|---|---|
| 19 | Is the person performing the work, in his/her activities, part and parcel of the principal's business or merely an accessory to it? | . the work is performed as an integral part of the business of the employer | . the work, although performed for the principal's business, is not integral into it but is only accessory to it. |
| 20 | Is the relationship a continuing one or does it exist only to procure a result? | . a contract of employment is normally of continuing duration. However, fixed period contracts of employment are common in professional or specialised fields of employment. In all cases, the master prescribes and has a right to direct the work and its performance<br><br>. short term employment can occur in various industries e.g. fruit picking | . the work is undertaken to produce a given result, but so that in the actual execution of the work the contractor is not under the order or control of the principal. The contractor may use his discretion in things not specified beforehand<br><br>. the contract is discharged when performance is completed. The relationship may be a continuing one in the sense that the parties may enter into consecutive but separate contracts. |
| 21 | Is the person performing the work free to accept work from other principals and/or conduct business on his own account? | . the employee is not usually free to enter into other gainful employment/activities, particularly where there is the possibility that this may affect the performance of existing tasks. Te employee would not be permitted to enter into other gainful employment during the hours he is committed to his employer | . the contractor will be at liberty to accept work from others subject to the over-riding requirement that he must not accept other business if it would interfere with his contractual obligation to carry out the specified task.<br><br>The contractor will generally hold out as being available to perform services for the public at large. |
| 22 | Does the person performing the work have the right to refuse the performance of a particular task or job? | . there is generally no right as such to refuse the performance of an allocated task. The persistent refusal to perform allocated tasks may be a ground for dismissal | . the tasks to be performed are normally agreed prior to entering into the contract. The contract will govern what tasks must be performed. The principal may seek to execute remedies for failure to perform under the contract but cannot otherwise control or direct the nature of the tasks to be performed. |

| | | | |
|---|---|---|---|
| 23 | Has the person performing the work the opportunity to profit from sound management in the performance of work? | . the work is generally performed for the master for a predetermined salary or wage range and profitability is not a normal consideration. When increased efficiency may lead to increased remuneration, this is usually a matter arising from alteration to the terms of employment.<br><br>. the employee would not be placed in a position of having to incur a financial loss out of his employment activities. | . sound management may lead to increased profitability in a business that is carried on by the contractor on his own account, without any change to the contract arrangements. On the other hand bad management (or any number of other reasons) may lead to financial losses in the activities carried on. |

F.O.I. EMBARGO: - May be released

APPENDIX C

DECISION DIAGRAM : IS PARAGRAPH 221A(1)(a) APPLICABLE?

