



IS YOUR CONSULTANT ACTUALLY AN EMPLOYEE?

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Hiring a consultant? Did you know there is a risk that your self-employed contractor may actually be considered an employee in the eyes of the Canada Revenue Agency (“CRA”)?) With the increasing popularity of consultants this may be a serious consideration for your business. Learn the risks and how to protect your business.

Independent contractors are an attractive option for many businesses trying to limit employment expenses and other labour requirements that coincide with having employees. From a cash flow perspective, hiring a consultant means you do not have to pay the employer portion of CPP, EI or EHT. While this option sounds appealing proceed with caution. The CRA considers the substance of the arrangement over its form. So what does this mean? Even though you may have a contract with a self-employed individual that states it is a contract for services, the CRA may not accept this if the facts do not support the claim.

If the CRA concludes your contractor arrangement is actually that of an employer-employee relationship, it is the employer who bears the financial risk. The employer is responsible to pay both the employer and employee portion of CPP and EI since the arrangement’s inception. Tack on penalties and interest and the ramifications could

Our goal is to provide updates on topical accounting and tax issues. Information contained in this newsletter is not meant to be a comprehensive summary of the issues raised. Rather, we wish to bring what we believe to be important issues to the attention of our valued clients and readers. We would be pleased to discuss any questions that you, the reader, might have in greater detail.



be significant. The failure to deduct penalty is 10% of the amount of CPP and EI not deducted. Interest is calculated using CRA’s prescribed interest rate (currently 5%) and is compounded daily from the day the payment was due. It’s easy to see how this can get costly fast.

To protect yourself and your business, there are a few key aspects you need to consider:

1. The written agreement: while not the sole identifying aspect of the relationship it does play a significant role. The agreement should be in writing and should show a clear common intent on whether the parties intend to enter into a business or an employment relationship.
2. Substance versus form: these are the small details which can make a big difference. The following list are areas the CRA considers when evaluating the substance of the relationship:
 - a. Level of control the business has over the worker's activities
 - b. Does the worker provide their own tools and equipment
 - c. Can the worker subcontract the work or hire assistants
 - d. What level of financial risk does the worker take – this typically considers only the expenses that are not reimbursed by the business
 - e. What is the worker's opportunity for profit

If you or your business has hired an independent contractor and is questioning whether or not the relationship is that of an employer-employee you may request a ruling from the CRA to have the status evaluated. A ruling can be requested before June 30th of the year following the year in question. Meaning, if you are wondering about an independent contractor you hired in 2016, you have until June 30, 2017 to make the request.

If you have questions about hiring an independent contractor we would be happy to meet with you to discuss in detail the factors that CRA considers and how they tie into the arrangement you currently have or the one you are considering.



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