

ICA member Luke has done an assessment of the ATOs contractor v employee tool found here:

[http://www.ato.gov.au/businesses/content.aspx?menuid=0&doc=/content/00326433.htm&page=1#P167\\_15311](http://www.ato.gov.au/businesses/content.aspx?menuid=0&doc=/content/00326433.htm&page=1#P167_15311).

These first 2 columns are what the ATO says The 3rd column is Luke's real life experience

	<b>(The ATO says )</b> Ahn is an employee (This is fairly accurate)	<b>(The ATO says)</b> Sara is a contractor (This is a freelance IT contractor - Perhaps 10% of IT contractors)	<b>(Luke says)</b> he has no idea what he is except he is generally what is considered a contractor in the IT industry but matches no known statement by the ATO. (The 100,000+ odd IT contractors around Australia who work for an Agency)
<b>Overview of the job performed</b>	A software engineer, Ahn, works for a large business and designs, develops, tests and installs software programs.	A software engineer, Sara, enters into a contract with a retail business to design, develop, test and install a new software program.	A software engineer, Luke, enters into a contract with a retail business to design, develop, test and install a new software program. Details of this are not specified in the contract though and it is usually a straight 3-6 month contract for such and such company at a set hourly rate. The contract is not with this company though, it is with an agency and includes terms such as "I must give 2 weeks notice to terminate the contract" but everyone else, including the agency and the company who I must perform work for but has no signature on my contract can terminate me at a moments notice.
<b>Control over the work</b>	<p>The business allocates work to Ahn and tells him the completion due date.</p> <p>Ahn must complete the work according to the business's established protocols, guidelines and quality standards.</p> <p>Employee characteristic - the business has control over the work.</p>	<p>The contract stipulates the new software program needs to:</p> <p>be operational within six months (specific stages of the project need to be completed by set dates) meet the retail business's requirements and specifications.</p> <p>Sara is able to determine how the work is completed.</p> <p>Contractor characteristic - Sara has freedom in the way the work is done, subject to the specific terms in the contract.</p>	<p>No details are provided on what work must be completed until all contracts are signed and you have turned up to work the first day. Generally you will work as part of a team of contractors and must perform the work as the head contractor specifies, if your good you will be the head contractor. Deadlines will be unrealistic and not set by those people having to perform the work.</p> <p>Contractor Characteristics: Control is usually set by a Contractor project manager and then by a team leader. None of this will be specified in the contract.</p>

<p><b>Ability to sub-contract/delegate</b></p>	<p>Ahn is required to complete tasks as assigned to him by the business. If Ahn is running late in meeting a project deadline, he may be able to assign aspects of his work to other software engineers who work for the business, depending on their workloads. The business pays the other software engineers.</p> <p>Employee characteristic - Ahn cannot sub-contract/delegate the work.</p>	<p>The contract does not stipulate Sara must personally complete the work (the contract focuses on achieving a specific result ie the software program). Sara can pay someone else to complete the work.</p> <p>Contractor characteristic - Sara can sub-contract/delegate the work.</p>	<p>The contract does not give leeway for me to hire another person on my behalf to finish my work. I believe the contract between the Company and the Agency generally gives the agency first right to place someone in my position if I am incapable of finishing the job but I have no such right myself.</p> <p>Contractor characteristic : No IT agency in its right mind would ever let Luke have this ability. But from the Company's perspective the agency does indeed subcontract this work out to me.</p>
<p><b>Basis of payment</b></p>	<p>As Ahn has recently completed his degree, the business has agreed to pay him a higher annual salary. They pay Ahn fortnightly for the agreed standard hours he works plus any agreed overtime.</p> <p>Employee characteristic - Ahn is paid for the time worked.</p>	<p>Sara quoted a price to design, develop, test and install the new software program. Sara will be paid progress payments upon specific stages of the project being satisfactorily completed.</p> <p>Contractor characteristic - Sara is paid for a specific result based on the quote she provided.</p>	<p>Work is paid hourly and quoted over a specific number of months. A quote implies a knowledge of the work to be done prior to a contract being taken. Given the size and scale of most IT projects a project manager and a business analyst is usually contracted for 3-6months just to work out how many IT people are needed over how long.</p> <p>Contractor characteristic - Luke is paid for a specific result at an hourly rate. The duration of the contract is generally the indicator on how long a piece of work will take to complete.</p>
<p><b>Equipment, tools and other assets</b></p>	<p>Ahn uses the computer equipment and software provided by the business. On occasion, as agreed with the business, Ahn will work from home using his laptop to write the end-user documentation and operational procedures.</p> <p>Employee characteristic - the business provides the majority of the equipment and assets required to complete the work.</p>	<p>Sara uses her own computer equipment and software. At designated stages of the project, Sara will use the retail business's computers for short periods of time.</p> <p>Contractor characteristic - Sara provides the majority of the equipment and assets required to complete the work.</p>	<p>Luke uses the computer equipment and software provided by the business. On occasion, as agreed with the business, Luke will work from home using his laptop to write the end-user documentation and operational procedures.</p> <p>Contractor Characteristics - Most large business have Standard Operating Environments and dislike having foreign computers connected into the corporate network. Most corporations will provide a PC and cover software licencing for development. It would be inconceivable that contractors would be able to handle the \$100k+ in software licences to develop offsite given the diverse and often bespoke nature of software systems involved.</p>

<p><b>Commercial risks</b></p>	<p>If there are faults in the work, or it is not completed on time, Ahn is not personally liable. The business would need to pay for rectification.</p> <p>Employee characteristic - Ahn takes no commercial risks.</p>	<p>If the software program does not meet the retail business's agreed requirements or does not perform to specification, Sara will be required to correct the problem at her own expense.</p> <p>Contractor characteristic - Sara takes commercial risks.</p>	<p>If the software program does not meet the retail business's agreed requirements or does not perform to specification, Luke will be required to correct the problem. Because this is a time and materials contract Luke is generally not required to fix at his own expense. If gross negligence is involved, or contract specific deadlines are not met the agency and Luke can be sued for damages and insurance is normally taken out by the agency to cover this.</p> <p>Contractor characteristic - Luke takes some commercial risks if certain conditions in the contracts are not met.</p>
<p><b>Independence</b></p>	<p>Ahn works on an ongoing basis for the business and must complete any work reasonably asked of him within his duty statement.</p> <p>Employee characteristic - Ahn is not operating independently from the business.</p>	<p>Sara has her own website which promotes her services. She has another project to complete after the contract with the retail business is completed and can choose whether she undertakes future projects for the retail business.</p> <p>Contractor characteristic - Sara is operating independently from the retail business.</p>	<p>Luke must regularly seek contracts through agencies, contacts and online to maintain work. Work will rarely be done through the same agency between different contracts.</p> <p>Contractor Characteristics - Work is not ongoing and must be sought after a contract is finished. Multiple contracts at once are a possibility.</p>