

APCC Business Checklist

Despite the rhetoric being quoted in the media from various accounting firms, the rules for determining whether a corporation used by a contractor to provide services is a Personal Services Business (PSB), have not changed.

All the government has done is increase the punitive measures that it will apply if a consultant's corporation is determined to be a PSB. These new punitive measures include:

- Disallowing all expenses other than those directly related to salaried employment (i.e. will allow the employer portion of CPP premiums)
- Disallowing reliance on the small business tax rate, thereby making it cost-prohibitive to leave retained earnings in the corporation after paying corporate tax, creating a situation in which the consultant would take all net income out of the corporation in the year that it is earned so that it will be taxed as income at the personal income tax rate

The basic determination is if the contractor who is providing services is engaged in:

A Contract OF Service (ie. an employer/employee relationship)

VS.

A Contract FOR Services (ie. a corporation to corporation relationship)

Commonly, an auditor will make a determination and decide whether or not to make an assessment. The taxpayer then has the opportunity to appeal any assessment made and the matter will be reviewed by a judge. The judge's decision will review the specifics of each situation, applying case law and numerous other factors (Please see Procom's "Suggestions on How to Safe Guard Your Self Employed Tax Status" Document).

The following elements of a business operation make the distinction between contractors and employees clear. You may want to use it as a check list against which you can assess yourself and your business...

1. Registration:

Every business should be registered:

- a. Register as a business with government departments or agencies for things like the goods and services tax (GST)/harmonized sales tax (HST)/, Quebec sales tax (QST), or business name registration.

OR

- b. Have a business license, as required by law or applicable regulations.

2. Company Name:

Every business should have a clear and unique name:

- a. When you form a company, it needs an actual name.
- b. If you do not provide a name, the Government will assign one consisting of a number, the province of incorporation and a suffix (ie. LTD, Inc., Limited, Incorporated, etc).
- c. A name is always preferable to a number and is easier for your clients to correctly remember.
- d. Decide which phrase sounds easier to remember and more authentic:

“Hi, I am Bill from Bill Systems, Inc. “

VS.

“Hi I am Bill from 123456 New Brunswick, Inc.”.

- e. One reflects a real company wanting to interact with the public, the other does not. It's your choice!

2. Office and Staff

As any business would, maintain an office, staff, or both, and you may provide services from that office:

- a. That office might be in an office building or in your home
- b. Regardless of the office location, having an address for your company is a key
- c. If the office location is in the home, it's best to set aside a space for your company work and company files (ie. a room, the kitchen table, etc). Make sure to keep books and records
- d. Have a separate telephone line (possibly a mobile phone), voicemail, fax line, or bank account for your business
- e. Have an Internet domain name or corporate email service for your business

3. Branding

Every business has a brand which is presented to their clients.

There are a number of ways in which that brand is presented to your buying-public as well as the people that you deal with for services. Basic elements include:

- a. Business cards
 - Including your company name and contact details
 - Electronic as enabled in outlook or similar software tools
 - List your number in the telephone/business directory
- b. Letterhead
 - Including your company name and contact details in the footer
- c. E-mail signature
 - Including your company name and contact details
 - Make it your default signature
- d. Have a presence on the internet
 - Create an account on LinkedIn, Facebook, or other network.
 - Have a website
- e. Advertise your services for hire or in newspapers, trade, journals, magazines or periodicals

4. Self-Improvement (items 5 and 6)

Every consultant should keep track of events in his/her industry and dedicate time for upgrading his skills:

- Participate in business development activities
- Become a member of a Professional Association of Independent Consultants (APCC)

5. Contract

Every contractor provides their services under contract.

- a. It is everyone's best interests to have a contract with detailed terms and conditions.
- b. Basic elements of a service contract include:
 - Names of the parties to the contract
 - Specifics such as start and end dates, pay rate
 - Statement of the intention of the relationship
 - Payment provisions

- Termination provisions, etc.
- c. It's common to have concerns about the length or technical terms in a contract. This is because:
- A good contract specifies the terms of the deal to the benefit of both parties
 - Absent some specifics, an abbreviated contract can be open to interpretation and not be worth the paper it is written on
 - Even so, commonly a bad (ie. poorly worded, abbreviated and or amateurish) contract document may be better than no contract when you are providing your services under contract

7. Risk

When you provide your services through a corp. to corp. contract you expose yourself to risk!

- a. If you work as an employee:
- Employment Standards Legislation (ESA) guarantees that you get paid, whether you do a good job, a bad job, or even no job at all
 - Additionally you cannot be sued for anything you do
- b. If you're engaged under contract, the client can withhold payment:
- The client can often withhold payment and possibly deny payment if the contractor does not do what they agreed to do.
 - Regardless of what is in your agreement, your client might do exactly what you would do if you were the recipient of unsatisfactory service (withholding payment, or discontinuing your engagement with the company providing service).¹
 - In a corp. to corp. relationship (i.e. contract) it is legal for them to do so
- c. If you're a contractor working through your own company, your company can be sued:
- Technically, you as the employee of your company are not being sued
 - However, the directors of the company can be sued, and when one has their own company they are also the directors of that company - Hence you can be sued

¹ When (if ever) this happens, it is brought into the court.
APCC My Own Business Check List (Basics)

8. Expenses

When you are an employee, your employer assumes a number of responsibilities and costs such as unemployment insurance benefits, CPP, and other benefits. As a contractor, you will now assume these costs.

This transition of responsibility is one of the largest differences between an employee and a contractor. Other expenses now transferred to the contractor include:

- a. Training costs
- b. Work continuity:
 - Employees...
 - i. Could presumably work forever or until their employer is merged, downsized, or becomes insolvent (government employees exempted).
 - Contractors...
 - ii. Only work for the duration of the contract.
- c. Accounting
 - Employees...
 - i. Depend on employers to manage their payroll and issue T4s
 - Contractors...
 - ii. Manage their own payroll.
 - iii. Keep receipts for business activities that they want to claim as expenses, and is commonly recommended as a rule.
 - iv. Engage an accountant or do their own financials.
- d. Self-Improvement:
 - Employees...
 - i. Get sent to conferences paid for by their employers.
 - Contractors...
 - ii. Attend these same conferences, usually paying travel, accommodation, and attendance feed out-of-pocket.
- e. Benefit programs:
 - Employees...
 - i. Depend on Employers to Contribute to a portion of CPP and EI.
 - ii. May have pension plans which are part of the employment package.
 - Contractors...
 - i. Pay both sides of CPP premiums.
 - ii. Are excluded from EI, unless they enroll as enabled by Bill C59.²

² Apparently the low number of people who have enrolled under Bill C59 suggests that few if any contractors see the merit of the offerings available through this legislation.

iii. Are defined by other differences, which are not noted here.

e. Benefit programs:

Employee...

- iv. Depend on Employers to Contribute to a portion of CPP and EI
- v. May have pension plans which are part of the employment package

Contractors...

- vi. Pay both sides of CPP premiums.
- vii. Are excluded from EI, unless they enroll as enabled by Bill C59.³
- viii. And other differences, which are not noted here.

It is your responsibility as a contractor to maintain your records and structure your affairs according to your business responsibilities...

9. Professional Services

Commonly, businesses will engage the services of various professionals when the need arises. This may include accountants, lawyers or other advisors.

As per the disclaimer provided at the end of this document, it is recommended that you seek the advice of independent tax/ or legal professionals in all matters of importance more specifically all matters of taxation and the structure of your business affairs.

The Check List

	NORMAL	ABNORMAL
Registration (Is your company Registered or Incorporated?)	Yes	No
Company Name	Name (Yours)	Number (Gov't)
If you have a Home Office do you have a dedicated space for work?	Yes	No
Do you have business cards?	Yes	No

³ Apparently the low number of people who have enrolled under Bill C59 suggests that few if any contractors see the merit of the offerings available through this legislation.

Do you have an e-card?	Yes	No
Do you have letterhead?	Yes	No
Do you have a default company email signature?	Yes	No
Do you have a separate telephone line, voicemail, fax line, or bank account for your business?	Yes	No
Do you have an Internet domain name or corporate email service?	Yes	No
Do you have a website or internet account on a certain network?	Yes	No
Are you a member of a professional association of independent consultants?	Yes	No
Do you attend and pay for training, conferences and other self-improvement events?	Yes	No
Do you have a written contract?	Yes	No
Does your contract include the names of the parties of the contract?	Yes	No
Does your contract include payment and termination provisions?	Yes	No
Do you work only for the duration of your contract?	Yes	No
Do you manage your own payroll?	Yes	No
Do you engage accountant?	Yes	No
Do you pay both sides of CPP Premiums?	Yes	No
Are you excluded from EI?	Yes	No

If you have any items in the column with the title “Abnormal” it is suggested that you review your business plan and/or consult with an independent tax and/or legal professional.

The APCC and persons providing services through it are neither a tax advisor nor a lawyer. The concepts and opinions advanced in this document should not be considered as professional advice. For more information please refer to literature published by the CRA, including the CRA Guidelines under publication RC4110, as well as relevant information bulletins.