



# **YORK UNIVERSITY**

## **GUIDELINE**

### **EMPLOYEE/EMPLOYER vs. INDEPENDENT CONTRACTOR**

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## Introduction

The Human Resources and Finance Divisions must process payments to persons providing personal services (Independent Contractors) to York University in a manner which complies with the Income Tax Act of Canada. Failure to appropriately withhold source deductions is an offence under the Act and related legislation, and results in substantial interest, penalties and fines for York. All persons with responsibility for hiring and paying faculty, students and staff must be aware of, and comply with the Acts and the Regulations. The policies and guidelines outlined in this document are derived from Canada Revenue Agency (CRA) assessing practices and regulations. There is little flexibility in these regulations.

This document provides guidance concerning the alternative methods of payment to individuals who provide services to the university. We have developed guidelines, examples and a questionnaire to assist you in understanding which individuals require the withholding and remitting of tax and which do not. The Sr. Manager, General Accounting & Compliance (x22914) will approve the classification of any individuals thought to be independent contractors.

## Policy Compliance

All payments for goods and services are subject to university policies and procedures including, but not limited to, Procurement of Goods and Services [Policy](#) and [Procedure](#), Conflict of Interest Policy for [employees](#), [faculty and librarians](#), the Declaring a Conflict of Interest in the Procurement of Goods and Services [guideline](#) and the Reimbursement of Expenses [Policy](#) and [Procedure](#).

## General Classification

The classification and taxation treatment of workers considers two (2) basic categories of employment relationships.

- (1) Employee-Employer - requires withholding of source deductions (income taxes, Canada Pension Plan (CPP) premiums and Employment Insurance (EI) premiums by the employer.
- (2) Independent Contractor - requires the Independent Contractor to collect and pay the GST/HST if revenue exceeds \$30,000 over a twelve-month period.

The Canada Revenue Agency (CRA) along with other governing agencies (Employment Standards, Employers Health Tax, WSIB) take a rigorous audit approach of companies and not-for-profit organizations with respect to the classification and taxation of employees versus independent contractors. York must be in compliance with current assessing practices and legislation. York must ensure that any individual classified as an independent contractor meets the requirements set out by CRA. Otherwise, these individuals must be classified as employees and taxed as such.

## Exemptions

Invoices from legally incorporated companies which provide services that are not normally provided by employees of the university will be treated as payments to independent contractors and paid by Accounts Payable. This guideline does not apply to payments to non-resident individuals or incorporated entities (discussed below) that provide services that are not normally provided by employees of the university.

## Employee of More than One Department or Providing Numerous Functions

If an individual provides numerous services to York, and the individual is considered an employee for one of the services, then they will be treated as an employee for all services rendered to York.

## Registered Businesses (Not Incorporated)

An individual that operates under a business name that is not incorporated will not be automatically given Independent Contractor status. Current CRA assessing practices do not view registered businesses as constituting a contractor relationship.

## Part-Time Instructors

Providers of part-time academic instruction are to be paid through Payroll with applicable withholdings and reported on a T4. This is true for full courses and half courses.

## Honoraria

An honorarium is a gift of an object or a small sum of money, normally less than \$500.00 annually, in thanks for a favour done. Honorariums paid to individuals are processed by Payroll for both those classified as employee status and those classified as non-employee status. For those classified as non-employee, such payments are not subjected to statutory source deductions and are reported on T4A. In the case where an individual is a York employee and is paid an honorarium, the payment is treated as employment income, subjected to all statutory withholdings of source deductions and as such is reported on a T4.

## Examples and Taxation Status

Examples	Taxation Status
<b>Instructors</b>	
1) Part-time instructors of regular courses (i.e. 4 months, course directors)	Employee - Payroll
2) Non-routine courses and special seminars of a few days	Invoice – Accounts Payable
3) Guest Lecturers <ul style="list-style-type: none"><li>No ongoing responsibility to the participants or students attending</li><li>No marketing or grading responsibility</li><li>Lectures infrequent, usually non-credit and in most cases not part of a regular course</li><li>Fee charged to those attending</li><li>No appointment with the university</li><li>University has little control over the content of the lecture other than with respect to topic</li><li>Lecturer paid a single fee for giving the lecture and payment made at that time</li><li>Lecture or lecture series of limited duration</li></ul>	Invoice – Accounts Payable
<b>Non-Instructional</b>	
4) Other Miscellaneous Non-Instructional Services <ul style="list-style-type: none"><li>Directors, managers, supervisors, executive officers, administration officers</li><li>Any job function which is integrated into the university</li><li>Cooperative liaison services</li><li>Editorial writing assistance</li><li>Invigilating</li><li>Ongoing advisory services</li></ul>	Employee - Payroll
5) Honorariums	Non-Employee - Payroll
6) Marking exams and papers (applicable to CUPE Exempt only)	Invoice – Accounts Payable
7) Other Miscellaneous Non-Instructional Services <ul style="list-style-type: none"><li>Grading correspondence courses (applicable to CUPE Exempt only)</li><li>Preparing exams (applicable to CUPE Exempt only)</li><li>Preparing course outlines</li></ul>	Invoice – Accounts Payable

Examples	Taxation Status
<ul style="list-style-type: none"> <li>• Preparing graphic illustrations</li> <li>• Preparing textbooks, done offsite</li> <li>• Typing, paid by the page</li> <li>• Writing a computer program, but not integrated into operations</li> <li>• Preparing stage props for a play</li> <li>• Proposal development and write-up</li> <li>• Facilitation of Principals Qualifications Program</li> <li>• Interpreting services</li> <li>• Computerized note-taking</li> <li>• Musical/dramatic performances</li> </ul>	

## Guidelines

### Independent Contractors Paid by Accounts Payable

The university may retain services from a service provider who is a separate and distinct business. These services are for specific work, services not integrated into York's operations, for short time duration, and the Independent Contractor bears the financial risk of the work they provide to York. In those cases, where the Independent Contractor is performing valid services as an Independent Contractor, an invoice is processed through Accounts Payable and no income tax is withheld. These Independent Contractors are not to provide services that are normally provided by employees of the university as this would mean they are integrated into York's operations. Invoicing, purely to avoid the source deduction of income tax and employee deductions does not relieve the university from the legal liability to withhold and remit source deductions. Therefore, the assumption will be that a service provider is an employee first until proven to be an Independent Contractor. Service providers invoicing Accounts Payable are required to report this income on their personal income tax returns. York will not provide a T4A for this income. Therefore, the individual must retain copies of invoices for use in completing their personal income tax return.

If the Independent Contractor is incorporated and provides services that are normally provided by employees of the university, they will be paid by Accounts Payable.

If the Independent Contractor is an unincorporated registered business, they will not be automatically given Independent Contractor status unless the function is included in the example chart above as "Invoice – Accounts Payable" and an Independent Contractor Questionnaire is completed.

### Employees Paid by Payroll

The university may obtain services by hiring an individual as an employee. Payments to employees are processed through Payroll and applicable withholding and reporting of taxes is made to CRA. The university's reporting requirements are separate and distinct from reporting requirements of the service provider/employee. CRA has the power to make an income tax reassessment in respect of a payment to an individual however made which it considers to be employment income.

### Determining if Employee or Independent Contractor

To determine if a service provider is an employee or an Independent Contractor, you need to examine and analyze the terms and conditions of the worker's service/employment contract as it relates to the four factors discussed below.

### **The Control Test**

The control test deals with the level of management prerogative, direction and control available to the service provider. If the individual/entity providing the service determines how, when and for what cost the services are to be offered and provided, they are more likely Independent Contractors. If university management exercises control over what is to be done, how and when and for what remuneration; it is more likely an employment relationship.

### **The Ownership Test**

The ownership test relates to who generally supplies the tools to do the work. In an employer-employee relationship, the employer generally supplies the equipment required by the employee. In addition, the employer covers the costs related to their use, repairs, insurance, rental and operations. In a business relationship, workers generally supply their own equipment and supplies.

### **The Chance of Profit/Risk of Loss Test**

In an employer-employee relationship, the employer alone assumes the risk of loss. The employer also covers operating expenses. The employee does not face financial risk and is entitled to full salary regardless of the financial health of the business. The income of the employee does not depend on the results achieved at the end of the contract.

### **The Integration Test**

Where the worker integrates their activities into the university activities, s/he is considered an employee. If the worker integrates the universities work into his/her commercial activities then the individual is considered an Independent Contractor.

### **Independent Contractor Questionnaire**

To determine whether income is that of an independent contractor or employee, individuals will be automatically classified as employees unless the completed [Independent Contractor Questionnaire](#) indicates an independent contractor status. The questionnaire is to be completed by the York manager hiring the worker and also signed by the same manager and the worker if the worker is to be classified as an independent contractor.

A general guideline is that, if the answer to 3 or more questions in the section "Determining Vendor Status" fall under the "York Manager" column, the individual is more likely to be an employee than an independent contractor. If an individual is performing teaching or they are integrated into the university's daily operations, the taxing authorities are deeming these individuals to be employees and not independent contractors.

Completed questionnaires are to be submitted to the Manager, General Accounting, Finance (22000) for approval of the individual's independent contractor status, prior to the first payment for new independent contractors.

### **Payment Procedures**

Payments processed by Accounts Payable are made after the department completes a [Payment Requisition](#) form or submits a signed copy of a Purchase Order indicating receipt of services along with the following:

- a) The service provider invoice must be attached.
- b) Invoices from incorporated businesses should include the GST/HST account number and GST/HST amount charged; unless the service provider's total revenue for the twelve-month period is less than \$30,000.

c) Completed Independent Contractor Questionnaire.

For payments processed through Payroll, an ETF is completed in accordance with ETF Reference Manual and forwarded to Human Resources.

### **Payments to Non-Residents**

This guideline does not apply to payments to non-resident individuals or non-resident incorporated entities who provide services that are not normally provided by employees of the university.

#### **Non-resident Individuals**

Services provided by non-resident individuals are to be paid by cheque or wire/draft. The department should complete a [Non-Resident Payment](#) form along with a [Payment Requisition](#) (if US resident) or [Wire Draft to Foreign Countries](#) form (if other than US resident) and forward to Payroll. Withholding taxes will apply on all services provided in Canada, unless a tax waiver is obtained in advance.

#### **Non-resident Corporations**

Services provided by non-resident corporations are to be paid by cheque or wire/draft. Complete a [Payment Requisition](#) form (if US corporation) or [Wire Draft to Foreign Countries](#) form (if other than US corporation) and forward it along with the invoice and signed purchase order (if applicable) to Finance. If the vendor is not registered to collect HST, HST will be self-assessed on the invoice amount. Withholding taxes will apply on all services provided in Canada, unless a tax waiver is obtained in advance.