

# Managing Tax & Employment Law Risks with your Mobile Workforce

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Presented by

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Spring LAW



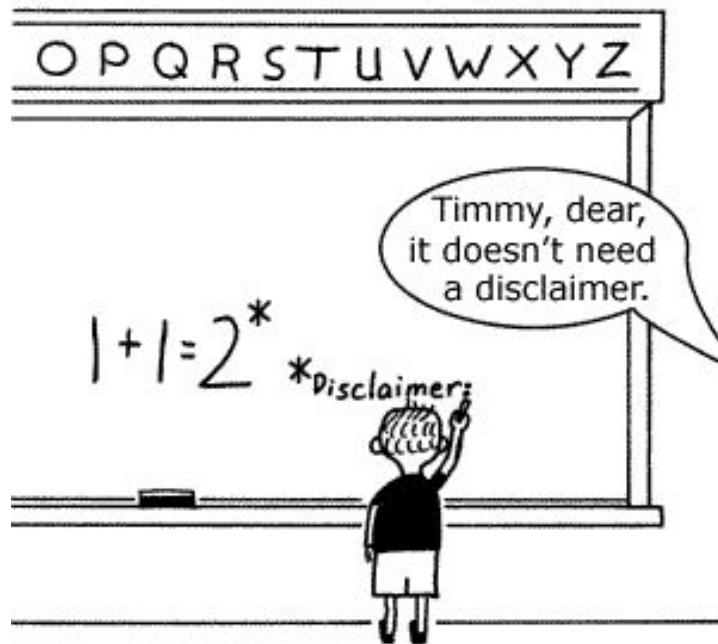
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We acknowledge that we are on the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and that this territory is now home to many diverse First Nations, Inuit and Métis peoples.

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Timmy  
doesn't need  
a disclaimer  
but we do...



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# Presentation Roadmap

- Independent Contractors vs Employees
- Choose Your Own Adventure Decision Trees

	Workplace HQ Location	Employee Status	Employee Location
#1 - Ahmed	Ontario	Canadian/PR	Alberta
#2 - Barb in Toronto	US	Canadian/PR	Ontario
#2A - Barb in California	Ontario	Canadian/PR	US
#3 - Carlo	Ontario	Mexican	Mexico
#4 - Debbie	Ontario	UK Citizen	Ontario, sometimes

# Independent Contractors vs Employees



# Independent Contractor vs Employee

## Key factors to consider (not an exhaustive list):

- Who controls the hours of work, owns the tools, carries the risk of profit?
- Does worker rely on company for most of income or multiple clients/worksites?
- Can the worker decline work without losing the contract?
- Does worker carry company business cards or their own consultant cards?
- Does worker charge HST, issue invoices OR get a salary?
- Whether the worker is entitled to a benefits package, i.e. insurance coverage, paid vacation etc.?
- Whether the worker is allowed to hire help or subcontract the work?
- Whether the worker is engaged for an isolated project with a defined term, or whether the worker is integral to the business of the payor?
- Whether the worker is responsible to expenses associated with performing the work?



# The New Mobile Workforce

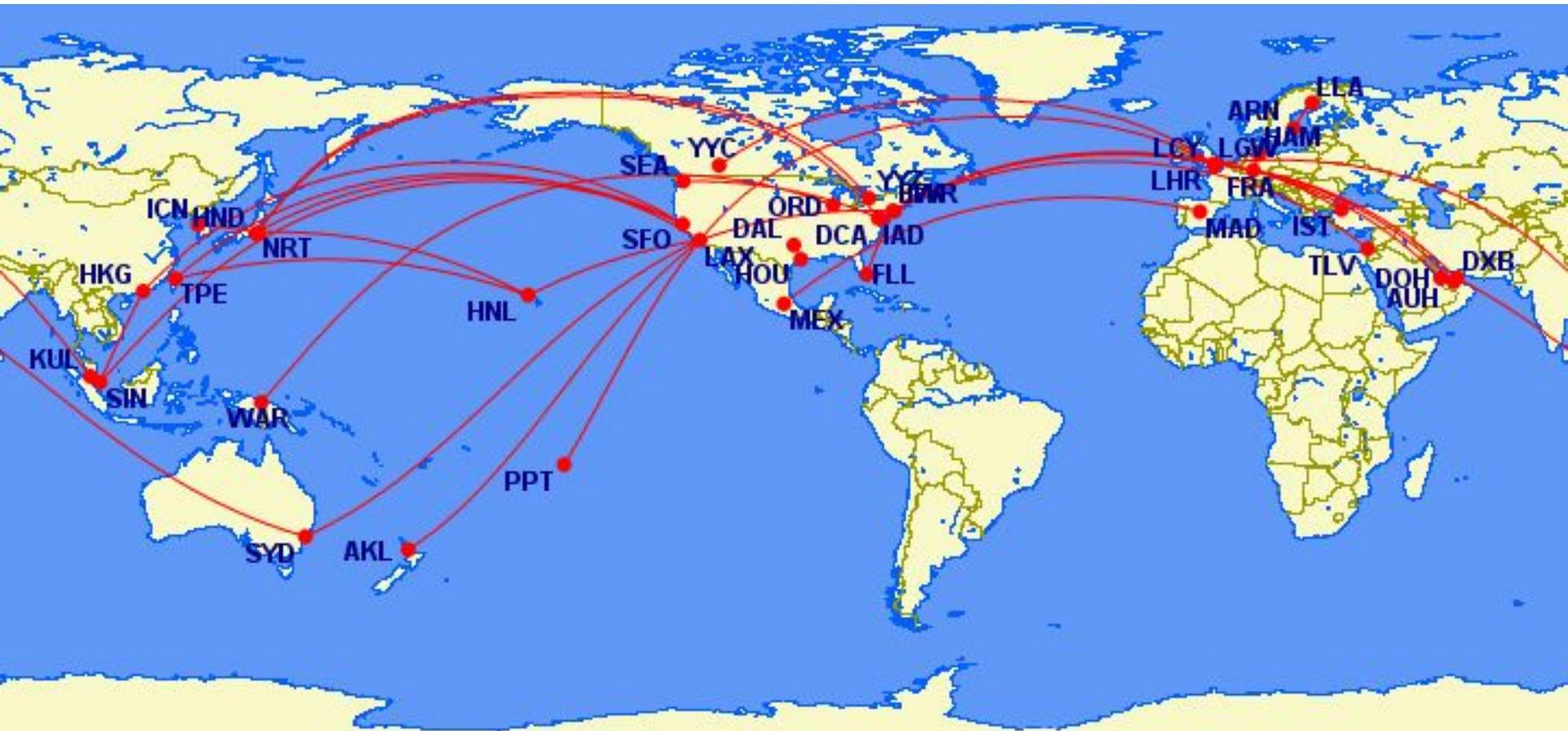
- Contractor vs Employee status will dictate tax and employment law outcomes
- Our new workplace era is really testing Conflict of Laws concepts and application
  - What law applies if you can work from anywhere for a remote company?
- Starting points (but not necessarily the end point...):
  - For tax law - follow where the money is earned and when it crosses borders
  - For employment law - follow where the worker lives
  - For corporate law - know when an “establishment” has been created

# New Era of Workplace Locations

Four examples of employees living in a different location than their employer

	Workplace HQ Location	Employee Status	Employee Location
#1 - Ahmed	Ontario	Canadian/PR	Alberta
#2 - Barb in Toronto	US	Canadian/PR	Ontario
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# Choose Your Own Adventure Decision Trees



# Case Study # 1

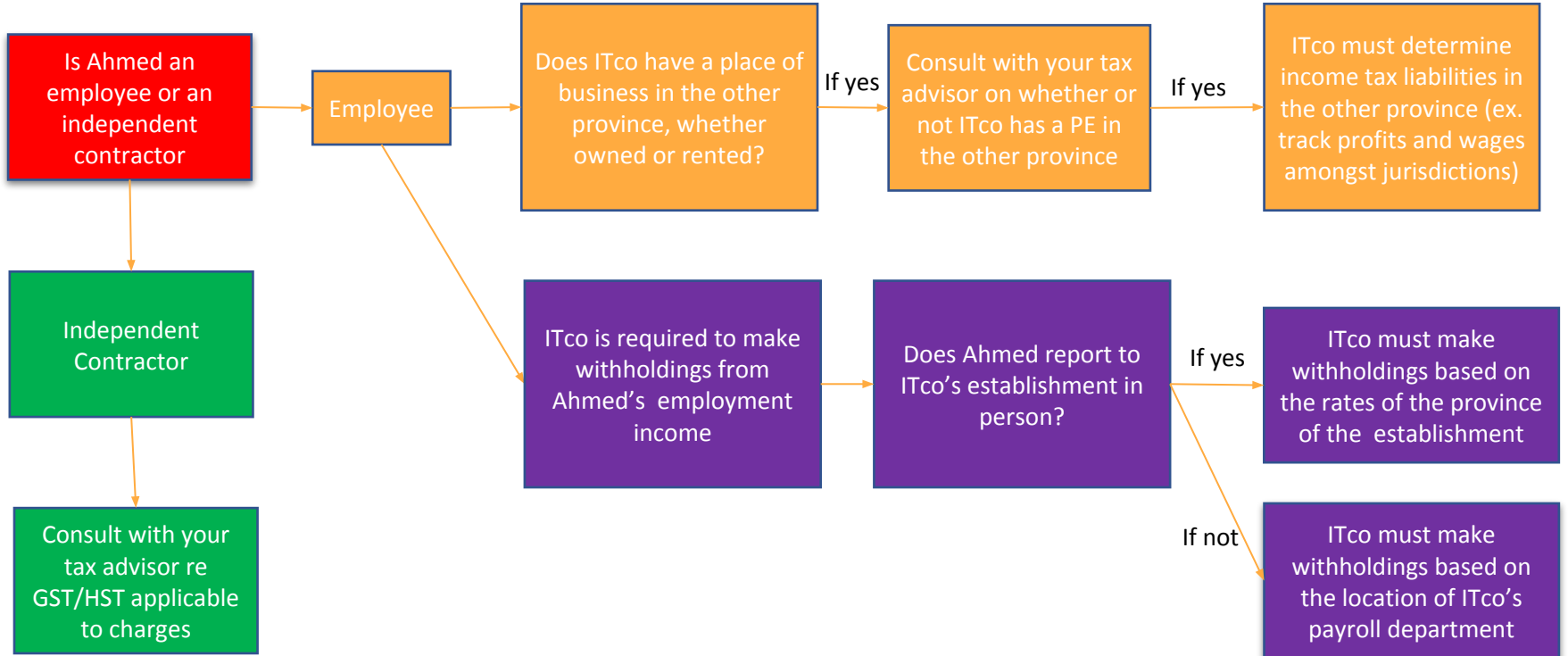
## A resident worker in a different Canadian province

	Workplace HQ Location	Employee Status	Employee Location
Ahmed	Ontario	Canadian/PR	Alberta

- **ITco** is a Canadian IT development corporation with an office in Toronto, ON.
- **Ahmed** is a highly skilled IT developer who lives in Calgary, AB. Ahmed refused to relocate to Toronto, but agreed to a remote arrangement where he works from Calgary. He currently works from his condo, which is less than ideal because he is frequently interrupted by his young children. Ahmed asks IT to rent a small office/workspace for \$1,500/month.

# Case Study # 1

## A resident worker in a different Canadian province



# Case Study # 2

## A resident worker in Canada for a foreign employer

	Workplace HQ Location	Employee Status	Employee Location
Barb in Toronto	US	Canadian/PR	Ontario

- **USco** is a marketing company with workers in Canada
- **Barb** is a project manager who works from her home in Toronto. and has been overseeing a large contract for USco in Canada for the past 4 years. She works under a contract and gets US\$100/hour.

# Permanent Establishment (“PE”) under the Canada-US Tax Treaty (Note! Treaties with different countries may contain different PE tests)

## “Fixed Place of Business” PE test:

A US business will have a PE in Canada if it has a fixed place of business in Canada, including: a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, as well as, in certain cases, a construction site, a drilling rigs or a ship.

## Deemed PE test:

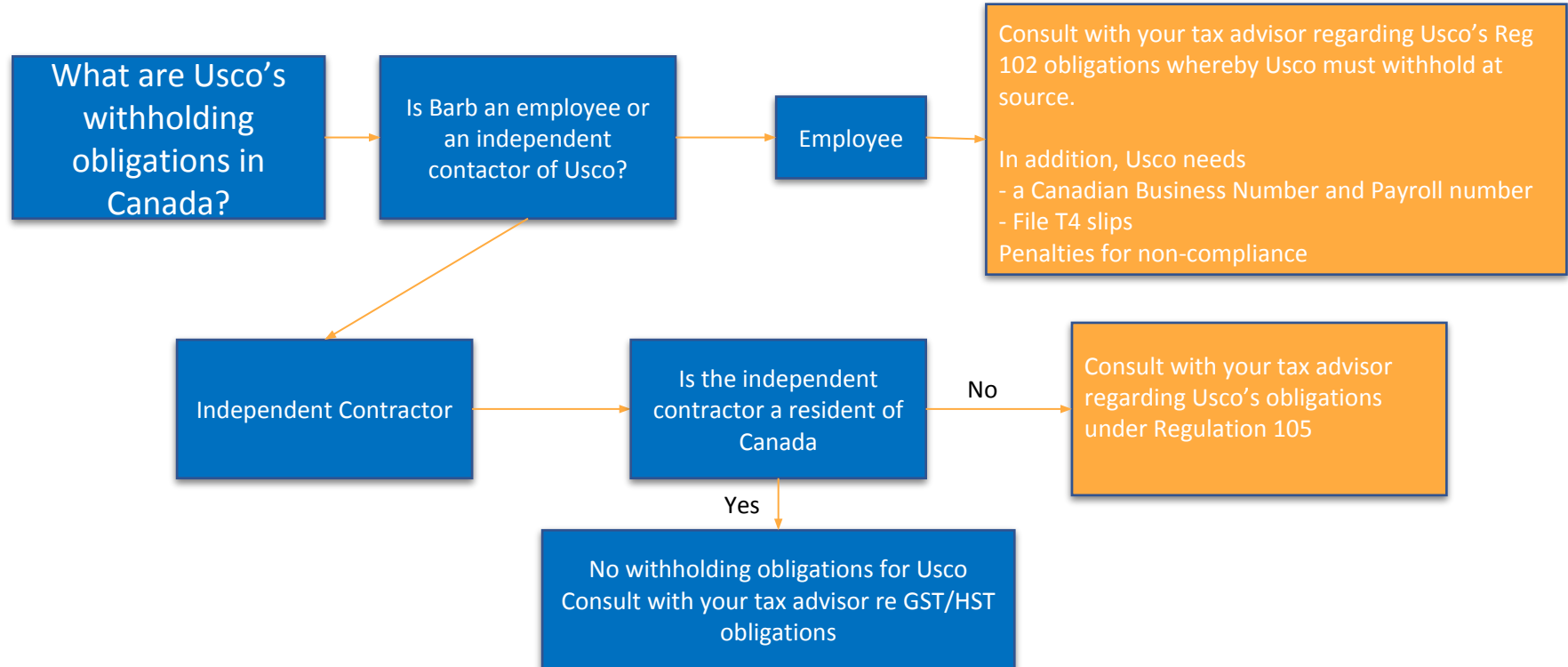
A US business will have a deemed PE in Canada if a US business has a person working in Canada and has , and habitually exercises in Canada, an authority to conclude contracts in the name of the US entity (brokers excluded).

## Services PE test:

- **The Single Individual Test:** the individual present in Canada for 183 days or more in any 12 months period AND during the period more than 50% of gross income derived from services in Canada by the individual or
- **The Enterprise Test:** services are provided in Canada for an aggregate of 183 days or more in any 12 months period with respect to the same or connected projects for customers who are residents of Canada or who maintain a PE in Canada

# Case Studies #2

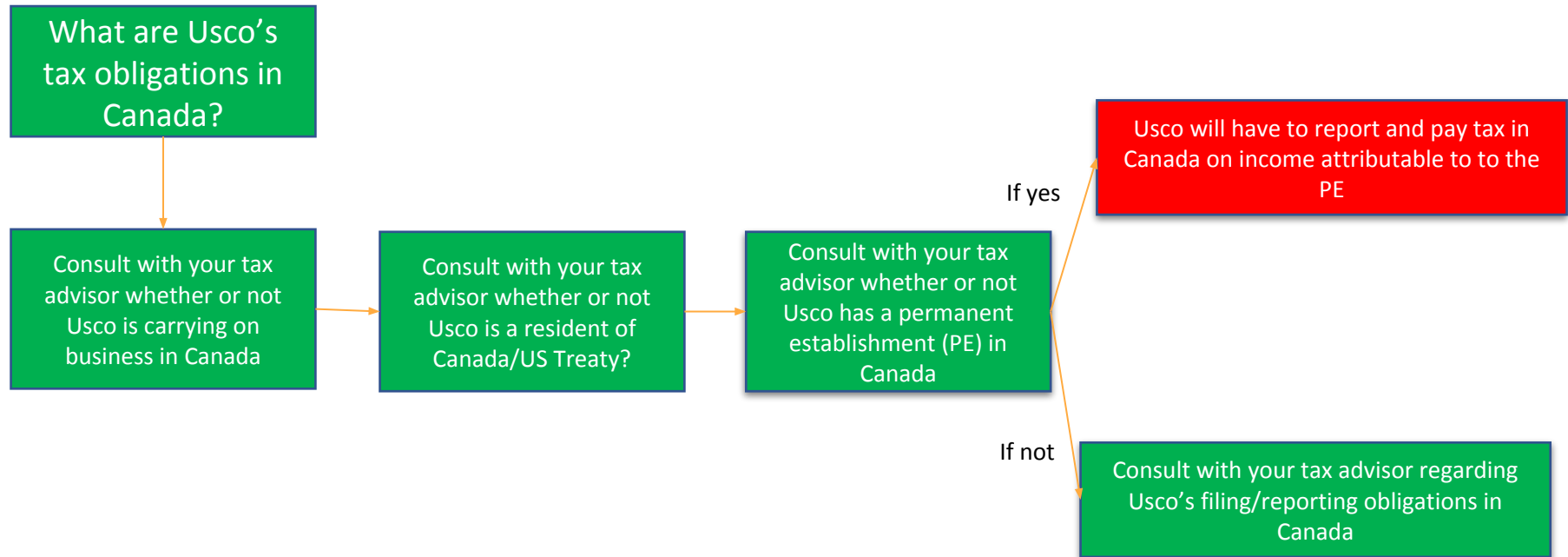
## A worker works in Canada for a foreign business





# Case Studies #2

## A worker works in Canada for a foreign business



# Case Study # 2A

## A Canadian/PR worker in the US for a Canadian employer

	Workplace HQ Location	Employee Status	Employee Location
Barb in California	Ontario	Canadian/PR	US

- What if Barb worked from her beach house in California for the same Canadian employer?

# Case Study # 3

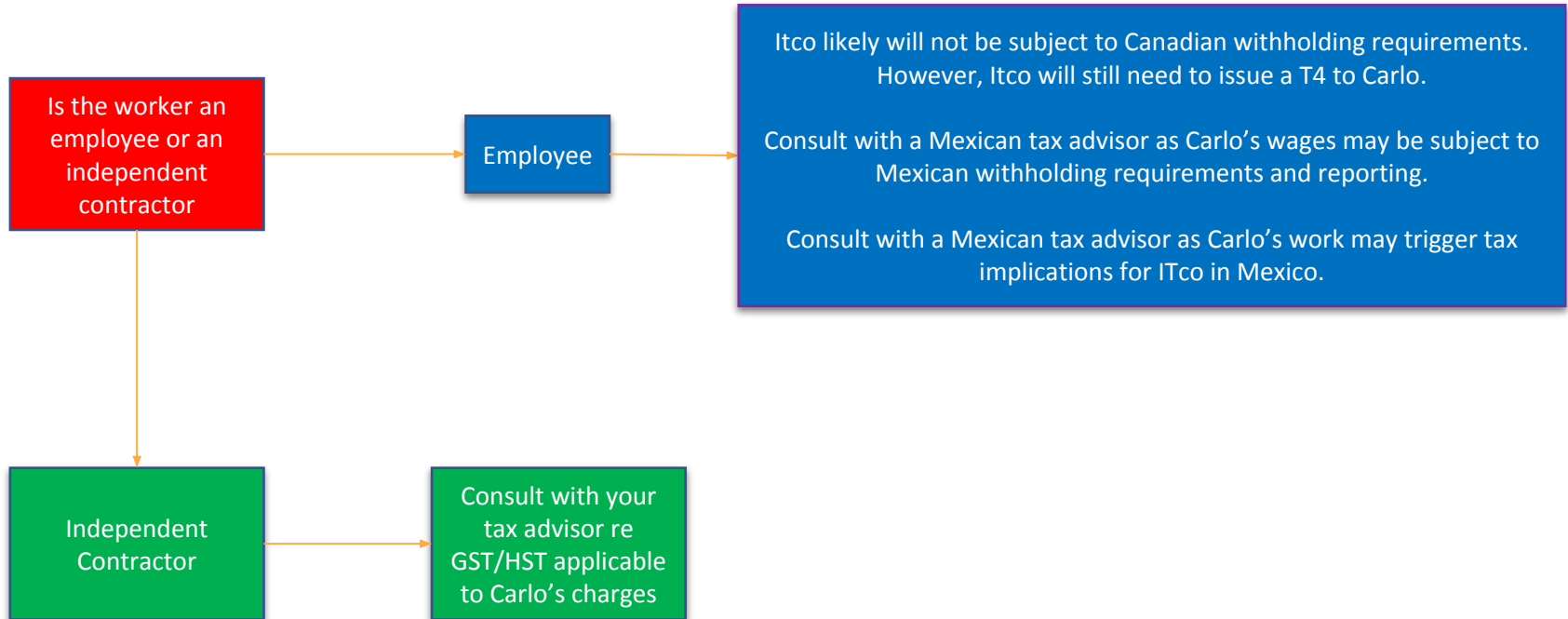
## A non-resident remote worker outside of Canada

	Workplace HQ Location	Employee Status	Employee Location
Carlo	Ontario	Mexican	Mexico

- **ITco** is a Canadian IT development corporation with an office in Toronto, ON.
- **Carlo** is a talented junior IT specialist who works from his home in Mexico. He works full-time for ITco.

# Case Study # 3

## A non-resident remote worker outside of Canada



# Case Study # 4

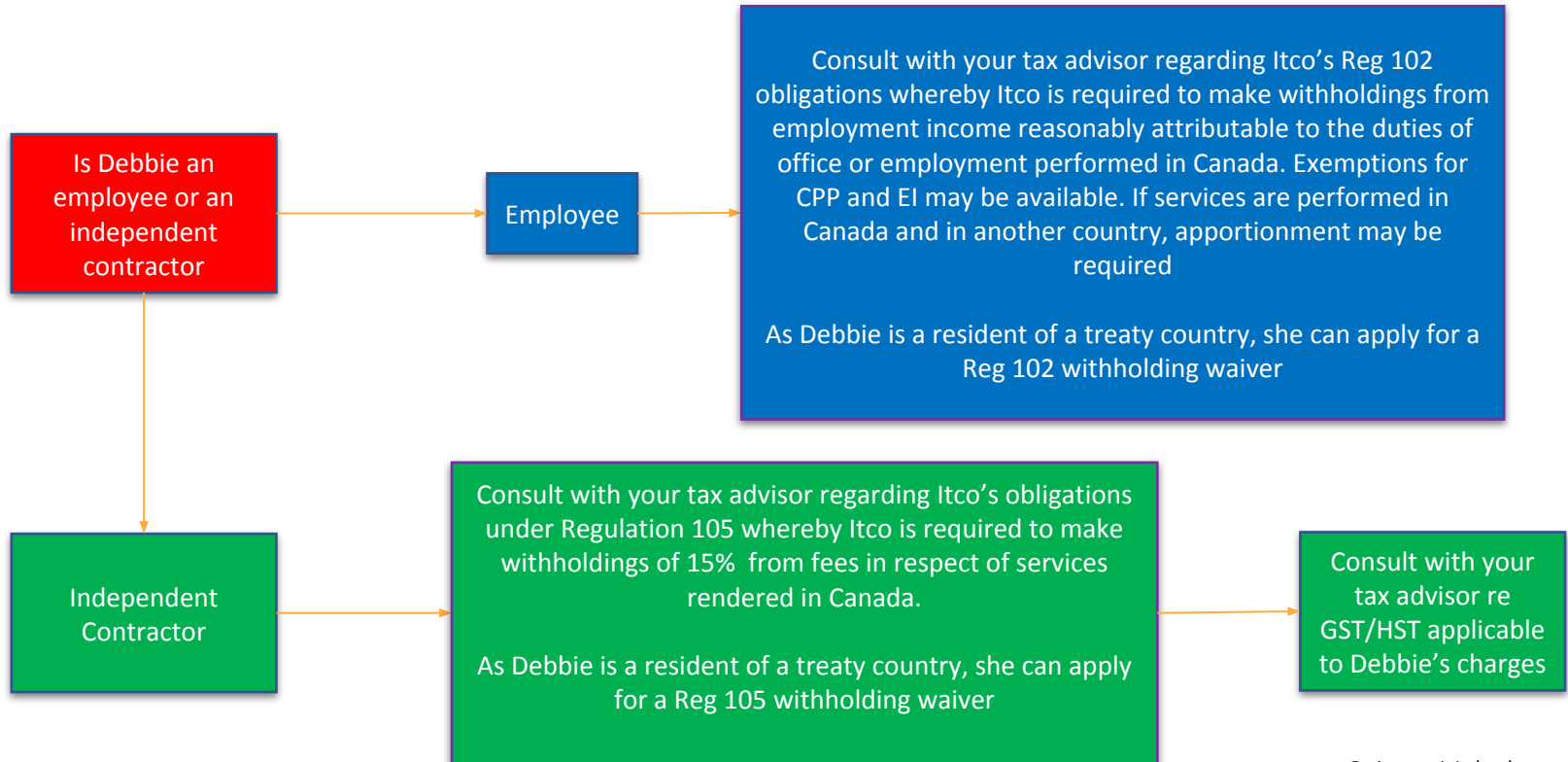
## A non-resident worker in Canada

	Workplace HQ Location	Employee Status	Employee Location
<b>Debbie</b>	Ontario	UK Citizen	Ontario, sometimes

- **ITco** is a Canadian IT development corporation with an office in Toronto, ON.
- **Debbie** is a resident of the UK for tax purposes. She works for ITco's office in Toronto and occasionally reports to its downtown office.

# Case Study # 4

## A non-resident worker in Canada



# Key Takeaways

- Start with the Employee v IC analysis
- Know when you are establishing a PE
- Follow the movement of money across borders - there will usually be a tax impact
- Talk to a tax lawyer early in the process!

Anna Malazhavaya at

<https://www.advotaxlaw.ca>

# National Employment Contract for Your Mobile Workforce

- Give yourself a head start with our online template and contact us for legal customization
- <https://springlaw.ca/product/contract-template/>



**Annotated  
Employment  
Contract Template**



# Questions?

To learn more about our team:  
[springlaw.ca/team/](https://springlaw.ca/team/)

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