

UNIVERSITY OF KWAZULU-NATAL

**Perceptions of Employers and/ or Entrepreneurs on the clarity of the
Definition(s) of Independent Contractor and Employee in the
Greater Richards Bay area**

By

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Page	Error	Corrections
	CHAPTER 1	
Cover	Topic: A bit unclear	The topic was not changed as I was advised by the Business School that the topic cannot be changed at this stage. The topic has to be the same as in the ethical clearance approval.
	Different fonts for acknowledgements page	Error corrected
	Abstract need to be corrected	Abstract adjusted to suit the quantitative method used and typing and grammatical errors corrected.
	Include the list of pages coming before the table of contents in the table of contents (e.g. declaration page)	The list of pages coming before the table of contents have now been included in the table of contents (e.g. declaration page)
	Appendices to be placed below references in the table of contents	Appendices have been placed below references in the table of contents
1&2	Substantiate the claim made in the background of the study	Substantiated the claim made in the background of the study. See page 2&3
3	Avoid overusing one source and minor grammatical errors	This has been adjusted throughout the document.
6& 7	Numbering of the objectives of the study and research questions	Have been addressed on page 8&9
7	Include Ho hypotheses	Ho hypotheses included in pages 9&10
7&8	Move definitions of terms to the introduction	Have moved definitions to the introduction
11	Give a brief explanation of each chapter in the structure of the dissertation	Supplied a brief explanation of each chapter in the structure of the dissertation on page12
	CHAPTER 2	
14	Avoid overusing one source	This has been adjusted throughout the document.
15	Confusion in the heading in point 2.2	Point 2.2 heading corrected

16	Remove the four objectives of the study	The four objectives of the study have been removed
17	Explain SIT in more details	SIT explanation provided in pages 17&18
19, 52	Do not use a web address as in-text reference	This has been corrected throughout the document
21,36	Proper alignment of the text	This has been corrected throughout the document
24,29,34,35, 40	Provide the source	Source has been provided
	CHAPTER 3	
	Change the research method from qualitative to quantitative.	The chapter has been updated to reflect Quantitative method (see pages 45 - 47).
	CHAPTER 4	
64	Research instrument to be transferred to chapter 3	Research instrument has been incorporated into chapter 3 (see page 56)
64	In-text reference required and the term Cronbach Alpha coefficient to be used	This has been corrected in page 66
66,	Incorrect figures in table 4.2	Figures have been corrected
67	Scores illegible	Graph colors have been changed to be clear.
72, 75 & 77	Font figures not the same in the graphs	This has been corrected.
73	How were the correlations calculated	The spearman's correlation formula has been supplied and an explanation that SPSS was used.
	Results are not linked to the literature review	Results have been linked to the literature review

	CHAPTER 5	
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ABSTRACT

The definitions of independent contractor and employee are problematic in the context of the South African Income Tax Act. This is evident from the number of cases in the South African Courts on this subject.

Therefore, the main purpose of this study was to investigate the perceptions of the employers of the clarity of the definitions of independent contractor and employee in the greater Richards Bay area. The study used sociological institutionalism theory (SIT) as its model. This was a quantitative study conducted by means of 140 questionnaires were administered to employers in the greater Richards Bay area, of which 128 questionnaires were completed in full. The data collection was through questionnaires and interviews, characterised by a simple random sample that adequately represents the target population. The data was analysed with the assistance of the Statistical Package for Social Sciences (SPSS) version 24 (2015).

The reviewed literature revealed that the employers have less knowledge in terms of the difference between an independent contractor and an employee, which causes difficulties as they prepare for the mandatory SARS submissions for tax compliance. Although most of the respondents had obtained tertiary qualifications and had been employed for a number of years, this problem of misunderstanding of the tax implications of independent contractors was noticed in the answers of respondents. This suggested that the respondents may not be clear about the understanding of the

definitions of independent contractor and employee as per the SARS Fourth Schedule as some of them profess.

The study provided strategic recommendations to advance employers' knowledge on the difference between independent contractors and employees. This will also help employers' understanding of tax implications imposed by the South African Revenue Services (SARS) over independent contractors versus employees. This study also aims to influence SARS to revisit the punitive manner in which SARS approaches the misunderstanding of these terms and begins to clarify the definitions of Independent Contractor and Employee. The study will also assist in improving the image of SARS in the eyes of employers and the general public, which could help in forging a good working relationship between SARS and employers, and ultimately increase tax compliance.

TABLE OF CONTENTS

SUPERVISOR’S REPORT OF REVISED AND CORRECTED THESIS.....	ii
SUPERVISOR’S PERMISSION TO SUBMIT THESIS FOR EXAMINATION...	iii
DECLARATION.....	iv
STUDENT REPORT TO CONFIRM ERROR CORRECTIONS.....	v
ACKNOWLEDGEMENTS.....	x
ABSTRACT.....	xii
CHAPTER 1: INTRODUCTION AND OVERVIEW.....	1
1.0 INTRODUCTION.....	1
1.1 BACKGROUND TO THE STUDY.....	3
1.2 PROBLEM STATEMENT	6
1.3 PURPOSE OF THE STUDY.....	7
1.4 OBJECTIVES OF THE STUDY.....	8
1.5 RESEARCH QUESTIONS	9
1.6 HYPOTHESES OF THE STUDY	9
1.7 SIGNIFICANCE OF THE STUDY.....	10
1.8 SCOPE OF THE STUDY.....	11
1.9 LIMITATIONS OF THE STUDY.....	11
1.10 STRUCTURE OF THE DISSERTATION.....	12
1.11 CONCLUSION.....	13

CHAPTER 2: LITERATURE REVIEW	15
2.0 INTRODUCTION.....	15
2.1 THEORETICAL FRAMAWEWORK OF RESEARCH CONCEPTS:	
INDEPENDENT CONTRACTORS AND EMPLOYEES.....	16
2.2 THORETICAL FRAMEWORK	17
2.3 INTERNATIONAL PERSPECTIVE OF INDEPENDENT CONTRACTORS AND EMPLOYEES.....	19
2.3.1 The discussion of independent contractor (s) and employee (s)	19
2.4 CASE LAW FOR STATUTORY DETERMINATION OF EMPLOYEE AND INDEPENDENT CONTRACTOR DEFINITIONS.....	23
2.5 LOCAL PERSPECTIVE OF INDEPENDENT CONTRACTORS AND EMPLOYEES.....	25
2.5.1 Independent contractor	26
2.5.2 Employee.....	27
2.5.3 Employer.....	32
2.5.4 Remuneration.....	33
2.6 FEATURES OR CHARACTERISTICS OF INDEPENDENT CONTRACTORS IN COMPARISON TO EMPLOYEES.....	34
2.6.1 Employment status.....	34
2.6.2 Gender and age restrictions.....	34
2.6.3 Other demographic characteristics.....	34
2.6.4 Occupation and industry.....	35

2.7 CHARACTERISTICS OF EMPLOYEES AND INDEPENDENT CONTRACTORS' TERMS OF EMPLOYMENT	35
2.8 ADVANTAGES AND DISADVANTAGES OF INDEPENDENT CONTRACTORS AND EMPLOYEES.....	37
2.9 BUSINESS RATIONALE AND/ OR APPROACHES OF HAVING INDEPENDENT CONTRACTORS AND EMPLOYEES.....	38
2.10 INDIVIDUAL OR PERSONAL REASONS OF BEING AN 'INDEPENDENT CONTRACTOR'.....	40
2.11 CASE LAW FOR STATUTORY DETERMINATION OF EMPLOYEE AND INDEPENDENT CONTRACTOR DEFINITIONS.....	41
2.12 CONCLUSION.....	43
CHAPTER 3: RESEARCH DESIGN AND METHODOLOGY.....	45
3.0 INTRODUCTION.....	45
3.1 RESEARCH DESIGN AND RATIONALE.....	46
3.1.1 Research design and approach.....	47
3.2. RESEARCH PARADIGM AND RESEARCH METHODS.....	48
3.3 STUDY SITE OR AREA.....	50
3.4 TARGET POPULATION	50
3.5 SAMPLING STRATEGY.....	51
3.5.1 Probability (random) samples.....	51
3.5.1.1 <i>Simple random sample</i>	51
3.5.1.2 <i>Systematic random sample</i>	52
3.5.1.3 <i>Stratified random sample</i>	50
3.5.1.4 <i>Multistage sample</i>	52
3.5.1.5 <i>Multiphase sample</i>	52
3.5.1.6 <i>Cluster sample</i>	52
3.5.2 Non-probability samples.....	52
3.5.2.1 <i>Convenience sample</i>	53
3.5.2.2 <i>Purposive sample</i>	53
3.5.2.3 <i>Quota sample</i>	53

3.5.3 Sample size of the study.....	54
3.6 RESEARCH INSTRUMENTS.....	54
3.7 PRE-TESTING.....	56
3.8 DATA QUALITY CONTROL.....	58
3.8.1 Reliability.....	59
3.8.2 Validity.....	60
3.8.3 Measurements.....	61
3.9 DATA COLLECTION TECHNIQUES.....	61
3.9.1 Primary data.....	61
3.9.2 Secondary data.....	62
3.10 DATA ANALYSIS.....	62
3.11 LOGISTICAL AND ETHICAL CONSIDERATIONS.....	63
3.12 CONCLUSION.....	64
CHAPTER 4: RESEARCH FINDINGS.....	65
4.0 INTRODUCTION.....	65
4.1 SAMPLE	65
4.2 RELIABILITY STATISTICS.....	66
4.3 SECTION A: DEMOGRAPHIC DATA.....	67
4.3.1 Respondents' gender and age levels.....	67
4.3.2 Respondents' position.....	68
4.3.3 Respondents' education levels.....	70
4.3.4 Respondents' levels of experience.....	71
4.3.5 Number of employees employed in the organisation.....	72
4.4 SECTION B: TAXATION.....	73
4.4.1 Correlation analysis.....	76

4.5 SECTION C: GENERAL INFORMATION.....	77
4.6 SECTION D: LABOUR LAW.....	79
4.7 HYPOTHESIS TESTING.....	81
4.7.1 Tests of the study’s hypotheses.....	82
4.8 CONCLUSION.....	84
CHAPTER 5: CONCLUSIONS.....	85
5.0 INTRODUCTION.....	85
5.1 CONCLUSIONS.....	85
5.1.1 Objective 1.....	85
5.1.2 Objective 2.....	86
5.1.3 Objective 3.....	87
5.1.4 Objective 4.....	88
5.2 RECOMMENDATIONS AND THE NEED FOR FUTURE RESEARCH.....	89
5.3 CONCLUSION.....	92
REFERENCES.....	94

LIST APPENDICES

APPENDIX A: DECLARATION OF CONSENT

APPENDIX B: QUESTIONNAIRE

APPENDIX C: LETTER FROM A PROFESSIONAL EDITOR

APPENDIX D: STATISTICAL RESULTS

APPENDIX E: INTENTION TO SUBMIT

APPENDIX F: GATEKEEPER’S LETTER

APPENDIX G: ETHICAL CLEARANCE APPROVAL

APPENDIX H: TURNITIN REPORT

LIST OF FIGURES

Figure 2.1: Theoretical framework of independent contractor and employee.....	17
Figure 3.1: Research concepts or study variables	46
Figure 4.1 Respondents' positions in the organisation.....	69
Figure 4.2: Respondents' education levels.....	70
Figure 4.3: Respondents' levels of experience	71
Figure 4.4: Number of employees employed in the organisation.....	72
Figure 4.5: Taxation.....	73
Figure 4.6: General information	78
Figure 4.7: Labour law.....	80

LIST OF TABLES

Table 2.1: Dominant test-based factors distinguishing between independent contractor and employee.....	29
Table 2.2: Comparison between common differences of employment terms.....	30
Table 4.1: Reliability statistics.....	66
Table 4.2: Respondents' gender and age levels.....	68
Table 4.3: Taxation qualification.....	71
Table 4.4: Correlations.....	76

CHAPTER 1

INTRODUCTION AND OVERVIEW

1.0 INTRODUCTION

The definitions and interpretations of the terms 'independent contractor' and 'employee' by the South African Revenue of Services (SARS), as opposed to the definitions and interpretations by employers has, become a serious concern leading to misconception in the commercial sector, particularly in South Africa. The absence of a common base for interpretation of independent contractor and employee definitions could result in dire consequences in the commercial sector. This study reviews the understanding, interpretation and perceptions of employers and/or entrepreneurs of the definitions of the terms 'independent contractors' and 'employees'.

This chapter introduces the study, the intellectual purpose of the study, the scope of the study, bearing in mind that all projects have limitations, the problem statement, study methodology, and the structure of the study.

DEFINITION OF TERMS

- **Independent contractor** - an independent contractor is a person or business who procures or provides employees to perform work or render services for a client and remunerates those employees (Code of Good Practice, 2006: 7-8).
- **Employee** - an employee is someone who has undergone training in order to perform duties dictated or controlled by others, usually the employer or principal (Reilly, 2015: 49).
- **Employer** - any person (excluding any person not acting as a principal, but including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person any amount by way of remuneration (Haupt, 2014: 433).
- **Entrepreneur** – a person who starts or organises a commercial enterprise (Hornby, 2014; 386).
- **Employees' tax** – tax withheld from an employee's remuneration in respect of employment (Haupt, 2014: 433).

1.1 BACKGROUND TO THE STUDY

The number of court cases stemming from the misinterpretation of the definitions of independent contractors and employees in the South African courts is alarming. There are a number cases in which courts have had to determine whether a person was an employee or independent contractor. The determination thereof has been by means of supervision and control tests, organisation tests, and dominant impression tests (Van der Heever & Associates 2002: 2). According to Surtees (2008: 1), SARS itself has, by implication, acknowledged the problem and difficulty by issuing Interpretation Note 17. He asserts that SARS usually declines giving rulings on the very matters that cause the greatest uncertainty - i.e. the decision as to whether a person is an independent contractor or an employee. He further states that SARS steadfastly refuses to be helpful in this regard, despite the fact that the legislation is unclear and the attitude of SARS is very punitive in this regard.

The animosity that is developing between South African employers and/or entrepreneurs and the South African Revenue Services is not healthy for the economy of a developing country like South Africa. Anon. (2008: 1) states that a wrong decision from misinterpreting said definitions can be very costly in terms of interests and penalties, which impacts negatively on the entrepreneurial spirit. The employers blame SARS for refusing to clarify these definitions, whilst on the other hand SARS is very punitive when it comes to the way it deals with taxpayers who misinterpret these two definitions. This reveals that there is a serious problem with these definitions,

which is impacting negatively on the South African taxpayers and the entrepreneurial spirit, as a whole. The researcher's interest in this field of study was sparked by the realisation of a problem that could cripple the South African economy.

Eisenach (2010: 4-8) conducted a study, the purpose of which was to investigate the employers' interpretation of the employee and independent contractor definitions in the U.S. economy. The findings of the study revealed that the determination of whether an individual is an employee or an independent contractor depends on the legal, economic, and jurisdictional contexts, as follows:

- the common-law test focuses on the degree of control an employer exercises over an employee;
- the economic realities test focuses on an economic dependence; and
- the hybrid test combines the elements of both approaches.

In the United States (U.S.) economy, worker classification depends on the three above mentioned contexts. It appears that while an individual can be classified as an 'independent contractor' because of payroll tax withholding and for Financial Intelligence Centre Act purposes, he or she can also be classified as an 'employee' for the purposes of the Fair Labour Standards Act or the Americans with Disabilities Act (Eisenach, 2010: 4-8).

Although there are definitions and characteristics that provide distinct elements between the two concepts, it appears that worker classification is far more complex

in practice than suggested by the three relatively simple categories of tests shown above. The worker classification is still a contentious and frequently litigated issue in the U.S., and is further complicated by significant cross-state variation in tests that are used to determine employment status under different state or country-based programmes. The extent of the inherent ambiguities that are associated with worker classification results in taxpayers' complaints about ambiguities and inconsistent enforcement of revenue or tax laws (Department of Professional Employees, 2016:3).

While taxpayers complain, the researcher wants to emphasise that the 'taxpayer group' consists of general individuals and 'employers'. Employers' complaints might be related to, or caused by, how they interpret 'employee' versus 'independent contractor'. It is from this premise or background that the researcher was interested in investigating the perceptions of the employers on the clarity of the definitions of 'employee' and 'independent contractor'. The literature maintains that the perceptions of the two concepts result in ambiguities, hence the researcher was interested in knowing what the employers' perceptions are, for the study unit of his target population (Eisenach, 2010: 4-8).

Waite and Mill (2001: 5), in their probe into independent contractors, observe that several employer organisations decided to contract out in response to environmental changes with, in most cases, a short-term rather than a strategic approach. They further asserted that, since changes are global so is the approach and this is a business scenario in both global and local economies. Their study further revealed

that South Africa's large corporations, which have a stable revenue history, are also found practicing the contracting of labour, both non-core and core services, depending on their strategic direction. Downsizing and retrenchment are possible across all business sectors due to priorities set or based on which parts of units are not profitable and are to be eliminated. The result thereof is no permanent employees for other functions, and thus independent contractors are the only viable option for performance of specific work activities.

It also makes business sense when the employer organisation or company has both employees and independent contractors based on the operations. Besides an attempt to escape labour laws' implications, there are economically pressing demands towards 'independent contractors or contracting' (Waite & Mill, 2001: 5).

1.2 PROBLEM STATEMENT

The more the employers feel aggrieved by the imposition of penalties by SARS, stemming from the misinterpretation of the definitions of independent contractors and employees, the more their willingness to comply with SARS is affected. This could lead to loss of revenue for SARS and a great impact on the government fiscal budget and its ability to provide essential services. This study will, therefore, attempt to investigate the perceptions of the employers on the clarity of the definitions of independent contractor and employee in the greater Richards Bay area.

In respect of the subject of this study, Leilbowicz (2011: 47-50) asserts that the tax laws, such as federal tax laws, specifically forbid the Internal Revenue Service (IRS) from defining the terms 'independent contractor' and 'employee'. However, the difference between an independent contractor and an employee is extremely important because it defines one's liability to pay and withhold certain taxes, i.e., federal income tax, social security and Medicare taxes, and federal unemployment tax.

A further consideration is Dann's (1998) observation, where he mentions that the common law allows for a general test to conclude if one is an independent contractor or an employee. This test, derived from the common law, hinges on the degree of control that an employer has over the employee (Dann, 1998: 2-7).

From the researcher's point of view, there seems to be insufficient research on the perceptions of the employers on the clarity of the definitions of independent contractor and employee in the greater Richards Bay area, in the Province of KwaZulu-Natal (South Africa).

1.3 PURPOSE OF THE STUDY

This study investigates the perceptions of the employers on the clarity of the definitions of independent contractor and employee in the greater Richards Bay area.

1.4 OBJECTIVES OF THE STUDY

The study aims to achieve the following objectives:

1. To ascertain the prevailing level of knowledge of the employers regarding the definitions of independent contractor and employee;
2. To investigate the perceptions of the employers on the clarity of the definitions of independent contractors and employees;
3. To ascertain the prevailing level of knowledge of employers regarding tax implications on independent contractors; and
4. To establish the relationship between the biographic variables and knowledge of the employers regarding the definitions of independent contractor and employee.

1.5 RESEARCH QUESTIONS

The research questions of the study are as follows:

1. What is the prevailing level of knowledge of the employers regarding the definitions of independent contractor and employee?
2. What kind of perceptions do the employers have on the clarity of the definitions of independent contractor and employee?
3. What is the employers' awareness of tax implications for independent contractors?
4. To what extent is there a relationship between the biographic variables and the knowledge of the employers regarding the definitions of independent contractor and employee?

1.6 HYPOTHESES OF THE STUDY

The study developed the following **hypotheses**:

Ho₁: Employers do understand the difference between independent contractors and employees.

Ha₁: Employers do not understand the difference between independent contractors and employees.

Ho₂: Employers are aware of the tax implications on independent contractors.

Ha₂: Employers are not aware of the tax implications on independent contractors.

Ho₃: If tax implications are not known, the employers have a negative attitude towards forming themselves as independent contractors.

Ha₃: If tax implications are known, the employers have a positive attitude towards forming themselves as independent contractors.

1.7 SIGNIFICANCE OF THE STUDY

After a sample of the literature on the definitions of independent contractors and employees was examined, it became evident that these concepts are used, interpreted and defined in conflicting ways depending upon the ideological orientation between SARS and employers. Basically, the terms 'independent contractor' and 'employee' are terminologically confusing and encouraged an interest to find out their correct meaning since it does not seem reasonable to hold that all meanings are equally valid.

Although there has been a large body of research generated on employers' perceptions of the definitions of the independent contractor and employee in an international context, little research of this nature exists in South Africa. While South Africa's employers may be faced with occasional serious challenges of understanding South African tax laws, very few countries have considered the need to investigate tax payers' understanding for such failing. This study builds upon the existing knowledge on taxation research and its impact on improving tax understanding by South African employers.

The study presents a sound basis on how to improve the tax knowledge of employers with regard to independent contractors and employees, and provides a list of available assistance mechanisms for them. Considering the culture of each employer, and that this culture may differ from employer to employer, the researcher compares the results of each employer. The findings of the study will promote the tax knowledge of South African employers, with specific reference to the greater Richards Bay area. Moreover, this study is significant in that the definitions of independent contractors and employees are rooted in reality for both the employers and SARS.

1.8 SCOPE OF THE STUDY

The study focuses on the perceptions of the employers on the clarity of the definitions of independent contractor and employee in the greater Richards Bay area. The scope of the study is to obtain empirical evidence of the employers' perceptions on the clarity of the definitions of independent contractor and employee in the greater Richards Bay area.

1.9 LIMITATIONS OF THE STUDY

All studies of this nature have their limitations. The limitation in this instance was the methodology of the study and broad scope of the study. The study does not investigate the perceptions of the employers on the clarity of the definitions of

independent contractor and employee outside the Richards Bay perimeters. The target population consists of employers in the greater Richards Bay area. This was a limitation since tax affects all South African businesses and individuals.

The gap identified was that most of the respondents had never been involved in a practical case where there was interaction with SARS, based on the case of confusing an independent contractor from an employee. Therefore, they could not answer about their experiences with SARS on resolving the matter. This compelled the researcher to predominantly utilise closed-ended questions in completely measuring the perceptions of the employers.

The researcher feels that the respondents may not have taken note of the specific detail that the definitions of independent contractor and employee had to be understood in terms of the SARS Fourth Schedule when answering the questions. Any limitation concern that might be of importance is addressed in the third chapter of this study, under validity and reliability.

1.10 STRUCTURE OF THE DISSERTATION

The structure of the dissertation is as follows:-

Chapter 1: provides an introduction and overview of the study and also deals with the pertinent aspects of the study to unpack the background and problem statement, indicating the researcher's interest in the study.

Chapter 2: provides the theoretical framework and insights into the intricacies of the study which sparked the researcher's interest in the study

Chapter 3: provides insight into the research design and methodology as well as the sampling techniques, the aim of which is to discuss the methods of collecting and analysing data for the study.

Chapter 4: presents the research findings of the study.

Chapter 5: describes the conclusions and recommendations for future research developed based on the research findings.

1.11 CONCLUSION

This introductory chapter provided the background to the study; a statement of the research problem; aims and objectives of the study, and has justified the necessity for the investigation. The scope and the methodology used were presented. The chapter revealed that there is a significant requirement for a study of this nature as there has been little research done in this field, yet there is much confusion regarding distinguishing between independent contractors and employees. The relevant terms for this study were also defined for the readers' purpose. Gaps and limitations of this

study were also identified in this chapter. Finally, the chapter presented research questions for the study.

Chapter two provides a comprehensive literature review on the perceptions of the employers on the clarity of the definitions of independent contractor and employee.

CHAPTER 2

LITERATURE REVIEW

2.0 INTRODUCTION

This chapter explores the employers' perceptions of the independent contractor and employee definitions. There seems to be a significant trend towards a mixed approach to the labour force in both global and local markets in that some employers opt for employees while others opt for independent contractors. In some cases or industries, one employer has both independent contractors and employees. The contracting employers either contract out to existing external providers or convert employees into independent contractors (Benjamin, 2005: 7-9).

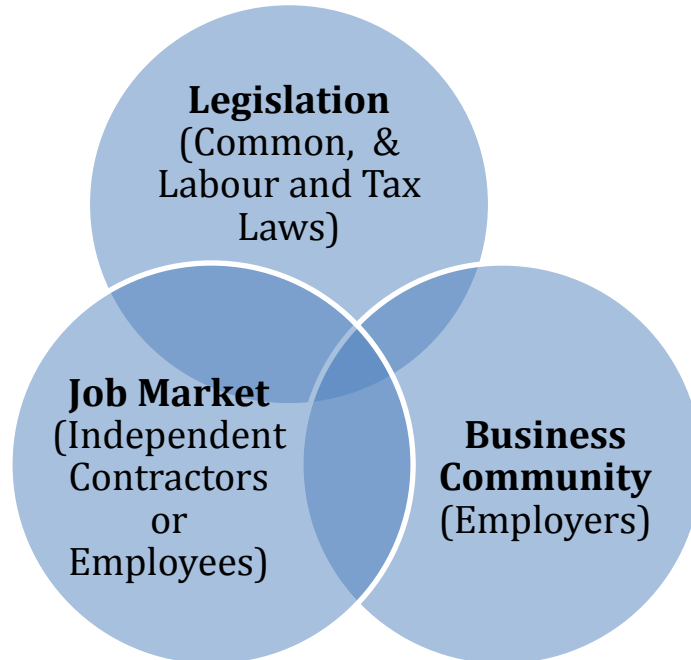
The explorations on the concepts entail international and local perceptions of the employers. It will then focus on the Richards Bay area by means of the target population being part of Chapter 3 of this study, which cannot be discussed under this chapter. Contextualising the independent contractors and employees will, in an argumentative fashion or approach, be part of this chapter so that the employers can be guided by rationale towards either contracting to independent contractors or employing employees, with an understanding of the ax implications of both (Benjamin, 2005: 7-9).

2.1 THEORETICAL FRAMEWORK OF RESEARCH CONCEPTS: INDEPENDENT CONTRACTORS AND EMPLOYEES

The perceptions of the employers of the independent contractors and employees are premised on the interplay among three sectors as to what is happening between the legislation, job market and the business community.

The business community has services and / or products to produce and/or render, for which it needs human resources (independent contractors and/ or employees). The job market presents job-needy individuals with different skills and standard-of-living needs. The market gives exposure to employers and indicates what kind of work terms and conditions they (job seekers) can work for. Legislation gives birth to, and enforcement of, social policies that might either be perceived by employers as tightening the job market in overly protecting the job seeker and employee rights, and employers, as a result, are inclined to opt for contracting. The legislation can be perceived as pushing the employers to practice business in regions where legislation does not seem to be constraining toward their business-advancing wills (Fienberg and Sunjka, 2014:1). It is of importance for one to view the topic of this study in the context of this framework as presented in Figure 2.1.

Figure 2.1: Theoretical framework of independent contractor and employee



(Fienberg and Sunjka, 2014: 1).

2.2 THORETICAL FRAMEWORK

In view of the fact that this chapter presents a theoretical framework for the study, it is therefore imperative to define the term 'theoretical framework' first before the presentation of theories. According to Barney (2010: 198), a theoretical framework represents the researcher's beliefs on how certain phenomena (or variables or concepts) are related to each other (a model) and an explanation of why the researcher believes that these variables are associated with each other (a theory).

Bandura (1986: 18), as cited by Creswell (2014: 100), states that 'when doing research on people's interpretation, it is very vital that a responsible institution considers not only the environment and availability of resources, but to also consider the behaviour and understanding of individuals'. Environment involves the surroundings or conditions in which a person operates.

According to Creswell (2014: 138), when he quotes Fishbein and Aizen (1975: 238), an attitude is a function of a person's beliefs about an object and the evaluative responses. Behaviour is the way in which a person acts or conducts himself or herself, especially towards something. In order to investigate someone's perception, the obvious starting point, as used in this study, is to obtain the responses of respondents' on direct questions to ascertain their understanding of the definitions of an independent contractor and an employee, and to ascertain their attitudes towards these perceptions. In order to illustrate a connection between environment, behaviour, perception and attitude, this section presents the theoretical frameworks of the study.

The theoretical framework adopted for the study was a sociological institutionalism theory (SIT). Many authors refers to SIT as the theory that considers the process by which structures become established as authoritative guidelines for social behaviour. The methodology employed by this theory is that of an intelligent observer trying to collect information to understand and describe the world as seen by him or her in the information collected in a non-abstract manner (Scott, 2004: 98). Sociological Institutionalism theory was used by the first political philosophers to identify and

analyse individual behaviors to direct them towards forming collective behavior required in forming political institutions. The researchers nowadays still employ the same principle to collect the individual perceptions of respondents to form the basis for collective understanding of the subject matter (Peters, 2011: 3). This theory focuses on three main parts: the individualist assumptions; the ambiguity of the linkage between observed reality, political instruments, and policy goals that may render impracticable interests; and interest-driven theories that may prematurely dismiss the constitutive role of culture in the organisation (Barney, 2010: 198).

Barney (2010: 198), when he quotes Wernerfelt (1984), concludes that SIT assumes that individuals' knowledge depends on the environment from which they are coming or where they live. Therefore, using the SIT theory, the researcher is confident that the objectives of the study will have been achieved.

2.3 INTERNATIONAL PERSPECTIVE OF INDEPENDENT CONTRACTORS AND EMPLOYEES

2.3.1 The discussion of independent contractor (s) and employee (s)

It is important to briefly define the concepts of this chapter for the reader's understanding as follows:

Waite and Will (2001: 12) define an independent contractor as 'a person who operates on his or her own economic enterprise or engages independently in a profession or

trade, and is engaged by a firm or organisation for some predetermined all-inclusive fee to provide a defined service for a specific period’.

According to the Internal Revenue Service (IRS), persons such as consultants, freelancers, self-employed or/and entrepreneurs and business owners are the best examples for defining an independent contractor. An independent contractor usually provides goods or services to another entity under terms specified in a contract or within a verbal agreement (Van der Walt and White, 2012: 1-3).

For purposes of further clarification, the IRS uses the common law ‘right control’ test to distinguish between an independent contractor and an employee. Under the test, employees are workers of the employer who has the right to direct and control the way they work, including the final results and the details of when, where, and how the job is accomplished. Independent contractors, on the other hand, are those that the employers do not have nearly as much control over. In this regard, an employer’s control is limited to accepting or rejecting the final results of an independent contractor’s work (Advocacy, 2012: 18).

It is difficult to get a universal all-applicable definition of the ‘employee’, given different contexts that are underpinned by different socio-economic policies of different countries. The definition of an employee, according to the English Thesaurus, refers to any person who works for another person in return for financial or other compensation (Hornby, 2014; 386).

The business dictionary defines an employee as someone who is paid to work for someone else. It also refers to 'employee' as a worker- an individual who works part-time or full-time under a contract of employment, whether oral or written, express or implied, and has recognised rights and duties (Cambridge Dictionary, 2016: 1).

Many employers have staffed their firms by opting between the two forces or groups, i.e. independent contractors and employees. It will be impractical or unreasonable in this study to discuss all organisations' perspectives or perceptions but the researcher discusses a few international cases, including, America, Australia and New Zealand. The global legislative framework will entail both labour and tax laws implications on the research concepts.

Baez (2013: 1), cited by International Labour Organisation (ILO) (2016: 1), through the 2012-2013 study that was launched by Trade Union Confederation of the Americas (TUCA), emphasises the need to counter the expansion of agency work and to set limits to outsourcing strategies. It should be noted also that the Bureau for Workers' Activities (ACTRAV) of ILO assisted the union on the study because the expected study results fall within ILO's ambit in terms of custody. The Trade Union Confederation of the Americas (TUCA)'s Secretary mentions that the union wants to promote the ratification of the Private Employment Agencies Convention (C 181) and technical advice should be given to governments and the unions on legislative

regulation. TUCA also wants to influence the unions to negotiate with enterprises on the reduction of precarious work.

The document referred to above also contains the notion that the union believes that ILO should work with Temporary Work Agencies (TWAs) in order to promote collective bargaining with specificity to sectoral bargaining for concluding collective agreements that can limit the number and duration of employment agency workers in an enterprise. Such agreements will also ensure equal treatment of agency workers in terms of wages and working conditions. Adding to the convention was the International Labour Conference (ILC) that adopted conclusions on social dialogue in June 2013. The conclusions provide a large work programme on collective bargaining and the extension of collective agreements for inclusion of workers in non-standard forms of employment in its coverage. In addition, the Geneva-based Assistant Director of one of the trade unions mentioned that trade unionism mandates ILO to assist constituencies in developing legislation and policies to regulate temporary work agencies and limit their activities in countries where they exist (Busser, 2013: 1).

The tax laws part of the legislative framework discusses the Australian Tax Office (ATO) perspective of the independent contractors in relation to taxation by citing a number of concerns as follows:

- self-employed contractors minimised tax because they did not withhold income tax;
- contractors could claim much higher business expense deductions than wage and

salary earners; and

- it appeared that there was a trend of employees moving out of a simple employment relationship to become unincorporated contractors or the owner-managers of interposed entities while not really changing the nature of the employer-employee relationship (Dahm, 2015: 1).

2.4 CASE LAW FOR STATUTORY DETERMINATION OF EMPLOYEE AND INDEPENDENT CONTRACTOR DEFINITIONS

The absence of a standard definition that distinguishes between self-employed contractors and employees is a challenge to courts and tribunals. The semantic implications of the term 'service' is expressed and is also part of determining whether one is an employee or independent contractor. Courts and tribunals rely on tests and indicators to determine whether an employment relationship is 'of service' or 'for service'. 'Of service' is the term used by courts to describe a relationship governed by a contract of employee-employer relationship. 'For service' is the term used to denote a relationship covered by a commercial law, or a contractor-client relationship (Labour Appeal Court, 2014: 1).

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It appears that courts used integration, consistency and economic tests in order to ascertain if an employment relationship is of or for service. Mot (1990: 1) alluded to the notion that the efforts of determination entail integration, which turned on

examining whether the worker is an integral part of the employer's organisation or a mere accessory to it. One of the Australian courts determined that control and integration should be part of the factors considered when categorising the employment relationship. The courts and tribunals, in determining the contractual status of individuals, assessed control and other indicators by using the criteria as follows:

- whether the contract permits the worker to perform similar work simultaneously for other employers;
 - whether the worker is free to subcontract the work or employ someone else;
 - whether the worker invoices for his or her work, or received wages;
 - whether the payment conditions mean that the worker could make a profit or loss;
 - whether the worker supplies their own tools or equipment; and
 - where responsibility for the payment of injury insurance premiums lies. (Riley, 2016: 1).
-
- The above-mentioned researchers also observed that the application of assessments or tests and other indicators were used by the Federal Court on the case of Odco (Pty) Ltd. Odco hired out for its business of the building industry. Its workers were required to sign contracts or agreements to state that they were not employees. They were paid on a weekly basis for, or according to, the work that they had performed. They were also responsible for their own tax deductions but their work was indistinguishable from that of traditional employees (Riley, 2016: 1).

Further observations by the researchers worth noting include that the trade union perceived the approach of the company as the one to undermine the position of employees in the building industry. The Federal Court decided that the Odco workers were legally not employees because there was no expectation of continuing employment, and contracts expressed genuine intent to achieve independence. Also, for the fact that workers were paid on the completion of work: workers were not found to be employees of the company despite the control over their working arrangements resting with the company.

Different countries, overseas, have different legal approaches of determination because the United States' Fair Standards Labour Act differs from the Australian approach. The U.S. Labour Courts, for example, must consider whether, as a matter of economic reality, a worker is dependent on the business to which a service is tendered for continued work (Ellenwood, 2016: 1).

2.5 LOCAL PERSPECTIVE OF INDEPENDENT CONTRACTORS AND EMPLOYEES

South Africa's legislative framework provides a statutory definition of independent contractors and employees. The tax law defines independent contractor and employee in a different way from common law and labour legislation.

The common law generally emphasises the presence of remuneration as a return for work, personal services rendered by a person to another person who directs or controls an employee's manner of work. In defining the 'employee', the labour legislation has a number of Acts and two of them, i.e. New Labour Relations Act (NLRA) Number 95 of 1996 with amendments, and the Basic Conditions of Employment Act (BCEA) Number 75 of 1997 with amendments, are those that deal extensively with the concepts of this research study. BCEA is the Act that regulates employee benefits and working terms and conditions. This part of the research paper discusses 'employer' and 'remuneration' for clarifying the components that relate to definitions of 'employee' and 'independent contractor' (Code of Good Practice, 2006: 5).

2.5.1 Independent contractor

The Income Tax Act and the Labour Relations Act have different definitions of independent contractor and employee. When defining independent contractors, one has to define some terms that are closely related to the subject of independent contractors and concomitantly interrogate all the terms to come to an understanding of 'independent contractors' and likewise for 'employee' (Leilbowicz, 2011: 49).

The labour legislation defines who an independent contractor is, as a person or business who procures or provides employees to perform work or render services for a client and remunerates those employees (Code of Good Practice, 2006: 7-8).

2.5.2 Employee

According to Dann and Reilly's understanding of the notion of employee and its legal implications, an employee is someone who has undergone training in order to perform duties dictated or controlled by others, usually the employer or principal. Their understanding is premised on the terms of the common law definition, which further states that an employee is a person who receives an agreed remuneration for work performed for the employer (Dann, 1998: 7; Reilly, 2015: 49).

In the precise definition of the presumption of who the employee is, the labour legislation defines an employee as any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration and any other person who, in any manner, assists in carrying on or conducting the business of an employer, and 'employed' and 'employment' have meanings corresponding to that of 'employee' (Code of Good Practice, 2006: 4).

Government gazettes also enhance the understanding of labour issues. Provisions are found in section 200A of the Labour Relations Act (LRA) Act No. 955 of 1996 and

section 83A of the Basic Conditions of Employment Act (BCEA), Act No. 75 of 1997. The provisions define employee as any person, excluding an independent contractor, who works for another person, or for the State and who receives, or is entitled to receive any remuneration; and any other person who, in any manner, assists in carrying on or conducting the business of the employer (Government gazette, 2006: 7).

The NLRA's Section 200A defines elements as factors of who the employee is and the same content is contained on BECA's Section 83A. The labour legislation differentiated between the independent contractor and an employee by means of adopting the 'dominant test'. The dominant test is determined on the basis of five factors to distinguish a contract of employment from a contract for services concluded by independent contractors in Table 2.1.

Table 2.1: Dominant test-based factors distinguishing between independent contractor and employee

No	Employee	No	Independent Contractor
1	The aim of the contract is to render personal services	1	The aim of the contract is to perform a specific work or produce a specified result.
2	The employee has to perform services himself or herself.	2	Independent contractor is usually allowed to perform through others.
3	Employer may choose when to make use of services of employee.	3	Independent contractor must perform work (or produce result) within period fixed by contract.
4	The contract dissolves at death of employee.	4	The contract does not necessarily terminate when an employee dies.
5	The contract also terminates on expiry of period of service in contract	5	The contract terminates on completion of work or production of specified result.

(Adapted from Code of Good Practice, 2006: 5)

Table 2.2 provides a comparison between common differences of employment terms as follows:

Policy	Employees	Independent Contractors
Layoffs	Entitled to severance benefits. Risks of going to the Commission for Conciliation, Mediation and Arbitration (CCMA). Strongly discouraged by unions.	No severance compensation. Relationship allows termination.
Firing for cause	Require extensive documentation and consultation before firing	No restrictions on manager's ability to terminate contract.
Career development	Training commonly provided Promotion opportunities and pay increases	No additional training provided. No career ladder access in firm.
Performance management	Annual performance review, with clear targets and bonus	No performance review or pay incentive.
Benefits	Pension fund, medical aid, access to share options.	Labour broker may provide limited benefits.
Costs	Generally lower cost, limited overtime pay.	Higher per unit cost, can charge for overtime.

Source: Fienberg and Sunjka (2014: 1131)

It is intriguing to notice that the South African Institute of Chartered Accountants (SAICA), i.e. the body that is entrusted with writing the Income Tax Legislation, has made a comment that reflects acknowledgement of the difficulties of distinguishing between an 'employee' and an 'independent contractor'. The following observation is pertinent to understand the severity of this problem, as it was mentioned by Anon. (2015: 1), that the question of whether a person is an employee for tax purposes as opposed to an independent contractor is one that continues to cause difficulties and conflict for taxpayers and especially the employers. This is also confirmed by SARS by stating that the concept of independent contractor still remains one of the most contentious features of the Fourth Schedule of The Income Tax Act of South Africa (SARS, 2011: 2).

Similarly, the civil courts have often struggled with this problem and the definition of persons who are entitled to receive remuneration or someone who assists in conducting the business of the employer (Wollenberg, 2010: 679). Weinberg (2015: 312) expresses a notion similar to that of Wollenberg. To date, no one has managed to come up with conclusive factors that determine if a worker is an employee or an independent contractor. No one has found a single factor that can assist in coming to a conclusion. Some factors may be relevant in some situations but not relevant in other circumstances. Currently, one has to look at the entire relationship, consider the degree or extent of the employer's right to direct and control labour and finally, to document each of the factors used in coming up with the determination.

Considering the discussions above, it is clear that determining whether a person is an employee or independent contractor is not an easy decision for a company to make. This has an impact on an individual, on an employer, and on the business hiring environment as a whole.

2.5.3 Employer

Reilly offers the following observations in respect of the notion of an employer: “Dann (1998: 7) discovered that The Income Tax Act No. 58 of 1962 defines the term ‘employer’ as any person (excluding any person not acting as a principal, but including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person any amount by way of remuneration. This includes any person responsible for the payment of any amount by way of remuneration to anyone under the provisions of any law or out of the public funds (including the funds of any provincial council or any administration) or out of funds voted by Parliament or a provincial council” (Reilly, 2015: 47-49). This implies that an act of service was performed for which the person undertaking the task ought to receive some remuneration.

2.5.4 Remuneration

According to The Income Tax Act No. 58 of 1962, 'remuneration' is any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered (Wollenberg, 2010: 679).

The Income Tax Act Number 58 of 1962 has a different context of 'employee' and 'independent contractor' definitions. Its Schedule Four puts an emphasis on remuneration as a 'key component' in the argument between the two concepts. The presence of remuneration in the tax law perspective draws conclusions on who is to be seen as an employee. It seems that the conclusion or presumption of who the employee is, in this context, is premised on a revenue target that the Act seeks to accomplish for the country. This tax law-related definition is similar to the one in Spain, which suggests that a person who works as a contractor must pay tax if his or her work and remuneration is the same as or equivalent to the employee's.

The Income Tax Act of 1962 requires people in a triangular employment relationship like independent contractors to pay tax and its battles are largely settled in courts of law. The parameter within which it defines employee does not look at other components that the labour legislation assesses for its presumptions (Free State Tax Court – Income tax case Number 1787, 67 SATC 142, 2004/5: 1).

2.6 FEATURES OR CHARACTERISTICS OF INDEPENDENT CONTRACTORS IN COMPARISON TO EMPLOYEES

2.6.1 Employment status

Gollin (2008: 7) discovered that the majority of self-employed contractors are owner-managers, and the majority are owner-managers of unincorporated enterprises.

2.6.2 Gender and age restrictions

The research conducted by Waite and Will (2001: 5) revealed that the majority of self-employed contractors amounting to 70.7% are much likely to be male when compared to employees. It appears that there is a considerably higher percentage of men than women as self-employed contractors. A similar study by Myers (2012: 222) revealed that tax education in South Africa seems to be lagging behind as compared to other counterpart countries like Europe and females have a better knowledge of tax than males.

2.6.3 Other demographic characteristics

Waite and Will (2001: 52) state that 'self-employed contractors are more likely to be married and have dependents than employees and tend to be older than employees'.

2.6.4 Occupation and industry

Waite and Will (2001: 55) discovered that self-employed contractors are found in every type of occupation, including 27% of tradespersons and related workers, and 18.3% of professionals. When compared to employees, self-employed contractors are more likely to be employed in, or occupy, higher-skilled occupations at 65% whilst employees in these occupations are 48%.

2.7 CHARACTERISTICS OF EMPLOYEES AND INDEPENDENT CONTRACTORS' TERMS OF EMPLOYMENT

Fienberg and Sunjka (2014: 1131) observe that South African businesses are challenged with ongoing unrest in the labour sector with increased costs. This dramatic change was seen since the introduction of the youth wage subsidy when labour or trade unions wanted to scrap the use of labour brokers. In response to these challenges, businesses have turned toward outsourcing activities that were previously performed by their bona fide employees. Outsourced firms acquire skills directly themselves, or further sub-contract to a third party. Outsourcing enables the use of specialised skills from outside the business, which would otherwise be costly to maintain in-house. Using independent contractors frees employers of South Africa from onerous labour legislation.

SARS (2011: 2) and Leilbowicz (2011: 49-50) point out that the task of defining an independent contractor and an employee is left to the ordinary employers. It seems that the employers appreciate the proposed Advanced Tax Rulings publication by SARS, i.e. the principle of advanced rulings is welcome and is the one that has been sought by the taxpaying public for many years. Perhaps the most unfortunate aspect of the proposal or ruling is that SARS will decline to give rulings on some matters that cause the greatest uncertainty for taxpayers. The worst example of this is the decision as to whether or not a person is an independent contractor or an employee in terms of the Fourth Schedule to the Income Tax Act.

SARS steadfastly refuses to be helpful in this regard, despite the fact that the legislation is unclear and the attitude of SARS is punitive in this regard. It is sometimes extremely difficult to arrive at a firm decision and the penalties for an incorrect decision are significant. SARS itself has, by implication, acknowledged the difficulty by issuing Interpretation Note 17, the very length and complexity of which illustrates the extent of the problem. Instead of assisting taxpayers, SARS seems to have the intention to maintain a regime where taxpayers, in sheer self-defense, err on the conservative side and deduct employees' tax when, in fact, they need not to do so. The only beneficiary in such circumstances is SARS, which enjoys an enhanced cash flow. Interpretation Note 17 states that SARS will not give rulings about such relationships, but it would be welcome if, in light of the advance rulings proposals, this policy was revisited (Surtees, 2008: 1).

2.8 ADVANTANGES AND DISADVANTAGES OF INDEPENDENT CONTRACTORS AND EMPLOYEES

It would appear from the aforementioned observations that independent contractors help with lower cost and a more efficient source of labour. Independent contractors also provide a source of numerical and contractual flexibility. They may absorb the risk and cost associated with changes and fluctuations in demand; they take charge of their own work organisation and training, and this feature provides a source of cost saving to the employer (Nortjie, 2013: 1).

Having employees rather than independent contractors accords control to the employer because employees are subject to the direction and control of the employer, and are obliged to carry out the employer's instruction. Employees understand the organisation's culture, policies, work practices and procedures better, and have knowledge about the company. Employees, compared to independent contractors who work for others, develop attachment or a sense of belonging to the employer due to the on-going relationship (Nortjie, 2013: 1).

Independent contractors do not present an on-going cost commitment, yet they might be paid at a higher rate than employees; and the use of independent contractors might be for avoidance of trade unions yet non-adherence to employee welfare best practices might still result in litigation costing the employer (Waite and Will, 2001: 6-7).

2.9 BUSINESS RATIONALE AND/ OR APPROACHES TO HAVING INDEPENDENT CONTRACTORS AND EMPLOYEES

Generally, employers would use former employees or convert current employees into independent contractors for minimising employment cost and obligations. Greene observes that employers may also realise the advantage of transferring a risk and liability, and avoidance of employment problems, like leave and dismissal complexities. They may be short-sighted or rather have economic reasons that outweigh the importance of control over the staff were they to be 'employees' in the context of burdens that employers run away from (Greene, 2000: 1).

Waite and Will (2001: 3-6) offer further elaboration on the research concepts. Hereunder are some of rationales and/ or approaches:

- traditional rationale for the provision of specialist services or skill, or coping with peaks in demand;
- supply-side rationale of which workers have a preference for self-employed status;
- new rationale concerned with responding to increased uncertainty, including reduced wage, overhead and training costs - this rationale is aimed at avoiding tax and insurance administration and hold perceptions that independent contractors are more productive or more committed;
- iterative and entrepreneurial approach that is based on regular assessment of the activities that will be essential in the market in the future;
- competency for both core or non-core dimensions; and

- short-term and headcount reduction based on which decisions are made on a short-term reactive basis and not as part of any coherent resourcing strategy. (Waite and Will, 2001: 3-6).

Wollenberg (2010: 678) and Weinberg (2015: 312) share a common view that the employers' understanding of independent contractors is linked with a view towards enjoying several tax benefits. For example, independent contractors avoid having payroll and income taxes withheld from their pay cheques. The South African Institute of Professional Accountants (SAIPA)'s 2015 publication mentions that employers need to know that the liability of an employer to deduct employees' tax known as Pay As You Earn (PAYE) is largely dependent upon whether or not the remuneration (as defined in the Fourth Schedule) is paid to employees. This simply means that an amount paid to an independent contractor for services rendered cannot be classed as remuneration and, therefore, the employer is not liable to deduct employees' tax from the amount paid. So far, the general rule is that PAYE is to be paid over to South African Revenue Service (SARS) by the employer. However, SARS is not open to negotiation on whose liability it is to deduct employees' tax. Consequently, it is the responsibility of the employer to determine whether or not the person in receipt of the remuneration is an independent contractor or an employee.

Weinberg (2015: 312) referred to the remedy in the event the employer mistakenly labels an individual as an independent contractor rather than an employee. The remedy entails what has to be done if the employer also fails to withhold social

security, federal unemployment, and medicare taxes, by virtue of government agencies, such as the IRS. The employer, due to the two aforementioned omissions, will be liable for a portion of those taxes. Therefore, making a clear distinction between an independent contractor and an employee is very important in order to avoid such potential problems.

2.10 INDIVIDUAL OR PERSONAL REASONS OF BEING AN ‘INDEPENDENT CONTRACTOR’

Why are independent contractors important in South Africa?

According to Fienberg and Sunjka (2014: 1131), the South African context for becoming an independent contractor, through a labour broker, provides more chances or access to jobs that would otherwise not be obtained by a normal applicant. Most businesses prefer outsourcing to an independent contractor rather than hiring a direct employee. This is due to a business preference to remain flexible and avoid cumbersome labour legislation. Furthermore, working as a contractor involves making compromises between:

- independence from the organisation versus being given the status of an outsider;
- increased financial security during contracting work versus uncertainty of the next contract;
- enhanced income versus hidden costs to remain up-to-date in the field; and
- having one’s skills traded as a commodity within the market does not always

provide interesting work.

From abovementioned authors' discussions, it was made clear that a choice of independent contractor over employee is varied with fewer benefits for employees. Employers avoid having a direct contract with employees because of labour costs and other related labour legislation.

2.11 CASE LAW FOR STATUTORY DETERMINATION OF EMPLOYEE AND INDEPENDENT CONTRACTOR DEFINITIONS

The case law perspective contends that in the context of South Africa's Income Tax Law Number 58 of 1962, the Free State Tax Court had to determine the true nature of a bilateral relationship between marketing agents and taxpayer (employer organisation). The applicant (taxpayer) had a money-lending business in a micro-lending sector and operated as a bank with its operational business activities consisting of a long-term loans for study and housing purposes. The applicant hired marketing agents to work for it and regarded the agents as independent contractors, not employees (Free State Tax Court, 2005: 1&2).

Upon submitting its annual income tax return IT 14, the applicant's submissions that its workforce was consisting of independent contractors were rejected by the SARS Commissioner, i.e. the respondent in the case that was before the court. The SARS

commissioner contended that the marketing agents were employees of the applicant. The objection that was lodged by applicant against the assessment that SARS Commissioner rejected was appealed to the Free State Tax Court. The court decided that the marketing agents were independent contractors on the basis that the applicant did not dictate the manner in which marketing agents did their work and the amount paid for work was not a fixed remuneration, i.e. it was not paid at regular intervals like weekly or monthly (Free State Tax Court, 2005: 1&2).

In determining whether persons are employees or independent contractors, one needs to examine the judgement of the Labour Appeal Court (LAC) on the case of *Phaka and Others v Bracks and Others*. The LAC had to decide whether owner-drivers were employees or independent contractors. It looked at different circumstances as follows:

- the contract between owner-drivers and the hiring company for determining if it was for an employment relationship;
- the individuals acquired their own vehicles to render the services;
- the individuals were not paid a salary but were paid on presentation of invoices;
and
- the hiring company asked its employees to assist in rendering the services.

The LAC utilised the control test and decided that, despite the fact that the drivers were under supervision and instructions of the hiring company, the drivers were

independent contractors. The reporting principle (supervision and instructions) does not mean that there was employment relationship (LAC, 2015: 1 & 2).

2.12 CONCLUSION

This chapter reviewed the literature on the understanding, interpretation and perceptions of the employers on the clarity of the definitions of independent contractor and employee. A general overview of the South African employer organisations, characteristics of employees and independent contractors' terms of employment, employers' knowledge of independent contractors and employees, employers' perceptions of independent contractor and employee definitions were all presented.

The definitions of independent contractor and employee have roots in reality for both the employers and SARS, but the perceptions of the employers of the clarity of the definitions of independent contractor and employee is still shrouded by secrecy and undercutting, resulting in improper income tax evaluations. The biggest gap and limitation identified in the literature review was that there is not much research that has been done on this subject. Most of the information available is information supplied the South African Revenue Services or the information coming from the definitions from the Labour Law.

From the literature that the researcher examined, it was very clear that there is still no clear determining factor that distinguishes the determination of independent contractor from an employee. The cases that have been examined have revealed that

even court judges find it difficult to conclude on the matters concerning the efforts of separating between independent contractors and employees.

The next chapter (Chapter 3) introduces the approach to the study and the overall methods of research that were followed.

CHAPTER 3

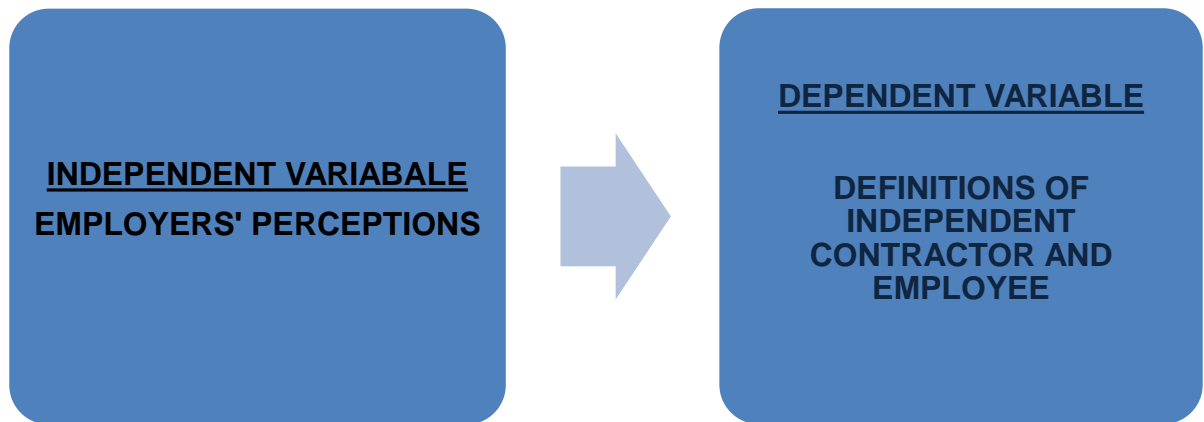
RESEARCH DESIGN AND METHODOLOGY

3.0 INTRODUCTION

The previous chapter reviewed the available literature on the definitions of independent contractor(s) and employee(s), and also explored the employers' understanding, interpretations and perceptions on these definitions.

According to Leech and Onwuegbuzie (2009: 269), research is the process of achieving solutions to problems using a planned and systematic method. This chapter discusses the research design and types of methodologies undertaken by the researcher to obtain data as accurately as possible to authenticate the study. The chapter begins by clarifying the research design and the study area. The target population is described and the instrument used for data collection is also explored, and followed by a method used to computerise and analyse data for the study. This chapter also looks into the requirements for ethical considerations and discusses how they were observed in this study.

Figure 3.1: **Research concepts or study variables**



The research title is made up of two research concepts or study variables as illustrated on the figure above. The researcher developed the figure for easy understanding. As detailed under the purpose of the study, the study examines the perceptions of the employers of the definitions of independent contractor and employee. The perceptions of employers are an independent or predictor variable, whereas the definitions of employee and independent contractor are a dependent or response (criterion) variable (Bergh, Theron, Werner, Ngokha, May, & Naidoo, 2012: 441).

3.1 RESEARCH DESIGN AND RATIONALE

The research design, according to Saunders, Lewis and Thornhill (2011: 22), is the way the researcher intends to conduct the study. Villa (2014: 3) defines research design as “a science of planning procedures for conducting studies so as to get the most valid findings, since a choice of a right design is a key step of the empirical study and the success of the study”. The research design, as a plan of conducting an

evaluation study, is vital in this investigation. It entails the expected results on the study, the methods of data collection, and how the data would be analysed (De Simone and Werner, 2013: 186-187).

3.1.1 Research design and approach

The researcher collected the data by means of a questionnaire as a data collection technique in quantitative research. Quantitative methods seek to clarify phenomena in their complexities, through carefully designed data collection and data analysis (Fraenkel & Wallen, 2014:68). According to the Encyclopedia (2016:1), Quantitative method refers to a systematic investigation that can be used in different disciplines such as sociology, psychology, economics, marketing and political science, with the objective of developing and employing mathematical models, theories and/ or hypotheses pertaining to the phenomena.

The design of this study was to investigate the unknown areas of knowledge and perceptions of participants about the definitions of employee and independent contractor and the clarity thereof and to describe the phenomena as accurately as possible. The technique of this research was concerned with discovery in order to:

- satisfy the researcher's curiosity and desire to gain insight into a phenomena;
- test the feasibility of undertaking a more comprehensive investigation;
- develop methods to be used in such a study; and
- formulate a problem for more precise investigation or for developing hypotheses;

(Guy, Edgler, Arafat & Allen, 1987, cited in Krishna (2005: 13)).

3.2 RESEARCH PARADIGM AND RESEARCH METHODS

The difference between quantitative and qualitative research is based on different research paradigms (Giddings, 2006: 198). Qualitative research focuses on the competence of the researcher to gather information through structured data collection (e.g. observations or interviews), whereas with quantitative research the researcher uses instruments (e.g. questionnaires) to gather information (Flick, Von Kardoff & Steinke, 2004: 47). According to Dellinger and Leech (2007: 311), qualitative research does not depend on the use of numbers or measurements and focuses on phenomena that cannot be explained adequately with statistics. Giddings (2006: 199) postulates that qualitative research has a phenomenological perspective and is very flexible, since the data and circumstances change.

Wollman (2013: 2 and 3) states that there are different types of paradigms related to different kinds of research. These include exploratory, predictive, evaluative, prescriptive, and descriptive paradigms. Rossman and Rollis (2003: 4) add to the literature of research paradigms by stating that positivism and interpretivism are part of constructivism, critical realism is part of positivism, and critical humanism is also part of a research paradigm. This study is characterised by post-positivism as a quantitative research study. According to Creswell (2014: 7), developing numerical measures of observation and studying the behaviour of individuals is paramount for

this research paradigm. The intent of the researcher was to measure, interpret or make sense of the understanding and perceptions employers and/or entrepreneurs have regarding the definitions of employee and independent contractor and the clarity thereof.

The study was underpinned by the quantitative method which involved a number of processes as follows:

- collection of empirical data;
- modelling of analyses of data;
- collecting, analysing, interpreting and writing the results of the study;
- the development of instruments and methods of measurement;
- the generation of models, theories and hypotheses;
- experimental control and manipulation of variables;

(Creswell, 2014: 158-159).

The researcher selected a method that relates to identifying a sample and population, and specifying the type of design. This involves collecting and analysing the data, presenting the results, making interpretations, and writing the research in a manner that is consistent with the study.

3.3 STUDY SITE OR AREA

The study was conducted in the greater Richards Bay area, in the Province of the KwaZulu-Natal, South Africa. The problem experienced by employers in defining and/or differentiating between an independent contractor and an employee is a national crisis. Due to limited resources such as time and funds, the researcher has chosen to conduct this study in the greater Richards Bay area. The advantage of this is that Richards Bay has many employers trading formally and informally.

3.4 TARGET POPULATION

Jacobs (2014: 42) defines the term population as ‘the study of objects which may be made up of individuals, groups, organisations, human products and events’. According to Moses (2013: 525), choosing the population depends on how homogeneous or heterogeneous the population is. George (2013: 95) states that ‘a heterogeneous population requires larger samples than a homogeneous population where smaller samples are required’.

In this study, the target population was identified to include all companies operating within the greater Richards Bay area. According to the Richards Bay Chamber of Commerce, there were 215 companies registered with the Chamber as at 25 February 2016. The target population of this study therefore comprised 215 employers from the greater Richards Bay area listed with the Richards Bay Chamber

of Commerce. Some are well established companies represented by their Human Resources personnel or Accountants in matters pertaining to payroll and dealings with SARS, whilst others are owner run companies.

3.5 SAMPLING STRATEGY

Schram and Caterino (2006: 2102) describe a sample as a subgroup of the population, which reflects the characteristics of the population as a whole. Saunders, Lewis and Thornhill (2011: 22) state that 'there are two types of sampling methods from which the researcher must choose'. Although the researcher used one sampling technique as being of relevance to the study design and approach, the variety of samples are presented below, in order to show a wide pool of techniques from which the researcher selected one.

These include probability (random) samples and non-probability samples.

3.5.1 Probability (random) samples

Welman *et al.* (2011: 87) and Saunders *et al.* (2011: 22) state that 'probability (random) samples include the following':

3.5.1.1 Simple random sample is a probability sampling method which entails that each member of the subset sample has an equal probability of being chosen. Moreover, a simple random sample is meant to be an unbiased representation of a group.

3.5.1.2 Systematic random sample is one type of probability sampling method in which sample members from a larger population are selected according to a random starting point and a fixed, periodic interval.

3.5.1.3 Stratified random sample is also called 'strata' and it requires that the sample population has to be divided into smaller groups. For example, random samples can be taken from each stratum, or group.

3.5.1.4 Multistage sample is the method that is normally very complex because its sampling involves dividing the population into clusters. Thereafter, any cluster is chosen at random and everyone within the chosen cluster is sampled.

3.5.1.5 Multiphase sample is the method by means of, in multiphase sampling, the different phases of observation relate to sample units of the same type. This method differs from that which characterises the multistage sampling, i.e. the sample units are of different types at different stages.

3.5.1.6 Cluster sample is this sampling technique of which the total population is divided into the clusters and a simple random sample of the groups is selected.

3.5.2 Non-probability samples

Welman *et al.* (2011: 87) and Saunders *et al.* (2011: 22) state that 'non-probability samples entail the following':

3.5.2.1 Convenience sample is made up of population that is easy to reach. The advantages of convenience sampling method are the availability and the quickness with which data can be gathered, but its disadvantages are the risk that the sample might not represent the population as a whole, and it might be biased by volunteers.

3.5.2.2 Purposive sample is a sampling technique that is also known as judgmental method, selective or subjective sampling. This technique allows the researcher to choose specific people within the population to use for a research project.

3.5.2.3 Quota sample requires that representative individuals be chosen out of a specific subgroup. For example, the researcher might ask for a sample of 120 females or 120 individuals between the ages of 18-25.

The researcher used a **simple random sample** because he wanted to ensure that all companies operating within the greater Richards Bay area have an equal opportunity of being selected for the purpose of this study. Another motivator for selecting this method is correctly articulated by Ben (2013: 238), who states that 'probability sampling provides the advantage of being less complicated and more economical in terms of time and financial constraints'.

Simple random sample is a probability sampling technique and is referred to as a subset of statistical population by means of which each member of the subset has equal opportunity of being chosen. The advantage of this type of sampling is that

there is no need to divide the population into subpopulations or take any other additional steps before selecting members of the population at random. It is a fair way to select a sample from a large group and every member of the population has an equal chance of getting selected (Investopedia, 2016: 3).

3.5.3 Sample size of the study

Aron (2014: 241) states that 'a good sample design not only helps to identify the type of data but also leads to efficient and accurate data collection'. Jerome (2012: 155) states that 'sample sizes larger than 30 and less than 500 are appropriate for most studies'. Sekaran's (1992: 253) computed table (Annexure C) for determining the optimum sample size from a given population was used in this study to select the sample. For this study, for a total target population of (N=215), a sample size of (n=140) is recommended (Sekaran, 2014: 268). A sample of 140 companies was adopted for this study in order to achieve reliable results.

3.6 RESEARCH INSTRUMENTS

According to Lieber and Weisner (2010: 587), a questionnaire helps in gathering the information for the study and the process was guided by the purpose of the study. Gorard and Symonds (2007: 92) define a questionnaire as 'a data collection strategy, which is the most generally used instrument of all'. Sharma, Bansal, and Ray (2009: 31) state that a questionnaire is a formalised set of questions for obtaining information

from respondents and is regarded as the main means of collecting primary data. Sharma (2010: 143) mentions that the questionnaire should also satisfy the assumptions on which questionnaires are based.

Hereunder are the assumptions on which the questionnaires are based:

- the respondents can read and understand the questions;
- the respondents are in a position to supply the information to answer the questions;
- the possibility of willingness to answer the questions exists; and
- the respondents will be interested in the outcome of the research and its implications for improvement in their situations.

The questionnaire (Appendix B), accompanied by a consent letter (Appendix A), was used as a research instrument to ensure that the data is well interpreted to reflect the views of respondents regarding their understanding or interpretation of the difference between independent contractor(s) and employee(s). The on-line questionnaire was used initially for collecting the data. Subsequently, the manual questionnaire was administered due to a slow response from participants on the on-line questionnaire.

There are two types of questions available for the researcher to use, namely, closed-ended and open-ended questions. The study was predominantly closed-ended questions and had one open-ended question, and this helped with tentative results

and saved time whilst an open-ended question gave freedom to the respondents to express their opinions in the questionnaire.

The researcher administered 20 questionnaires on a one-on-one interview basis, assisting the respondents to understand the questions. The researcher noticed a difference in how the questions were answered as compared to the other 120 self-administered questionnaires.

The research instrument consisted of 36 items, with a level of measurement at a nominal or an ordinal level. The questionnaire was divided into four sections which measured various themes as illustrated below:

- A Demographic Information
- B Taxation
- C General
- D Labour Law

3.7 PRE-TESTING

The term 'pre-testing the study' is defined by Welman *et al.* (2011: 148) as 'a preparatory dress rehearsal for the actual study'. In this study, a questionnaire was first sent to 10 employers who gave feedback on the understandability and clarity of the questions asked. Their feedback was incorporated before the questionnaire was administered to the respondents within the target population. The 10 employers

selected to participate in the pre-testing were excluded from the target population (N=215).

Sharma (2010: 143) justifies the value of pre-testing in his expressed observation by mentioning that the pre-testing is important for the researcher to be satisfied with the design of the questionnaire in order to facilitate the administration of the questionnaire, and to encourage positive respondent participation. Before conducting the actual study, the researcher conducted a pre-test of the questionnaire to the field experts. Pre-testing helps to identify possible flaws in the measurement procedures such as, ambiguous instructions and inadequate time limit of the intended study. Secondly, pre-testing helps in identifying unclear or vaguely formulated statements.

3.8 DATA QUALITY CONTROL

For any research, reliability for being accurate in measurements and validity for measuring the right thing are both important tests and were adhered to in this study (Sekaran and Bougie, 2010: 158). The researcher is aware and conscious of statistical power, and has ensured that the design and analyses used have adequate power in order to test the perceptions of the employers of the employee and independent contractor definitions. The researcher has achieved this by having a large group of participants in the study. The scale (as part of questionnaires) was designed and was selected in such a way that it allowed only respondents who can give valuable responses to answer the research questions, i.e. valuable information on the phenomena of the study (De Simone and Werner, 2013: 214).

The feasibility of this study has been proven through a pilot study (pre-test) and a Cronbach's Alpha system was utilised in order to meet the requirements of inner consistency and dependability of the study. As a rule, the study acknowledged a Cronbach's alpha above 0.6 (Sekaran and Bougie, 2014: 161). According to Lieber and Weisner (2010: 589), for a research study to be accurate, its findings must be reliable and valid. Validity guarantees that the survey measures what it needs to quantify, and it is a judgment of the suitability of a measure for particular inductions, choices and/or results. Reliability alludes to the degree to which the scores are comparable over various types of the same instrument for information gathering (Rosentreter, 2012: 70-71, cited in Dawson, 2009: 116).

3.8.1 Reliability

Muijs (2011: 56) describes reliability as “a measure to see if the study repeats the same results if the same experiment is performed again, and validity is an instrument to see if the study measures what it intended to measure”. Briggs and Collman (2007: 193) state that reliability deals with accuracy and it can be thought of as the degree of consistency of the measurement instrument. According to Sharma and Bansal (2009: 134), reliability refers to the fact that a question evokes the same set of responses each time it is asked in similar circumstances. Using IBM (Software Package for Social Science) SPSS, a reliability test was performed in order to see whether the study would give similar results if the same study is repeated in the future (Malhotra and Birks, 2011: 467). This was achieved as follows:

- only the closed-ended questions were used for reliability test;
- a pilot study of the questionnaire was undertaken to make sure that all questions and statements are both relevant and easily understood;
- the questionnaire of the study was designed to ensure the anonymity of the respondent; and
- Cronbach Alpha was calculated to measure the reliability of the measurement.

In order to determine whether the items are associated, the Alpha co-efficient must be close to one. If items are badly correlated, the Alpha coefficient will be close to

zero. This means that the reliability co-efficient of 0.60 or higher was acceptable (Muijs, 2011: 221).

3.8.2 Validity

According to Leech and Onwuegbuzie (2011: 174), an instrument should be usable for the particular purposes for which it was designed and the concept of validity is indicative of research conclusions being sound. Upagade and Shende (2007: 166) state that in order for a questionnaire to be valid, it must be able to measure accurately what it is supposed to measure. In order to ensure the validity of the study, a pilot study (pre-testing) was conducted and the results were scrutinised by both the researcher and a statistician. There are two types of validity that the researcher used: face validity, and construct validity. Face validity ensures that the respondents completely understand the questionnaire statements whereas construct validity helps to ensure that the instruments take into account a representative set of items that measure the concepts being addressed.

The value of any evidence is dependent on its validity. Research must have both internal validity and external validity in order to make a meaningful contribution to evidence-based management. The study has internal validity if there are no plausible alternative explanations of the reported results other than those reported. External validity is concerned with the generalisability of the results obtained. The results of

the study must be applicable to a wide range of people or situations so that the study will have external validity (Luthans, 2011: 19 & 64).

3.8.3 Measurements

Nominal and ordinal scales were used in the design of the questionnaire. A five-point scale was used for closed-ended research questionnaire items. Open-ended questions, extending the exploration of the survey, had to be answered by means of the written detailed responses.

3.9 DATA COLLECTION TECHNIQUES

According to Kumar (1999: 109), data collection techniques enable researchers to systematically collect information in order to answer questions in a conclusive way. This study is characterised by primary data and secondary data as detailed in the following paragraphs.

3.9.1 Primary data

Primary data was gathered by means of a simple random sample as a sampling technique, and a questionnaire was a tool or guide with a set of questions for respondents.

3.9.2 Secondary data

Secondary data was gathered from the literature on the perceptions of the employers on the clarity of the definitions of independent contractor and employee, and the key issues that characterise the current situation in defining independent contractors and employees were also reviewed. The reports that discuss the present development of the South African income tax regarding the independent contractors and employees, government publications, conference papers, academic journals, policy documents, relevant books, and online sourcing using articles from the internet, were used.

Through data collection, the researcher was able to measure the results of secondary data and primary data. The collection of primary data from the employers in the greater Richards Bay area was conducted through the self-administered method and interviews. The researcher was dedicated in data collection for about a week (5 days). Through the assistance of the Chamber, respondents were notified before data collection and were reached at their businesses during working hours or business time.

3.10 DATA ANALYSIS

The questionnaire was used for the list of questions to be asked of the respondents in the context of the research questions. Questions consisted of nominal Likert scales for biographical data or demographics, and for research question items. Data was

analysed using the IBM Statistical Package for Social Sciences (SPSS) version 24.0 (2015). This study was quantitative in nature and the questions were analysed by means of statistical measurements.

3.11 LOGISTICAL AND ETHICAL CONSIDERATIONS

The relevant ethical issues have been considered in this study. Likewise, Cohen, Manion and Marrison (2007: 55) support that formal procedures of obtaining permission to conduct a research study should be carried out in all research fields. In order to ensure protection of the respondents, the UKZN research guidelines were followed. The researcher submitted a research proposal to the Humanities and Social Sciences Research Ethics Committee. The letters of information and consent were obtained from the university. The protocol reference number is HSS/0278/016M. This was to ensure that the responses of respondents are kept anonymous and confidential and that there would be no harm from participating in the study. The researcher also respected the respondents' rights by obtaining a permission letter from the Zululand Chamber of Commerce and Industry to conduct a study. The respondents were asked to sign a written consent form before participating in the study. Their names, phone numbers, addresses and other details were not included in the questionnaire to ensure confidentiality.

3.12 CONCLUSION

This chapter presented the research design and types of methodology which were undertaken by the researcher to obtain data as accurately as possible to authenticate the study. The study used quantitative methods using predominantly closed-ended and one open-ended questions in a questionnaire, in order to improve the quality of results. The methodology assisted in examining the understanding of employers on the clarity of the definitions of independent contractor and employee in the greater Richards Bay area. The study also indicated that the data was analysed by means of the descriptive and inferential statistics using an SPSS version 24.0 (2015). This made it easier to code the data and sequence it for analysis.

In the following chapter, the findings of the research study are presented. However, the essence of this chapter is presented in the main study.

CHAPTER 4

RESEARCH FINDINGS

4.0 INTRODUCTION

This chapter outlines the research results and discusses the findings derived from the questionnaires in this study. The questionnaire was the primary tool that was used to collect data and was distributed to 140 employers in the greater Richards Bay area. The statistical data obtained from the responses was analysed with SPSS version 24.0 (Retrieved August 2015). The findings outline the descriptive statistics in the form of cross tabulations, graphs and other figures for the data that was collected. Inferential techniques include the use of correlations and chi square test values; which are interpreted using the p-values.

4.1 SAMPLE

One hundred and forty (140) questionnaires were sent out and one hundred and twenty eight (128) were returned, which gave a 91.43% response rate and that is far beyond the minimum requirement, of 70%.

4.2 RELIABILITY STATISTICS

The two most important aspects of precision are reliability and validity. Reliability is computed by taking several measurements on the same subjects. According to Lance, C.E., Butts, M.M., and Michels, L.C. (2006: 205) the Cronbach Alpha Coefficient of 0.600 or higher is considered as acceptable. Table 4.1 presents the Cronbach's alpha score for all the items that constituted the questionnaire.

Table 4.1: Reliability statistics

		Number of Items	Cronbach's Alpha
B	Taxation	13	0.800
C	General	5	0.438
Overall (Sections B and C)		19	0.780
D	Labour Law	2	0.602

The reliability scores (0.780) for all sections exceed the recommended Cronbach's alpha value of 0.600 for a newly developed construct. This indicates a degree of acceptable and consistent scoring for these sections of the research as it suggests that items have relatively high consistency. Section C had a slightly lower value. This was primarily due to the nature of the statements which addressed only specific groups as these were general and relatively independent questions.

4.3 SECTION A: DEMOGRAPHIC DATA

4.3.1 Respondents' gender and age levels

This section summarises the demographic characteristics of the respondents. Table 4.2 in the next page describes the overall gender distribution by age.

Table 4.2: Respondents' gender and age levels

		Gender		Total	
		Female	Male		
Age group (years)	20 - 25	Count	11	7	18
		% within Age group	61.1%	38.9%	100.0%
		% within Gender	18.6%	10.1%	28.7%
		% of Total	8.6%	5.5%	14.1%
	26 - 30	Count	15	14	29
		% within Age group	51.7%	48.3%	100.0%
		% within Gender	25.4%	20.3%	45.7%
		% of Total	11.7%	10.9%	22.7%
	31 - 35	Count	7	12	19
		% within Age group	36.8%	63.2%	100.0%
		% within Gender	11.9%	17.4%	29.3%
		% of Total	5.5%	9.4%	14.8%
	36 - 40	Count	8	12	20
		% within Age group	40.0%	60.0%	100.0%
		% within Gender	13.6%	17.4%	31.0%
		% of Total	6.3%	9.4%	15.6%
	41 - 50	Count	5	14	19
		% within Age group	26.3%	73.7%	100.0%
		% within Gender	8.5%	20.3%	28.8%
		% of Total	3.9%	10.9%	14.8%
51+	Count	13	10	23	
	% within Age group	56.5%	43.5%	100.0%	
	% within Gender	22.0%	14.5%	36.5%	
	% of Total	10.2%	7.8%	18.0%	
Total	Count	59	69	128	
	% within Age group	46.1%	53.9%	100.0%	
	% within Gender	100.0%	100.0%	100.0%	
	% of Total	46.1%	53.9%	100.0%	

Overall, the distribution of males to females in this study is approximately 1:1 (53.9%: 46.1%). The age category between the ages of 36 to 40 years, consisted of 60.0%

males. Males only category consisted of 17.4% of ages between 36 to 40 years. This category of males between the ages of 36 and 40 years formed 9.4% of the total sample.

4.3.2 Respondents' position

Figure 4.1 indicates the positions that respondents hold in the organisation.

Figure 4.1: Respondents' position

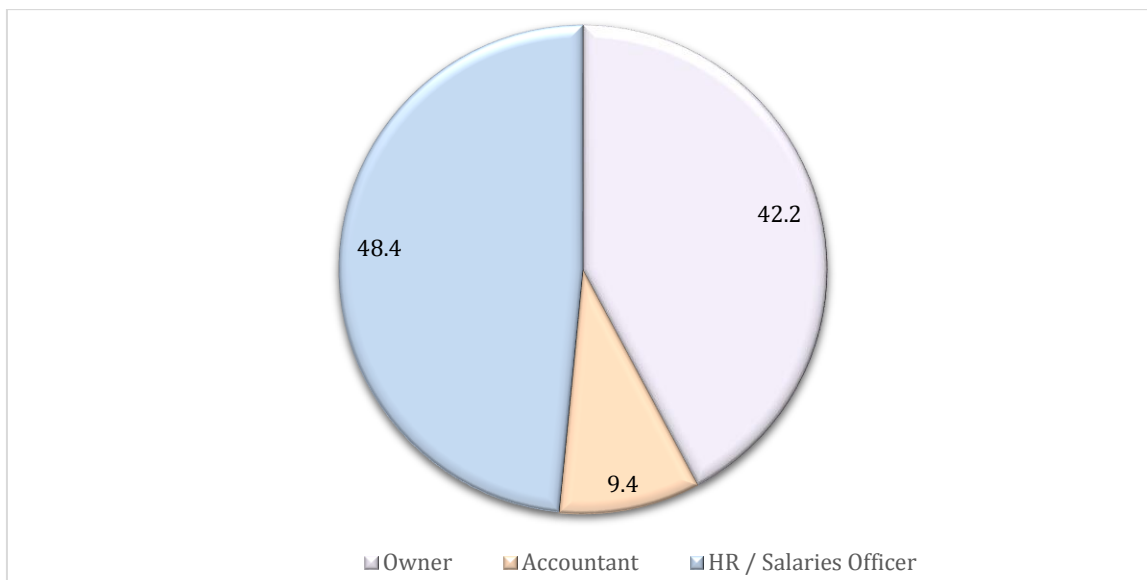
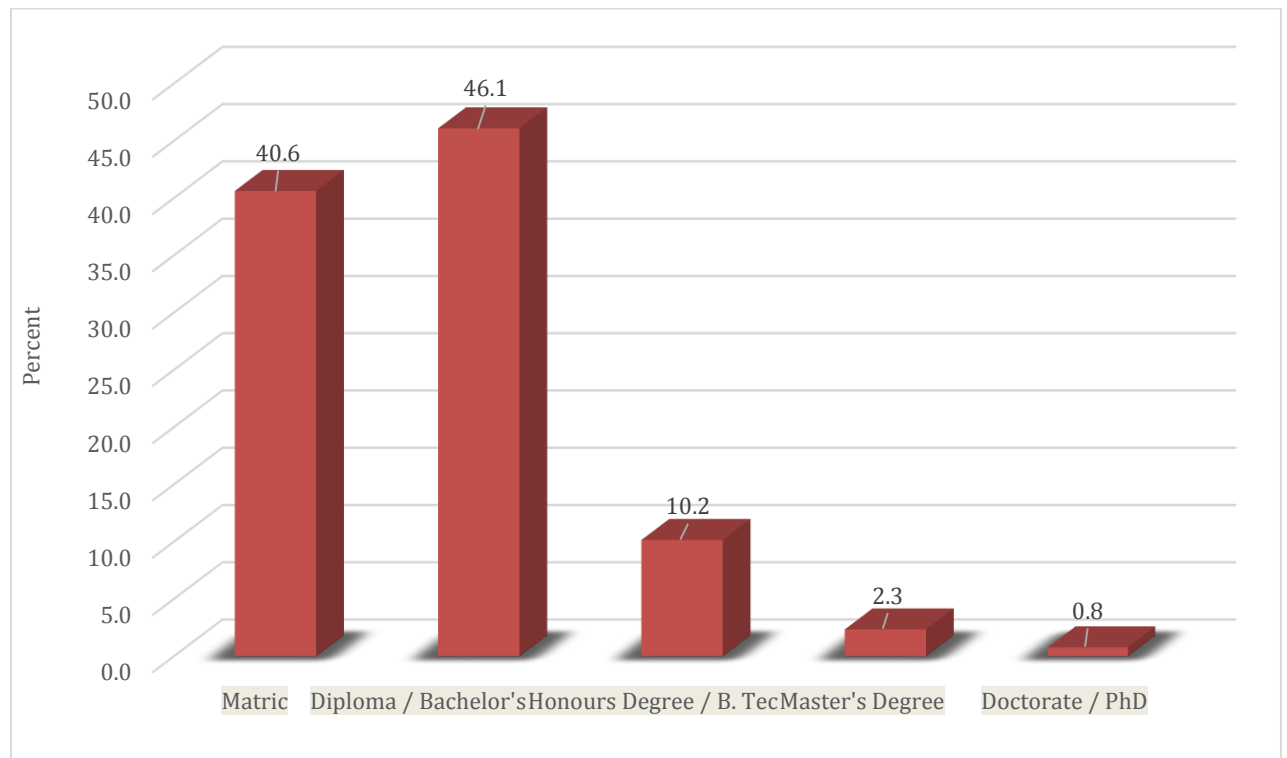


Figure 4.1 illustrates that nearly half of the respondents (48.4%) were HR or Salary Officers, with 42.2% being owners and 9.4% being accountants (management officials). The results indicate that the respondents were predominantly individuals who are involved in salary calculations and interact with SARS on a regular basis.

4.3.3 Respondents' education levels

Figure 4.2 indicates the education levels of the respondents.

Figure 4.2: Respondents' education levels



Of the 128 total respondents, the majority (46.1%) were had diploma and bachelor's degree qualifications, 40.6% had a matric qualification, 10.2% had honours degrees, 2.3% had master's degrees, and 0.8% had a doctoral degree qualification. This was important to note because it reveals that a fair proportion of the respondents have obtained tertiary qualifications. This indicates that the responses gathered would have been from an informed source.

4.3.4 Respondents' levels of experience

Figure 4.3 indicates the level of experience of the respondents.

Figure 4.3: Respondents' levels of experience

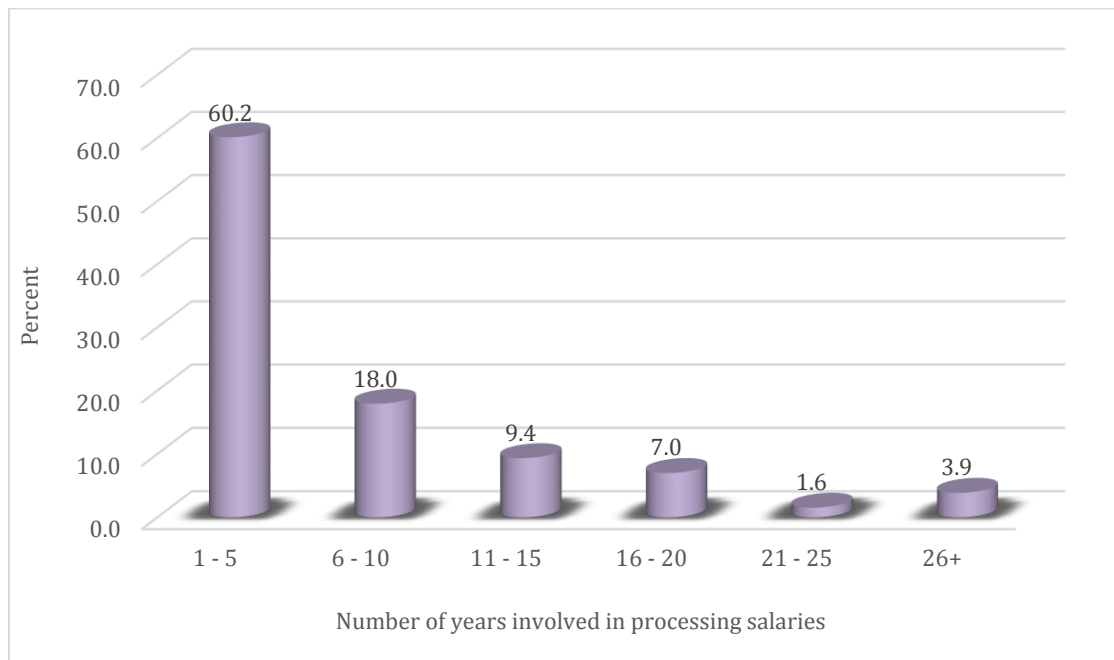


Figure 4.3 indicates that nearly 40% of the respondents had been operating in the area of salaries for at least 6 years. This tells us that the respondents had been operating for a number of years and this is also a useful fact as it reveals that the responses are from experienced individuals.

Table 4.3: Taxation qualification

	Frequency	Percent
Yes	16	12.5
No	112	87.5
Total	128	100.0

Table 4.3 however reveals that only 12.5% of the respondents had a taxation qualification.

4.3.5 Number of employees employed in the organisation

The number of employees in the organisations is shown below.

Figure 4.4: Number of employees

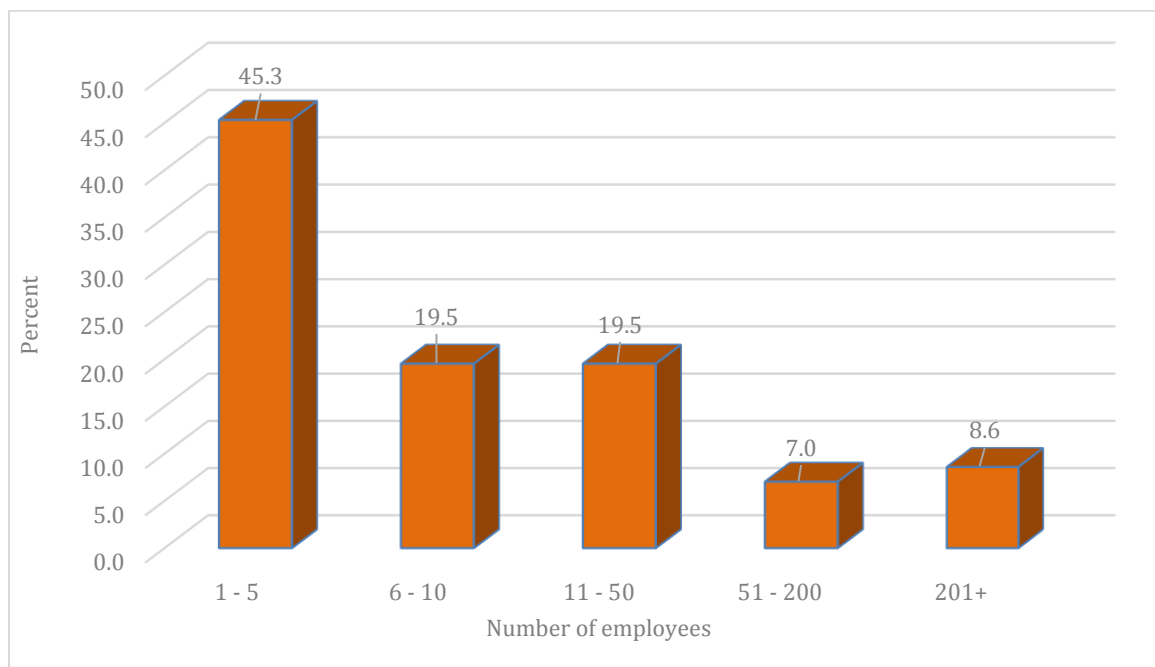
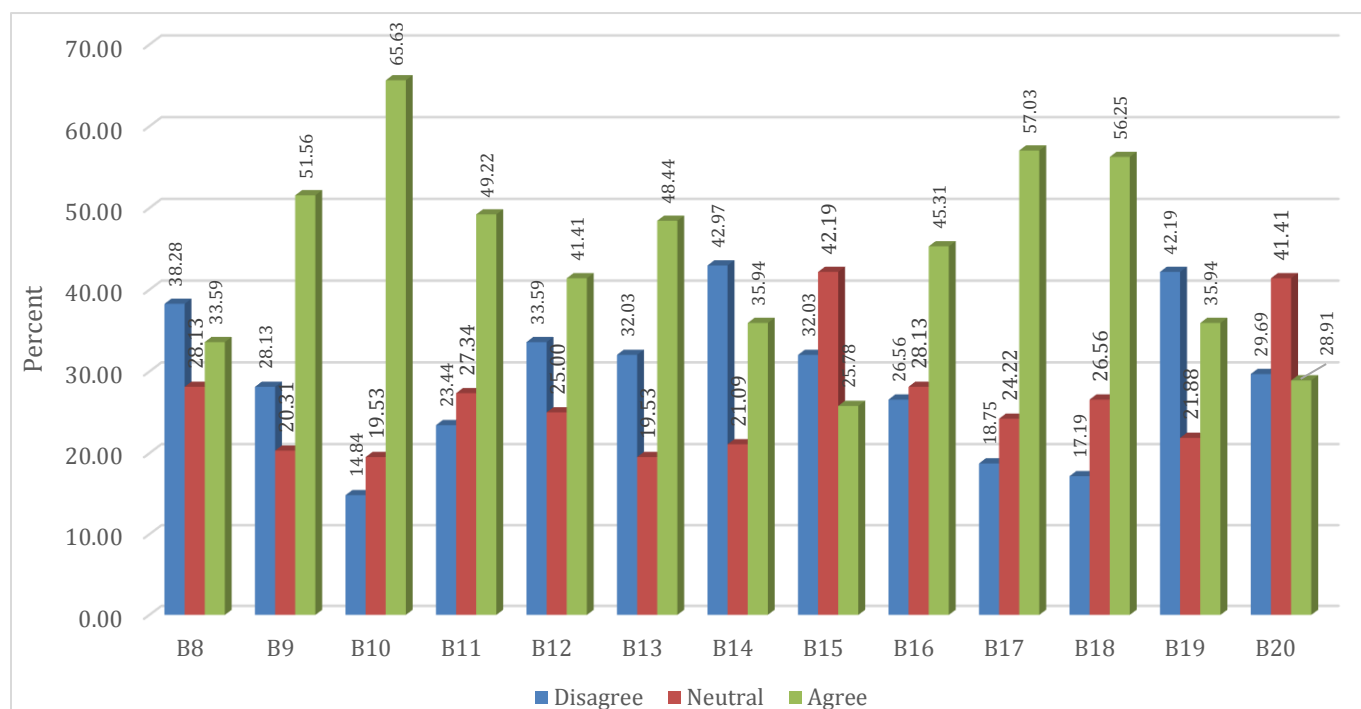


Figure 4.4 shows that companies which employ between 1 - 5 employees are 45.3%, companies employing between 6 -10 are 19.5%, employing between 11 - 50 were also 19.5%, and employing between 51 and above were 15.6%.

4.4 SECTION B: TAXATION

This section aims to ascertain the respondents' tax understanding and tax implications of independent contractors and employees.

Figure 4.5: Taxation



Tax education offered by SARS is sufficient	B8
I understand the definition of an Independent contractors as per SARS Forth schedule	B9
I understand the definition of an employee as per SARS Fourth schedule	B10
It is easy to understand the definitions of independent contractors and employees as defined in the SARS Fourth Schedule	B11
SARS is eager to make the definition of independent contractors easy to understand	B12
SARS is eager to make the definition of employees easy to understand	B13
South African Tax System encourages entrepreneurship spirit	B14
SARS is not punitive when dealing with companies who confuse independent contractors and employees in their tax declaration	B15
I understand the different tax implications of independent contractors and employees	B16
An independent contractor is liable to deduct employees' tax (PAYE) from the amount paid	B17
An independent contractor pays tax from the gross income earned	B18
All independent contractors should pay the same percentage of their income to tax	B19
South African income tax imposed on independent contractors is unfair	B20

Figure 4.5 shows that the majority (38.28%) of the respondents disagreed that tax education offered by SARS is sufficient, whilst 33.59% agreed and 28.13% of the respondents were neutral with the statement. Regarding the statement whether the respondents understand the definition of an independent contractors as per SARS Fourth Schedule, more than half (51.56%) of the respondents agreed, whereas 28.13% disagreed, and 20.31% were neutral with the statement. The definition of an employee as per SARS Fourth Schedule was understood by the majority (65.63%) of the respondents whereas 19.53% reserved their comment, and 14.84% totally agreed with the statement. Almost half (48.44%) of the respondents believe that SARS is eager to make the definition of employees understandable to tax payers, whilst 32.03 % disagree and 19.53 are neutral about the statement. These results concur with the ascertions of Myers (2012: 222) in the literature review chapter, that tax education in South Africa seems to be lagging behind as compared to other counterpart countries like Europe. In the same study Myers also discovered that females have a better knowledge of tax than males.

It is evident that SARS still needs to do more to change the perception of the employers when it comes to the South African Tax System encouraging the entrepreneurial spirit, since only 35.94% of the respondents agree with the notion that the tax system encourages entrepreneurial spirit; 42.97% disagree and 21.09% reserved their comments. The results on this question are in agreement with the assertions of Anon. (2008: 1) in the literature review chapter, who stated that a wrong decision from misinterpreting the said definitions can be very costly in terms of

interests and penalties, which ultimately impacts negatively on the entrepreneurial spirit.

It is worrying to see that 57.03% of the respondents agreed that independent contractors deduct PAYE on the amounts paid; 24.22% were neutral and 18.75% of the respondents disagreed with statement. This reflects a lack of understanding of the taxation of independent contractors. It is not surprising though as this confirms the assertions of Surtees (2008: 1) as per the literature that was reviewed by the researcher in chapter 2 which revealed that the taxation of the independent contractors and employees cause the greatest uncertainty. He also states that SARS steadfastly refuses to be helpful in clarifying the two definitions, despite the fact that the legislation is unclear and the attitude of SARS is very punitive in this regard. On the question of whether SARS is not punitive when dealing with taxpayers, the results are in support of Surtees assertions but the results are contrary to his assertions when it comes to the question of whether SARS is eager to make the definitions understandable, as results reveal that 48.44% of respondents agree that SARS is eager to make the definitions understandable, whilst only 32.03% of the respondents disagree.

4.4.1 Correlation analysis

The following formula is used to manually calculate the Spearman rank correlation:

$$\rho = 1 - \frac{6 \sum d_i^2}{n(n^2 - 1)}$$

P= Spearman rank correlation

di= the difference between the ranks of corresponding values Xi and Yi

n= number of value in each data set

In this study the Statistical Package for Social Sciences (SPSS) version 24 (2015) was used to calculate the correlations. Table 4.4 reflects the correlations calculated.

Table 4.4: Correlations

B8 vs	B9	B10	B11	B12	B13	B14	B15	B16	B17	B18	B19	B20
Level of Significance	0.000	0.000	0.000	0.000	0.000	0.000	0.088	0.000	0.011	0.061	0.040	0.240

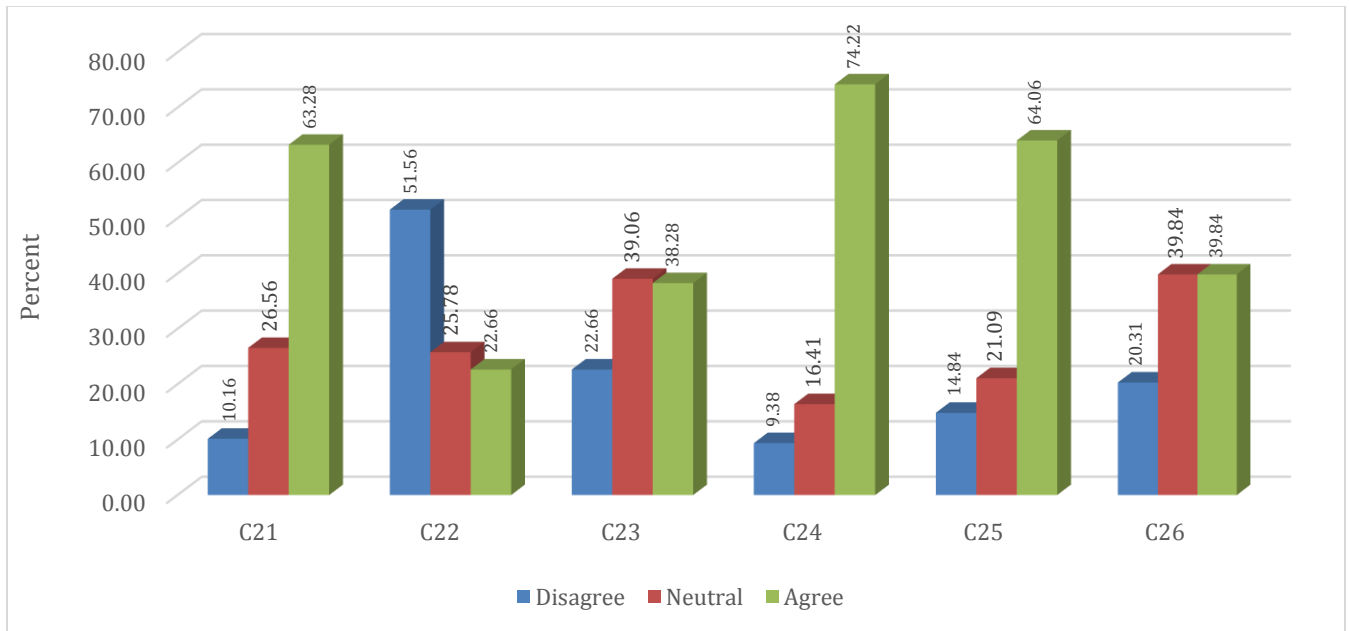
There is a significant relationship between statements that tax education offered by SARS is sufficient and respondents' understanding of the definitions of an independent contractors as per SARS Fourth schedule. The statements are related at 0.000 level. This means that the more SARS offers tax education, the more respondents will understand tax implications of independent contractors in South Africa. The significant relationship is also noticed on the statements that tax education offered by SARS is sufficient and SARS is eager to make the definitions of independent contractors and employees easy to understand, as they are related at

0.000 level. This reflects that the SARS tax education and communication is making an impact on the general interpretation of tax payers. The statements that tax education offered by SARS is sufficient and SARS is not punitive when dealing with companies who confuse independent contractors and employees in their tax declaration are also significantly related at a 0.088 level of significance. This is a good reflection of how SARS communicate and treats the taxpayers when assisting them on their tax matters.

4.5 SECTION C: GENERAL INFORMATION

This section pertains to the respondents' general understanding in relation to independent contractors and employees.

Figure 4.6: General information



I do promote the existence of independent contractors in South Africa	C21
Whenever I can I try to avoid independent contractors	C22
Existence of independent contractors is promoted by the ruling party in South Africa	C23
I need to know more about independent contractors	C24
Independent contractors create more jobs in South Africa	C25
An independent contractor has less payroll	C26

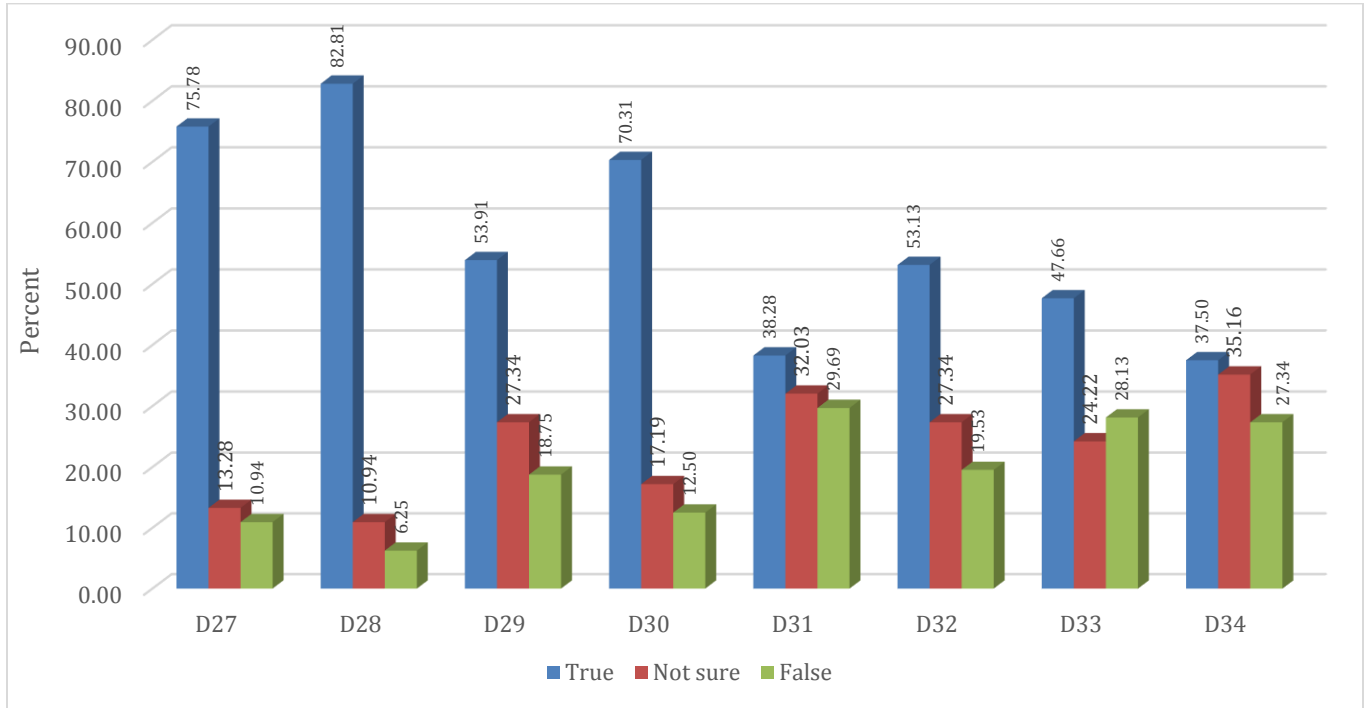
Figure 4.6 illustrates that the majority (63.28%) of the respondents support the existence of independent contractors in South Africa, 26.56% held their peace, and 10.16% were not in support of the statement. The respondents are not totally convinced that the South African government supports the existence of independent contractors as 39.06% of them disagree with the statement, 38.28% agree and 22.66% are neutral. The majority (64.06%) of the respondents agreed with the statement that independent contractors create more jobs in South Africa, whereas

21.09% were neutral and 14.84% disagreed with the statement. The literature reviewed in chapter 2 revealed that these results are in agreement with the study conducted by Waite and Mill (2001: 5) into independent contractors, where they observed that a number of employer organisations decided to contract out in response to environmental changes. Since changes are global, so is the approach and this is a business scenario in both global and local economies. South Africa's large corporations, which have a stable revenue history, are also found practicing the contracting of labour, both non-core and core services, depending on their strategic direction.

4.6 SECTION D: LABOUR LAW

This section deals with the respondents' understanding of labour law relating to independent contractors and employees.

Figure 4.7: Labour law



Persons such as consultants, freelancers, self-employed or/and entrepreneurs and business owners are best examples for defining an independent contractor	D27
An independent contractor usually provides goods or services to another entity under terms specified in a contract or within a verbal agreement	D28
An independent contractor, through a labour broker, provides more chances or access to jobs that would otherwise not be attained by a normal applicant	D29
An independent contractor can be defined as to outsource a service rather than hiring a direct employee	D30
An independent contractor avoids cumbersome labour legislation	D31
An independent contractor's relationship with employee allows for termination	D32
An independent contractor provides employees with additional training	D33
An independent contractor conducts annual performance review in order to give bonuses to the employees	D34

Figure 4.7 shows that the most (75.78%) of the respondents were in full support of the statement that persons such as consultants, freelancers, self-employed and/ or business owners are best examples for defining an independent contractor, and less than 15% of them were in between false and not sure about the statement. An

independent contractor usually provides goods or services to another entity under terms specified in a contract or within a verbal agreement: this was supported by a high level of agreement (82.81%) by the respondents. More than half (53.91%) of the respondents were in support that an independent contractor, through a labour broker, provides more chances or access to jobs that would otherwise not be attained by a normal applicant. The statement 'an independent contractor can be defined as to outsource a service rather than hiring a direct employee' was supported by 70.31% of the respondents, with only 17.19% of the respondents in disagreement and 12.50% not sure about this statement. The results concur with the assertions of Fienberg and Sunjka (2014: 1131) in the literature view chapter that the South African context for becoming an independent contractor, through a labour broker, provides more chances or access to jobs that would otherwise not be obtained by a normal applicant. Most businesses prefer outsourcing to an independent contractor rather than hiring a direct employee. This is due to a business preference to remain flexible and avoid cumbersome labour legislation.

4.7 HYPOTHESIS TESTING

The first chapter of this study contains the hypotheses that the researcher developed as required for the study. It is impractical to repeat the hypotheses in this chapter, but the researcher would rather write about tests of the hypotheses in the following paragraph.

4.7.1 Tests of the study's hypotheses

Ho₁ Employers do understand the difference between independent contractors and

Ha₁ Employers and/or entrepreneurs do not understand a difference between independent contractors and employees.

Results:

The correlation value between the statements whether the employers understand the definition of an independent contractor as per SARS Fourth Schedule and whether an independent contractor is liable to deduct employees tax from their income is 0.136 and is significant at 0.127. Respondents pretend to be knowledgeable about tax, yet they were less informed, and as a result, they seem to be vulnerable to penalties that may be imposed on them.

The study found that the employers/entrepreneurs do not understand the difference between independent contractors and employees. This means that the results are in agreement with the alternative hypothesis (Ha₁).

Ho₂ Employers are aware of the tax implications on independent contractors.

Ha₂ Employers and/or entrepreneurs are not aware of tax implications on independent contractor.

Results:

The correlation value between the statements whether the employers do understand different tax implications between independent contractors and employees and their understanding of the definition of independent contractors as per SARS Fourth Schedule is 0.477 and is extremely significant at 0.000 level. Respondents indicate that their understanding of tax implications on independent contractors and employees is a derivative from being familiar with the South African tax laws on independent contractors.

Therefore, the study found that the employers/entrepreneurs are not aware of tax implications on independent contractor. This is in line with the alternative hypothesis (Ha₂).

Ho₃ If tax implications are not known, the employers have a negative attitude towards forming themselves as independent contractors.

Ha₃ If tax implications are known, the employers have positive perceptions towards informing themselves and independent contractors.

Results:

The correlation value between the statements whether the employers have an understanding of various tax implications across independent contractors and employees and whether the South African tax system encourages entrepreneurial spirit is 0.270 and is extremely significant at 0.002 level. This means that the

employers' familiarity with the South African tax implications on independent contractors is a decider whether they become or remain entrepreneurs or not.

In this regard, the study found that if tax implications are known, the employers have positive perceptions towards informing themselves and independent contractors. This means that the results are in agreement with the alternative hypothesis (H_{a3}).

4.8 CONCLUSION

This chapter presented the statistical results and discussed the findings obtained from the questionnaires in this study. The results presented the descriptive statistics in the form of cross tabulations, graphs and other figures for the data that was collected. The tested hypotheses were also presented in this chapter.

Chapter five presents the major findings with regard to the research questions and the conclusions of the study.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This study aimed to ascertain the prevailing level of knowledge of the employers regarding the clarity of the definitions of independent contractor and employee and to investigate the perceptions of the employers of the definitions of independent contractor and employee in the greater Richards Bay area.

The previous chapter outlined the results of the study. This chapter discusses the major findings with regard to the research questions, the overall conclusions of the study and recommendations for future research.

5.1 CONCLUSIONS

This sections outlines the study's conclusions in terms of the research objectives that were set for this study.

5.1.1 Objective 1: To ascertain the prevailing level of knowledge of the employers regarding the definitions of independent contractor and employee.

The results revealed that approximately 60% of the respondents had obtained tertiary qualifications and 40% had been dealing with salaries and related taxes for more than

six years. During their tenure, they have processed salaries and interacted with the South African Revenue Services. This implied that the responses were obtained from well-educated and experienced individuals. Deducing from the responses received, it was evident that most respondents seemed to have a general understanding of the definitions of independent contractor and employee at a surface level. When it really comes to the intricacies of the tax implications of independent contractors, they were found wanting. This was evident from the 57% of respondents who agreed that independent contractors have to deduct employees tax from amounts received, which is not true. This revealed a lack of understanding of the tax implications of independent contractors. This was also confirmed by the 43% of respondents who disagreed with statement number 16 of the questionnaire which was: "I understand the different tax implications of independent contractors and employees". This was not surprising to the researcher as the literature review has indicated that the clarity between the terms 'independent contractors' and 'employees' is still a serious concern in the commercial sector.

5.1.2 Objective 2: To investigate the perceptions of the employers on the clarity of the definitions of independent contractor and employee.

The study reveals that more than 65% of the respondents understand the definitions of independent contractors and employees at a basic level, as previously mentioned. The respondents believe that SARS is eager to make these definitions understandable. This reveals a positive attitude toward the efforts SARS is putting to

clarify these intricate definitions. The researcher accepts the perceptions and attitudes of respondents towards SARS and its efforts to clarify the definitions of independent contractors and employees, although this was in contrast to discoveries from the literature reviewed. The literature revealed that there is a serious hinderance to definite definers of the clarifying factors of these two definitions as they are currently defined from different view-points in common law, labour and tax legislation.

5.1.3 Objective 3: To ascertain the prevailing level of knowledge of employers regarding tax implications on independent contractors.

Although most of the respondents had obtained tertiary qualifications and had been employed for a number of years, a slight misunderstanding of the tax implications of independent contractors was noticed in the answers from respondents. This suggested that the respondents may not be as clear about the understanding of the definitions of independent contractor and employee as per the SARS Fourth Schedule as they profess. This was further emphasised by the difference in how the questions were generally answered in the 20 questionnaires that the researcher administered personally with the respondents as opposed to the self-administered questionnaires. Most of the respondents seemed to have acknowledged in those 20 questionnaires that they did not understand the said definitions in terms of the SARS Fourth Schedule. It was gathered that the respondents had a general understanding of these definitions at a surface level.

5.1.4 Objective 4: To establish the relationship between the biographic variables and the knowledge of employers regarding the definitions of independent contractor and employee.

The study revealed that the respondent's gender distribution was equal between male and female and there was no noticeable difference in terms of the levels of knowledge of the definitions of independent contractors. Approximately 68% of the respondents were below the age of 40 years and educated, and therefore presented some level of understanding of the differences between independent contractors and employees.

The analyses have revealed that independent contractors are preferred by employers to be part of a practice in the economy for creating jobs, and this finding necessitates the need for more clarity on a definition of independent contractors because they must be properly understood if they are to prevail as part of business or economy.

5.2 RECOMMENDATIONS AND THE NEED FOR FUTURE RESEARCH

The reviewed literature and data analysis suggest further investigation into the topic of the researcher's interest. This section concludes the study and focuses on recommendations aimed at improving on the shortcomings that were observed during the study.

This study's recommendations are informed by the research objectives of this study and are supported by the research's statistical findings from the data analysis. According to McLeod (2009: 69), the most straightforward way of finding out about someone's perception would be to ask him or her. However, perceptions are related to self-image and social acceptance. To preserve a positive self-image, people's responses may be affected by social desirability. They may not divulge their true interpretation, but answer in a way that they feel is socially acceptable. There are various methods of measuring perceptions that have developed. However, all of them have limitations.

McLeod's (2009: 69) assertions may have been the case in this study. Respondents may have also totally missed the fact that the definitions of independent contractor and employee were asked as defined in the SARS Fourth Schedule and answered the questions generally. The following recommendations are built upon the research findings in terms of the perceptions of the employers of the clarity of the definitions of independent contractor and employee and their tax implications. These

recommendations will be of benefit to the South African business community and SARS in further strengthening the relations with its stakeholders (employers, trade unions, accounting and tax professional bodies, law societies, business unity, policy makers or parliament and the general public as a whole). This will also save a great deal of the South African taxpayers' money that SARS spends on many court cases that relate to the uncertainties found in the interpretation of independent contractors and employees.

The limitations of the study were considered when establishing the following recommendations:

Firstly, a study of this nature should be undertaken using a different approach and different research methodology, for example, a pure qualitative method and with focus groups. In this way, respondents will be asked to define independent contractors and employees according to the SARS Fourth Schedule on their own instead of being given the answers to choose from. The researcher would be interested in taking the study further at a PhD level and probably for the whole province of KwaZulu-Natal or the whole country, depending on the financial and time constraints.

Secondly, further research should be undertaken on a similar study where the sample only includes respondents who have had dealings with SARS where there were misunderstandings on the perceptions of independent contractors and employees. This will assist in establishing the causes of the misconceptions and/ or

misinterpretations, which will assist SARS, labour law experts and policy-makers in coming to a more vivid understanding of the problem so as to come up with defining ways of improving the differentiating features of these two definitions. This will assist the taxpayers in a great many of their efforts to comply with tax requirements.

Thirdly, there could be a possibility for further study that would focus on analysing the court cases in order to determine the confusing factors that even the court judges are struggling with as identified in the few court cases that the researcher examined in the literature review.

Fourthly, the gaps of different levels of knowledge or understanding of the two concepts by the employers, identified in the first objective, might or might not be attributed to biographical variables. Therefore, the gaps that have been identified from the analyses call for a further investigation in relation to the interest in the study. Another avenue for future research should be to investigate the relationship between the employers' perceptions of the definitions of 'employee' and 'independent contractor' and employers' biographical variables.

Lastly, further research could also be conducted with big corporate companies since they are the largest users of independent contractors.

5.3 CONCLUSION

This chapter presented the ultimate research findings and the recommendations for future study regarding the research objectives, based on the research findings and the overall conclusions of the study.

The reviewed literature revealed that employers have little knowledge in terms of the difference between an independent contractor and an employee, which causes difficulties as they prepare for the mandatory SARS submissions for tax compliance. The research findings also confirmed that the employers are finding difficulties in clearly differentiating between independent contractors and employees.

Although most of the respondents had obtained tertiary qualifications and had been operating in the salaries' sphere for several years, the problem of misunderstanding of the tax implications of independent contractors was noticed in their answers. This suggested that the respondents are not as clear about the understanding of the definitions of independent contractor and employee as per the SARS Fourth Schedule as some of them profess. The study provided strategic recommendations to advance employers' knowledge on the difference between independent contractors and employees. This will help in enhancing employers' understanding of tax implications imposed by the South African Revenue Services (SARS) over independent contractors versus employees.

This study also aimed to influence SARS in revising the punitive manner in which it approaches the misunderstanding of these terms and begins to clarify the definitions of 'independent contractor' and 'employee'. The researcher recommended that SARS and all the policy-makers need to analyse the deficiencies found in the definitions of independent contractor and employee and come up with real distinguishing features of the two definitions. The study also recommends that employers engage more with SARS during the stakeholder meetings in order to voice their views and contribute towards improving the current tax system for their benefit.

This study should influence SARS in its efforts to enhance its systems and interventions for improving tax compliance by corporate tax payers. This study will also assist in improving the image of SARS in the eyes of employers and the general public, which could help in forging a good working relationship between SARS and employers, and ultimately increase tax compliance. The research objectives were fully answered with the help of both the literature review and the data gathered through the completed questionnaires in this study.

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