

Revenue Rulings

Contractors – 90-Day Exemption

Payroll Tax Act 2007

Revenue Ruling PTA035 (version 2)

Ruling history	
Ruling no.	PTA035 (version 2)
Status	Current
Issued date	May 2012
Replaces	PTA035
Dates of effect	
From	July 2007
To	-

Preamble

The *Payroll Tax Act 2007* (the Act), which commenced on 1 July 2007, rewrites the *Pay-roll Tax Act 1971* and harmonises the payroll tax legislation in a number of Australian jurisdictions.

The contractor provisions are in Division 7 of Part 3 of the Act. These provisions provide for certain contractors (whether incorporated or not) to be deemed employees (under what are defined as 'relevant contracts') and for payments to those contractors to be treated as wages for the purposes of the Act. Most contracts for the provision of services are 'relevant contracts'.

However, there are six possible exemptions that may exclude payments under such contracts from the definition of wages. One of the exemptions is a contract for the provision of services by a person providing the same or similar services to a principal under the contract for no more than 90 days in a financial year (section 32(2)(b)(iii) of the Act).

In addition to explaining the operation of the exemption under section 32(2)(b)(iii) of the Act (90-day exemption), the purpose of this Revenue Ruling is to set out a replacement method (the Replacement Method) approved by the Commissioner of State Revenue (the Commissioner) in determining the application of the 90-day exemption where a principal encounters difficulty in determining the actual number of days that a contractor has rendered services in a financial year.

Ruling

The 90-day exemption

If a relevant contract involves the provision of services by a person providing the same or similar services to a principal under the contract for no more than 90 days in a financial year, it is an exempt contract under section 32(2)(b)(iii) of the Act. For the purposes of this exemption:

- the carrying out of any work on a given day will count as a full day, and
- the days worked do not have to be consecutive, it is the total number of days worked during the financial year that is relevant.

Once the 90-day limit is exceeded, the total payments made to that contractor during the financial year, including payments made for the work performed in the first 90 days, is subject to payroll tax.

Where a principal encounters difficulty in determining the actual number of days on which services are rendered, the Replacement Method may be used. The Replacement Method does not require the calculation of the number of days for which services are provided.

Replacement Method

Under the Replacement Method, a formula is used to calculate the estimated remuneration a contractor would receive from an employer for 90 days of service. If the principal is unable to determine the actual number of days on which the contractor rendered services and the actual amount earned by the contractor is less than or equal to the amount calculated using the formula, the 90-day exemption will be accepted as being applicable to that contract.

The formula is $Y = A \times B \times C \times D$ where:

Y= The estimated remuneration for 90 days of service

A= The highest hourly rate for the classification in that industry according to the respective pay scale summary that is available on the Australian Government's Fair Work Ombudsman website (www.fairwork.gov.au)

B= Average number of hours worked per working day

C= 120 per cent (this accounts for an additional 20 per cent for the types of payment not typically received by contractors such as sick pay, holiday pay, overtime)

D=90 days

It should be noted that in comparing the actual remuneration received by a contractor with the estimated remuneration derived using the formula (i.e. Y), the actual amount may be reduced by any allowable deduction determined by the Commissioner (please refer to **Revenue Ruling PTA018** for the relevant deductions).

By allowing for the allowable deduction, the wages ordinarily payable to an employee for 90 days of work in that industry are comparable with the labour-only component of the actual amounts paid to the contractor in question.

Example

In October 2010, New Homes Pty Ltd (New Homes) engaged a plasterer to perform a contract for services under which an amount of \$15,000 (exclusive of GST) was paid, which included the supply of various materials needed for the job. The plasterer worked for New Homes at residential home sites for an average of 7 hours per day.

New Homes finds it difficult to determine the actual number of days the plasterer worked during the 2010/11 financial year. New Homes decides to adopt the highest hourly rate for the classification based on the pay scale summary set out in the award that best matches the work undertaken by a plasterer. According to the Fairwork Australia website, the pay scale that best matches the work undertaken by a plasterer who performs work in the onsite building industry is the Building and Construction General On-site Award 2010 (the Award).

Labour-only Component of Contract Price

The actual labour-only component after subtracting 20 per cent (deduction allowable for wall and ceiling plasterers according to **Revenue Ruling PTA018**) is calculated as follows:

$$\begin{aligned} & \$15,000 \text{ minus } \$3000 \text{ (being 20 per cent} \\ & \text{of } \$15,000) = \$12,000 \end{aligned}$$

The highest hourly rate for a full-time employee plasterer under the Award is \$18.06.

As a result, the estimated remuneration for 90 days of service provided by the plasterer under the contract is calculated to be:

$$\$18.06 \times 7 \times 120\% \times 90 \text{ days} = \$13,653.36$$

In this instance, the labour-only component (\$12,000) paid to the plasterer is less than the estimated remuneration (\$13,653.36) calculated using the formula. Therefore, the 90-day exemption applies to exempt that payment from payroll tax.

Pay scale summary

In applying the Replacement Method, employers must identify the pay scale summary that best matches the type of work undertaken by the contractor. The pay scale summary to be used is the summary applicable at the commencement of the contract and if the same contract continues into the following financial year, the pay scale summary to be used in that financial year must have been in force at the commencement of that financial year (unless it no longer exists). Records must be kept regarding the pay scale summary used for each contractor for a period of five years.

Where no comparable pay scale summary exists, employers who can provide a satisfactory alternative rate may seek a private ruling from the State Revenue Office (SRO).

Please note that Revenue Rulings do not have the force of law. Each decision made by the SRO is made on the merits of each individual case having regard to any relevant ruling. All Revenue Rulings must be read subject to Revenue Ruling GEN.01.