

Revenue Rulings

Contractors Engaging Others

Revenue Ruling PT.076

Preamble

Section 3C of the *Pay-roll Tax Act 1971* (the Act) provides for certain contractors (whether incorporated or not) to be deemed employees (under what are known 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 and payments made in relation to such contracts are wages for the purposes of section 3C of the Act and are subject to pay-roll tax. However, there are several possible exemptions that would exclude contracts from being relevant contracts and thereby exclude payments under such contracts from the definition of wages.

Section 3C (1)(f) of the Act exempts a contract in which the contractor employs or engages other persons, whether employees or contractors, to perform some or all of the work required under the contract.

The purpose of this ruling is to explain the operation of this exemption, particularly in light of the decision in *Zuccala Homes Pty Ltd v Commissioner of Pay-roll Tax*.

Ruling

The exemption under s.3C(1)(f) of the Act may apply in any of these three situations:

| Status of contracting entity | Number of persons engaged by the contractor and working on the contract. |
|------------------------------|----------------------------------------------------------------------------------------------------------------------|
| Partnership | (i) Partner(s) and one or more other persons, or (ii) Two or more persons not being the partners (see note below) |
| Company | Two or more |
| Sole trader | (i) Sole trader and one or more other person(s), or (ii) Two or more other persons |

(Note: If the work under the contract is performed merely by partners, this exemption will not apply.)

For the exemption to apply in each of the above circumstances, all of the following conditions must be satisfied:

- **the services supplied by the person or persons performing the work under the contract with the principal are a necessary part of, and are supplied in the course of, the contractor's business.** For example, a person operates a business as an electrician but as a favour to a regular client enters into a contract to provide painting services. Any painters engaged by the electrician to perform the work under the painting contract would not be providing services to the contractor in the course of his business as an electrician and the exemption would not apply;
- **the person engaged by the contractor must be engaged to perform the work which is the object of the contract.** Any administration work performed for the contractor's business will not be considered as work which is the object of the contract. For example, if for a family business one spouse is performing the mainstream work which is the object of the contract, whereas the other spouse is providing administrative services only, such as maintaining the accounts and doing the banking for the family business, the exemption cannot apply;

Another example illustrates this condition. A person carries on a business as an electrician, and contracts with a principal to install electrical items in a room and restore the walls to their original state.

To perform the work required under the contract, the electrician engages a plasterer and a painter. In this case the principal can rely on this exemption;

- **the work performed by the person or persons engaged by the contractor must be a normal occurrence of the contractor's business and not of a once-off nature. For example, in the case of Zuccala Homes, it is accepted that the services of a stump hole digger or a frame cutter are a normal occurrence or requirement of the business of the contract carpenter concerned;**
- **the contractor must carry on a business. The term 'business' includes a trade or profession and any other activity generally carried on for a fee, gain or reward with system and repetition;**
- **the contractor must have the overall responsibility to fulfil the terms of the contract in the course of the contractor's business; and**
- **the person(s) performing the work under the contract must be engaged directly by the contractor and not the principal, even though the principal may also benefit from those services.**

When any person engaged by the contractor to perform the work is a former employee of the principal, the Office may consider that arrangement in light of the anti-avoidance provision under s.3C(1)(f) of the Act. The same approach may be taken where a person engaged by the contractor is a spouse or child of the contractor, or a beneficiary of a trust set up by the contractor and is not paid at a commercial rate.

It is common for contractors to operate in a team or buddy gang system where two or more contractors work together on a job or number of jobs. Often it is difficult to establish the formal relationship between members of the gang, or whether the gang constitutes a legal entity. Where there is a lack of documentation supporting the status of the gang, a contract is deemed to exist between the principal and each contractor if the principal pays each of the contractors separately. In these circumstances, the exemption does not apply to a gang of contractors.

Where a principal has numerous contracts with a contractor during a financial year and there is clear evidence that each contract is discrete, the exemption will apply on a contract-by-contract basis. For example, a builder has 20 separate contracts to build houses and sub-contracts all the carpentry work to a single contract carpenter. The sub-contract carpenter provides his services on all contracts but engaged the services of a frame cutter in respect of only 15 of the 20 houses. In this instance, the exemption would

apply to those 15 contracts and payments made by the principal to the contractor on the remaining 5 contracts are taxable unless other exemption provisions apply.

There are circumstances where a contractor may share the services of a person or persons with another contractor to perform work pursuant to the respective contracts between the same principal and the contractors. For the exemption to apply, the sharing of such services must be a commercial arrangement, that is:

- (a) **the work performed by the person or persons engaged by both the contractors must be distinct; and**
- (b) **the remuneration paid to that person or persons must be commensurate with the work performed and at a commercial rate.**

Where the criteria stated above are not met, but the principal believes the exemption should apply, an application should be made to the Commissioner for a private ruling.

Anti-avoidance provision

Section 3C(1)(f) contains an anti-avoidance provision that allows the Commissioner not to exempt a relevant contract under this section where the contract or arrangement is entered with the intention of avoiding pay-roll tax.

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

Denzil Griffiths
Commissioner of State Revenue
31 October 1995