

Contractors – 90 Day Test

Revenue Ruling PT.119

Replaces PT.052

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 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 (prior to 1 July 2002, there were seven 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 3C(1)(e)(iii) of the Act).

The replaced Revenue Ruling PT.052 explained the operation of this exemption and outlined an approved method as an alternative to the 90-day test (the Alternative Method). The Alternative Method was based on a daily award rate according to the abolished Victorian State award system.

In Victoria, following the abolition of the State award system, employers and employees are covered by the Federal workplace relations system. Therefore, Victorian employees are subject to one of the following working conditions:

- An Australian workplace agreement; or
- A certified agreement with an employer; or
- A Federal award; or
- A minimum wage order.

Minimum wage orders provide for minimum wage entitlements. Currently, there are minimum wage orders for 18 Victorian industries prescribed on WageNet’s website www.wagenet.gov.au. The industries listed are as follows:

- Accommodation
- Agriculture, Forestry and Fishing
- Communication Services
- Construction
- Cultural and Recreational Services

- Education
- Electricity, Gas and Water Supply
- Finance and Insurance
- Government Administration and Defence
- Health and Community Services
- Manufacturing
- Mining
- Personal and Other Services
- Police Services
- Property and Business Services
- Retail Trade
- Transport and Storage
- Wholesale Trade

In addition to explaining the operation of the exemption under Section 3C(1)(e)(iii) of the Act, the purpose of this ruling is to provide a revised Alternative Method approved by the Commissioner of the State Revenue Office (the Revised Alternative Method) of determining the application of the 90-day test using the prescribed minimum wage orders. The Revised Alternative Method replaces the Alternative Method.

Ruling

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 3C(1)(e)(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 Pay-roll Tax. Where a principal encounters difficulty in determining the actual number of days on which services are rendered, the Revised Alternative Method may be used. The Revised Alternative Method does not require the calculation of the

number of days for which services were provided.

Revised Alternative Method

Under the Revised Alternative Method, a formula is used to calculate the estimated remuneration a contractor would receive for 90 days of service from one principal. If 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 for a full time employee according to the minimum wage order

B= Average number of hours worked per working day

C= 120 per cent (which increases the amount by an additional 20 per cent representing the type of payments 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 amount derived using the formula (i.e. Y), the actual amount may be reduced by any allowable prescribed deduction (please refer to Revenue Ruling PT.066 for these deductions).

By doing this, the wages ordinarily payable to an employee for 90 days is compared with the labour-only component of the actual amounts paid to the contractor in question.

Example

New Homes Pty Ltd engaged a ceiling plasterer to perform a contract under which the total remuneration is \$18,000 (exclusive of GST), which included the supply of various materials needed for the job. The ceiling plasterer worked for New Homes Pty Ltd on an average of 8 hours per day.

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 PT.066) is calculated as follows:

$\$18,000 \text{ minus } \$3,600 \text{ (being 20 per cent of } \$18,000) = \$14,400$

Minimum Wage Equivalent

According to WageNet, the industry sector that best matches the work undertaken by ceiling plasterers is the Construction industry. The highest hourly rate for a full-time employee commencing on or after 1 August 2004 as prescribed by the minimum wage order for the Construction Industry sector is \$17.60.

Taking into consideration payments not typically received by a contractor, the estimated minimum remuneration of the ceiling plasterer in respect of that contract, performing 90 days of service is calculated to be:

$\$17.60 \times 8 \times 120\% \times 90 \text{ days} = \$15,206.40$

In this instance, the labour-only component (\$14,400) paid to the ceiling plasterer is less than the estimated remuneration (\$15,206.40) calculated using the formula. Therefore, the 90-day exemption applies to the contract.

In applying the Revised Alternative Method, principals must identify the industry sector that best matches the type of work undertaken by the contractor. The minimum wage order to be used is the order applicable at the commencement of the contract and if the same contract continues into the following financial year, the minimum wage order to be used in that financial year must be the order in force at the commencement of that financial year. Records must be kept regarding the minimum wage order used for each contractor for a period of five years.

Where no comparable minimum wage order exists, employers who can provide a satisfactory alternative rate may seek a private ruling from the State Revenue Office.

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.

