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Contractors – 180-day exemption

Revenue Ruling PT.127
Replaces PT.053

Preamble

Section 3C of the *Payroll Tax Act 1971* (the Act) deems a person (whether incorporated or not) who entered into a 'relevant contract' with a business (the principal) to be an employee of the principal, and payments to such persons to be wages for the purposes of the Act. Deemed wages under section 3C of the Act are subject to pay-roll tax.

While most contracts for the provision for services come within the meaning of 'relevant contracts' under section 3C of the Act, there are certain types of contracts that are specifically excluded from the definition of 'relevant contracts'. One of these exclusions is a contract for services of a kind ordinarily required by the principal for less than 180 days in a financial year (section 3C(1)(e)(ii) of the Act). Accordingly, payments made under such a contract are exempt from pay-roll tax.

The purpose of this Revenue Ruling is to explain the 180-day exemption under section 3C(1)(e)(ii) of the Act and provide examples to clarify the application of this exemption.

Ruling

The 180-day exemption is different from the 90-day exemption provided by section 3C(1)(e)(iii) of the Act in the sense that while the 90-day exemption involves the determination of the number of days an individual contractor provides services to a principal, the 180-day exemption requires a determination of the total number of days a particular type of service is required by the principal (regardless of whether the service has been provided by contractors and/or employees). For further explanation of the 90-day exemption, please refer to Revenue Ruling PT.119.

The 180-day exemption focuses on the number of days for which a particular type of service is ordinarily required by the principal in a financial year. This exemption is recognition of the fact that some businesses require certain ad hoc services to operate effectively but do not require these services for the whole year. Furthermore, seasonal businesses may require certain essential services to operate effectively but do not require these services for the whole year. Where a particular service is provided by both employees and contractors, the number of days for which such a service is provided to the principal by both the contractors and employees is taken into account in determining whether or not the 180-day exemption is applicable.

For the purposes of the180-day exemption, services required for part of a day will count as a full day. The days for which the type of service is required do not have to be consecutive. It is the total number of days for which a particular type of service is ordinarily required during the financial year that is relevant.

In essence, where a type of service is required by an employer for less than 180 days in a financial year, payments to all contractors providing that service are exempt even though an individual contractor may have worked for more than 90 days.

In the following examples, it is assumed that the principals do not engage employees to perform the type of services discussed in the financial year concerned.

Example 1

A ski school operator in the Victorian snow fields engages a number of ski instructors each year for 120 days during the snow season. The business has no requirement for the services of ski instructors outside of the snow season. Section 3C(1)(e)(ii) of the Act is satisfied in this situation as the services are required for less than 180 days in a financial year.

Consequently, the contracts that the ski instructors entered into with the ski school operator are not 'relevant contracts'. Payments made to the contract ski instructors are exempt from pay-roll tax even if each ski instructor has worked more than 90 days in a particular financial year.

Example 2

A building company engages the services of a landscape gardener (Landscaper A) to perform landscaping services for 100 days in a financial year. A second landscape gardener (Landscaper B) is engaged to perform the same services concurrently for 95 days. No other landscaping work is required by this building company for the rest of the financial year.

As the building company only requires landscaping services for 100 days in the financial year, section

3C(1)(e)(ii) of the Act is satisfied. Accordingly, neither contract with Landscaper A nor Landscaper B is a 'relevant contract' and payments made under either contract are not subject to pay-roll tax.

On the other hand, if Landscaper B performed the 95 days of service after Landscaper A has completed his 100 days of service, the exemption in section 3C(1)(e)(ii) of the Act does not apply because the total number of days that the building company requires landscaping services is 195 (100 days + 95 days). As a result, contracts entered into with Landscaper A and Landscaper B are 'relevant contracts' under 3C of the Act and payments made under these contracts are subject to pay-roll tax.

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Commissioner of State Revenue