

Payroll tax exemption for payments to owner-drivers

Payroll Tax Act 2007
Revenue Ruling PTA006

Due to legislative changes, this Ruling is under review. The State Revenue Office will issue a revised Ruling in due course.

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 Victoria and NSW.

The contractor provisions are contained in Division 7 of Part 3 of the Act. Under these provisions, the respective persons under a relevant contract are taken to be employer and employee and payments made under such a contract are taken to be wages for payroll tax purposes.

Although most contracts for the provision for services initially come within the meaning of a relevant contract under section 32 of the Act, there are certain types of contracts that are specifically exempted from the definition of a relevant contract. One of the exemptions provided under section 32(2)(d)(i) exempts a contract under which a person provides services ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them (i.e. contract owner-drivers). The exemption does not apply where the Commissioner of State Revenue determines that the contract was entered into with the intention to avoid Payroll Tax.

This Revenue Ruling sets out the conditions which need to be satisfied in order for payments made to owner-drivers to be exempt under section 32(2)(d)(i) of the Act

Ruling

Payments made for services performed by a contractor who provides his/her own vehicle, being a motorcycle, car or truck, will be exempt under section 32(2)(d)(i) of the Act if:

- the vehicle provided by the contractor is not owned or leased by the employer
- the employer makes no contribution, whether directly or indirectly, to the capital or running expenses of the vehicle, and
- the main purpose of the contractor's work is the conveyance (i.e. transportation and delivery) of goods. Any other services provided must be in every respect ancillary or secondary to that main purpose. That is, those services must be supplemental or subservient to the main purpose.

Provision of vehicle

To qualify for exemption, it is not necessary that the contractor own the vehicle used for the conveyance of goods. The vehicle may be made available through direct ownership, or through hiring, leasing or borrowing.

Main purpose of the contract

The State Revenue Office (SRO) is aware that some contract owner-drivers may convey goods for the purpose of installing those goods at the point of destination or for use in connection with repair, maintenance or servicing work at the point of destination. In these types of circumstances, the main purpose of the contract is not the conveyance of goods as such, but rather their installation or use in connection with repair, maintenance or servicing work and accordingly, the exemption under section 32(2)(d)(i) will not apply.

Couriers

The exemption will generally apply to couriers who use motorcycles, cars or trucks to convey goods. This is subject to all the conditions detailed in this Revenue Ruling being fully satisfied.

In relation to pushbike couriers, the SRO considers that in most instances, such persons are employees of the courier business. Therefore, the exemption cannot apply and all payments made to such persons are subject to payroll tax.

This Revenue Ruling is effective from 1 July 2007.

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.001.