Revenue | Rulings

Exemption for contractors ordinarily rendering services to the public

Payroll Tax Act 2007

Revenue Ruling PTA021

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.

Parties to a 'relevant contract' are deemed to be employers and employees (sections 33 and 34 of the Act) and payments made under a contract are deemed to be wages (section 35 of the Act). Deemed wages are subject to payroll tax under section 36 of the Act.

While most contracts for the provision of services come within the meaning of 'relevant contract' under section 32 of the Act, there are certain types of contracts that are specifically excluded from the definition of 'relevant contract'. A contract is not a 'relevant contract' if the Commissioner of State Revenue (the Commissioner) is satisfied that the person who performed the services under the contract ordinarily performs services of that kind to the general public in that financial year.

This Revenue Ruling provides a non-exhaustive list of factors that the Commissioner takes into consideration in exercising his discretion under section 32(2)(b)(iv) of the Act.

Ruling

In exercising his discretion under section 32(2)(b)(iv) of the Act, the Commissioner needs to be satisfied that the contractor:

- provides the services in the course of conducting a genuine independent business, and

- ordinarily renders those services to the general public.

The mere fact that a contractor works on a succession of jobs for different principals does not mean that these criteria are satisfied. It is necessary to consider the steps undertaken by the contractor to create an independent business (i.e. to obtain work from clients other than the principal in question).

To seek an exemption under section 32(2)(b)(iv) of the Act, a principal is required to apply to the Commissioner for a private ruling. Details on how to apply for a private ruling are set out in Revenue Ruling GEN.009.

In making his determination, the Commissioner will review the contractor's business and consider factors including (but not limited to):

- the use of a business name by the contractor

- the extent and nature of advertising undertaken by the contractor

- the range of clients serviced by the contractor

- the extent and nature of plant and equipment provided by the contractor in execution of the services

- the engagement of staff or sub-contractors by the contractor

- the use of business premises by the contractor

- the method of operation of the business (such as tendering for jobs)

- the potential for entrepreneurial risk

- the nature of contracts entered into (e.g. formal long term or informal rolled over contracts)

- the history of the formation of the contractor's business

- how the contractor won the contract

- whether work is performed on separate contracts concurrently

- the nature of the contractor's business and the type of services provided

- whether the contractor bears the cost and responsibility for faulty materials or workmanship

- whether the contractor quotes competitively for jobs on an all inclusive basis (all labour and materials), and

- whether the contractor merely charges for services on an hourly rate and adds on the cost of materials.

None of the above factors is conclusive on its own. The above is not an exhaustive list of factors that the Commissioner will take into account in exercising his discretion under section 32(2)(b)(iv) of the Act, he will also consider any other matters that are relevant to his decision.

However, the Commissioner will accept that a contractor ordinarily renders services to the public generally where, in the financial year in which services were provided under the contract in question, the contractor provided services of that type to:

1. two or more principals (not being members of a group) during the financial year, and

2. the principal claiming the exemption for an average of 10 days or less per month (excluding the months in which no services were provided).

Revenue Ruling PTA014 explains what constitutes a day's work.

If a contractor who has supplied services under a contract to a principal in a particular financial year, meets the above two criteria, the exemption in section 32(2)(b)(iv) of the Act applies. Under these circumstances, there is no need for the principal to obtain a private ruling from the Commissioner.

Example 1

Michael is a computer programmer. During the financial year, he provided services to Principal A and Principal B. Under his contract for service with Principal A, he provided his services as follows during the financial year:

Month	Number of days worked for Principal A
July	5
August	3
September	7
October	5
November	16
December	9
January	13
February	4
March	8
April	5
May	14
June	11
Total	100

In that financial year, Michael worked for a total of 100 days for Principal A which is an average of 8.3 (100 days divided by 12 months) days per month. As a result, payments made by Principal A to Michael for the financial year are exempt from payroll tax.

Example 2

Shelly is also a computer programmer. During the financial year, she provided services to Principal C and Principal D. Under her contract for service with Principal C, she provided her services as follows during the financial year:

Month	Number of days worked for Principal C
July	11
August	16
September	–
October	–
November	–
December	22
January	21
February	20
March	–
April	–
May	18
June	–
Total	108

In that financial year, Shelly worked for a total of 108 days for Principal C. This worked out to be 18 (108 days divided by 6 months) days per month. Consequently, payments made by Principal C to Shelly 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.