

## Contractors - 90 day test

### Revenue Ruling PT.052

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#### 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.

Although most contracts for the provision of services are relevant contracts for the purposes of Section 3C of the Act and payments made in relation to such contracts are generally wages subject to payroll tax, there are seven possible exemptions that will exclude payments under such contracts from the definition of wages.

The purpose of this ruling is to explain the operation of the exemption under Section 3C(1)(e)(iii) of the Act, and to outline an approved method of determining the application of the 90 day test.

#### Ruling

If a relevant contract involves the provision of services by a person providing the same or similar services to the principal on 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. In addition, the days worked do not have to be consecutive days; it is the total days **in aggregate** during the financial year that is considered in determining whether the exemption applies.

Once the 90 day limit is exceeded the liability extends to all the payments made to that contractor during the financial year, including payments made for work performed in the first 90 days.

Where a principal encounters difficulty in determining the actual number of days on which services are rendered, an **alternative** method has been approved by the Commissioner, which does not require calculation of the number of days on which services were provided.

Under this method a formula is used to calculate the estimated remuneration a contractor would receive from 90 days services with 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 applying to that contract.

The formula is as follows:

	Y	=	(A + B) x C
Where	Y	=	The estimated 90 days remuneration (dollars)
	A	=	The equivalent daily award rate for the type of work primarily performed by the contractor (at the commencement of the contract in question)
	B	=	20% of A, representing the type of payments not typically received by contractors (for example, sick pay, holiday pay, overtime, etc)
	C	=	90 (days)

It should be noted that in comparing the actual contractor remuneration with the estimated amount under the formula (ie. Y), it is permissible to reduce the actual amount by any allowable prescribed deduction (see Revenue Ruling PT.066 for these deductions).

#### Example

Green Pty Ltd engages a ceiling plasterer to perform a four month contract under which the total remuneration is \$12,000, which includes the supply of various materials needed for the job.

At the commencement of the financial year the daily award wage rate for a comparably experienced ceiling plasterer is \$100.

Using the formula, the estimated remuneration of a ceiling plasterer performing 90 days services is as follows:

$$\begin{aligned} Y &= (100 + 20\%) \times 90 \\ &= 120 \times 90 \\ &= \$10,800 \end{aligned}$$

This amount must be compared with the actual remuneration paid to the contractor, adjusted for any allowable materials and equipment deduction. In this way, the wages ordinarily payable to an employee for 90 days work can be compared with the labour-only component of the actual amounts paid to the contractor in question. In this case, the actual labour-only component is calculated as follows, by subtracting the 20 per cent allowable deduction for ceiling plasterers.

$$\$12,000 - \$2,400 = \$9,600$$

(Note that the \$2,400 represents the 20 per cent prescribed deduction available in respect of ceiling plasterers who provide their own materials and/or equipment.

Therefore the 90 day exemption can be applied to this contract, because the remuneration paid to the contractor adjusted to approximate the labour-only component (\$9,600) is less than the amount payable to such a worker for 90 days work under the relevant award (10,800).

In adopting this method, principals must use an aware rate that is commensurate with the experience and skill level of the contractor. The award rate to be used is the rate applicable at the commencement of the contract and if the same contract continues into the following financial year, the award rate to be used in that financial year must be the rate in force at the commencement of that financial year. Records must be kept regarding the award rate used for each contractor, for a period of five years.

Where no comparable award rate exists, employers who can provide a satisfactory alternative rate may seek an individual ruling from the 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

**Denzil Griffiths**

**Commissioner of State Revenue**

**30 September 1993**