

Pay-roll Tax Contractors' Information Circular

Pay-roll Tax Act 1971

Pay-roll Tax is governed by the *Pay-roll Tax Act 1971* and is a State tax calculated on wages paid or payable and applies in all States and Territories of Australia.

This circular provides a brief explanation of the Victorian Pay-roll Tax Contractor Provisions contained in Section 3C of the *Pay-roll Tax Act 1971*.

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This document provides information on the common law employer/employee relationship and the Pay-roll Tax contractor provisions, however, it does not constitute a ruling. If any uncertainty exists regarding a particular aspect of the information provided, advice should be sought from the Victorian State Revenue Office (SRO). The information provided in this circular is correct at the time of release. Any reference to States includes a reference to the Australian Capital Territory and the Northern Territory.

introduction

Pay-roll Tax is a tax based on wages paid to, or in relation to, employees. Accordingly, payments to employees that meet the definition of wages in the *Pay-roll Tax Act 1971* (the Act) are subject to Pay-roll Tax. With effect from 1 January 1984, the Act was amended to deem certain contractors to be employees and the payments they receive to be wages.

The term 'contractor' is generic and applies equally to consultants, out-workers and sub-contractors. It effectively includes all persons, other than employees, who provide services to a business.

The term 'principal' describes the person who engages a contractor.

employment agency contracts

The Act contains separate provisions relating to persons that are on-hired under an employment agency contact to a client of the employment agency. The information on this circular does not apply to employment agency contracts.

steps for determining liability

There are three steps involved in determining if payments made to a particular person are subject to Pay-roll Tax. In summary, the steps are:

Step 1: Is the person an employee?

If the person is an employee, the payments made to, or in relation to, that person are subject to Pay-roll Tax. If the person is not an employee, it is necessary to consider Step 2.

Step 2: Is the contract a relevant contract?

If the contract involves being supplied with services, or supplying services, or giving out goods for their re-supply, it is a relevant contract and it is necessary to consider Step 3. If the contract does not involve any of these, it is not a relevant contract, and payments under the contract **are not** subject to Pay-roll Tax.

Step 3: If the contract is a relevant contract, does the contract fall within one of six exemptions or are the services of a type exempted by legislation?

Payments under a relevant contract are not taxable if:

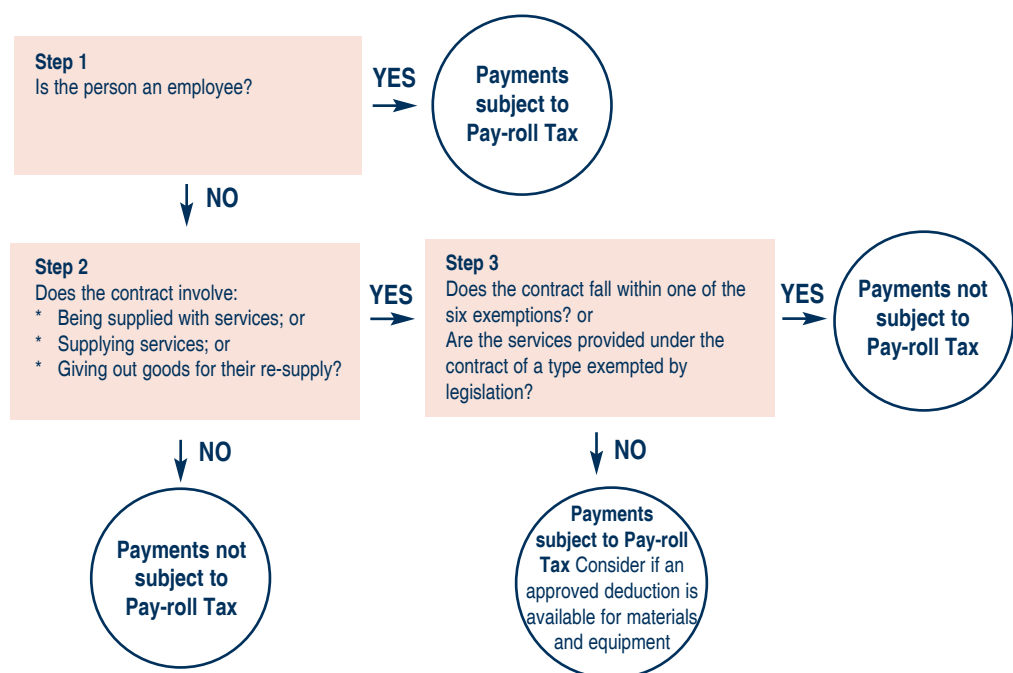
- Any one of six exemptions provided in the Act applies; or
- The services provided under the contract are of a type specifically exempted by the legislation.

If none of the exemptions apply, the payments made under the relevant contract are subject to Pay-roll Tax.

Determining liability

The following flowchart depicts the steps involved in the process. A detailed analysis of each of the steps is provided in the remainder of this document.

liability flowchart



is the person an employee?

It is necessary to differentiate between employees and contractors to determine if payments are taxable. Payments to or in relation to employees, whether engaged on a permanent, temporary or casual basis, are always subject to Pay-roll Tax. However, payments to contractors are subject to Pay-roll Tax in certain circumstances only.

Although the Act does not define the term 'employee', in most instances it is not hard to determine if a person is an employee or a contractor.

Please note that only 'natural persons' can be considered employees. If the person engaged conducts their business via a company or a trust they cannot be considered an employee. However payments to them may still be taxable under the contractor provisions. (See steps 2 and 3 above.)

Determining liability

If it is not clear whether the 'person' is an employee or a contractor, a number of factors need to be considered. These factors have been established by the courts over a number of years. Some of the more significant factors are:

- Does the principal have the right to exercise control over the manner in which the work is to be performed?
- Is there any documentation that indicates the person is an employee (for example, employment agreement, letter of appointment)?
- Are the hours of work defined?
- Is the person engaged on a continuing basis?
- Does the principal provide materials, plant and equipment?
- Is the person paid periodically rather than on a per job basis?
- Is the person paid sick leave, holiday pay or superannuation?
- Is the person working under similar conditions to employees?
- Is the person prevented from delegating or subcontracting their work to another person?
- Are the services provided by the person integral to the business conducted by the principal?

If the answer to the majority of these questions is 'Yes', it is likely that the person is an employee and accordingly, payments made to that person are subject to Pay-roll Tax.

The above list is not exhaustive. It lists some of the more significant factors that need to be considered when determining a person's status. Only by making a balanced evaluation of all the relevant indicators of a relationship can a person's status be correctly determined.

Of the factors listed, one of the most crucial in determining whether a person is an employee or a contractor is control. The existence of an employer/employee relationship usually occurs when the principal has the right to control what work is to be done and the manner in which the work is to be done. On the other hand, a contractor is typically engaged to produce a specific result and the manner in which the work is to be performed generally is not subject to a high degree of control and direction by the principal.

Although the control test has been useful in the past, in reality skilled persons are generally not subject to a high degree of control of the manner in which they perform their work. However, the actual exercising of control is not the key: it is the right to exercise such control which is the main consideration.

Another way of looking at the distinction between an employee and a contractor is that an employee serves the employer in the employer's business whereas a contractor is a person who carries on their own trade or business. (See Revenue Rulings PT.071 and PT.118)

If uncertainty exists as to the status of a person, a ruling should be obtained from the SRO. In cases where it has been determined that a person is a contractor and not an employee, it is necessary to consider the contractor provisions contained in Section 3C of the Act.

Contractor provisions

introduction to the contractor provisions

The definition of wages includes payments to contractors under certain circumstances. The provisions, contained under section 3C of the Act, deem such contractors to be employees and the payments made to them are deemed to be wages.

The provisions are intended to tax payments to those contractors who provide predominantly labour services and who work exclusively or primarily for one principal in a financial year.

If a contract is a relevant contract, payments under the contract are, prima facie, deemed to be wages (excluding GST). The principal who engages the contractor is deemed to be an employer and is liable to pay Pay-roll Tax on those deemed wages.

As mentioned earlier, the term 'contractor' is generic and applies equally to consultants, out-workers and sub-contractors. The title or description of the person is not relevant; the relevant issue is whether they are performing services for the principal.

Furthermore, a contractor can be deemed an employee regardless of whether their services are provided via a company, trust, partnership or sole proprietorship. The nature of the contracting entity **does not** affect the application of the contractor provisions.

is the contract a relevant contract?

The Act provides that tax is imposed on payments made for services provided under a relevant contract. A relevant contract is one where a person in the course of their business:

- Supplies services to another person for or in relation to the performance of work; or
- Receives services from another person for or in relation to the performance of work; or
- Gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the first mentioned person, or where that person is a member of a group, to another member of that group.

In practical terms, a relevant contract exists where the contractor provides some labour services in fulfilling the requirements of the contract.

If a contract is not a relevant contract, payments under that contract will not be subject to Pay-roll Tax.

Although most contracts for the performance of work are initially caught by these provisions as a relevant contract, the Act provides six exemptions. If at least one of these exemptions applies to a particular contract, payments under that contract are exempt from Pay-roll Tax.

The object of these exemptions is to exclude payments to those contractors who run significant independent businesses and who ordinarily provide services to a number of different clients.

General exemptions

services of a type exempted by legislation

The Act specifically exempts payments made for services provided by:

- a) Owner-drivers;
- b) Insurance agents; and
- c) Door-to- door sellers.

In order for this exemption to apply, the services must be provided by a contractor and not an employee.

An owner- driver is generally a contractor engaged primarily to transport goods where the contractor provides and drives the vehicle used for the transport of those goods. (See Revenue Ruling PT.102)

In relation to insurance agents the provision exempts contracts under which a person is supplied with services solely for, or in relation to the procurement of persons desiring to be insured by the person. The exemption applies to contractors who sell general and life insurance on a commission basis for insurance companies. The exemption does not apply to commissions from the sale of other non-insurance products.

In relation to door-to- door sellers, the Commissioner of State Revenue (the Commissioner) has ruled that, to satisfy this exemption, a number of criteria must be met. These criteria include a requirement that the goods sold are essentially domestic goods and the sale of the goods is made at the purchaser's residence. (See Revenue Ruling PT.095)

Accordingly, payments made to contractors who provide any of these three types of services are not taxable even if none of the six exemptions listed below apply.

six general exemptions

Generally, payments under a relevant contract are taxable unless **at least one** of the following six exemptions applies:

1. The contractor provides services to the one principal on no more than 90 days in a financial year.
2. The contractor engages others to do all or part of the work pursuant to the contract (subject to certain conditions being met).
3. The provision of labour is ancillary or secondary to the supply of materials or equipment by the contractor.
4. The services provided under the contract are of a type not ordinarily required in the principal's business and the contractor usually provides those services to a range of clients.
5. The services are of a type ordinarily required by the principal for less than 180 days in a financial year.
6. The Commissioner is satisfied that the contractor ordinarily renders services of the type under the contract to the public generally in a financial year.

General exemptions

exemption 1

The contractor provides services to the one principal on no more than 90 days in total, in the financial year.

This provision exempts payments made to contractors who work for no more than 90 days for the one principal during a financial year. This exemption operates to exempt payments to short term contractors and should be the first exemption considered when determining if payments to contractors are subject to Pay-roll Tax.

It is also important to note the following:

- This exemption cannot be used to exempt casual, short- term or part-time employees.
- The carrying out of any work on a given day will count as one full day. (See Revenue Ruling PT.068).
- The days worked do not have to be consecutive and could be worked intermittently throughout the financial year. It is the number of days in total during the financial year that must be considered in determining if this exemption applies.
- Once the 90 day limit is exceeded, all payments made to the contractor during the financial year are taxable, including payments made for the first 90 days. (Subject to none of the other five exemptions applying.)
- The exemption will not apply where the contractor is providing the same or similar services to a principal under various contracts where the number of days on which the services are provided in total is greater than 90 days in that financial year.

Commissioner's ruling

Generally, a principal will be able to ascertain the number of days a contractor has rendered services by reference to time sheets, attendance sheets or invoices. However, in some circumstances it may not be possible to determine the actual number of days on which services are provided. The Commissioner has issued a ruling which provides a revised alternative method which does not require determination of the actual 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 service with the 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 is accepted as applying to that contract. (See Revenue Ruling PT.119)

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

General exemptions

Example

New Homes Pty Ltd engaged a ceiling plasterer in August 2004 to perform a contract under which the total remuneration paid during the 2004-05 financial year is \$18,000 (exclusive of GST). The ceiling plasterer worked an average of 8 hours per day and supplied the tools and various materials needed for the job.

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 minus \$3,600 (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:

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

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.

exemption 2

The contractor who provides the services engages labour to perform those services.

This provision exempts payments to contractors who engage other persons to do all or part of the work under the contract with the principal.

To gain exemption, the number of persons required to be engaged varies according to the nature of the entity through which the services are provided. The table on the following page details the number of persons required to be engaged:

General exemptions

Nature of contracting entity	Number of persons employed or engaged by the contracting entity to perform the work under contract
Company	Two or more
Partnership	Partner(s) and one or more other persons, or Two or more persons not being partners
Trustee	Two or more
Sole trader	Sole trader and one or more other persons, or two or more persons not being the sole trader.

For the exemption to apply in any of the circumstances shown in the table, all of the following conditions must be satisfied:

- The services supplied by the person(s) performing the work under the contract with the principal are a necessary part of, and are supplied in the course of, the contractor's business.
- The person(s) engaged by the contractor must be engaged to perform the work that is the object of the contract.
- The work performed by the person(s) engaged by the contractor must be a normal occurrence of the contractor's business and not of a one-off nature.
- The contractor must carry on a trade or business.
- The contractor must have the overall responsibility to fulfil the terms of the contract in the course of the contractor's business.
- The person(s) performing the work under the contract must be engaged directly by the contractor and not the principal, even though the principal may also benefit from those services.

Where the above conditions are not met, but the principal believes that the exemption should apply, an application should be made to the SRO for a private ruling. (See Revenue Ruling PT.076)

Examples

1. ABC Enterprises pays John Smith Pty Ltd for consulting services provided by the contracting entity. John Smith Pty Ltd employs Mr Smith to perform the financial consulting services, while Mrs Smith is employed to perform the administrative duties of John Smith Pty Ltd (for example, book-keeping and general administration).
In these circumstances, ABC Enterprises cannot gain exemption in respect of the contract with John Smith Pty Ltd, as only one employee (Mr Smith) is performing the work pursuant to the contract (that is, the financial consulting work).
2. ABC Enterprises pays the Jones & Smith Partnership for consulting services provided by the contracting entity. The two partners of the Jones & Smith Partnership, namely Ms Jones and Mr Smith, perform the financial consulting services for ABC Enterprises.

General exemptions

In these circumstances, ABC Enterprises cannot gain exemption in respect of the contract with the partnership because all services are performed by the partners. For the contract to be exempt, the legislation requires the services to be provided by one or more partners and at least one other person engaged by the partnership or alternatively by two or more persons engaged by the partnership.

exemption 3

The provision of labour is ancillary or secondary to the supply of materials or equipment by the contractor.

This provision exempts from Pay-roll Tax payments made under contracts where the provision of labour is ancillary or secondary to the supply of equipment or materials by the contractor. In other words, the provision of materials or equipment is the main object of the contract.

Examples

1. A company has an air-conditioning unit installed. The contractor who supplied the unit also installed it. In this instance, the installation work is ancillary to the provision of the air-conditioning equipment and payments under the contract are not taxable.
2. Jones Constructions Pty Ltd enters into a contract with Riggs Crane-Hire Pty Ltd to supply the use of a crane and Riggs Crane-Hire Pty Ltd also supplies the crane operator. This contract is exempt because the supply of the crane is the principal object of the contract. The supply of the operator is ancillary to the supply of the crane.

Commissioner's ruling (see Revenue Ruling PT.123)

The Commissioner has ruled that the provision of labour under a contract will be considered to be ancillary to the provision of materials or equipment where the cost to the principal of the provision of the materials or equipment exceeds 65 per cent of the contract amount, as evidenced on the contractor's invoice.

The amount attributable to materials or equipment on the invoice must be a reasonable figure, having regard to the type of services provided. In determining what is a reasonable figure, due regard must be given to the current market rates or prices for such materials or equipment.

The materials or equipment cannot be purchased or leased from the principal or a member of a group to which the principal belongs, unless the materials or equipment were purchased on an arms' length basis.

Industry Rulings - Plumbers, Electricians and Cabinet makers

Payments made to contracting plumbers, electricians and cabinet makers engaged in the building industry to ensure that prime cost items are put in place are exempt from pay-roll tax.

The intention of these industry rulings is to exempt contractors who are running their own independent trade or business and are not providing essentially labour-only services. These industry rulings are not intended to exempt contractors who charge an hourly rate for their services and merely on-charge the cost of materials.

General exemptions

These industry rulings are only applicable where the following conditions are satisfied:

- The contractor must quote for the job inclusive of *all* labour and materials;
- The contractor must bear the cost and responsibility for any faulty workmanship or materials specified in the quote; and
- The contractor must provide all the materials and equipment necessary to ensure that the prime cost items are put in place.
 - For contracting plumbers - the plumber must provide all the materials (e.g. tubing, bends, traps, spouting, downpipes etc) necessary to fulfil the contract. This exemption will not apply where the person engaging the plumber supplies such materials. This exemption will, however, apply when the person engaging the plumber only supplies such items as the major prime cost items (e.g. appliances) or prime cost décor fittings (e.g. baths, basins, taps etc.).
 - For contracting electricians - the electrician must provide all the materials (e.g. electrical cabling, switches etc) necessary to fulfil the contract. This exemption will not apply where the person engaging the electrician supplies such materials. This exemption will, however, apply where the person engaging the electrician only supplies such items as the major prime cost items (e.g. appliances) or prime cost decor fittings (e.g. light fittings).
 - For contracting cabinet makers - the cabinet maker must provide all the raw materials and manufacture the cabinets on his own premises using his own equipment.

Where the above conditions are not satisfied the exemption does not apply. However, where the contractor provides some equipment or materials, the contractor deduction available to contracting plumbers, electricians and cabinet makers may still be available. (See Revenue Ruling PT.122)

General exemptions

exemption 4

The services provided are of a type not ordinarily required in the course of the principal's ongoing business and those services are provided by a contractor who normally renders such services to the general public.

This provision exempts payments for services of a type not ordinarily required in the principal's business where the contractor usually provides those same services to the public generally. This exemption recognises the fact that businesses do require certain services that are not associated with their mainstream business.

Example

A bank hires painters and decorators to paint and decorate its office once every five years, and those painters and decorators also render their services to the public generally. The contract is exempt because the bank does not ordinarily require the services of painters and decorators.

Commissioner's ruling

If both the following criteria are satisfied, this exemption is accepted as applying to the contract in question.

- The services provided by the contractor must not ordinarily be required by the principal. This will be accepted where the services are of a type not allied with the main business of the principal; and
- The contractor must ordinarily provide the services in question to the public generally. To satisfy this criterion, the contractor would need to have derived less than 40 per cent of gross trading income from the principal in question during the financial year.

Gross trading income, in this context, is considered to be the gross income earned by the contractor in the conduct of the contractor's business, and therefore excludes any investment income or wages that would appear on a group certificate. (See Revenue Ruling PT.057)

Exemption provisions

exemption 5

The services are of a kind or type ordinarily required by the principal for less than 180 days in a financial year.

This provision exempts payments made under contracts for a type of service which the principal requires on less than 180 days in a financial year. This exemption takes into account the fact that businesses require ad-hoc services allied to the mainstream work of the business, but so infrequently that employees are not engaged to perform those services.

This exemption is only concerned with the number of calendar days on which a particular type of service (for example, carpentry or painting) is required by the principal during the course of the financial year. Where a type of service is required for less than 180 days in a financial year, payments to all contractors providing those services will be exempt even though an individual contractor may have worked for more than 90 days.

This exemption differs from the 90 day exemption, as the 90 day exemption involves determining the number of days on which an individual contractor provides services to a principal, whereas the 180 day exemption involves determining the total number of days on which a particular type of service is required by the principal, irrespective of whether the services have been provided by a contractor or an employee. (See Revenue Ruling PT.053)

Examples

1. A builder engages contract landscape gardeners for a total of 160 days in a financial year. Consequently, all payments to contract landscape gardeners are exempt from Pay-roll Tax, as that type of service is required for less than 180 days in a financial year, despite the fact that an individual landscape gardener may have worked for more than 90 days. This example assumes that the builder does not engage employees to perform landscape gardening work during the same financial year that contract landscape gardeners are engaged.
2. A contract plumber works for 120 days and then at the end of that period another contract plumber commences and works a further 120 days. Therefore, the total number of days that plumbing services are required is 240 and accordingly services of this type are not exempt. Alternatively, if two separate contract plumbers were engaged to work concurrently for 120 days, it would be accepted that the services are only required on 120 days. These examples assume that the principal does not engage employees to perform plumbing work during the same financial year that contract plumbers are engaged.

Exemption provisions

exemption 6

The Commissioner is satisfied that the services are rendered by a contractor who ordinarily renders services of that type to the public generally in that financial year.

This provision exempts contracts for services that do not meet any of the previous five exemptions and the Commissioner is satisfied that the services are rendered by a contractor who ordinarily renders such services to the public generally in that financial year.

In applying this exemption, the Commissioner needs to be satisfied that the contractor provides the services in the course of conducting a genuine independent business, which stands in the market place and actually renders like services to a range of clients in that financial year.

In making this determination, the Commissioner will conduct a broad review of the contractor's business and in so doing will consider numerous issues including:

- 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 (for example, tendering for jobs);
- The potential for entrepreneurial risk;
- The nature of contracts entered into (for example, formal long-term or informal rolled over contracts);
- The history of the formation of the contractor's business;
- The concurrency of work;
- The nature of the contractor's business and the type of services provided;
- Who bears the cost and responsibility for faulty materials or workmanship;
- Whether the contractor quotes competitively for jobs on an all inclusive basis (the quotes include all labour and materials); and
- Whether the contractor merely charges for services on an hourly rate and adds on the cost of materials.

This is not an exhaustive list of the issues that the Commissioner will consider in making his determination and no one issue in isolation is necessarily determinative. The Commissioner will consider all the information available and is not limited to considering the financial year under review.

Exemption provisions

A contractor will be accepted as ordinarily rendering 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 the same principal for an average of ten days or less per month (excluding months in which no services were provided). Consequently, where a contractor provides services to a particular principal for ten days or less on average a month for a financial year, the exemption under section 3C(1)(e)(v) applies to each contract for those services provided by the contractor to the principal for that particular year (see Revenue Ruling PT.091).

Example

A computer programmer provided services to a computer software company under a 12-month contract during the financial year as follows:

Month	Number of days on which services were performed for the software company	
	Scenario 1	Scenario 2
July	5	11
August	3	16
September	7	–
October	5	–
November	16	–
December	9	22
January	13	21
February	4	20
March	8	–
April	5	–
May	14	18
June	11	–
Total	100	108

In scenario 1, the contractor worked an average of 8.3 days a month for the software company and payments made by the software company to the programming contractor would be exempt from Pay-roll Tax under this ruling. In scenario 2, the contractor worked an average of 18 days a month for those months in which some work was performed. Consequently, the exemption would not apply under this test. Where payments to a contractor are not exempt under this test, a principal may still seek the exemption under section 3C(1)(e)(v) of the Act by making a written application to the Commissioner.

The application will be considered having regard to all the circumstances of the contract and particularly, the factors listed in the ruling.

What amount is to be declared?

what amount is to be declared?

Having determined that payments under a relevant contract are taxable, the next issue to consider is what amount is to be declared.

Generally, the full amount paid to a contractor is taxable (excluding GST). However, it is recognised that many of the contracts subject to Pay-roll Tax involve some element of materials or equipment being supplied by the contractor, although not enough for the labour ancillary exemption to apply.

Accordingly, the Commissioner has approved certain deductions for various classes of contracts to reflect a deemed amount for materials and equipment.

The following deductions may be applied against the total payment (excluding GST) where the contractor is providing some materials or equipment. The effect of these deductions is that only the deemed labour component is declared for Pay-roll Tax.

Type of contractor	Deduction
Architects	5%
Blind-fitters <i>(deduction rate applicable from 1 July 1991)</i>	25%
Bricklayers	30%
Building supervisors <i>(who provide their own vehicles and inspect more than six sites a week)</i>	25%
Cabinet makers	25%
Carpenters	25%
Carpet layers	25%
Computer programmers	5%
Draftspersons	5%
Electricians	25%
Engineers	5%
Fencing contractors	25%
Painters	15%
Plumbers	25%
Resilient floor layers	37%
Roof tilers	25%
Tree fellers	25%
Wall and ceiling plasterers	20%

Anti-avoidance provisions

Example

A contract computer programmer is engaged by a principal and is paid \$100,000 (excluding GST) in the 2004/2005 financial year. The programmer provides some materials and equipment in performing the work under the contract.

Assuming the payments to that contractor are subject to Pay-roll Tax, the amount to be declared is \$95,000 (that is, \$100,000 less the 5 per cent approved deduction (\$5,000)).

There are three important points regarding these deductions:

- They are only available in respect of contractors who provide some materials or equipment to fulfil their duties, and do not apply to employees;
- The materials or equipment provided by the contractor must not have been purchased from the principal or a member of the principal's group; and
- Approved deductions are the only allowable method to take account of materials or equipment provided by contractors. Where contractors provide invoices showing separate amounts for the labour and non-labour items, it is the full amount of the invoices which is subject to Pay-roll Tax, less any approved deduction. You cannot declare the invoiced labour component only.

In circumstances where a principal is liable for Pay-roll Tax on payments to a contractor who is providing materials or equipment and a deduction is not available to that class of contract, the principal or the relevant industry association may submit an application to the Commissioner requesting a deduction to be granted.

This application should provide information which allows the SRO to distinguish between the labour and the non-labour component costs and enable a percentage deduction to be calculated. (See Revenue Ruling PT.122)

anti-avoidance provision

The legislation contains an anti-avoidance provision to defeat certain schemes designed to qualify for specific exemptions by means of artificial arrangements. It provides that in certain circumstances, where contracts are arranged so as to qualify for exemption from the relevant contract provisions and the Commissioner is not satisfied that the businesses of the parties to the contracts are carried on independently of each other and are being carried on with an intention of avoiding or evading payment of Pay-roll Tax, he may determine that the contracts are relevant contracts and give notice in writing to this effect.

Further information

This circular contains guidelines and information which are correct at the time of printing but which may be subject to change. For further information or assistance, please contact the SRO.

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