STATE REVENUE OFFICE VICTORIA
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Contractors – 180-day exemption

Payroll Tax Act 2007

Revenue Ruling PTA020

Preamble

The *Payroll Tax Act 2007* (the Act), which commenced on 1 July 2007, rewrites of 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, certain types of contracts are specifically excluded from the definition of 'relevant contract'. One exclusion is a contract for services of a kind ordinarily required by the principal for less than 180 days in a financial year (section 32(2)(b)(ii) of the Act). Another exclusion is a contract for the provision of services by a person providing the same or similar services to a principal under the contract for no more than 90 days in a financial year (section 32(2)(b)(iii) of the Act).

The purpose of this Revenue Ruling is to explain the 180-day exemption under section 32(2)(b)(ii) of the Act and provide examples to clarify the application of this exemption.

Ruling

The difference between the 180-day exemption and the 90-day exemption is that while the 90-day exemption requires 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).

From time to time, businesses may require certain ad-hoc services to operate effectively but do not require these services for the whole year. Further, seasonal businesses may require certain essential services to operate effectively but do not require these services for the whole year.

The 180-day exemption focuses on the number of days on which a particular type of service is ordinarily required by the principal in a financial year. Where a particular service is provided by both employees and contractors, the number of days on which such a service is provided to the principal by both the contractors and employees must be taken into account. 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 same financial year.

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 contract 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 32(2)(b)(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'. Accordingly, payments made to the contract ski instructors are not subject to payroll 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 contract landscape gardener (Landscaper A) to perform landscaping services for 100 days in a financial year. A second contract 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 32(2)(b)(ii) of the Act is satisfied. Accordingly, both contracts with Landscaper A and Landscaper B are not 'relevant contracts' and payments made under both contracts are not subject to payroll 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 32(2)(b)(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 32 of the Act and payments made under these contracts are subject to payroll tax, unless one of the other exemptions under the contractor provisions applies.

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.

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Commissioner of State Revenue