

Contractors Engaging Others

Payroll Tax Act 2007
Revenue Ruling PTA023

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 taken to be employers and employees (sections 33 and 34 of the Act) and payments made under a contract are taken to be wages (section 35 of the Act). Payments taken to be 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 contracts' under section 32 of the Act, certain types of contracts are specifically excluded from the definition of 'relevant contract'. One exclusion is a contract in which the contractor hires employees or engages other contractors to perform some or all of the work required under the contract (section 32(2)(c) of the Act).

The purpose of this Revenue Ruling is to explain how section 32(2)(c) of the Act would apply to exclude a contract from the definition of 'relevant contract'.

Ruling

Section 32(2)(c) of the Act may apply to exclude a contract from the definition of 'relevant contract' in any of the following situations:

Type of contracting entity	Persons performing the work under the contract
(i) Company	Two or more
(ii) Partnership of natural persons	<ul style="list-style-type: none"> Partner(s) and one or more other persons, or Two or more persons none of whom is a partner <p>This exemption will not apply if the work under the contract is performed only by partners.</p>
(iii) Sole trader	<ul style="list-style-type: none"> The sole trader and one or more other person(s), or Two or more persons none of whom is the sole trader

In addition, all the following conditions must be met for the exemption in section 32(2)(c) of the Act to apply in each of the above circumstances:

- The contractor must be carrying on a business (includes a trade, profession, or any other activity generally provided for a fee, gain or reward, carried out in systematic and repetitive manner)
- 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
- The services supplied by the person(s) performing the work must be a necessary part of and are supplied in the course of the contractor's business

Example 1

Richard runs a business as a carpenter. He enters into a contract with his client who is a home builder to erect frames for homes. After measuring the sites and determining the areas for the footings of the frames, Richard engages a stump hole driller to drill the holes for the footings. When the timber was delivered, Richard engages a frame cutter to cut the timber.

The work performed by the stump hole driller and frame cutter is a necessary part of and is supplied in the course of Richard's business. The work is considered a normal occurrence of Richard's business. This condition is met.

- The person(s) must be engaged by the contractor to perform the work which is the object of the contract

Example 2

Peter is a plumber. He enters into a contract with a client to carry out some plumbing work. He performs the plumbing work which is the object of his contract. His spouse, Sharon only provides the plumbing business with administrative services such as maintaining the accounts and banking for the business. Administration work is not considered the object of the contract. This condition is not met.

Example 3

Samantha carries on a business as an electrician. She enters into a contract with a client to install electrical items in a room and restore the walls to their original state. To perform the work required under the contract, she engages a plasterer and a painter. The work performed by the plasterer and painter is considered part of the object of the contract. This condition is met.

Multiple contracts between the same principal and contractor

Where a principal has numerous contracts with a contractor during a financial year and there is clear evidence that each contract is discrete, the exemption will apply on a contract-by-contract basis.

Example 4

Michelle is a builder. She has 20 separate contracts to build houses and sub-contracts all the carpentry work to a carpenter, Frank. Frank provides his services on all contracts but engages the services of a frame cutter in respect of only 15 of the 20 houses. The exemption applies to those 15 contracts. Payments made by Michelle to Frank on the remaining 5 contracts are taxable unless another exemption applies.

'Buddy Gang'

It is common for contractors to operate in a team or buddy gang system where two or more contractors work together on a job or number of jobs. Often, it is difficult to establish the formal relationship between members of the gang, or whether the gang constitutes a legal entity. Where there is a lack of documentation supporting the status of the gang, a contract is deemed to exist between the principal and each contractor if the principal pays each of the contractors separately. In these circumstances, the exemption does not apply to a buddy gang of contractors.

Contractors sharing the services of the same person(s)

There are circumstances where a contractor may share the services of a person or persons with another contractor to perform work pursuant to the respective contracts between the same principal and the contractors. For the exemption to apply, the sharing of such services must be a commercial arrangement, that is:

- (i) the work performed by the person or persons engaged by both the contractors must be distinct, and
- (ii) the remuneration paid to that person or persons must commensurate with the work performed and at a commercial rate.

Where the criteria stated above are not met, but you believe that the exemption should apply, please apply to the State Revenue Office for a private ruling. Details on how to apply for a private ruling are set out in Revenue Ruling GEN.009.

Anti-avoidance provisions

A contract will not be exempt under section 32(2) of the Act if the Commissioner considers the contract or arrangement was entered into with the intention of avoiding payroll tax. If any person engaged by the contractor to perform the work is a former employee of the principal, the Commissioner may also consider the arrangement in light of the anti-avoidance provisions under section 32(2)(c) of the Act.

The same approach may be taken where a person engaged by the contractor is a spouse or child of the contractor, or a beneficiary of a trust set up by the contractor and is not paid at a commercial rate.

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