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Public Ruling Payroll Tax Act—Harmonised: CONTRACTORS – 180-DAY EXEMPTION

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Pay-roll Tax (Harmonisation) Amendment Act 2008* amended the *Pay-roll Tax Act 1971* (the *Pay-roll Tax Act*) with effect from 1 July 2008 to harmonise certain aspects of Queensland's pay-roll tax system with the systems of other jurisdictions.
2. Parties to a 'relevant contract' are deemed to be employers and employees¹ and payments made under such a contract are deemed to be wages.² Deemed wages are subject to pay-roll tax under s.13F of the *Pay-roll Tax Act*.
3. While most contracts for the provision of services come within the meaning of 'relevant contract' under s.13B of the *Pay-roll Tax 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 designated person³ (the principal) for less than 180 days in a financial year (the 180-day exemption).⁴ 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 (the 90-day exemption).⁵
4. The purpose of this Public Ruling is to explain the 180-day exemption and provide examples to clarify the application of this exemption.

¹ Sections 13C and 13D of the *Pay-roll Tax Act*
² Section 13E of the *Pay-roll Tax Act*
³ As defined in section 13B(1) of the *Pay-roll Tax Act*
⁴ Section 13B(2)(b)(ii) of the *Pay-roll Tax Act*
⁵ Section 13B(2)(b)(iii) of the *Pay-roll Tax Act*

Ruling and explanation

5. 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).
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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 diving school operator on the Great Barrier Reef engages a number of contract diving instructors each year for 120 days during the tourist season. The business has no requirement for the services of diving instructors outside of the season. Section 13B(2)(b)(ii) of the Pay-roll Tax 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 diving instructors entered into with the diving school operator are not 'relevant contracts'. Accordingly, payments made to the contract instructors are not subject to pay-roll tax even if each 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 (Landscape A) to perform landscaping services for 100 days in a financial year. A second contract landscape gardener (Landscape 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.

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As the building company only requires landscaping services for 100 days in the financial year, s.13B(2)(b)(ii) of the Pay-roll Tax 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 pay-roll 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 s.13B(2)(b)(ii) of the Pay-roll Tax 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 s.13B of the Pay-roll Tax Act and payments made under these contracts are subject to payroll tax, unless one of the other exemptions under the contractor provisions applies.

Date of effect

12. This Public Ruling takes effect from 1 July 2008.

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA020.1	24 February 2009	1 July 2008	2 July 2009