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Public Ruling Pay-roll Tax Act—Harmonised: CONTRACTORS ENGAGING OTHERS

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 taken to be employers and employees¹ and payments made under such a contract are taken to be wages.² Payments taken to be 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 in which the contractor hires employees or engages other contractors to perform some or all of the work required under the contract.³
4. The purpose of this Public Ruling is to explain how s.13B(2)(c) of the *Pay-roll Tax Act* would apply to exclude a contract from the definition of 'relevant contract'.

¹ Sections 13C and 13D of the *Pay-roll Tax Act*

² Section 13E of the *Pay-roll Tax Act*

³ Section 13B(2)(c) of the *Pay-roll Tax Act*

Ruling and explanation

The exemption generally

5. Section 13B(2)(c) of the Pay-roll Tax Act may apply to exclude a contract from the definition of 'relevant contract' in any of the following situations:
 - (a) where the entity contracted to provide services (the contractor) is a company—the work under the contract is performed by two or more persons
 - (b) where the contractor is a partnership of natural persons—the work under the contract is performed by either:
 - (i) one or more partners and one or more other persons or
 - (ii) two or more persons, none of whom is a partnerand not only by one or more partners alone
 - (c) where the contractor is an individual (i.e. a sole trader)—the work under the contract is performed by either:
 - (i) the individual and one or more other persons or
 - (ii) two or more persons, none of whom is the individual.
6. In addition, all the following conditions must be met for the exemption in s.13B(2)(c) of the Pay-roll Tax Act to apply in each of the above circumstances:
 - (a) 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)
 - (b) the contractor must have the overall responsibility to fulfil the terms of the contract in the course of the contractor's business
 - (c) 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
 - (d) 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 and
 - (e) the person(s) must be engaged by the contractor to perform the work which is the object of the contract.

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. Condition (d) is met.

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. Condition (e) 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. Condition (e) is met.

Multiple contracts between the same principal and contractor

7. 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 five contracts are taxable unless another exemption applies.

'Buddy gang'

8. 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.
9. 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)

10. 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.

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11. In such a situation, for the exemption to apply, the sharing of such services must be a commercial arrangement, that is:
- (a) the work performed by the person or persons engaged by both the contractors must be distinct and
 - (b) the remuneration paid to that person or persons must be commensurate with the work performed and be at a commercial rate.

Anti-avoidance provisions

12. A contract will not be exempt under s.13B(2)(c) of the Pay-roll Tax Act if the Commissioner of State Revenue (the Commissioner) considers the contract or arrangement was entered into with the intention of avoiding pay-roll 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 s.13B(4) of the Pay-roll Tax Act.
13. 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.

Date of effect

14. 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
PTA023.1	24 February 2009	1 July 2008	2 July 2009