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Public Ruling Payroll Tax Act:

THE MASTER/SERVANT RELATIONSHIP

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 *Payroll Tax Act 1971* (the Payroll Tax Act) imposes payroll tax on taxable wages paid or payable by an employer.¹
2. Except where the Payroll Tax Act provides otherwise², the imposition of payroll tax is generally dependent on establishing the existence of a master/servant relationship (also called an employer/employee relationship).³
3. The purpose of this Public Ruling is to outline the matters which may be relevant in determining whether a contractual relationship is one of master/servant.

Ruling and explanation

4. The key determinant in establishing whether a master/servant relationship exists is 'control'. If the principal party to the contract controls the incidental manner by which the contractor to the contract performs his or her duties, a master/servant relationship exists.⁴
5. A contract's conditions, in the absence of being proven a sham, will stand as strong evidence as to the nature of the contractual relationship.⁵ (A sham is an agreement or arrangement which in form does not reflect the true substance of that agreement or arrangement).⁶

¹ Sections 9 and 10 of the Payroll Tax Act

² Examples of where the imposition of payroll tax does not rely on the existence of a master/servant relationship include the contractor provisions in Part 2 Division 1A and the employment agent provisions in Part 2 Division 1B of the Payroll Tax Act.

³ *Glebe Administration Board v Commissioner of Pay-roll Tax (NSW)* 83 ATC 4269 at 4273 and 4274

⁴ *Narich Pty Ltd v Commissioner of Pay-roll Tax (NSW)* (Narich's case) 84 ATC 4035 at 4036 and 4039

⁵ *City Motors (1981) Pty Ltd v Commissioner of State Taxation (WA)* (City Motors' case) 93 ATC 4742 at 4762

⁶ McDonald P. (Ed.), 1999 Tax Summary, 80th Ed. (Melbourne-VIC: Taxpayers Australia Inc., 1999), p.525

6. Any contractual conditions which purport to define a relationship as being one of independent contractor/principal cannot alter the true nature of the relationship, if the balance of the contract's conditions and supporting facts evidence a master/servant relationship.⁷
7. Where it is shown, subsequent to a contract, that the contracted parties' conduct implies an agreed addition to or modification of the contract, such conduct will be taken into account when making a decision as to the nature of the contractual relationship.⁸
8. The test of control will vary based upon the industry standards and nature of the work being performed by the contractor^{9 10}.

Example

An example of how industry standards affect the test of control can be best illustrated by the following comparison.

The relationship between a principal and a clerical worker will normally be one of master/servant as the principal will usually exert a large degree of control (contingent or otherwise) over the incidental manner by which a clerical worker performs his or her duties. The reason for this is the nature of the work allows the principal such control over the contractor.

The relationship between a principal and a doctor would normally be one of independent contractor as a doctor exerts a large degree of control over the incidental manner by which he or she performs their duties. However, despite having this control, where the balance of facts indicates that the principal exerts a large degree of control over a doctor, a master/servant relationship may still exist. The reason in part for this is, when analysing the relationship, a relevant consideration is that the nature of the work being performed by a doctor necessarily requires delegation of control.

9. The test of control in determining the establishment of a master/servant relationship is not based on actual exercise of control, but the ability or right to exercise such control over the incidental manner by which the employee performs his or her duties.¹¹
10. The courts have broadened the test of control in determining the establishment of a master/servant relationship to recognising a number of general factors which will assist in establishing whether a master/servant relationship exists.¹² These factors include:
 - (a) An employee has no right to delegate his or her work.
 - (b) An employee has no right to employ others to perform his or her contractual obligations.
 - (c) An employee bears no or minimal costs in the performance of his or her duties.
 - (d) An employee has no ability to make a profit or loss in the performance of his or her duties.

⁷ *Massey v Crown Life Insurance Co* (1978) 1 WLR 676 at 679

⁸ *Narich's case* at 4038

⁹ *D & D Tolhurst Pty Ltd v Commr of State Revenue (Vic)* 97 ATC 2179 at 2180

¹⁰ *Roy Morgan Research Centre Pty Ltd v Commr of State Revenue (Vic)* 96 ATC 4767 at 4773

¹¹ *De Lux Red and Yellow Cabs Co-Operative (Trading) Society Ltd & Ors v FC of T (De Lux Cab's case)* 97 ATC 4770 at 4780

¹² *Stevens v Brodribb Sawmilling Company Pty Ltd* (1986) 160 CLR 16 at 20, 24, 36 and 37

- (e) An employee has no exposure to commercial risk.
 - (f) An employee has no ability to accumulate goodwill or saleable assets in the performance of his or her duties.
 - (g) Usually, an employee does not supply equipment in performing his or her contractual duties. Where equipment has been supplied by the employee, the equipment is usually incidental or minor in nature.
 - (h) An employee has entitlements to sick leave, holiday leave, etc.
 - (i) An employee is subject to the PAYG withholding system for paying tax.
 - (j) An employee is usually paid regularly (e.g. fortnightly) as opposed to an independent contractor who is usually paid based on the production of a result.
 - (k) An employee is usually paid with either set amounts (salary) or set hourly rates.
 - (l) An employee is required to devote his services/labour exclusively to the employer. This exclusivity does not preclude a person being classified as an employee, where the person is working for two or more separate employers, provided that the tests of control are satisfied. This arrangement can be compared to a person being employed by two or more employers on a part time basis.
 - (m) An employee contract includes broad rights of suspension or dismissal.
 - (n) An employee usually works at the employer's place of business or at those locations as directed or approved by the employer.
 - (o) An employee is required to work at set times.
 - (p) An employee's employer may be subject to the Commonwealth Government's Superannuation Guarantee charge.
 - (q) An employee's employer must comply with the requirements of WorkCover.
 - (r) An employee provides his or her services/labour to one entity for a long period.
11. These factors are not meant to replace the test of control, but simply used to assist in establishing whether the test of control is satisfied.¹³
12. These factors are neither exhaustive nor indisputable in establishing the nature of the contractual relationship. Further, each test can have different weighting of relevance, based on the cumulative facts of each case.^{14 15}
13. It must be also remembered that contractual rights attributed to the contractor, such as the right to delegate work and employ others will require close scrutiny. Where these clauses in practical terms prove to be inoperable due to the nature of the services to be performed or are a sham, such inoperability or sham will be taken into account, when determining the nature of the relationship.¹⁶
14. After applying the above tests, if doubt still exists as to whether a master/servant relationship exists, a supplemental test called the 'organisation or integration test' is used to clarify the relationship.

¹³ *De Lux Cab's case* at 4781

¹⁴ *AMP Society v Allan & Anor* (AMP case) (1978) 52 ALJR 407 at 408

¹⁵ *De Lux Cabs' case* at 4785

¹⁶ *AMP case* at 389 and 390

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15. This test involves establishing 'whether or not a person's work is done as an integral part of another's business or is only accessory to it; whether, to put it in slightly different terms, the person in question is performing the relevant services as a person in business on his own account'.¹⁷
16. If the contractor is performing his services as an integral part of the principal's business or on behalf of the principal, a master /servant relationship exists.
17. It must be remembered that the organisation or integration test is ancillary to the control test. The organisation or integration test is only used to confirm or clarify the control test. 'Of the two concepts, legal authority to control is the more relevant and the more cogent in determining the nature of the relationship'.¹⁸
18. Finally, as stated by his Honour Meagher JA 'it is almost never an easy task to decide whether a given person is an employee or an independent contractor'.¹⁹ As such, whether a person is an employee or independent contractor is usually based upon a very fine balance of facts.

Date of effect

19. This Public Ruling takes effect from 24 February 2009.

David Smith
 Commissioner of State Revenue
 Date of Issue 3 July 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
PTAQ000.1.1	3 July 2009	24 February 2009	30 June 2011
Supersedes Revenue Ruling PY 3.2	1 July 2005	1 July 2005	23 February 2009

¹⁷ *City Motors' case* at 4762

¹⁸ *Vabu Pty Ltd v FC of T (Vabu's case)* 96 ATC 4898 at 4902

¹⁹ *Vabu's case* at 4900