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Public Ruling

**Payroll Tax Act—Harmonised:
EXEMPTION FOR CONTRACTORS
ORDINARILY RENDERING SERVICES TO THE
PUBLIC**

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (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 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 *Payroll Tax Act 1971* (the *Payroll Tax Act*) with effect from 1 July 2008 to harmonise certain aspects of Queensland's payroll 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 payroll tax under s.13F of the *Payroll Tax Act*.
3. While most contracts for the provision of services come within the meaning of 'relevant contract' under s.13B of the *Payroll Tax Act*, certain types of contracts are specifically excluded from the definition of 'relevant contract'. A contract is not a 'relevant contract' if the Commissioner is satisfied that the person who performed the services under the contract ordinarily performs services of that kind to the general public in that financial year.
4. This Public Ruling provides a non-exhaustive list of factors that the Commissioner takes into consideration in exercising his discretion under s.13B(2)(b)(iv) of the *Payroll Tax Act*.

¹ Sections 13C and 13D of the *Payroll Tax Act*

² Section 13E of the *Payroll Tax Act*

Ruling and explanation

5. In exercising his discretion under s.13B(2)(b)(iv) of the Payroll Tax Act, the Commissioner needs to be satisfied that the contractor provides:
 - the services in the course of conducting a genuine independent business, and
 - ordinarily renders those services to the general public.
6. The mere fact that a contractor works on a succession of jobs for different principals does not mean that these criteria are satisfied. It is necessary to consider the steps undertaken by the contractor to create an independent business (i.e. to obtain work from clients other than the principal in question).
7. To seek an exemption under s.13B(2)(b)(iv) of the Payroll Tax Act, a principal is required to apply to the Commissioner for a determination.
8. In making his determination, the Commissioner will review the contractor's business and consider factors including (but not limited to):
 - (a) the use of a business name by the contractor
 - (b) the extent and nature of advertising undertaken by the contractor
 - (c) the range of clients serviced by the contractor
 - (d) the extent and nature of plant and equipment provided by the contractor in execution of the services
 - (e) the engagement of staff or sub-contractors by the contractor
 - (f) the use of business premises by the contractor
 - (g) the method of operation of the business (such as tendering for jobs)
 - (h) the potential for entrepreneurial risk
 - (i) the nature of contracts entered into (e.g. formal long term or informal rolled over contracts)
 - (j) the history of the formation of the contractor's business
 - (k) how the contractor won the contract
 - (l) whether work is performed on separate contracts concurrently
 - (m) the nature of the contractor's business and the type of services provided
 - (n) whether the contractor bears the cost and responsibility for faulty materials or workmanship
 - (o) whether the contractor quotes competitively for jobs on an all-inclusive basis (all labour and materials)
 - (p) whether the contractor merely charges for services on an hourly rate and adds on the cost of materials.
9. None of the above factors is conclusive on its own. The above is not an exhaustive list of factors that the Commissioner will take into account in exercising his discretion under s.13B(2)(b)(iv) of the Payroll Tax Act. The Commissioner will also consider any other matters that are relevant to his decision.

10. However, the Commissioner will accept that a contractor ordinarily renders services to the public generally where, in the financial year in which services were provided under the contract in question, the contractor provided services of the type to:
- (a) two or more principals (not being members of a group) during the financial year, and
 - (b) the principal claiming the exemption for an average of 10 days or less per month (excluding the months in which no services were provided).

Public Ruling PTA014 explains what constitutes a day's work.

11. If a contractor who has supplied services under a contract to a principal in a particular financial year meets the above two criteria, the exemption in s.13B(2)(b)(iv) of the Payroll Tax Act applies. Under these circumstances, there is no need for the principal to obtain a determination from the Commissioner.

Example 1

Michael is a computer programmer. During the financial year, he provided services to Principal A and Principal B. Under his contract for service with Principal A, he provided his services as follows during the financial year:

Month	Number of days worked for Principal A
<i>July</i>	5
<i>August</i>	3
<i>September</i>	7
<i>October</i>	5
<i>November</i>	16
<i>December</i>	9
<i>January</i>	13
<i>February</i>	4
<i>March</i>	8
<i>April</i>	5
<i>May</i>	14
<i>June</i>	11
Total	100

In that financial year, Michael worked for a total of 100 days for Principal A, which is an average of 5.3 (100 days divided by 12 months) days per month. As a result, payments made by Principal A to Michael for the financial year are exempt from payroll tax.

Example 2

Shelly is also a computer programmer. During the financial year, she provided services to Principal C and Principal D. Under her contract for service with Principal C, she provided her services as follows during the financial year:

Month	Number of days worked for Principal A
July	11
August	16
September	-
October	-
November	-
December	22
January	21
February	20
March	-
April	-
May	18
June	-
Total	108

In that financial year, Shelly worked for a total of 108 days for Principal C. This worked out to be 18 (108 days divided by six months) days per month. Consequently, payments made by Principal C to Shelly are subject to payroll tax.

Date of effect

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

David Smith
 Commissioner of State Revenue
 Date of Issue: 18 February 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA021.1	18 February 2013	1 July 2008	Current