

Contents	Page
What this ruling is about	1
Ruling and explanation	2
Date of effect	4
References	4

Public Ruling

**Payroll Tax Act—Harmonised:
CONTRACTORS—90-DAY EXEMPTION**

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. The contractor provisions are in Part 2, Division 1A of the Payroll Tax Act. These provisions provide for certain contractors (whether incorporated or not) to be deemed employees (under what are defined as 'relevant contracts') and for payments to those contractors to be treated as wages for the purposes of the Payroll Tax Act. Most contracts for the provision of services are 'relevant contracts'.
3. However, there are six possible exemptions that may exclude payments under such contracts from the definition of wages. One of the exemptions 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 (s.13B(2)(b)(iii) of the Payroll Tax Act).
4. In addition to explaining the operation of the exemption under s.13B(2)(b)(iii) of the Payroll Tax Act (90-day exemption), the purpose of this public ruling is to set out a replacement method (the Replacement Method) approved by the Commissioner in determining the application of the 90-day exemption where a principal encounters difficulty in determining the actual number of days that a contractor has rendered services in a financial year.

Ruling and explanation

The 90-day exemption

5. If a relevant contract involves 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, it is an exempt contract under s.13B(2)(b)(iii) of the Payroll Tax Act. For the purposes of this exemption:
 - the carrying out of any work on a given day will count as a full dayand
 - the days worked do not have to be consecutive, it is the total number of days worked during the financial year that is relevant.
6. Once the 90-day limit is exceeded, the total payments made to that contractor during the financial year, including payments made for the work performed in the first 90 days, is subject to payroll tax.
7. Where a principal encounters difficulty in determining the actual number of days on which services are rendered, the Replacement Method may be used. The Replacement Method does not require the calculation of the number of days for which services are provided.

Replacement Method

8. Under the Replacement Method, a formula is used to calculate the estimated remuneration a contractor would receive from an employer for 90 days of service. If the principal is unable to determine the actual number of days on which the contractor rendered services and the actual amount earned by the contractor is less than or equal to the amount calculated using the formula, the 90-day exemption will be accepted as being applicable to that contract.
9. The formula is $Y = A \times B \times C \times D$ where:
 - Y = The estimated remuneration for 90 days of service
 - A = The highest hourly rate for the classification in that industry according to the respective pay scale summary that is available on the Australian Government's Fair Work Ombudsman website (www.fairwork.gov.au)
 - B = Average number of hours worked per working day
 - C = 120% (this accounts for an additional 20% for the types of payment not typically received by contractors such as sick pay, holiday pay, overtime)
 - D = 90 days
10. It should be noted that in comparing the actual remuneration received by a contractor with the estimated remuneration derived using the formula (i.e. Y), the actual amount may be reduced by any allowable deduction determined by the Commissioner (please refer to Public Ruling PTA018 for the relevant deductions).
11. By allowing for the allowable deduction, the wages ordinarily payable to an employee for 90 days of work in that industry are comparable with the labour-only component of the actual amounts paid to the contractor in question.

Example

In October 2010, New Homes Pty Ltd (New Homes) engaged a plasterer to perform a contract for services under which an amount of \$15,000 (exclusive of GST) was paid, which included the supply of various materials needed for the job. The plasterer worked for New Homes at residential home sites for an average of seven hours per day.

New Homes finds it difficult to determine the actual number of days the plasterer worked during the 2010–11 financial year. New Homes decides to adopt the highest hourly rate for the classification based on the pay scale summary set out in the award that best matches the work undertaken by a plasterer. According to the Fairwork Australia website, the pay scale that best matches the work undertaken by a plasterer who performs work in the onsite building industry is the Building and Construction General On-site Award 2010 (the Award).

Labour-only Component of Contract Price

The actual labour-only component after subtracting 20% (deduction allowable for wall and ceiling plasterers according to Public Ruling PTA018) is calculated as follows:

$$\$15,000 - \$3,000 \text{ (being 20\% of } \$15,000) = \$12,000$$

The highest hourly rate for a full-time employee plasterer under the Award is \$18.06.

As a result, the estimated remuneration for 90 days of service provided by the plasterer under the contract is calculated to be:

$$\$18.06 \times 7 \times 120\% \times 90 \text{ days} = \$13,653.36$$

In this instance, the labour-only component (\$12,000) paid to the plasterer is less than the estimated remuneration (\$13,653.36) calculated using the formula. Therefore, the 90-day exemption applies to exempt that payment from payroll tax

Pay scale summary

12. In applying the Replacement Method, employers must identify the pay scale summary that best matches the type of work undertaken by the contractor. The pay scale summary to be used is the summary applicable at the commencement of the contract and if the same contract continues into the following financial year, the pay scale summary to be used in that financial year must have been in force at the commencement of that financial year (unless it no longer exists).
13. Records must be kept regarding the pay scale summary used for each contractor for a period of five years.
14. Where no comparable pay scale summary exists, employers who can provide a satisfactory alternative rate may seek a determination from Queensland Revenue Office.

Date of effect

15. This public ruling takes effect from 1 July 2008.¹

David Smith
Commissioner of State Revenue
Date of issue: 18 October 2012

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA035.1	18 October 2012	1 July 2008	Current

¹ This is the first version of PTA035 issued in Queensland. It is harmonised with the second version of PTA035 which has now issued in NSW, Victoria, South Australia, Tasmania and Northern Territory.