

# Information Circular No: 5

## *Payroll Tax Act 2009*

### **Contractors**

**Issued 1 July 2009**

The *Payroll Tax Act 2009*, which commenced on 1 July 2009, rewrote and repealed the *Pay-roll Tax Act 1971* and provides fully harmonised legislation with New South Wales, Victoria, Tasmania and Northern Territory.

Payroll tax is a state tax calculated on wages paid or payable and applies in all states and territories of Australia.

This Information Circular provides a brief explanation of the South Australian payroll tax contractor provisions contained in Division 7, Part 3 of the *Payroll Tax Act 2009*.

Authorised copies of the Act can be purchased from the Service SA Government Legislation Outlet, Ground Floor, 101 Grenfell Street, Adelaide.

Online versions of State Legislation are available at the South Australian legislation website:

**[www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)**

For further details on any matters relating to the Act mentioned in this Information Circular, please contact RevenueSA on (08) 8204 9880.

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# Introduction

**Preface** This Information Circular provides information on the common law employer/employee relationship and the payroll tax contractor provisions, however, it does not constitute a Revenue Ruling.

If any uncertainty exists regarding a particular aspect of the information provided, advice should be sought from RevenueSA. The information provided in this Information Circular is correct at the time of publication.

Any reference to state(s) includes the Australian Capital Territory and the Northern Territory.

Mike Walker  
COMMISSIONER OF STATE TAXATION  
1 July 2009

**Overview** The definition of wages includes payments to contractors under certain circumstances. The provisions, contained under **Division 7, Part 3** of the *Payroll Tax Act 2009* (the “Act”), deem such contractors to be employees and the payments made to them are deemed to be wages.

The provisions are intended to tax payments to those contractors who provide predominantly labour services and who work exclusively or primarily for one designated person in a financial year.

If a contract is a relevant contract, payments under the contract are, *prima facie*, deemed to be wages (excluding GST). The designated person who engages the contractor is deemed to be an employer and is liable to pay payroll tax on those deemed wages.

The term ‘contractors’ is a generic one, which includes sub-contractors, consultants and outworkers. The provisions apply regardless of whether the contractor provides services via a company, trust, partnership or as a sole trader. The nature of the contracting entity does not affect the application of the contractor provisions.

In practical terms, the contractor provisions initially capture all contracts for the performance of work.

However, the provisions contain several exemptions and if any one applies to a particular contract, the payments under that contract are not taxable.

The Act contains separate provisions relating to persons that are on-hired under an employment agency contract to a client of the employment agency. Therefore, the information provided below does not apply to employment agency contracts.

For further information see  
the **Payroll Tax: Employment  
Agency Information Circular**

# Determining Liability

Essentially there are three steps involved in determining if payments made to a particular person are subject to payroll tax. In summary, the steps are:

## **STEP 1: Is the person an employee?**

If the person is an employee, the payments made to, or in relation to, that person are subject to payroll tax. If the person is not an employee, it is necessary to consider Step 2.

## **STEP 2: Is the contract a relevant contract?**

If the contract involves being supplied with services, or supplying services, or giving out goods for their re-supply, it is a relevant contract and it is necessary to consider Step 3. If the contract does not involve any of these, it is not a relevant contract, and payments under the contract are not subject to payroll tax.

## **STEP 3: If the contract is a relevant contract, does the contract fall within one of six exemptions or are the services of a type exempted by legislation?**

Payments under a relevant contract are not taxable if:

- any one of six exemptions provided in the Act apply; or
- the services provided under the contract are of a type specifically exempted by the legislation.

If none of the exemptions apply, the payments made under the relevant contract are subject to payroll tax.

It is necessary to differentiate between employees and contractors to determine if payments are taxable. Payments to or in relation to employees, whether engaged on a permanent, temporary or casual basis, are always subject to payroll tax. However, payments to contractors are subject to payroll tax in certain circumstances only.

Although the Act does not define the term 'employee', in most instances it is not hard to determine if a person is an employee or a contractor.

Only 'natural persons' can be considered employees. If the person engaged conducts their business via a company or a trust they cannot be considered an employee. However payments to them may still be taxable under the contractor provisions.

If it is not clear whether the 'person' is an employee or a contractor, a number of factors need to be considered. These factors have been established by the courts over a number of years. Some of the more significant factors are:

- ▶ Does the designated person have the right to exercise control over the manner in which the work is to be performed?
- ▶ Is there any documentation that indicates the person is an employee (e.g. employment agreement, letter of appointment)?
- ▶ Are the hours of work defined?

## Employee or Contractor?

- ▶ Is the person engaged on a continuing basis?
- ▶ Does the designated person provide materials, plant and equipment?
- ▶ Is the person paid periodically rather than on a per job basis?
- ▶ Is the person paid sick leave, holiday pay or superannuation?
- ▶ Is the person working under similar conditions to employees?
- ▶ Is the person prevented from delegating or subcontracting their work to another person?
- ▶ Are the services provided by the person integral to the business conducted by the designated person?

If the answer to the majority of these questions is 'Yes', it is likely that the person is an employee and accordingly, payments made to that person are subject to payroll tax.

The above list is not exhaustive. It lists some of the more significant factors that need to be considered when determining a person's status. Only by making a balanced evaluation of all the relevant indicators of a relationship can a person's status be correctly determined.

Of the factors listed, one of the most crucial in determining whether a person is an employee or a contractor is control. The existence of an employer/employee relationship usually occurs when the designated person has the right to control what work is to be done and the manner in which the work is to be done. On the other hand, a contractor is typically engaged to produce a specific result and the manner in which the work is to be performed generally is not subject to a high degree of control and direction by the designated person.

Although the control test has been useful in the past, in reality skilled persons are generally not subject to a high degree of control of the manner in which they perform their work. However, the actual exercising of control is not the key: it is the right to exercise such control which is the main consideration.

Another way of looking at the distinction between an employee and a contractor is that an employee serves the employer in the employer's business whereas a contractor is a person who carries on their own trade or business.

If uncertainty exists as to the status of a person, advice should be obtained from RevenueSA. In cases where it has been determined that a person is a contractor and not an employee, it is necessary to consider the contractor provisions contained in **Division 7, Part 3** of the Act.

## Corporate Contractors

If the contract worker is incorporated, they cannot be a common law employee if the contracts are entered into between the worker's company and the person or business to whom they provide a service.

In most cases of an incorporated worker the contract will be between two corporations. The payment made by one business for the services provided to another are not wages paid to an employee as such. The payments can however attract payroll tax under the relevant contract provisions.

# Relevant Contracts

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The Act provides that payroll tax is imposed on payments made for services provided under a relevant contract. A relevant contract is one where a person in the course of their business:

- ▶ supplies services to another person for or in relation to the performance of work;
- ▶ receives services from another person for or in relation to the performance of work; or
- ▶ gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the first mentioned person, or where that person is a member of a group, to another member of that group.

In practical terms, a relevant contract exists where the contractor provides some labour services in fulfilling the requirements of the contract.

If a contract is not a relevant contract, payments under that contract will not be subject to payroll tax.

Although most contracts for the performance of work are initially caught by these provisions as a relevant contract, the Act provides a number of exemptions. If at least one of these exemptions applies to a particular contract, payments under that contract are exempt from payroll tax.

# Exemptions

The Act specifically exempts payments made for services provided by:

1. owner-drivers;
2. insurance agents; and
3. door-to-door sellers.

In order for an exemption to apply, the services must be provided by a contractor and not an employee.

For further information see  
Revenue Ruling PTA006

An owner-driver is generally a contractor engaged primarily to transport goods where the contractor provides and drives the vehicle used for the transport of those goods.

In relation to insurance agents, the provision exempts contracts under which a person is supplied with services solely for, or in relation to the procurement of persons desiring to be insured by the person. The exemption applies to contractors who sell general and life insurance on a commission basis for insurance companies. The exemption does not apply to commissions from the sale of other non-insurance products.

For further information see  
Revenue Ruling PTA007

In relation to door-to-door sellers, the Commissioner of State Taxation (the “Commissioner”) has ruled that, to satisfy this exemption, a number of criteria must be met. These criteria include a requirement that the goods sold are essentially domestic goods and the sale of the goods is made at the purchaser’s residence.

Accordingly, payments made to contractors who provide any of these three types of services are not taxable even if none of the six exemptions listed below apply.

## Six general exemptions

Generally, payments under a relevant contract are taxable unless at least one of the following six exemptions applies:

1. The contractor provides services to the one designated person on no more than 90 days in a financial year.
2. The contractor engages others to do all or part of the work pursuant to the contract (subject to certain conditions being met).
3. The provision of labour is ancillary or secondary to the supply of materials or equipment by the contractor.
4. The services provided under the contract are of a type not ordinarily required in the designated person’s business and the contractor usually provides those services to a range of clients.
5. The services are of a type ordinarily required by the designated person for less than 180 days in a financial year.
6. The Commissioner is satisfied that the contractor ordinarily renders services of the type under the contract to the public generally in a financial year.



## The contractor provides services to the one designated person on no more than 90 days in total, in the financial year.

This provision exempts payments made to contractors who work for no more than 90 days for the one designated person during a financial year. This exemption operates to exempt payments to short term contractors and should be the first exemption considered when determining if payments to contractors are subject to payroll tax.

It is also important to note the following:

- ▶ This exemption cannot be used to exempt casual, short- term or part-time employees.
- ▶ The carrying out of any work on a given day will count as one full day .
- ▶ The days worked do not have to be consecutive and could be worked intermittently throughout the financial year. It is the number of days in total during the financial year that must be considered in determining if this exemption applies.
- ▶ Once the 90 day limit is exceeded, all payments made to the contractor during the financial year are taxable, including payments made for the first 90 days (subject to none of the other five exemptions applying).
- ▶ The exemption will not apply where the contractor is providing the same or similar services to a designated person under various contracts where the number of days on which the services are provided in total is greater than 90 days in that financial year.

## Exemption 1

For further information see  
Revenue Ruling PTA014

## Commissioner's Ruling

Generally, the designated person will be able to ascertain the number of days a contractor has rendered services by reference to time sheets, attendance sheets or invoices. However, in some circumstances it may not be possible to determine the actual number of days on which services are provided.

The Commissioner has issued a Revenue Ruling which sets out a replacement method (the Replacement Method) to determine the application of the 90-day exemption. Where a designated person encounters difficulty in determining the actual number of days on which services are rendered by a contractor, the Replacement Method may be used. The Replacement Method does not require the calculation of the number of days for which services are provided.

Under the Replacement Method, a formula is used to calculate the estimated remuneration a contractor would receive from a designated person for 90 days of service. If 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.

For further information see  
Revenue Ruling PTA035

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 Workplace Authority website
- B** = Average number of hours worked per working day
- C** = 120 per cent (this accounts for an additional 20 per cent for the types of payment not typically received by contractors such as sick pay, holiday pay, overtime)
- D** = 90 days

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.

Refer to Revenue Ruling  
PTA018 for the relevant  
deductions

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 2009, New Homes Pty Ltd (New Homes) engaged a ceiling plasterer to perform a contract under which an amount of \$15 000 (exclusive of GST) was paid, which included the supply of various materials needed for the job. The ceiling plasterer worked for New Homes for an average of 6 hours per day.

New Homes finds it difficult to determine the actual number of days the ceiling plasterer worked during the 2009-10 financial year. New Homes decides to adopt the highest hourly rate for the classification based on the pay scale summary of the National Building and Construction Industry Award 2000 (the Award).

#### Labour-only Component of Contract Price

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

$$\text{\$15 000 minus \$3 000 (being 20\% \$15 000) = \$12 000}$$

According to the Workplace Authority website, the pay scale summaries that best match the work undertaken by ceiling plasterers are the Award and the Australian Workers' Union Construction and Maintenance Award 2002. The highest hourly rate for a full-time employee under each award is \$18.82.

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

$$\mathbf{\$18.82 \times 6 \times 120\% \times 90 \text{ days} = \$12\,195}$$

In this instance, the labour-only component (\$12 000) paid to the ceiling plasterer is less than the estimated remuneration (\$12 195) calculated using the formula. Therefore the 90 day exemption applies to exempt that payment from payroll tax.

### **Pay scale summary**

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). Records must be kept regarding the pay scale summary used for each contractor for a period of five years.

Where no comparable pay scale summary exists, employers who can provide a satisfactory alternative rate may seek a determination from RevenueSA.

**Exemption 2** The contractor who provides the services engages labour to perform those services. This provision exempts payments to contractors who hire employees or engages other contractors to perform some or all of the work required under the contract with the designated person.

To gain exemption, the number of persons required to be engaged varies according to the nature of the entity through which the services are provided.

For further information see  
Revenue Ruling PTA023

### Commissioner’s Ruling

The Revenue Ruling sets out to explain how the number of persons required to be engaged varies according to the nature of the entity through which the services are provided.

The table below details the number of persons required to be engaged:

Type of Contracting Entity	Persons performing the work under the contract
Company	▶ Two or more
Partnership of natural persons	▶ Partner(s) and one or more other persons; or ▶ Two or more persons none of whom is a partner  This exemption will not apply if the work under the contract is performed only by partners.
Sole trader	▶ Sole trader and one or more other persons; or ▶ Two or more persons not being the sole trader.

In addition, all of the following conditions must be met for the exemption to apply in each of the above circumstances:

- ▶ 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 a systematic and repetitive manner).
- ▶ The contractor must have the overall responsibility to fulfill the terms of the contract in the course of the contractor’s business.
- ▶ The person(s) performing the work under the contract must be engaged directly by the contractor and not the designated person, even though the designated person may also benefit from those services.

- ▶ 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.

### Example

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. This condition is met.

- ▶ The person(s) must be engaged by the contractor to perform the work which is the object of the contract.

### Example

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. This condition is not met.

### Example

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. This condition is met.

Where the above conditions are not met, but the designated person believes that the exemption should apply, an application should be made to RevenueSA.

### Exemption 3 **The provision of labour is ancillary or secondary to the supply of materials or equipment by the contractor.**

This provision exempts from payroll tax payments made under contracts where the provision of labour is ancillary or secondary to the supply of equipment or materials by the contractor. In other words, the provision of materials or equipment is the main object of the contract.

For further information see  
[Revenue Ruling PTA033](#)

#### **Commissioner's Ruling**

The Commissioner has ruled that the provision of labour under a contract will be considered to be ancillary to the provision of materials or equipment where the cost to the designated person of the provision of the materials or equipment exceeds 50 per cent of the total contract amount. There must be evidence to substantiate that the provision of materials and/or equipment is the principal object of the contract.

The amount attributable to materials and/or equipment on the invoice must be a reasonable figure, having regard to the type of services provided. In determining what is a reasonable figure, due regard must be given to the current market rates or prices for such materials and equipment.

The materials or equipment cannot be purchased or leased from the designated person or a member of a group to which the designated person belongs, unless the materials or equipment were purchased on an arms' length basis.

#### **Example**

A company has an air-conditioning unit installed. The contractor who supplied the unit also installed it. In this instance, the installation work is ancillary to the provision of the air-conditioning equipment and payments under the contract are not taxable.

#### **Example**

Jones Constructions Pty Ltd enters into a contract with Riggs Crane-Hire Pty Ltd to supply the use of a crane and Riggs Crane-Hire Pty Ltd also supplies the crane operator. This contract is exempt because the supply of the crane to the designated person is the object of the contract. The supply of the operator is ancillary to the supply of the crane.

## Exemption 4

The services provided are of a type not ordinarily required in the course of the designated person's ongoing business and those services are provided by a contractor who normally renders such services to the general public.

This provision exempts payments for services of a type not ordinarily required in the designated person's business where the contractor usually provides those same services to the public generally.

This exemption recognises the fact that businesses do require certain services that are not associated with their mainstream business.

### Commissioner's Ruling

If both the following criteria are satisfied, this exemption is accepted as applying to the contract in question.

- ▶ the services provided by the contractor must not ordinarily be required by the designated person. This will be accepted where the services are of a type not allied with the main business of the designated person's; and
- ▶ the contractor must ordinarily provide the services in question to the public generally. To satisfy this criterion, the contractor would need to have derived less than 40% of gross trading income from the designated person in question during the financial year.

Gross trading income, in this context, is considered to be the gross income earned by the contractor in the conduct of the contractor's business, and therefore excludes any investment income or wages that would appear on a group certificate.

For further information see  
[Revenue Ruling PTA022](#)

### Example

A bank hires painters and decorators to paint and decorate its office once every five years, and those painters and decorators also render their services to the public generally. The contract is exempt because the bank does not ordinarily require the services of painters and decorators.

## Exemption 5 **The services are of a kind or type ordinarily required by the designated person for less than 180 days in a financial year.**

This provision exempts payments made under contracts for a type of service which the designated person requires for less than 180 days in a financial year. This exemption takes into account the fact that businesses require ad-hoc services allied to the mainstream work of the business, but so infrequently that employees are not engaged to perform those services.

For further information see  
[Revenue Ruling PTA020](#)

### **Commissioner's ruling**

This exemption is only concerned with the number of calendar days on which a particular type of service (for example, carpentry or painting) is required by the designated person during the course of the financial year. Where a type of service is required for less than 180 days in a financial year, payments to all contractors providing those services will be exempt even though an individual contractor may have worked for more than 90 days.

This exemption differs from the 90 day exemption, as the 90 day exemption involves determining the number of days on which an individual contractor provides services to a designated person, whereas the 180 day exemption involves determining the total number of days on which a particular type of service is required by the designated person, irrespective of whether the services have been provided by a contractor or an employee.

### **Example**

A security firm in Adelaide engages a number of crowd controllers each year for 120 days during the Fringe, Festival and Clipsal season. The business has no requirement for the services of crowd controllers outside of this season. **Section 32(2)(b)(ii)** of the 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 crowd controllers entered into with the crowd control operator are not 'relevant contracts'. Accordingly, the payments made to the contract crowd controllers are not subject to payroll tax even if each crowd controller has worked more than 90 days in a particular financial year.



## Example

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.

As the building company only requires landscaping services for 100 days in the financial year, **Section 32(2)(b)(ii)** of the Act is satisfied. Accordingly, both contracts with Landscape A and Landscape B are not 'relevant contracts' and payments made under both contracts are not subject to payroll tax.

On the other hand, if Landscape B performed the 95 days of service after Landscape A has completed his 100 days of service, the exemption in **Section 32(2)(b)(ii)** of the 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 Landscape A and Landscape B are 'relevant contracts' under **Section 32** of the Act and payments made under these contracts are subject to payroll tax, unless one of the other exemptions under the contractor provisions applies.

## Exemption 6 **The Commissioner is satisfied that the services are rendered by a contractor who ordinarily renders services of that type to the public generally in that financial year.**

This provision exempts contracts for services that do not meet any of the other five exemptions and the Commissioner is satisfied that the services are rendered by a contractor who ordinarily renders such services to the public generally in that financial year.

In applying this exemption, the Commissioner needs to be satisfied that the contractor provides the services in the course of conducting a genuine independent business, which stands in the market place and actually renders like services to a range of clients in that financial year.

In making this determination, the Commissioner will conduct a broad review of the contractor's business and in so doing will consider numerous issues including:

- ▶ the use of a business name by the contractor;
- ▶ the extent and nature of advertising undertaken by the contractor;
- ▶ the range of clients serviced by the contractor;
- ▶ the extent and nature of plant and equipment provided by the contractor in execution of the services;
- ▶ the engagement of staff or sub-contractors by the contractor;
- ▶ the use of business premises by the contractor;
- ▶ the method of operation of the business (e.g. tendering for jobs);
- ▶ the potential for entrepreneurial risk;
- ▶ the nature of contracts entered into (e.g. formal long-term or informal rolled over contracts);
- ▶ the history of the formation of the contractor's business;
- ▶ how the contractor won the contract;
- ▶ whether the work is performed on separate contracts concurrently;
- ▶ the nature of the contractor's business and the type of services provided;
- ▶ whether the contractor bears the cost and responsibility for faulty materials or workmanship;
- ▶ whether the contractor quotes competitively for jobs on an all inclusive basis (the quotes include all labour and materials); and
- ▶ whether the contractor merely charges for services on an hourly rate and adds on the cost of materials.

This is not an exhaustive list of the issues that the Commissioner will consider in making his determination and no one issue in isolation is necessarily determinative. The Commissioner will consider all the information available and is not limited to considering the financial year under review.

## Commissioner's Ruling

For further information see  
Revenue Ruling PTA021

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 that type to:

1. two or more principals (not being members of a group) during the financial year; and
2. the principal claiming the exemption for an average of 10 days or less per month (excluding the months in which no services were provided).

If a contractor who has supplied services under a contract to a principal in a particular financial year, meets the above criteria, the exemption in **Section 32(2)(b)(iv)** of the Act applies. Under these circumstances, there is no need for the principal to obtain a determination from the Commissioner.

### Example

A computer programmer provided services to a computer software company under a 12 month contract during the financial year as follows:

Month and number of days on which services were performed for the software company:

Month	Number of days on which services were performed for the software company	
	Scenario 1	Scenario 2
July	5	11
August	3	16
September	7	-
October	5	-
November	16	-
December	9	22
January	13	21
February	4	20
March	8	-
April	5	-
May	14	18
June	11	-
<b>TOTAL</b>	<b>100</b>	<b>108</b>

In scenario 1, the contractor worked an average of 8.3 days a month for the software company and payments made by the software company to the programming contractor would be exempt from payroll tax under this ruling.

In scenario 2, the contractor worked an average of 18 days a month for those months in which some work was performed. Consequently, the exemption would not apply under this test.

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Where payments to a contractor are not exempt under this test, a designated person may still seek the exemption under **Section 32(2)(b)(iv)** of the Act by making a written application to the Commissioner.

The application will be considered having regard to all the circumstances of the contract and particularly, the factors listed above.

Having determined that payments under a relevant contract are taxable, the next issue to consider is what amount is to be declared.

Generally, the full amount paid to a contractor is taxable (excluding GST). However, it is recognised that many of the contracts subject to payroll tax involve some element of materials or equipment being supplied by the contractor, although not enough for the labour ancillary exemption to apply.

## Commissioner's ruling

The Commissioner has approved certain deductions for various classes of contracts to reflect a deemed amount for materials and equipment.

The following deductions may be applied against the total payment (excluding GST) where the contractor provides materials and/or equipment. The effect of these deductions is that only the deemed labour component is declared for payroll tax.

For further information see  
[Revenue Ruling PTA018](#)

Type of contractor	Deduction from gross payments to contractor
Architects	5%
Blind and Curtain Fitters	25%
Blind and Curtain Sales Persons	25%
Bricklayers	30%
Building Supervisors (who provide their own vehicles and inspect more than six sites per week)	25%
Cabinet Makers/Kitchen Fitters	30%
Carpenters	25%
Carpet layers	25%
Computer programmers	5%
Draftspersons	5%
Electricians	25%
Engineers	5%
Fencing contractors	25%
Painters (who provide their own paint)	30%
Painters (who do not provide their own paint)	15%
Plasterers	20%
Plumbers	25%
Resilient floor layers/vinyl layers	37%
Roof tillers	25%
Tree fellers	25%
Wall and ceiling plasterers	20%
Wall and Floor Tilers	25%

If a profession/trade is not listed, the designated person or the relevant industry association may submit an application to the Commissioner requesting a deduction to be granted. This application should provide information which allows RevenueSA to distinguish between the labour and the non-labour component costs and enable a percentage deduction to be calculated.

### Example

A contract computer programmer is engaged by a designated person and is paid \$100 000 (excluding GST) in the financial year. The programmer provides some materials and equipment in performing the work under the contract.

Assuming the payments to that contractor are subject to payroll tax, the amount to be declared is \$95 000 (that is, \$100 000 less the 5% approved deduction (\$5 000)).

There are three important points regarding these deductions:

1. they are only available in respect of contractors who provide some materials or equipment to fulfill their duties, and do not apply to employees;
2. the materials or equipment provided by the contractor must not have been purchased from the designated person or a member of the designated person group; and
3. approved deductions are the only allowable method to take account of materials or equipment provided by contractors. Where contractors provide invoices showing separate amounts for the labour and non-labour items, it is the full amount of the invoices which is subject to payroll tax, less any approved deduction. You cannot declare the invoiced labour component only.

The amount or value of wages paid or payable to a person is to be reduced by the relevant proportion of the amount of GST.

Relevant proportion, means the proportion that the amount or value of the wages bears to the total consideration paid under the contract, within the meaning of the GST legislation.

# Anti-avoidance Provisions

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**Section 47** of the Act contains an anti-avoidance provision, which relates to agreements under which payments by an employer for the services of a natural person are paid to another person (i.e. trust, company or partnership) related to that natural person, and the effect of such agreement is to avoid or reduce payroll tax.

The Commissioner may disregard such an agreement and determine any party to be the employer and any payment under the agreement to be wages. A determination under this provision must be in writing and served on the employer setting out all the facts upon which the Commissioner relies and the reasons for making the determination.



# Further Information

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Further information may be obtained from RevenueSA.

<b>Location</b>	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
<b>Postal</b>	Commissioner of State Taxation RevenueSA GPO Box 1353 ADELAIDE SA 5001
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<b>Facsimile</b>	(08) 8226 3805
<b>Email</b>	<a href="mailto:payrolltax@sa.gov.au">payrolltax@sa.gov.au</a>
<b>Website</b>	<a href="http://www.revenuesa.sa.gov.au">www.revenuesa.sa.gov.au</a>