RevenueSA
DEPARTMENT OF TREASURY AND FINANCE

Revenue Ruling

Payroll Tax Act 2009 PTA020

CONTRACTORS
180 DAY EXEMPTION

Preamble

The *Payroll Tax Act 2009* (the "Act"), which commenced on 1 July 2009, rewrote and repealed the *Pay-roll Tax Act 1971* and provides fully harmonised legislation with New South Wales, Victoria, Tasmania and Northern Territory.

Parties to a 'relevant contract' are deemed to be employers and employees (**Sections 33** and **34** of the Act) and payments made under a contract are deemed to be wages (**Section 35** of the Act). Deemed wages are subject to payroll tax under **Section 36** of the Act.

While most contracts for the provision of services come within the meaning of 'relevant contract' under **Section 32** of the Act, certain types of contracts are specifically excluded from the definition of 'relevant contract'. One exclusion is a contract for services of a kind ordinarily required by the principal for less than 180 days in a financial year (**Section 32(2)(b)(ii)** of the Act). Another exclusion 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 (**Section 32(2)(b)(iii)** of the Act).

The purpose of this Revenue Ruling is to explain the 180-day exemption under **Section 32(2)(b)(ii)** of the Act and provide examples to clarify the application of this exemption.

Ruling

The difference between the 180-day exemption and the 90-day exemption is that while the 90-day exemption requires the determination of the number of days an individual contractor provides services to a principal, the 180-day exemption requires a determination of the total number of days a particular type of service is required by the principal (regardless of whether the service has been provided by contractors and/or employees).

From time to time, businesses may require certain ad-hoc services to operate effectively but do not require these services for the whole year. Further, seasonal businesses may require certain essential services to operate effectively but do not require these services for the whole year.

The 180-day exemption focuses on the number of days on which a particular type of service is ordinarily required by the principal in a financial year. Where a particular service is provided by both employees and contractors, the number of days on which such a service is provided to the principal by both the contractors and employees must be taken into account. Services required for part of a day will count as a full day.

The days for which the type of service is required do not have to be consecutive. It is the total number of days for which a particular type of service is ordinarily required during the financial year that is relevant.

In essence, where a type of service is required by an employer for less than 180 days in a financial year, payments to all contractors providing that service are exempt even though an individual contractor may have worked for more than 90 days in the same financial year.

In the following examples, it is assumed that the principals do not engage employees to perform the type of services discussed in the financial year concerned.

Example 1

A security firm in Adelaide engages a number of contract 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 security company are not 'relevant contracts'. Accordingly, 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 2

A building company engages the services of a contract landscape gardener (Landscaper A) to perform landscaping services for 100 days in a financial year. A second contract landscape gardener (Landscaper 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 Landscaper A and Landscaper B are not 'relevant contracts' and payments made under both contracts are not subject to payroll tax.

On the other hand, if Landscaper B performed the 95 days of service after Landscaper 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 Landscaper A and Landscaper 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.

Further Information

Further information can be obtained from RevenueSA.

Location	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
Postal	Commissioner of State Taxation RevenueSA GPO Box 1353 ADELAIDE SA 5001
Telephone	(08) 8204 9880
Facsimile	(08) 8226 3805
Email	payrolltax@sa.gov.au
Website	www.revenuesa.sa.gov.au

History

This Revenue Ruling is effective from 1 July 2009.

This is the first Revenue Ruling issued on this topic.

COMMISSIONER OF STATE TAXATION

1 July 2009