



NSW Payroll Tax Information for Contractors and Employment Agents

Deemed employees

If a relevant contract or employment agency contract is not exempt, the hiring business or employment agency is deemed to be the employer and the contract worker, under that contract, is deemed to be their employee. Any payments made to the contract worker under that contract are deemed to be liable wages.

See Division 7 Contractor provisions and Division 8 Employment agents of the *Payroll Tax Act 2007*.

Contractor provisions (Division 7)

Contracts, which provide for direct payments to contractors and subcontractors for work they perform, are liable for payroll tax under the *Payroll Tax Act 2007* unless the contract is exempt. There are nine exemptions which may apply. Contracts, which are not exempt, are known as relevant contracts and are liable for payroll tax. The contractor provision applies even if the party to the contract is a company or personal service business.

Employment agency contracts are not relevant contracts and are dealt with in Division 8, 'Employment agents' of the *Payroll Tax Act 2007* and, therefore, the contract exemptions are not applicable.

Relevant contracts

A relevant contract is a contract under which the hiring business:

- supplies services relating to work, or
- is supplied with services relating to work, or
- gives out goods to natural persons for the resupply of those goods to the hiring business or another member of a group containing the hiring business.

Contractors – who pays?

All of the payments made by the hiring business for the services of the contractor are deemed to be wages. This includes any fringe benefits or superannuation contributions. The hiring business is deemed to be the liable employer.

When payments are made to a company, trust or partnership, which in turn pays them to the worker, only the hiring business is liable for the tax. The GST component of a contract is not liable. See Section 44 of the *Payroll Tax Act 2007*.

Exempt contracts

Many Australian businesses use contractors instead of common law employees. The contractor provisions were introduced specifically to tax those contracts where the worker is hired as an independent contractor, but works and operates exactly like an employee. Although all contracts are potentially liable, the *Payroll Tax Act 2007* includes nine exemptions for contracts for services. If any of the nine exemptions apply, the contract is not liable.

Contracts that satisfy at least one of the following exemptions do not attract a payroll tax liability:

1. Supply of labour is ancillary to the supply or use of goods owned by a contractor

This exemption recognises that a contractor may provide labour when the supply of goods or the use of goods owned by the contractor is the fundamental object of the contract.

For example, payroll tax is not payable when:

- you contract someone to supply or install an air conditioning system; or
- a contractor uses a backhoe provided by the contractor as part of the contract.

See Section 32 (2)(a) of the *Payroll Tax Act 2007*.

2. Services you do not normally require and provided by a contractor who provides such services to the general public

This exemption recognises many contracts are for services businesses require on an intermittent basis and the service provider provides such services to other businesses and to the public generally.

Example:

- A small retailer engages a shop fitter to refit the interior of the shop. The retailer does not regularly require this service, and the shop fitter provides services to shopkeepers generally, not just the one shopkeeper. If, however, the hiring business operated a large chain of stores and the contractor's services were required for a sequence of contracts over much of a year, the exemption would not apply.

See Section 32 (2)(b)(i) of the *Payroll Tax Act 2007*.

3. Services normally required for less than 180 days in the financial year

This exemption is based on the number of days in a financial year that a business ordinarily requires services of a particular type, whether provided by contractors or employees. If services of that type are provided by contractors and/or employees for more than 180 days, no exemption applies and all the payments are liable.

Example:

- A librarian is contracted for a fixed fee to service a legal firm's library. The contractor works on weekends when the office is closed but chooses her time of work.
- A ski fields operator offers a maintenance contract by tender to repair and maintain various machinery. The contractor is paid a fixed amount to be available for 120 days.

Note: This exemption relates to the business needs of the hiring business, and in no way extends the 90 day exemption, which is based on the period a contractor provides services to a single hiring business.

See Section 32 (2)(b)(ii) of the *Payroll Tax Act 2007*.

4. Services provided for 90 days or less in any one financial year

This exemption applies to contracts where the services are provided for a period or periods, which in aggregate do not exceed 90 days in a financial year. It focuses on the individual who provides the services such that not only are separate engagements of that individual totalled, separate hirings of the individual through corporate or other structures are also totalled.

In any of these circumstances, you must include the total days worked for the hiring business when using this test.

Note: If any work is performed on a calendar day, it counts as a full day towards the 90-day annual total. That is, this exemption does not take account of accrued hours worked, only the total number of days on which services are provided to a hiring business in any given financial year.

Example:

- You employ someone as a concreter in the first instance and as a cement mixer operator in the second, and they provide the same type of services on each occasion. Both terms of service must be combined for the purposes of calculating the total days worked.
- If 'A Pty Ltd' and 'B Pty Ltd' provide similar services to you, and the people doing the work are the same, the services of both businesses must be combined for the purposes of calculating total days worked.

When a contractor has worked for 80 days only, the contract is not liable for payroll tax.

If the contractor works a further 11 days later in the year, then the contract will become liable for payroll tax.

Payroll tax is payable on payments relating to the full 91 days and liability is calculated back to day one.

You would only have to pay the payroll tax when the 90 days is exceeded and would not have to amend previous monthly returns.

See Section 32 (2) (b) (iii) of the *Payroll Tax Act 2007*.

5. A contractor who does not qualify under the above headings but the Chief Commissioner is satisfied the contractor provides services of that type to the public generally within that financial year

This exemption allows for contracts to be exempt in situations when exemptions 1 to 4 have not applied. To qualify for an exemption, each case must be referred to the Chief Commissioner of State Revenue who will decide whether or not the contract should be exempt.

In making a determination, the Chief Commissioner of State Revenue will review the nature of the contractor's business and will consider various issues including:

- a listing of other clients to whom similar services have been provided by the contractor
- the time spent within the last year when services of that type were provided to other businesses
- the extent and nature of advertising undertaken by the contractor
- the nature of the contractor's business and the type of services provided.

None of the above factors is conclusive on its own. The above is not an exhaustive list of factors that the Chief Commissioner will take into account in exercising his discretion under Section 32(2)(b)(iv) of the Act. He will also consider any other matters that are relevant to his decision.

However, the Chief 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:

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

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

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 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 Chief Commissioner.

Example:

- A carpenter is engaged by several builders throughout the year, but does more than 90 days work with one hiring business.
- The hiring business may apply for an exemption under this provision.

See Section 32 (2) (b) (iv) of the *Payroll Tax Act 2007*.

6. Contractors engaging labour to fulfil the contract

This exempts payments to contractors who engage other people to do all or part of the work of the contract. There must be two or more persons engaged by the contractor to provide the service before this exemption will apply.

Contracts would not attract payroll tax where:

- the contractor is a corporation (or partnership including corporations) which engages two or more people to do the actual work under the contract
- the contractor is a partnership of individual people and the work is performed by one or more partners, plus one or more people engaged by the partnership for this purpose

Note: This exemption will not apply if the work under the contract is performed only by partners

- the contractor who provides the services is a sole trader and that person, together with at least one other person engaged by the sole trader, does the actual work required.

In all cases, the person engaged must perform the work that is the object of the contract. It would not be sufficient for a spouse performing purely clerical work to satisfy the exemption provisions, as he or she would not be engaged in the work to which the contract relates.

Example:

- A person is contracted to clean a building for a year and in order to fulfil the contract engages two additional people to clean the building. As the contractor is using two additional workers to perform the core work of the contract, payments by the building owner to the contractor would be exempt. It should be noted that if a contractor retained a large number of subcontractors, that contractor could become a liable employer in his or her own account.

- If a person is employed to complete purely clerical tasks for a contractor undertaking a painting contract, the contract would not be exempt from payroll tax as the clerical job function does not relate directly to painting.

This exemption will not apply where the Chief Commissioner of State Revenue determines that any part of the arrangement was entered into with the intention of avoiding payment of tax.

See Section 32 (2) (c) of the *Payroll Tax Act 2007*.

7. Contractor conveys goods in a vehicle they provide

A contract for goods being delivered, transported or provided is not liable under the following criteria:

- the owner driver is not a common law employee
- provides their own vehicle
- the primary purpose of the contract must be to convey goods.

See Section 32 (2)(d)(i) of the *Payroll Tax Act 2007*.

8. Contractor provides services by procuring persons for insurance coverage

The services related to providing insurance coverage are not liable under the following criteria:

- the insurance agent is not a common law employee
- agent must be a genuine independent contractor conducting an agency business.

Note: Exemption applies only to commissions from the sale of insurance.

See Section 32 (2)(d)(ii) of the *Payroll Tax Act 2007*.

9. Contractor sells goods door to door solely for domestic purposes

Contracts under which a person who sells goods door to door to households on behalf of a business is not liable under the following criteria:

- direct selling agent is not a common law employee
- agent has an agreement to sell directly to the public
- sales must be made at the place of residence or employment of the buyer
- sales must be made to the ultimate consumer.

See Section 32 (2)(d)(iii) of the *Payroll Tax Act 2007*.

The amount payable

All of the payments made by the hiring business for the services of the contractor are deemed to be wages. This includes any fringe benefits, superannuation contributions and termination payments. The GST component of a contract is not liable. The hiring business is deemed to be the liable employer.

When payments are made to a company, trust or partnership, which in turn pays them to the individual worker, only the hiring business is liable for the tax.

Only the labour component of a relevant contract is a wage, **not** materials provided by the contractor. The Chief Commissioner accepts the assumed material component but only when provided by the contractor. No reduction applies for other costs such as transport or home office etc incurred by the contractor.

The following table contains agreed percentage deductions for listed trades.

Trade	Labour content (%)
Architects	5
Blind fitters	25
Bricklayers	30
Building supervisors who provide their own vehicles and inspect more than 6 sites per week	25
Cabinet makers/Kitchen fitters	30
Carpet layers	25
Carpenters	25
Computer programmers	5
Draft persons	5
Electricians	25
Engineers	5
Fencing contractors	25
Painters who provide their own paint	30
Painters who do not provide their own paint	15
Plumbers	25
Resilient floor/Vinyl layers	37
Roof tilers	25
Tree fellers	25
Wall and ceiling plasters	20
Wall and floor tilers	25

You will need to provide relevant details if you believe a lesser percentage applies to labour in your contract, or you consider an allowance should be made for a trade not listed in the above table.

Employment agency contracts (Division 8)

Employment agency or labour hire firm contracts are contracts where a person (the employment agent) procures the services of another person (contract worker) for a client of the agency. However the contract is not an employment agency contract if it results in a contract of employment between the client of the agency and the contract worker.

See Section 37 *Payroll tax Act 2007*.

MORE INFORMATION



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What is liable?

All of the payments made by the employment agency for the services of the contract worker are deemed to be wages on which payroll tax is payable. This includes any fringe benefits or superannuation contributions. The agency is deemed to be the employer liable for the tax to the exclusion of any other party to the contract.

Example:

A business pays an agency Mighty Fine Executives Pty Ltd \$750 000 a year for the services on Peter Green. The agency pays Green Pty Ltd \$700 000 which then pays the \$700 000 to Peter Green its only employee. The only liable employer is Mighty Fine Executives Pty Ltd.

Although the agency is the liable employer, an agency is not liable for the payments made under an agency contract when the payments would have been exempt if paid by the client. This means the client must be an exempt employer under Part 4 'exemptions' in the *Payroll Tax Act 2007*. The payments under the contract are not exempt, however, until the client provides a declaration regarding its exemption on an approved form to the agency.

Who is liable?

When payments are made to a company, trust or partnership, which in turn pays them to the worker, only the agency is liable for the tax.

See Section 37 of the *Payroll Tax Act 2007*.

Agreement to reduce or avoid liability to payroll tax

If the effect of an employment agency contract is to reduce or avoid the liability of any party to the contract to payroll tax, the Chief Commissioner may disregard the contract and determine that any party to the contract is the employer and that any payment is wages.

If agencies or labour hire firms wish to claim the exemption for exempt clients, they must obtain a genuine, completed and signed OSR declaration, available from www.osr.nsw.gov.au, from the client of the agency.

Exempt agency clients

For information regarding payroll tax exemptions under Part 4 of the *Payroll Tax Act 2007*, see the exemption factsheet available from www.osr.nsw.gov.au

Online services

Our online payroll tax tools help you:

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- lodge your annual reconciliation
- lodge a 'nil return'
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