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**Public Ruling**

**Payroll Tax Act—Harmonised:**

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**CONTRACTORS WHO ORDINARILY  
PERFORM SERVICES TO THE PUBLIC**

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*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

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1. The purpose of this public ruling is to explain how s.13B(2)(b)(iv) of the *Payroll Tax Act 1971* (Payroll Tax Act) applies to exclude a contract from the definition of ‘relevant contract’ for the purposes of the contractor provisions in Part 2, Division 1A of the Payroll Tax Act (contractor provisions).
2. PTA021.3 replaces the earlier versions of PTA021 to address the decision in *Nationwide Towing & Transport Pty Ltd & Ors v Commissioner of State Revenue* [2018] VSC 262. The effect of that case is that the Commissioner does not need to be satisfied that a contractor conducts a genuine independent business to exclude the contract under s.13B(2)(b)(iv) of the Payroll Tax Act. PTA021.3 removes that requirement and clarifies the application of the exclusion under s.13B(2)(b)(iv).
3. A contract between a principal and a contractor may be a ‘relevant contract’ under the contractor provisions.
4. If the contract is a relevant contract, the principal who engages the contractor is deemed to be an employer, the contractor is deemed to be an employee and payments made under the contract for the performance of work are deemed to be wages.<sup>1</sup> Deemed wages are wages and are taxable in Queensland if they meet the nexus provisions of the Payroll Tax Act. Taxable wages are subject to payroll tax under s.10 of the Payroll Tax Act.
5. Whereas most contracts for the provision of services come within the meaning of relevant contract under s.13B(1) of the Payroll Tax Act, a contract is not a relevant contract if any of the exclusions under s.13B(2) applies.

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<sup>1</sup> Sections 13C, 13D and 13E of the Payroll Tax Act

6. If a contract is not excluded under any of the exclusions under s.13B(2)(b)(i) to (iii) of the Payroll Tax Act, the exclusion in s.13B(2)(b)(iv) may apply. Section 13B(2)(b)(iv) provides that a contract is not a 'relevant contract' in relation to a financial year if the Commissioner is satisfied that the person who performed the services under the contract ordinarily performs services of that kind to the public generally in that financial year.

## **Ruling and explanation**

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### **Factors that may be relevant to the exclusion**

7. In determining whether a contractor who performed services under a contract ordinarily performs services of that kind to the public generally in a financial year, the Commissioner will consider a range of factors in the context of the contractor's particular circumstances. The Commissioner considers that the following factors may be relevant and would generally support a finding that the exclusion applies:
  - (a) The contractor provides the same type of services to a range of principals in the financial year (however, providing the same type of service to members of the same payroll tax group is not a strong factor supporting a finding that the contract is not a relevant contract).
  - (b) The contractor derives income from principals other than the principal claiming the exclusion in the financial year. The case of exclusion is stronger when the proportion of the contractor's income obtained from other principals is greater.
  - (c) The contractor enters into contracts that do not tie the contractor to the principal and do not restrict the contractor from providing the same type of services to other principals in the financial year.
  - (d) The contractor is proactive in sourcing work from a range of principals in the financial year; for example, by advertising to the public. However, merely advertising to the public without actually providing services to the public is not a strong factor supporting a finding that contract is not a relevant contract.
  - (e) The contractor performs work on separate contracts with separate principals concurrently in the financial year.
8. None of the above factors is conclusive on its own. In addition to the above list of factors, the Commissioner will also consider any other factors that are relevant to the particular circumstances. In some circumstances, the Commissioner may determine that the exclusion applies to a contract for one financial year but not another financial year. In such cases, the exclusion will only apply to the amounts paid or payable under the contract in the financial year in which the Commissioner has determined that the exclusion applies.

### *Example 1*

Amy is an electrician. She does not advertise and instead tends to learn about jobs through word of mouth. Amy typically provides services to the same principal for relatively long periods. She does not work for other principals concurrently. During a financial year, Amy provides services to Principal A only. Based on these facts, the Commissioner is not satisfied that Amy ordinarily provides electrical services to the public generally in that financial year, and as a result the payments made by Principal A to Amy for the performance of work are wages subject to payroll tax.

*Example 2*

Oliver is a carpenter. He tenders for small advertised jobs. During the first half of a financial year, Oliver concurrently provides carpentry services to three principals; and during the second half of the financial year, he provides carpentry services to one principal only. Based on these facts, the Commissioner is satisfied that Oliver ordinarily provides carpentry services to the public generally in the financial year, and as a result the payments made by each principal to Oliver for the performance of work in that financial year are not wages subject to payroll tax.

**Determination from the Commissioner**

9. A principal may apply to the Commissioner for an exclusion determination under s.13B(2)(b)(iv) of the Payroll Tax Act.
10. In applying to the Commissioner for a determination, the principal should include all the information and documentation available to the principal that would assist the Commissioner in determining whether the contractor performing services under the contract ordinarily performs services of that kind to the public generally in the relevant financial years.
11. In determining whether the exclusion under s.13B(2)(b)(iv) of the Payroll Tax Act applies, the Commissioner may also obtain and consider information directly from the contractor, as well as from other sources, such as the Australian Taxation Office and WorkCover Queensland.

**The 10 days or less per month method**

12. The Commissioner will accept that a contract is excluded under s.13B(2)(b)(iv) of the Payroll Tax Act in the following circumstances, in which case the principal can exclude the payments made to the contractor from its taxable wages without obtaining a determination from the Commissioner. The circumstances are where:
  - (a) the contractor provides services of the same type to the principal claiming the exclusion and to one or more other principals (not being members of a group) during the financial year
  - (b) the contractor provides services of that type to the principal claiming the exclusion for an average of 10 days or less per month (excluding the months in which no services were provided to that principal).<sup>2</sup>

*Example 3*

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

<b>Month</b>	<b>Number of days worked for Principal B</b>
July	5
August	3
September	7

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<sup>2</sup> Public Ruling PTA014 explains what constitutes a day's work for a contractor.

<b>Month</b>	<b>Number of days worked for Principal B</b>
October	5
November	16
December	9
January	13
February	4
March	8
April	5
May	14
June	11
<b>Total</b>	<b>100</b>

In that financial year, Michael worked for a total of 100 days for Principal B, which is an average of 8.3 days per month (100 days ÷ 12 months). As a result, the Commissioner will be satisfied that Michael ordinarily performed services of that kind to the public generally in that financial year.

Principal B can exclude the payments it makes to Michael from its taxable wages without seeking a determination from the Commissioner.

*Example 4*

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

<b>Month</b>	<b>Number of days worked for Principal D</b>
July	11
August	16
September	–
October	–
November	–
December	22
January	21
February	20
March	–
April	–

Month	Number of days worked for Principal D
May	18
June	–
<b>Total</b>	<b>108</b>

In that financial year, Shelly worked for a total of 108 days for Principal D. This worked out to be 18 days per month (108 days ÷ 6 months). The circumstances do not meet the criteria for Principal D to exclude the payments to Shelly from its taxable wages without seeking a determination from the Commissioner.

### Record keeping requirement

13. Principals must keep all records necessary to enable a payroll tax liability to be ascertained (including records that substantiate an exclusion) for a period of five years.<sup>3</sup>

## Date of effect

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14. This public ruling takes effect from the date of issue.

Mark Jackson  
 Commissioner of State Revenue  
 Date of issue: 17 December 2020

## References

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Public Ruling	Issued	Dates of effect	
		From	To
PTA021.3	17 December 2020	17 December 2020	Current
PTA021.2	1 July 2019	1 July 2019	16 December 2020
PTA021.1	18 February 2013	1 July 2008	30 June 2019

<sup>3</sup> Sections 114 and 118 of the *Taxation Administration Act 2001*