



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. PT 5

Relevant Contracts - Contracts of Service Employer/Employee Relationships/Employment Agents

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PT 5	02 September, 1986	01 April 1986	30 June 2007	Obsolete

Preamble

- 1 Section 3A(1) of the Pay-roll Tax Act, 1971 defines a **relevant contract** for the purposes of pay-roll tax liability. The provision specifically excludes a **contract of service** and, while payments made under both these types of contract attract pay-roll tax, it is important to distinguish between the two.
- 2 Arrangements that fall into the definition of a relevant contract relate mainly to contractors and subcontractors whereas contracts of service relate to employer/employee relationships even though the arrangements may be temporary.
- 3 In some circumstances payments to independent contractors fall outside the definition of a relevant contract and thereby do not attract pay-roll tax, whereas all payments made under a contract of service are liable without exception.
- 4 In general terms, a contract of service is an arrangement whereby a worker is paid for hours/weeks/months worked and where the person paying the worker has a sufficient degree of control to create an employer/employee relationship. A relevant contract on the other hand relates to agreements for the supply of services or performance of work where payments are made for the completion of a particular job regardless of the time taken, or methods used, to complete the job.
- 5 Relevant contracts are the subject of Ruling PT 4 but this ruling distinguishes those contracts from contracts of service.

Ruling

- 6 The interpretation of a contract of service is based on the principles of common law. If an employer/employee relationship exists there is a contract of service and the recipient is an "employee as such" for the purposes of the definition of wages under the Pay-roll Tax Act.
- 7 The primary test for an employer/employee relationship is control. Control includes the power of deciding the thing to be done, the means to be employed in doing it, the time when and the place where it shall be done. It should be noted that the factor of control has become less important due to technological changes which have necessitated highly specialised skills, as well as changes in organisational structures and management philosophies.
- 8 If the existence of an employer/employee relationship is not conclusive from the extent of control then the degree of integration will be considered. Under this test it is necessary to determine whether the worker is carrying on a business or is merely part of the operations of the principal. If the relationship is a continuing one or the worker has only the one principal, it is likely that an employer/employee relationship exists. A further consideration is whether a

worker is integrated to such an extent that increases in productivity directly benefit the principal's business rather than the worker.

- 9 Any written contractual agreement evidencing the terms and conditions under which the work is performed would be taken into account. An overriding consideration, however, is whether or not the parties operate in accordance with the written contract.
- 10 It should be noted that the courts have decided that a declaration in the contract that the worker is an independent contractor or an agent or simply that the parties are not to be regarded as employer/employee will not be conclusive of the actual relationship between the parties. The facts of the relationship will be viewed in their entirety and only if an ambiguity exists will such a declaration be conclusive.
- 11 Income Tax Ruling IT 2129 issued by the Commissioner of Taxation includes a series of practical working tests that may be applied to determine whether an employer/employee relationship exists and provides a useful reference.
- 12 The position of contracts involving employment agents has been raised by a number of taxpayers. Where a worker is remunerated by arrangement through an employment agent, the agent is liable for pay-roll tax on such payments - refer to paragraph (f) of the definition of "wages". If the worker, on the other hand, dispenses with the services of the employment agent but works for a principal **under the same conditions** i.e. remuneration is determined on a hourly/weekly/monthly basis, etc., there is every likelihood that a contract of service exists. In these circumstances, pay-roll tax liability would be attracted from the first day of the contract and the principal could not seek to be excluded under the relevant contract provisions, i.e. the 90 day rule, for example, would not apply.¹
- 13 Employers are reminded that failure to pay pay-roll tax on wages attracts additional tax of up to 200 per cent of the tax evaded. (The Chief Commissioner may remit or reduce such penalties, and Ruling PT 1 sets out the guidelines under which this power will be exercised.)
- 14 Employers who are in doubt as to whether a contract of service exists should therefore seek a ruling from the Department of Finance. Written requests should include all the circumstances relating to the contract in question.

A D Clyne,
Chief Commissioner of Pay-roll Tax.
2 September, 1986

¹ Paragraph 12 applies only up to 31 December 1998. from 1 January 1999, See Section 3C of the Pay-roll Tax Act 1971