

# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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## 12 | Payroll Tax Contractor Provisions

Payments to contractors are subject to payroll tax if paid under a 'relevant contract' without an exemption. This single sentence is full of issues. Who is a contractor? What is a relevant contract? What exemptions apply? Mistakes can cost a business a lot of money.

The general contractor provisions apply across Australia (except WA). So even if you are outside of NSW, the general provisions may still apply. It is just the specific exemptions that differ from state to state or territory.

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### Payroll Tax Contractor Provisions

In theory it sounds all easy. Payments to contractors are subject to payroll tax if paid under a 'relevant contract'.

Contractors are obviously contractors, but can also be subcontractors, agents, consultants or any other title and can be a natural person or corporate entity.

And a 'relevant contract' is a contract where a person pays another person for services and :

1. the payment for services is taken to be a wage, and
2. the person paying that wage is taken to be an employer, and
3. the natural person who actually performs the work is taken to be an employee, and the contract does not fall into one of the contractor exemptions.

The contractor provisions are mainly about these exemptions. If an exemption applies, no payroll tax. If it doesn't, payroll tax. As a rough rule of thumb.

A service contract is not a relevant contract if it falls under one of the following general contractor exemptions. If any of these exemptions apply, the contract is not a relevant contract and there is no payroll tax.

#### # 1 Services ancillary to the provision of goods or use of goods

A contract is not a relevant contract if the labour provided under the contract is ancillary to the supply or use of goods.

#### # 2 Services not ordinarily required and contractor supplies such services to the general public

The purpose of such a contract must be to secure services that a business does not ordinarily require and the person that provides those services must supply the same type of services to the general public in that financial year.

### **# 3 Services ordinarily required for less than 180 days in a financial year**

An exemption applies if a business does not ordinarily require these services and if uses these services for 179 days a year or less.

### **# 4 Services provided for 90 days or less in a financial year**

If workers work for the hiring business for less than 90 days in the financial year, this exemption applies. After 90 days, the entire contract becomes relevant from day one (1) unless one of the other provisions apply.

### **# 5 Services generally supplied by the contractor to the public**

A taxpayer may apply for this provision when the first four exemption provisions do not apply. The Chief Commissioner can exclude the contract when satisfied based on evidence provided that the contractor provides services of that type to the general public during the financial year. The contractor must have actually provided services to the public – simply being available to provide them is not enough.

### **# 6 Services performed by two or more people**

A contract is not a relevant contract if the contractor engages others to provide the services or the service requires two or more people to provide. This exemption can be denied if determined that it was entered into with the intention of avoiding payroll tax.

So these are the six general provisions that apply across Australia (apart from WA) thanks to harmonisation.

The specific exemptions differ from state to state or territory. NSW just got one specific exemption, others have three or none at all. Here is the specific exemption for NSW.

### **# 7 Services provided by an owner-driver**

If the contract is solely for the conveyance of goods in a vehicle provided by the contractor the contract is not a relevant contract. The contractor must own or lease the vehicle as a vehicle and must not be an employee. This exemption plays a big role in the transport industry covering all owner-drivers.

## **Employer substantiation**

If there is evidence that a contract for services is not a relevant contract, there is no payroll tax. Without evidence, the contractor provisions apply. So the payment is taken to be a wage, the person paying that wage is taken to be an employer and the person who performs the work is taken to be an employee.

The onus of proving that any of the exemptions apply rests with an employer. They must be able to provide documentation to substantiate that a contract is not a relevant contract.

So this is a rough overview of the contractor provisions for payroll tax.

For more detailed information, please refer to the website for your state or territory: [NSW](#) – [Victoria](#) – [Queensland](#) – [Tasmania](#) – [South Australia](#) – [ACT](#) – [Northern Territory](#)

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