

PAYROLL TAX

COMMON ERRORS

Employers are making

Employers often make the following errors when calculating their payroll tax liability:

Contractors

Contractors vs employees

You must consider the full relationship when deciding if your contractor is really an employee. This includes the following factors:

1. The degree of control that the business operator can exercise over the worker.
2. The nature of the relationship between the parties.
3. The purpose of a contract is to achieve a 'given result'.
4. The worker is conducting their own business as distinct from participating in the business of the business operator.
5. The right to delegate is initiated and carried out by the worker and not controlled by the business operator.
6. The worker bears the commercial risk and responsibility for rectification and injury.

7. The provision of tools, equipment and assets without reimbursement or an allowance being paid.

8. Other factors detailed in [Revenue Ruling PTA 038](#).

Even if the contract says they are an independent contractor, they may still be an employee and the contractor exemptions will not apply.

Having an ABN does not automatically mean that a worker is a contractor.

Contractor exemption – 180 days vs 90 days rule

The [180 day exemption](#) focuses on the type of services the business uses. The [90 day exemption](#) focuses on the contractor and the number of days they provide their services. The 180-day exemption does not extend the 90-day exemption.

Contractor exemption – services approved by the Commissioner as exempt - ordinarily rendering services to the public

A contract is [exempt](#) from payroll tax if the contractor provided services of that type to:

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

Contractor exemption – contractors engaging labour

Payments made to a contractor are [exempt](#) if they engage two or more workers to provide the contracted services. For the exemption to apply, the services performed must be for that contract only.

For more information, read the [contractors](#) page.

Grouping

Failing to recognise grouping of employers

For payroll tax purposes, businesses can be grouped with other businesses if there is a link between the companies. [Grouping](#) can occur regardless of where the businesses operate. Grouping has important

implications for calculating threshold entitlements.

Where a group exists:

- the [threshold entitlement](#) is based on the proportion of NSW wages against total Australian wages
- a single threshold deduction applies to the group
- every member of the group is liable for any outstanding payroll tax of other group members.

Employment agencies

If you are an [employment agent](#), you are liable for payroll tax on wages you pay to workers. The relevant contractor provisions are not applicable where a worker is provided under an employment agency contract.

What should I do if I find an error?

If you fail to include all liable amounts in your monthly payroll tax returns for the current financial year, you should ensure these amounts are included in your Annual Reconciliation Return. Contact us to disclose any errors.



P | (02) 4225 7779
 E | solutions@bwaccounting.net.au
 W | www.bwaccounting.net.au
 2/73 Market Street, Wollongong NSW 2500

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