

IT 2058 - Prescribed payments system : interpretation and operation

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TAXATION RULING NO. IT 2058

PRESCRIBED PAYMENTS SYSTEM : INTERPRETATION AND
OPERATION

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
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	PRESCRIBED PAYMENTS	221 YHD
	SYSTEM	221 YHQ
		221 YHR
	PRESCRIBED PAYMENT	REG. 54ZEB
	PRESCRIBED PERSON	REG. 54ZEB

OTHER RULINGS ON TOPIC: IT 2056

PREAMBLE 1. The purpose of this ruling is to elaborate on some of the major issues dealt with in Taxation Ruling IT 2056 and to clarify other matters of significance in relation to the interpretation and operation of the Prescribed Payments System (Division 3A of Part VI of the Income Tax Assessment Act 1936 and Division 3A of Part VI of the Income Tax Regulations), which have been raised since that Ruling was issued.

RULING Prescribed Payment

2. The principle contained in paragraph 2(b) of Taxation Ruling No. IT 2056 also applies for the purpose of determining whether a payment is a prescribed payment in accordance with regulation 54ZEB. Thus, any payment made or liable to be made under a contract the performance of which, in whole or in part, involves the performance of work that consists of the carrying out of any activity specified in sub-regulation 54ZEB(2) or (3), would be a prescribed payment, even though that activity may only be a minor part of the work that is to be performed under the contract, e.g., a single contract for the construction of a major industrial plant which also includes construction of buildings and roads or a single contract for the development of land for sale which also includes road making activities. If, however, separate contracts exist for the specified activities, it would only be payments under these contracts that would be prescribed payments.

3. One of the requirements to be satisfied in determining whether a payment is a prescribed payment under sub-regulation 54ZEB(1) is that the payment is made or is liable to be made under a contract that involves the performance of specified activities. In this regard, consideration has been given to the effect of the Queensland Subcontractors' Charges Act 1974 which,

in certain situations, secures payment of moneys owed to sub-contractors.

4. Where a sub-contractor is entitled to be paid for work he has performed under a contract with a contractor he may in certain circumstances, by virtue of this Act, secure payment for that work by, in broad terms, claiming a charge over moneys payable to the contractor by the contractor's client.

5. In effect, the payment which the contractor is liable to make under his contract with the sub-contractor is instead made by the client direct to the sub-contractor. By making this payment the client at the same time discharges his liability to pay an equal amount under his contract with the contractor. For example, the client may be liable to pay \$1000 to the contractor who in turn is liable to pay \$800 to the sub-contractor. The contractor holds a certificate varying the rate of deduction under the PPS to 3 per cent, while the sub-contractor holds no such certificate, and is therefore subject to deduction at the rate of 10 per cent. If the amounts to which the contractor and sub-contractor were entitled under their contracts were paid in the normal course, the client would have paid \$970 to the contractor and remitted \$30 to the Taxation Office, and the contractor would have paid \$720 to the sub-contractor and remitted \$80 to the Taxation Office.

6. Where, however, a charge is taken by the sub-contractor under the Queensland law in respect of the payment to which he is entitled in the above example, the payments and the amounts to be deducted therefrom under the PPS will be :

Payment to which contractor entitled under contract with client		1,000
less part of liability discharged by client's payment direct to sub-contractor	800	
less paid in cash to contractor	170	
PPS deduction on account of contractor (3% of 1,000)	30	1,000
Payment to which sub-contractor entitled under contract with contractor		800
Paid in cash by client	720	
PPS deduction on account of sub-contractor (10% of 800)	80	800

7. That is, the client will pay a total of \$1,000 made up of \$170 to the contractor, \$720 to the sub-contractor and \$110 to the Taxation Office. Of the \$110 paid to the Taxation Office, \$80 will have been paid on behalf of the contractor who, as the person liable under his contract with the sub-contractor

to pay the \$800 to which the sub-contractor was so entitled, is the eligible paying authority in relation to the sub-contractor. In that situation, it will be necessary for the client, acting in the name and on behalf of the contractor, to complete and lodge the deduction form and a reconciliation statement in respect of his payment to the sub-contractor.

Agency test

8. The operation of the agency test to treat certain persons as prescribed persons under sub-regulation 54ZEB(4) in respect of activities referred to in sub-regulations 54ZEB(2) and (3) was discussed in paragraphs 6 to 10 of Taxation Ruling IT 2056 and in Schedule 'A' to the Prescribed Payments System Information Booklet. There remain, however, some aspects of the application of this test on which further clarification has been sought, particularly in relation to certain real estate agents and property managers, and to stock and station agents.

9. Whether the agency test will apply to treat a person as a prescribed person in relation to particular payments made essentially turns upon the contractual relationships that person has established with the clients of his business and with the contractors to whom payments of a kind specified in the regulations are made. Taking first the situation where a person who carries on a business involving rental of real estate for client property owners makes payments to, e.g., cleaners for the cleaning of clients' premises - if that business did no more than act as agent, for commission, on behalf of the principal for whom the work is actually performed, payments made by the business on behalf of the principal would not be prescribed payments. If, however, that business contracted with the client property owner to provide cleaning services, and then separately contracts with a cleaning contractor for performance of that work for the business, payments made to the cleaning contractor by that business would be prescribed payments.

10. Similar considerations are also relevant in relation to payments made by stock and station agents to road transport operators in respect of the transportation of graziers' stock and produce to market (eg cattle to a sale). In circumstances where a stock and station agent, acting on behalf of the grazier, arranges a contract between the grazier and the transport operator for the latter to transport the grazier's stock or produce to a market, a payment made to the transport operator by the stock and station agent on behalf of the grazier out of the proceeds of the sale of the stock would not be a prescribed payment. On the other hand, if the stock and station agent contracted with a grazier to provide transportation of his stock to market and the agent then separately contracted with the road transport operator to transport that stock on the agent's behalf, a payment by the agent to the road transport operator would be a prescribed payment.

11. The application of these principles is also relevant to the activities of service trusts operated in connection with the

conduct of professional practices, etc. in relation to, e.g., cleaning contracts and motor vehicle repairs where the property or motor vehicles are owned or leased by the practitioners and not by the trust, but the trust has contracted to furnish or arrange cleaning or repair services in respect of such assets. In such a case, the service trust would be a prescribed person, and payments by it to a cleaning contractor or motor vehicle repairer would be prescribed payments.

12. The same rules would apply where a building owner undertakes with his tenants to furnish or arrange cleaning services for parts of the building occupied by them, i.e., payments made by the owner to whom the cleaning work has been contracted would be prescribed payments. If, however, the terms of the lease were such that the building owner was required to provide tenants with cleaned premises on an on-going basis, payments made by the owner to contract cleaners would not be prescribed payments.

Prescribed person

13. One test that is common to each of the paragraphs of sub-regulation 54ZEB(4) is that a person will be a prescribed person if he carries on a business which consists in part of the carrying out of one or more of the activities referred to in sub-regulation 54ZEB(2) or (3). However, a person will only be a prescribed person by virtue of the operation of this particular test to the extent that the particular activities are carried out for another person. As noted in Schedule A of the Prescribed Payments System Information Booklet, payments made by businesses in carrying out motor vehicle repairs or cleaning solely for their own purposes would not be prescribed payments. If, however, such activities were also carried out for other persons, payments made in relation to the work so carried out for other persons would be prescribed payments. In another application of this test, payments made by a firm engaged in a specialist area of motor vehicle repairs in connection with repairs to its own fleet of motor vehicles which it has sub-contracted to others would not be prescribed payments. Similarly, a person who carries on a business that consists of carrying out road transport activities, would not make prescribed payments if another area of that business that is unrelated to the carrying out of those activities engaged a road transport operator to perform services for it, e.g., payments for waste removal.

14. Under sub-sub-paragraph 54ZEB(4) (h) (iii) (B), a person is a prescribed person, in respect of certain payments for motor vehicle repairs, where that person is carrying on a business that consists in part of the carrying out of motor vehicle repairs in connection with a motor vehicle that is to be sold by that person. As indicated in Schedule A to the Prescribed Payments System Information Booklet, the purpose of this test is to treat as prescribed payments, payments made by new and used car dealers for repairs of vehicles that are to be sold by them.

15. It is, of course, normal practice for any business to

ensure that its own motor vehicles are serviced, to maintain those vehicles in a saleable condition, and, where necessary, to bring those vehicles to such a condition prior to replacing them by sale. The test contained in the abovementioned paragraph does not operate to treat a person as a prescribed person under paragraph 54ZEB(4)(h) in relation to a payment for motor vehicle repairs where the motor vehicle in question is an item of plant of the business of a person. That is, it is only where repairs are made to a motor vehicle that is an item of trading stock of a business, that a payment made by the person carrying on that business for those repairs would be a prescribed payment by virtue of sub-sub-paragraph 54ZEB(4)(h)(iii)(B).

Structure

16. Further to paragraphs 11 to 15 of Taxation Ruling No. IT 2056, it has been accepted that sculptures, statues, carvings and similar artistic works are not structures for the purposes of the Prescribed Payments System.

Installation of systems or devices, etc, in a structure

17. It has been confirmed that the installation in, or fixing or fitting to, a building of the following items:

- (a) patio covers;
- (b) window awnings;
- (c) screens and screen doors;
- (d) curtain tracks and curtains;
- (e) venetian blinds (including those installed between the panes of glass in double glazed windows); and
- (f) carpets and other floor coverings

are all activities to which sub-regulation 54ZEB(2) applies.

Motor vehicle repairs

18. Paragraph 54ZEB(3)(g) which describes various motor vehicle repair activities, does not apply in relation to the retreading of motor vehicle tyres which is regarded as a manufacturing process. For similar reasons, payments made for the construction and installation of special fittings, etc, for modification to, and for installation of accessories in, new vehicles are not prescribed payments.

19. It is also confirmed that payments made by motorists' organisations to agents for the provision by them of roadside services to members of those organisations are not prescribed payments.

Production of exemption or variation certificates

20. Where a payee has properly furnished a deduction form to an eligible paying authority and the payment is to be made to the payee in person, sub-section 221YHQ(9) requires that, inter alia, the payee must produce to the eligible paying authority the deduction exemption certificate before a prescribed payment may be made without deduction of tax. It has been accepted that, where an employee of a payee delivers on behalf of his employer a deduction form in relation to a payment that is to be made on completion of the work by the employee, the payment is not being made to the payee "in person" for the purposes of sub-section 221YHQ(9), and the employee is not required to produce his employer's exemption certificate before the prescribed payment is made. The same rule applies in the application of sub-paragraph 221 YHD(5)(a)(ii) in relation to payments made to the holder of a deduction variation certificate.

Lodgment of Reconciliation Forms

21. In terms of sub-section 221YHD(1) a payer is required to complete a reconciliation form in relation to all prescribed payments made during a month and forward this form together with the original of the deduction forms and tax deducted (if any) to the Taxation Office within 14 days of the end of the month in which the payments are made.

22. Some payers, particularly large organisations operating nationally who regularly make a substantial number of payments through autonomous divisions or branches located in centres through more than one State or Territory have indicated that they would experience difficulty in drawing to a central location all the appropriate completed deduction forms in order to complete the one reconciliation action and lodge the reconciliation form within the time required.

23. To assist payers whose businesses operate along these lines, approval will be given, by arrangement with the Taxation Office, for a reconciliation form to be lodged each month by the payer's respective divisions or branches. For example, an organisation making payments through outlets in Brisbane, Melbourne and Perth may be given approval for each outlet to complete a reconciliation form in respect of payments it makes, and lodge the completed reconciliation form with the respective Deputy Commissioner's office in Brisbane, Melbourne and Perth. Similarly, an organisation having completely autonomous divisions centred in, say, Melbourne, may make application for each division to lodge a monthly reconciliation form in respect of payments it makes with the Deputy Commissioner, Melbourne.

24. Payers wishing to avail themselves of this arrangement should contact the main office of the Deputy Commissioner with whom they lodged their Paying Authority Notification Form. Payers subject to such an arrangement are not required to lodge further Paying Authority Notification Forms in respect of their divisions or branches.

