TD 92/191 - Income tax: do the pay-as-you-earn (PAYE) tax instalment deduction provisions of the Income Tax Assessment Act 1936 apply to persons other than common law employees?

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This document has changed over time. This is a consolidated version of the ruling which was published on *19 November 1992*

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: do the pay-as-you-earn (PAYE) tax instalment deduction provisions of the *Income Tax Assessment Act 1936* apply to persons other than common law employees?

1. Yes. The PAYE provisions apply to persons who receive salary or wages as that term is defined in the Act. The term 'salary or wages', as defined in subsection 221A(1), includes salary, wages etc paid to common law employees and covers other payments including payments made under a contract that is wholly or principally for the labour of the person to whom the payments are made. 'Principally', in this context, means more than 50%.

2. Both domestic and private payments made under a contract wholly or principally for labour are specifically excluded from the definition of salary or wages and, therefore, the PAYE provisions. These would include, for example, payments of a private or domestic nature made to a tradesman or a professional person.

3. In addition, payments which are covered by the prescribed payments system (PPS) arrangements are expressly excluded from the PAYE provisions.

Examples:

1. A consultant is employed (for example by a government or a non-government body) and is paid under a contract principally for labour. Subject to paragraph 2 above, the PAYE provisions require the 'employer' to deduct tax instalments from payments made to the consultant.

2. Similarly, the PAYE arrangements apply to payments made to self-employed people who are not covered by the PPS arrangements where those payments are made under a contract principally for labour.

Commissioner of Taxation
19/11/92

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