

Inquiry - Application of the contractor and employment agent provisions in the Payroll Tax Act 2007

Revenue NSW - Questions on Notice & Supplementary Questions Responses

Questions on Notice

SCOTT JOHNSTON: So our ability to be effective in our compliance effort has increased. But, as I mentioned in my statement, nearly half the audits that we undertake don't result in a reassessment. Reflecting on coming here today, the other changes that we've seen in the last five years at least is there was a long period during COVID when we paused our audit program. So many other things were happening at that time, and auditing businesses wouldn't have been appropriate. We haven't tried to catch up following that, but there was a period of lower effort and lower compliance that we did for a couple of years there. That is now back to normal levels.

The Hon. Dr SARAH KAINE: You must, though, have a way of triaging or determining priority sectors. Is there something that might be there that might trigger—

SCOTT JOHNSTON: What we have evolved over recent years is this risk-based approach to auditing rather than a random approach. We do have access to other information that speaks potentially to industries, where there might be compliance issues or areas to explore, that then focuses our compliance officers in that space, because, ultimately, our objective is to administer the law fairly and equally. The motivation to that is where we understand most businesses are meeting their payroll tax obligations as the law is, but having the integrity in the system requires us to assess that. That is an area of focus for us, but it's not driving particular targets at any industries for any other reason other than data and information we might have suggest there might be reasons to explore the compliance audits.

The Hon. Dr SARAH KAINE: **In terms of that risk-based assessment, I don't know if you are, but are you able to share what the attributes are of risk that you prioritise? I don't know if you're able to share that.**

SCOTT JOHNSTON: I'll take that on notice, just to think about how we can best help you, because I think that's a useful point. Maybe the factors that we consider in developing that to a point are fairly broad, but I'm happy to work in the way that we could help.

Response:

Revenue NSW takes a targeted, risk-based approach to its payroll tax compliance activities to make the best use of resources and maximise public benefit.

Priority is given to high risk matters where:

- businesses haven't voluntarily registered when they became liable
- customers have understated their liabilities
- customers don't lodge returns on time
- non-compliant conduct is industry wide or likely to become so
- non-compliant conduct involves a significant new or emerging risk

We use a number of analytical techniques, such as data matching and statistical analysis, to identify customers that may have a risk of non-compliance.

Data matching enables Revenue NSW to identify potential non-compliant customers based on contradictory information they have provided to different agencies. Statistical analysis is used to identify customers that may be operating differently to industry standard practice.

The Hon. CHRIS RATH: I know you said it was paused under COVID. Maybe you can take on notice the number of audits per year pre-COVID, during COVID and now.

SCOTT JOHNSTON: Yes. I'll take that on notice.

The Hon. CHRIS RATH: I assume it was a bit higher, then low during COVID and now it's up high again. If there's any information you can provide to us on the estimated gap between the self-assessment done versus the audit that has determined how much they're able to pay—I know that's hard because you don't want to say business by business. For some businesses, I assume, when you do the audit, the self-assessment versus the audit would be very similar or identical. In other instances, it would be minor. In some cases—and this might be where the brokers come in—there would be quite a large gap between what they thought they had to pay and the advice that they've been given.

Response:

Pre-COVID

FY 2019 – 7,091

During COVID

FY 2020 – 4,215

FY 2021 – 5,207

FY 2022 – 3,292

Post-COVID

FY 2023 – 9,091

FY 2024 – 11,094

FY 2025 (YTD 1 July 2024 - 31 March 2025) – 8,524

Note: The audit numbers include reviews of consistent non-payers. Revenue NSW uses a variety of audit techniques, such as validating single wage components as well as comprehensive audits either via desk or face to face.

The Hon. Dr SARAH KAINE: From what I'm hearing, nothing has substantively changed from your point of view since the last change in the Act; it's businesses' response to whatever other circumstances that means they change their business models. **Have you been required to, say, over the past five years, provide briefings to Ministers because of a concern that there's a perception of a change out there?**

SCOTT JOHNSTON: I'll take that on notice. What I would say is that this has been an issue for a number of years in different industries. Our view has been very consistent, in that we feel that we're applying the law fairly and consistently. Obviously, a lot of attention comes to certain court cases, which, in the main, have fallen in our favour, confirming our approach. From a briefing perspective, I think it's very much about having that position that we've held fairly strongly to. I think what we do attempt to do is to provide the support that we can to inform others about how we think about the law so that they can best navigate the challenges that Commissioner Smythe spoke to. But it hasn't changed.

I know the highlights for some of those court matters that have happened in the past few years bring a lot of attention, but we're very reasonable. We will meet with people or industry groups if they want to discuss their circumstances so that we consider whether there's either more that we could do to inform

or consider our practices, even. I think it's an ongoing relationship with business. Payroll tax is not defined by industry. It's about business models. That's an important feature of it, particularly from a harmonised perspective, which we try to navigate through with our colleagues from other jurisdictions as well.

Response:

No, Revenue NSW has not provided briefing notes regarding a perceived change in the administration of Payroll Tax.

Supplementary Questions

1. What briefings were you asked to provide any government ministers/ministerial staff in general about payroll tax or about the application of contractor provisions to a particular industry?

Response:

Revenue NSW has provided briefing notes to the Minister for Finance, which include details about the application of Payroll Tax in connection to Mortgage Aggregators and Medical Centres.

2. Please provide for each of the past four complete payroll tax years:

- a. The total collected
- b. The number of businesses who paid payroll tax
- c. The number of businesses with a payroll tax between \$1.2 million and \$1.5 million
 - i. The total payroll tax collected from these businesses
- d. The number of businesses who paid payroll tax that included payroll tax on contractor payments
 - i. The total quantum of payroll tax paid by these businesses
 - ii. The amount of this that was payroll tax on contractor payments
- e. The number of businesses who paid payroll tax that included payroll tax related to employment agencies
 - i. The total quantum of payroll tax paid by these businesses
 - ii. The amount of this that was payroll tax on employment agencies payments

Responses: All data as at 31 March 2025.

2 a.

FY 2021 - \$9,568,220,936

FY 2022 - \$10,612,668,261

FY 2023 - \$13,070,071,921

FY 2024 - \$13,908,007,015

Note: The figures represent the total customer liability for the financial year based on the annual returns lodged for that year.

2 b.

FY 2021 - 33,647

FY 2022 - 35,622

FY 2023 - 38,165

FY 2024 - 39,185

Note: Customers with a nil liability, including non-lodging members of a Single Lodger group, have been excluded from the numbers.

2 c.

FY 2021 - 202

FY 2022 - 231

FY 2023 - 343

FY 2024 - 380

Note: This is the number of customers who paid payroll tax between \$1.2 million and \$1.5 million. For a customer who employs in NSW only, this equates to paying wages between \$23 million and \$29 million.

2 c.i.

FY 2021 - \$271,353,461

FY 2022 - \$308,737,251

FY 2023 - \$458,731,109

FY 2024 - \$508,788,036

Note: The figures represent the total customer liability for the financial year based on the annual returns lodged for that year.

2 d.

FY 2021 - 7,903

FY 2022 - 8,011

FY 2023 - 8,074

FY 2024 - 8,423

Note: The figures represent the number of customers who paid payroll tax and declared taxable contractor payments on their annual return for each of the years.

2 d.i.

FY 2021 - \$4,545,736,342

FY 2022 - \$5,397,647,963

FY 2023 - \$5,399,701,695

FY 2024 - \$5,820,617,173

Note: The figures represent the total customer liability for the financial year based on the annual returns lodged for that year.

2 d.ii.

Revenue NSW is unable to determine the amount of payroll tax paid on contractor payments only as it is not calculated on separate wage components. Payroll tax is calculated on the customer's gross NSW wages less the relevant threshold entitlement multiplied by the tax rate.

2 e.

Revenue NSW is only able to provide data for the 2024 financial year as this was the first-year customers were required to indicate on the annual return whether they provided workers under an employment agency or labour hire arrangement.

FY 2024 - 1,252

2 e.i.

FY 2024 - \$580,603,727

Note: The figure represents the total customer liability for the financial year based on the annual returns lodged.

2 e.ii.

Revenue NSW is unable to determine the amount of payroll tax paid on employment agencies payments only as it is not calculated on separate wage components. Payroll tax is calculated on the customer's gross NSW wages less the relevant threshold entitlement multiplied by the tax rate.

3. Does Revenue NSW keep any records or hold any information about businesses that have ceased to operate as a result of payroll tax audit?

Response:

Revenue NSW is unable to provide details on how many businesses have ceased to operate as a result of a payroll tax audit. Revenue NSW only collects the following high-level reasons when a customer cancels their registration:

- Ceased to employ
- Under the threshold
- Insolvent

4. How much has been spent in each of the last five years by Revenue NSW dealing with auditing and court cases related to:

a. Contractor payments?

b. Employment agency payments?

Response:

Revenue NSW does not keep records on costs associated with each payroll tax audit or with matters before the courts.

Court Costs

The Chief Commissioner instructs the Crown Solicitors Office on State Taxation matters before the courts as it is considered core legal work. The costs associated with these matters are covered by the Attorney General's Legal Fund.

The Fund is jointly administered by the Secretary of the Department of Communities and Justice and the Crown Solicitor.