

Pay-roll Tax Employment Agency Contracts

Chain of on-hire

Revenue Ruling PT.112

Preamble

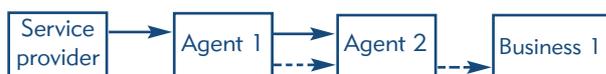
1. The *State Taxation Acts (Tax Reform) Act 2004* introduced amendments to the employment agency contracts provisions contained within the *Pay-roll Tax Act 1971* (the Act) with effect from 1 January 2005.
2. Prior to these amendments Pay-roll Tax was imposed on employment agency contracts under the provisions of section 3D of the Act with the client of the employment agency incurring a Pay-roll Tax liability on 75 per cent of the amount paid by the client, excluding GST, to the agent.
3. The amended provisions are contained in Part II of the Act and have the effect of shifting the Pay-roll Tax liability under an employment agency contract from the client of the agent to the agent directly.
4. An employment agency contract is defined in section 4(1) of the Act as follows:
For the purposes of this Act, an "employment agency contract" is a contract, whether formal or informal and whether express or implied, under which a person ("employment agent") procures the services of another person ("service provider") for a client of the employment agent.
5. These provisions apply to labour-hire arrangements where the client contracts with another person (employment agent) for the provision of labour where there is no contract or agreement between the worker and the client.

The diagram below depicts a common employment agency contract arrangement.



6. In some instances, multiple employment agency contracts may arise. This could be when one employment agent on-hires a service provider to another employment agent who then on-hires the original service provider to their client.

This scenario is illustrated in Example 1 below.



The "solid" arrows indicate the first employment agency contract arrangement - i.e. Agent 1 has procured Service Provider for their client, Agent 2.

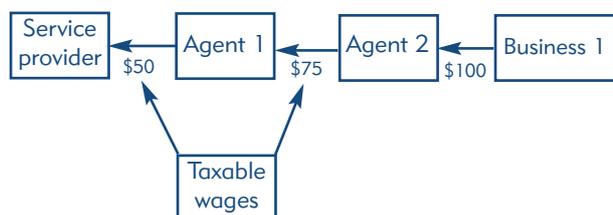
The "dashed" arrows indicate the second employment agency contract arrangement - i.e. Agent 2 has procured Agent 1 for their client, Business 1.

7. This Revenue Ruling addresses the Pay-roll Tax implications of situations where an employment agent hires labour to another employment agent where the second agent then further on-hires that labour to their client.

Ruling

8. Under the arrangement shown in Example 1, Business 1 would make a payment to Agent 2. Agent 2 would make a payment down the line to Agent 1. Agent 1 would then make a payment to the Service Provider. The purpose of this Revenue Ruling is to clarify which of these payments are subject to Pay-roll Tax under the employment agency contract provisions.
9. When an employment agency contract arises, section 5(1)(6)(b) of the Act deems the employment agency to be the employer of the person performing the work for the client. Furthermore, "wages" paid by the employment agent to the service provider are deemed to be taxable wages paid by the agent. In Example 1 this would mean that Agent 2 has paid taxable "wages" to Agent 1 and that Agent 1 has paid taxable "wages" to Service Provider.

This scenario is illustrated in Example 2 below.



10. The Commissioner of State Revenue (the Commissioner) has ruled that in situations where there is a "chain of on-hire" the agent closest to the ultimate client is the agent that is liable for Pay-roll Tax. In Example 2, Agent 2 would pay Pay-roll Tax on the \$75 paid to Agent 1.

What if Agent 2 is not liable for Pay-roll Tax?

11. If, for some reason Agent 2 does not have a Pay-roll Tax liability (because it pays total wages below the taxable threshold) then Pay-roll Tax on the arrangement shown in Example 2 will be payable by Agent 1 on the \$50 paid to Service Provider
12. In order for Agent 1 and Agent 2 to know exactly what their respective Pay-roll Tax obligations will be (and to overcome situations where both Agent 1 and Agent 2 pay Pay-roll Tax on essentially the same employment agency contract arrangement), Agent 1 should require Agent 2 to complete SRO Pay-roll Tax Form 10 (Employment Agency Contracts – Chain of on-hire declaration) which is available on www.sro.vic.gov.au
In completing SRO Pay-roll Tax Form 10, Agent 2 will confirm either:
 - they are not liable for Pay-roll Tax; or
 - they are liable for Pay-roll Tax and will pay Pay-roll Tax on the “wages” paid to Agent 1
13. If this declaration is completed and Agent 2 has indicated that they are not liable for Pay-roll Tax, Agent 1 should ensure that Pay-roll Tax is paid on the payment they make to the Service Provider.
14. If Agent 2 has declared they are liable for, and will pay, Pay-roll Tax on the arrangement, the Commissioner will excuse Agent 1 from their liability on the payment made by Agent 1 to the Service Provider.

What if Agent 2 has declared incorrectly?

15. If Agent 2 has declared to Agent 1 that they are liable and will meet the Pay-roll Tax obligation under the employment agency contract, and it is found that the declaration has been made in error, the Commissioner will excuse Agent 1 from any retrospective liability when satisfied that:
 - the incorrect declaration was an honest mistake; and
 - the incorrect declaration was not made in an attempt to reduce or avoid Pay-roll Tax liability.However, in these circumstances the Commissioner will generally assess Agent 2 for any arrears of Pay-roll Tax that may arise.
16. If the Commissioner believes that the incorrect declaration was made for the purposes of reducing or avoiding Pay-roll Tax liability, then the Commissioner may, under the provisions of section 5A of the Act, choose to impose the Pay-roll Tax liability upon either Agent 1 or Agent 2.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

Commissioner of State Revenue
December 2004

