

Employment Agency Contracts

On-hire to Government

Revenue Ruling PT.117

Preamble

1. The *Pay-roll Tax Act 1971* ('the PRT Act') was amended by the *State Taxation Acts (Tax Reform) Act 2004* to introduce changes to the employment agency contract provisions effective from 1 January 2005.
2. Under the new provisions, the employment agent is liable for Pay-roll Tax on payments made under an employment agency contract to or in relation to service providers (on-hired workers), as well as on the value of any fringe benefits provided and superannuation contributions made on behalf of these on-hired workers.
3. An exemption for the employment agent is provided under section 5(3) of the PRT Act, in respect of the wages paid to the on-hired worker, under an employment agency contract, where:
 - a. the wages would be exempt from Pay-roll Tax under section 10 of the PRT Act had the on-hired worker been paid by the client as an employee; and
 - b. the client has provided a declaration to that effect to the employment agent, in respect of the on-hired worker.
4. The purpose of this ruling is to clarify the correct Pay-roll Tax treatment of payments made by an employment agent to a worker on-hired to a government department.

Ruling

5. Commonwealth Government

The Commonwealth Government ('the Commonwealth') does not pay Pay-roll Tax by virtue of section 114 of the Commonwealth of Australia Constitution Act ('the Constitution'). Section 114 of the Constitution prevents any State Government from imposing tax on the Commonwealth.

6. Section 10 of the PRT Act does not apply to the Commonwealth, and therefore, an employment agent must pay Pay-roll Tax on 'wages' paid to any workers on-hired to Commonwealth government departments under an employment agency contract from 1 January 2005 (eg. The Department of Defence, The Department of Family and Community Services).

7. Victorian State Government

All Victorian State Government departments are subject to Pay-roll Tax in Victoria and therefore employment agents must pay Pay-roll Tax on 'wages' paid to workers on-hired to Victorian State Government departments

under employment agency contract from 1 January 2005 (eg. The Department of Human Services, The Department of Primary Industries, The Department of Infrastructure).

8. Local Government

Wages paid by Local Government (municipal councils) are exempt from Pay-roll Tax under section 10(1)(e) of the PRT Act, other than those wages paid or payable:

- (i) *for or in connexion with; or*
- (ii) *for or in connexion with the construction of any buildings or the construction of any works or the installation of plant, machinery or equipment for use or in connexion with -*
the supply of electricity or gas, water supply, sewerage, the conduct of abattoirs, of public markets, of parking stations, of cemeteries, of crematoriums or of hostels or of any other activity that is a prescribed activity

9. Consequently, employment agents that on-hire workers to Local Government are not required to pay Pay-roll Tax on payments to those on-hired workers, provided that the worker is not engaged in a prescribed activity shown at paragraph 8 above.
10. 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.

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