

## Employment Agency Contracts Declaration by Clients Exempt under Section 10

### Revenue Ruling PT.124 Replaces PT.108

#### Preamble

1. As a consequence of the *State Taxation Acts (Tax Reform) Act 2004*, the employment agency contract provisions contained in sections 3D, 3E and 3F of the *Pay-roll Tax Act 1971* (the Act) cease on 31 December 2004. New employment agency contract provisions, under PART II of the Act, take effect from **1 January 2005**.
2. The new provisions define an *employment agency contract* as:  
*a contract, whether formal or informal and whether express or implied, under which a person (the employment agent) procures the services of another person (the service provider) for a client of the employment agent.*
3. Although the definition of an employment agency contract remains largely unchanged, the liability for Pay-roll Tax under the new provisions shifts from the client of the employment agent to the employment agent directly.
4. The new provisions deem:
  - (a) the employment agent to be the employer of the service provider; and
  - (b) the person who performs work for, or in relation to which services are supplied to the client (the on-hired worker) to be an employee of the employment agent; and
  - (c) any amount paid or payable to or in relation to the service provider (gross payment excluding GST) to be wages paid or payable by the employment agent, including:
    - any employer superannuation contribution made in respect of the on-hired worker;
    - the value of any fringe benefits provided to the on-hired worker.
5. An exemption for the employment agent is provided under section 5(3) of the Act, for 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 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 (*a relevant declaration*).
6. Organisations that are exempt from Pay-roll Tax under section 10 of the Act include:
  - Charitable bodies;
  - Public Benevolent Institutions (PBI's);
  - Religious Institutions;
  - Public Hospitals;
  - Not-for-profit Private Hospitals;
  - Municipalities;
  - Certain not-for-profit schools; and
  - State school councils within the meaning of the *Education Act 1958*.

It should be noted that the wages paid by exempt organisations are only exempt from pay-roll tax to the extent provided under section 10 of the Act.

Furthermore, it should also be noted that in the case of employment agency contracts the exemption provided to school councils, under section 10(1)(ca) of the Act is subject to a further qualification. Section 5(3A) of the Act limits the exemption to those amounts, benefits or payments paid to the on-hired worker on or after **1 July 2005**.
7. The purpose of this ruling is to clarify the requirements that employment agents need to satisfy in order to claim their entitlement to an exemption under section 5(3) of the Act on the

wages paid to their on-hired workers, who provide services to clients that are exempt under section 10 of the Act.

## Ruling

### Relevant Declaration

8. An employment agent, in calculating its Pay-roll Tax liability, may exclude those wages that are exempt under section 5(3) of the Act, where the employment agent has obtained a *relevant declaration* from its client.

Section 5(3) of the Act states as follows:

*Sub-section 1(c) does not apply to an employment agency contract to the extent that an amount, benefit or payment referred to in that sub-section would be exempt from pay-roll tax under section 10 had the service provider been paid by the client as an employee, if the client has given a declaration to that effect to the employment agent.*

9. The relevant declaration must be in writing and state that:
  - (i) the client is exempt under section 10 of the Act; and
  - (ii) the services provided by the on-hired worker for the client of the employment agent, are services that are also exempt under section 10 of the Act.
10. SRO Pay-roll Tax Form 9 entitled, *Victorian Pay-roll Tax, Employment Agency Contracts - Declaration by Client* may be used to make the declaration. SRO Pay-roll Tax Form 9 is available on [www.sro.vic.gov.au](http://www.sro.vic.gov.au)

This form is not a prescribed form and employment agents are free to develop their own version of the declaration.
11. Employment agents should be aware that they will be liable for any Pay-roll Tax if a declaration made by their client is found to be incomplete or does not meet the requirements shown in paragraph 9 of this Revenue Ruling. Accordingly, employment agents must ensure that their clients, who qualify for an exemption under section 10 of the Act, complete the declaration fully.

### Incorrect declaration

12. Where it is found that a client that has provided an employment agent with a relevant declaration is not exempt under section 10 of the Act, or where the on-hired worker is not utilised by the client in an exempt activity, the employment agent will be exonerated from

any Pay-roll Tax liability provided the employment agent has at all times acted in good faith.

Where the Commissioner of State Revenue (the Commissioner) believes the employment agent has not acted in good faith, the Commissioner may impose Pay-roll Tax liability against that employment agent.

### Frequency of Declaration

13. Although the Act requires a separate declaration for each employment agency contract entered into between the employment agent and their client(s), the Commissioner recognises that this requirement may be impractical and onerous.
14. The Commissioner will be satisfied if the employment agent obtains one relevant declaration from its client (that is exempt under section 10 of the Act) each calendar year where the type of work performed by all persons on-hired by that employment agent to that client is identical.

Employment agents must ensure that declarations are 'renewed' with their clients prior to the commencement of each calendar year.

#### Example:

Agent 1 hires six workers to Client 1 (that is a public hospital) who will all be performing accounts payable work for Client 1. Agent 1 only needs to obtain one relevant declaration from Client 1 for each calendar year that Agent 1 on-hires any workers to Client 1 that will be doing accounts payable work for Client 1. If Agent 1 then on-hires three engineers to Client 1, a separate declaration will be required with respect to the work being performed by the engineers.

### Application for refund made by an employment agent

15. Where an employment agent has paid tax on wages under an employment agency contract on or after 1 January 2005, and is subsequently made aware that its client is exempt under section 10 of the Act, the employment agent may claim a refund (under the provisions of Section 19 of the *Taxation Administration Act 1997* (TAA) - see Revenue Ruling TAA.002) of the tax previously paid.
16. In support of any refund application made in accordance with the TAA, the employment agent must provide a *relevant declaration* and written confirmation from the client stating that the declaration is made for a retrospective

period correlating to the period of the refund claimed.

17. Employment agents should be aware that any refund application is subject to the windfall gain provisions contained in section 22 of the TAA.

#### **Record keeping by employment agent**

18. Employment agents are required to keep all declarations made in accordance with this Revenue Ruling for a period of five (5) years. Employment agents must also ensure they are able to readily produce any declaration if requested by the Commissioner.

Employment agents should not send completed declarations to the SRO - the declarations must be held by the employment agent.

#### **Anti-avoidance provisions**

19. Section 5A of the Act contains anti-avoidance provisions empowering the Commissioner to impose a liability for Pay-roll Tax on any payment made by any party to an employment agency contract, including the client of the employment agent or the service provider.

**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.**



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*Commissioner of State Revenue*