

Employment Agency Contracts - Workers on-hired to government

Payroll Tax Act 2007
Revenue Ruling PTA028

Preamble

The *Payroll Tax Act 2007* (the Act), which commenced on 1 July 2007, rewrites the *Pay-roll Tax Act 1971* and harmonises the payroll tax legislation in Victoria and NSW.

The employment agency provisions in Division 8 of Part 3 of the Act apply to a labour hire arrangement where a person (the employment agent) contracts with another (the client) for the provision of labour where there is no agreement between the worker and the client.

Under the employment agency provisions, the employment agent is taken to be the employer (section 38 of the Act) and the on-hired worker is taken to be the employee (section 39 of the Act). Amounts paid or payable under the employment agency contract are taken to be wages (section 40(1) of the Act). Consequently, under section 41 of the Act, the employment agent is liable to pay payroll tax on the amounts taken to be wages.

The purpose of this ruling is to clarify the correct payroll tax treatment of payments made by an employment agent to a worker on-hired to a government department.

Ruling

Commonwealth Government

Generally, the Crown in right of the Commonwealth is not liable for payroll tax. Examples of Commonwealth Government departments are Department of Defence and Department of the Treasury.

Although the Commonwealth Government is not liable for payroll tax, an employment agent is still liable for payroll tax on wages paid to workers on-hired to Commonwealth government departments under an employment agency contract. This is because payroll tax is imposed on employment agents.

An exemption is only available to an employment agent under section 40(2) of the Act on payments where:

- (a) the wages would have been exempt from payroll tax under Part 4 except for Division 4 or 5 of that part, section 50 or clause 16 of schedule 2 had the on-hired worker been paid directly by the client as an employee, and

- (b) the client has made a declaration to that effect to the employment agent, in respect of the on-hired worker,

Organisations exempt from payroll tax listed in Part 4 do not include the Commonwealth Government.

State Government

All State Government departments are liable for payroll tax in their respective state. Therefore, an employment agent must pay payroll tax on wages paid to workers on-hired to Victorian Government departments under an employment agency contract. Examples of Victorian Government departments are Department of Human Services, Department of Primary Industries and Department of Transport.

Local Government

Wages paid by local government (municipal councils) are exempt from payroll tax under Part 4 of the Act (section 58), except for wages for or related to certain activities which are outlined in section 60 of the Act. Consequently, an employment agent is exempt from payroll tax on wages to workers on-hired to a municipal council if the workers are not engaged in the activities listed in section 60 of the Act.

This Revenue Ruling is effective from 1 July 2007.

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.001.