

Employment Agency Contracts Declaration by Clients Exempt Under Section 10

Revenue Ruling PT.108

CEASED 14 February 2006 CEASED 14 February 2006 CEASED 14 February 2006 CEASED 14 February 2006 CEASED 14 February 2006

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 PRT Act') cease on 31 December 2004. New employment agency contract provisions, under PART II of the PRT 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 PRT 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 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 (*a relevant declaration*).
6. Organisations that are exempt from Pay-roll Tax under

section 10 of the PRT Act include:

- Charitable bodies;
- Public Benevolent Institutions (PBI's);
- Religious Institutions;
- Public Hospitals;
- Not-for-profit Private Hospitals;
- Municipalities; and
- Certain not-for-profit schools.

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 PRT Act.

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

Ruling

Relevant Declaration

8. An employment agent can exclude from their Pay-roll Tax liability, those wages that are exempt under section 5(3) of the PRT Act, where the employment agent obtains a *relevant declaration* from their client.

Section 5(3) of the PRT 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 PRT 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 PRT Act.
10. The SRO has developed a form for this purpose titled, *Victorian Pay-roll Tax, Employment Agency Contracts - Declaration by Client*. (A copy of this form is attached to this ruling)

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 (the agent) will be liable for any Pay-roll Tax if a declaration made by the client of the employment agent is found to be incomplete i.e. it doesn't meet the requirements shown in paragraph 9 of this ruling. Accordingly, employment agents must ensure that their clients, who qualify for an exemption under section 10 of the PRT 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 PRT 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 the appropriate Pay-roll Tax liability against that employment agent.

Frequency of Declaration

13. Although the PRT 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 their client (that is exempt under section 10 of the PRT 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.

For example:

Agent 1 hires 6 workers to Client 1 (that is a public hospital) who will all be performing account 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 their client is exempt under section 10 of the PRT Act, the employment agent may claim a refund (under the provisions of Section 19 of the *Taxation Administration Act 1997* - 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 claim.
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 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 PRT Act contains anti avoidance provisions enabling 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.



December 2005
Commissioner of State Revenue

Victorian Pay-roll Tax Employment Agency Contracts - Declaration by Client

Effective 1 January 2005, the *Pay-roll Tax Act 1971* (the Act) has been amended to impose a pay-roll tax liability on wages paid by employment agents to staff on-hired under employment agency contracts.

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 ("the client") of the employment agent.

Section 5(3) of the Act provides an exemption for the employment agent where:

1. The client of the employment agent is exempt from pay-roll tax under Section 10 of the Act; and
2. The client has provided a declaration to that effect to the employment agent.

This form shall constitute such a declaration when duly signed and dated by the client of the employment agency.

This form should be held by the employment agency in order to satisfy the SRO, if requested, to substantiate the exclusion of wages paid to service providers on-hired to pay-roll tax exempt clients.

The Act contains anti-avoidance provisions in Section 5A that may impose a liability for pay-roll tax upon a client of an employment agent where that client makes an incorrect declaration of exemption to the employment agent.

Note that an exemption from Income Tax granted by the Australian Taxation Office does not meet the requirements of Section 10 of the Act.

Note also that the exemption does not apply where the client does not pay pay-roll tax simply because their (the clients) wages are below the pay-roll tax threshold.

Information about Section 10 of the Act is provided on the reverse of this form.

Legal name of client

Address of client

<input type="text"/>		State	Postcode	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Client's ABN

<input type="text"/>											
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I, (Authorised Employee of Client)

declare that (Legal Name of Client)

has been granted exemption from pay-roll tax by the State Revenue Office under the provisions of Section 10 of the Act.

I also confirm that (Legal Name of Client)

is a client of (Legal Name of Employment Agent)

and that the on-hired worker(s) is/are to be utilised by (Legal Name of Client)

in the activities for which the pay-roll tax exemption has been granted to (Legal Name of Client) .

Signed:

Date:

Details of Section 10 of the *Pay-roll Tax Act 1971*

10. Exemption from pay-roll tax

(1) The wages liable to pay-roll tax under this Act do not include wages paid or payable:

- (a) By the Governor of a State;
- (b) By a religious institution to a person during a period in respect of which the institution satisfies the Commissioner that the person is engaged exclusively in religious work of the religious institution;
- (ba) By a public benevolent institution to a person during a period in respect of which the institution satisfies the Commissioner that the person is engaged exclusively in work of the institution of a public benevolent nature;
- (bb) By a charitable body (other than a school or educational institution or an instrumentality of the State) to a person during a period in respect of which the body satisfies the Commissioner that the person is engaged exclusively in work of the body of a charitable nature;
- (bc) By a public hospital to a person during a period in respect of which the hospital satisfies the Commissioner that the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connexion with the conduct of public hospitals;
- (c) By a hospital which is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association being wages paid or payable to a person during a period in respect of which the hospital satisfies the Commissioner that the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connexion with the conduct of hospitals;
- (d) By a school that is:
 - (i) Registered under Part III of the *Education Act 1958*; and
 - (ii) Carried on by a person otherwise than for the purpose of profit or gain to the person or the individual members of the person, being wages paid or payable to a person in relation to the provision of education within that school;
- (da) By a school or college that:
 - (i) Is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association and is not carried on by or on behalf of the State of Victoria; and
 - (ii) Provides education predominantly at or below the secondary level of education and to students, the majority of whom are aged under 19 years of age; and
 - (iii) Was in existence as such a school or college before 27 May 1997, being wages paid or payable to a person in relation to the provision of education at or below the secondary level of education;
- (daa) By a school or college within the meaning of paragraph (da) as in force immediately before the commencement of section 19(a) of the *State Taxation Legislation (Further Amendment) Act 2002*, being wages referred to in that paragraph;
- (db) By a person who provides an educational service in connection with the curriculum of a school referred to in paragraph (d) or a school or college referred to in paragraph (da) or (daa) otherwise than for the purpose of profit or gain to the person or the individual members of the person, being wages paid or payable to a person in relation to the provision of that service;

- (e) By a municipal council or by any union or partnership of which all the members are municipal councils except to the extent that those wages are paid or payable:
 - (i) For or in connexion with; or
 - (ii) For or in connexion with the construction of any buildings of the construction of any works or the installation of plant, machinery or equipment for use in 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;
 - (f) To members of his official staff by:
 - (i) A consular or other representative (other than a diplomatic representative) in Australia of any other part of Her Majesty's Dominions or of any other country; or
 - (ii) A Trade Commissioner representing in Australia any other part of Her Majesty's Dominions;
 - (g) By a specialized agency as defined by section one of the Convention on the Privileges and Immunities of the Specialised Agencies which was adopted by the General Assembly of the United Nations on the 21st November, 1947;
 - (h) By the Commonwealth War Graves Commission;
 - (i) By the Australian-American Educational Foundation; wages paid or payable by the employer
 - (j) To a person who is a member of the Defence Force of the Commonwealth or of the armed forces of any part of Her Majesty's Dominions, being from whose employment the person is on leave by reason of his being such a member
- (l) Subject to section 10A, by a body corporate to a person for or in connection with an activity conducted for a municipal council, or for 2 or more municipal councils, under a written arrangement between the body corporate and the municipal council or municipal councils.
- (2) For the purposes of sub-section (1)(bb) "educational institution" includes a company:
- (a) In which an educational institution has a controlling interest; and
 - (b) That provides, promotes or supports the educational services of that institution.
- (3) An educational institution has a controlling interest in a company for the purposes of sub-section (2) if:
- (a) The members of the board of management (by whatever name called) of the company, or a majority of those members, or one or more of those members, being a member or members who is or are entitled to exercise a majority in voting power at meetings of the board of management, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the educational institution; or
 - (b) The educational institution may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50% or more of the voting power attached to voting shares, or any class of voting shares, issued by the company; or
 - (c) The educational institution has power to appoint 50% or more of the members of the board of management (by whatever name called) of the company.

By correspondence

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