

## Employment Agency Contracts - Declaration by exempt clients

*Payroll Tax Act 2007*  
Revenue Ruling PTA026

### 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.

However, certain types of payments are exempt from payroll tax under section 40(2) of the Act. The exemption applies 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 (the Relevant Provisions) 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 (the Relevant Declaration).

Organisations that are exempt from payroll tax under the Relevant Provisions include:

- **Non-profit bodies having wholly charitable, benevolent, philanthropic or patriotic purposes**
- Public benevolent institutions
- Religious institutions
- Certain non-profit schools providing education at or below the secondary level
- State school councils within the meaning of the *Education and Training Reform Act 2006*
- Health care service providers, and
- Municipalities (for certain activities).

This Revenue Ruling explains the operation of the exemption under section 40(2) of the Act and its requirements.

### Ruling

#### Relevant Declaration

To claim the exemption under section 40(2) of the Act, the employment agent has to obtain a Relevant Declaration from its client. The Relevant Declaration must be in writing and must state that:

- (i) the client is exempt under the Relevant Provisions, and
- (ii) the services provided by the on-hired worker are services that are also exempt under the Relevant Provisions.

SRO Payroll Tax PTA Form 3 (*Employment Agency Contracts - Declaration by Client*) which is available on [www.sro.vic.gov.au](http://www.sro.vic.gov.au) may be used to make the Relevant Declaration. This form is not a prescribed form and employment agents are free to develop their own version of the declaration.

Employment agents are liable for any payroll tax liability if a Relevant Declaration is found to be incomplete or does not meet the requirements outlined above. For this reason, employment agents should ensure that their exempt clients have completed the Relevant Declaration in full.

#### Incorrect Declaration

If a client has provided a Relevant Declaration which is later found to be incorrect (because the client is not exempt or the on-hired worker is not used by the client in an exempt activity), the employment agent will only be exonerated from any payroll tax liability if the employment agent has acted in good faith at all times. If the Commissioner of State Revenue (the Commissioner) believes that the employment agent has not acted in good faith, he may impose a payroll tax liability on the employment agent.

## Frequency of Declaration

The Act requires a separate Relevant Declaration for each employment agency contract entered into between the employment agent and their client(s). However, the Commissioner recognises that this requirement may be impractical and onerous.

For this reason, the Commissioner will be satisfied if the employment agent obtains one Relevant Declaration from its exempt client for each calendar year if the type of work performed by all persons on-hired by that employment agent to that client is identical. Employment agents must ensure that a new Relevant Declaration is made prior to the commencement of each calendar year.

### Example 1

Agent XYZ on-hired six workers to Client D for five consecutive calendar years. Client D is a public hospital. All six workers performed accounts payable work for Client D for the whole period.

Agent XYZ is entitled to the exemption under section 40(2) of the Act as Client D and the services provided by the six workers are exempt under Division 3 of Part 4 of the Act. To claim this exemption, Agent XYZ must obtain a Relevant Declaration from Client D for each calendar year for the six workers.

### Example 2

In the 2008 calendar year, Agent XYZ on-hires three engineers to Client D in addition to the six accounts payable workers. The three engineers were engaged to conduct maintenance work on Client D's ventilation system. The services provided by the three engineers are also exempt under Division 3 of Part 4 of the Act.

To claim the exemption under section 40(2) of the Act for the three engineers on-hired to Client D, Agent XYZ must obtain a separate Relevant Declaration from Client D for the engineers.

## Application for refund made by an employment agent

If an employment agency found out that its client is exempt under the Relevant Provisions of the Act after having paid payroll tax on the wages under an employment agency contract, the employment agency may apply for a refund under section 19 of the *Taxation Administration Act 1997* (TAA).

A refund application must be accompanied by a Relevant Declaration and written confirmation from the client stating that the Relevant Declaration is made for a retrospective period correlating to the refund period. All refund applications are subject to the windfall gain provisions contained in section 22 of the TAA.

## Record keeping by employment agent

All Relevant Declarations must be kept by the employment agent for five years. Employment agents must ensure that all Relevant Declarations can be readily produced upon request by the Commissioner.

## Anti-avoidance provisions

If an employment agency contract has the effect of reducing or avoiding payroll tax, section 42 of the Act allows the Commissioner to impose payroll tax on any payment made under the contract on any party to the contract including the client of the employment agency or the service provider.

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.**



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Commissioner of State Revenue