

Revenue Ruling

Payroll Tax Act 2009

PTA028

EMPLOYMENT AGENCY CONTRACTS WORKERS ON-HIRED TO GOVERNMENT

Preamble

The *Payroll Tax Act 2009* (the "Act"), which commenced on 1 July 2009, rewrote and repealed the *Pay-roll Tax Act 1971* and provides fully harmonised legislation with New South Wales, Victoria, Tasmania and Northern Territory.

The employment agency provisions in **Division 8, 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:

- the wages would have been exempt from payroll tax under **Part 4** except for **Division 4** or **5** of that Part or **Section 50** had the on-hired worker been paid directly by the client as an employee, and
- 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

In South Australia, State Government departments are liable for payroll tax. Therefore, an employment agent must pay payroll tax on wages paid to workers on-hired to South Australian Government departments under an employment agency contract. Examples of South Australian Government departments are Department of Health, Department of Primary Industries and ResourcesSA, and Department for Transport, Energy and Infrastructure.

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.

Further Information

Further information can be obtained from RevenueSA.

Location	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000
Postal	Commissioner of State Taxation RevenueSA GPO Box 1353 ADELAIDE SA 5001
Telephone	(08) 8204 9880
Facsimile	(08) 8226 3805
Email	payrolltax@sa.gov.au
Website	www.revenuesa.sa.gov.au

History

This Revenue Ruling is effective from 1 July 2009.

This is the first Revenue Ruling issued on this topic.

Mike Walker
COMMISSIONER OF STATE TAXATION

1 July 2009

