

Revenue Ruling

Payroll Tax Act 2009

PTA029

RECRUITMENT AGENCIES / PLACEMENT AGENCIES / JOB PLACEMENT AGENCIES

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The *Payroll Tax Act 2009* (the "Act"), which commenced on 1 July 2009, rewrote and repealed the *Pay-roll Tax Act 1971* and provides fully harmonised legislation with New South Wales, Victoria, Tasmania and Northern Territory.

A recruitment agency is an agency that places a worker with an employer who is a client of the agency. Recruitment agencies may also be known as placement agencies or job placement agencies. A typical contractual arrangement in a recruitment agency situation is as follows:

- ▶ a contract or agreement exists between the agency and the client and/or the agency and the worker; and
- ▶ a contract or agreement exists between the worker and the client.

A recruitment agency is different from an employment agency (or labour hire agency). Under an employment agency (or labour hire) arrangement, a contract exists between the agency and its client, and the agency and the worker, but there is no contract between the client and the worker. Employment agency arrangements are governed by **Division 8, Part 3** of the Act.

The purpose of this Revenue Ruling is to clarify who bears the payroll tax liability in circumstances where a recruitment agency places a worker with an employer who is a client of the agency.

Ruling

In a recruitment agency situation, there is usually a contract or agreement between the client and the worker. The relationship between the client and the worker could be that of an employer/employee (whether full-time, part-time or casual) or principal/contractor. The nature of the relationship between the client and the worker is determined by referring to the contract and applying the common law principles which distinguish between employees and contractors. In either case, the client is responsible for any payroll tax liability arising from payments made to the worker.

If the relationship between the worker and the client of the agency is that of an employee and employer, all amounts paid by the client for the services provided by that employee are wages and are subject to payroll tax. This is also the case even if the client pays the worker via the recruitment agency.

If the relationship between the worker and the client is one of contractor and principal (or where the worker provides services via a company) the payroll tax liability of the client is determined by the contractor provisions in **Division 7, Part 3** of the Act.

Under these circumstances, the recruitment agency is not liable for payroll tax on wages paid to a worker who has been placed with a client. The employment agency provisions in **Division 8, Part 3** of the Act do not apply to a recruitment agency, they only apply to employment agency arrangements where there is no contract or agreement between the worker and the client.

Further Information

Further information can be obtained from RevenueSA.

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History

This Revenue Ruling is effective from 1 July 2009.

This is the first Revenue Ruling issued on this topic.

COMMISSIONER OF STATE TAXATION

1 July 2009