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Information Circular	Information Circular Number 109 Payroll Tax and Labour Hire Services
Status	Current
Legislation	<i>Payroll Tax Act 2009</i>
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Introduction

This Information Circular outlines the Commissioner of State Taxation's approach to administering payroll tax under the *Payroll Tax Act 2009* in relation to entities operating under the *Labour Hire Licensing Act 2017*.

It specifically addresses the treatment of payments made by Employment Agents under the *Payroll Tax Act 2009* (referred to as Labour Hire Services entities under the *Labour Hire Licensing Act 2017*) and the implications for payroll tax liability.

Legislative Framework

The following legislation is relevant to this Information Circular:

- *Payroll Tax Act 2009*: Imposes payroll tax on taxable wages paid or payable by an employer.
- *Taxation Administration Act 1996*: Provides administrative provisions supporting the *Payroll Tax Act 2009*, including assessments, reassessments, and refunds.
- *Labour Hire Licensing Act 2017*: Regulates Labour Hire Services entities and defines relevant terms.

Definitions

Under section 7 of the *Labour Hire Licensing Act 2017*, a person provides labour hire services if:

- a) in the course of conducting a business the person supplies, to another person (the host), an individual to undertake work; and
- b) the individual is a labour hire worker for the person.

Exclusions apply where:

- the work is not part of a business or commercial undertaking of the host;
- the work is not prescribed work; and
- other circumstances prescribed by regulation.

A 'Labour Hire Worker' is defined as an individual engaged by a licensed Labour Hire Services entity under an arrangement where:

- the entity may supply the individual to a third party; and
- the entity is obliged to pay the individual for the work.

Prescribed work under the *Labour Hire Licensing Act 2017* includes:

- cleaning work;
- horticultural processing work;
- meat processing work;
- seafood processing work;
- trolley work; and
- other work prescribed by regulation.

The *Payroll Tax Act 2009* defines an 'employment agency contract' under section 37 as a contract under which an employment agent procures the services of a service provider for a client. If the arrangement results in a direct employment contract between the service provider and the client, it is not considered an employment agency contract.

Deeming Provisions

Under section 39 of the *Payroll Tax Act 2009*, the Employment Agent is deemed the employer and the service provider is deemed the employee. The following are deemed wages:

- a) any amount paid or payable to or in relation to the service provider in respect of the provision of services in connection with the employment agency contract;
- b) the value of any benefit provided for or in relation to the provision of services in connection with the employment agency contract that would be a fringe benefit if provided to a person in the capacity of an employee; and

- c) any payment made in relation to the service provider that would be a superannuation contribution if made in relation to a person in the capacity of an employee.

Payroll Tax Liability and Registration

An entity or grouped entities must register for payroll tax if their Australia-wide taxable wages exceed \$28,846 per week or \$1.5 million annually.

Registration must be completed online via RevenueSA Online. Employers are required to lodge monthly returns and complete an annual reconciliation.

The *Payroll Tax Act 2009* addresses the issue of entities not wanting to directly engage employees due to the seasonal nature of work or during cyclical or unexpected peaks in workloads but rather obtain the necessary workforce through a licensed Labour Hire Service entity (also known as an Employment Agent) who are engaged to procure the appropriately skilled persons for the entity.

Failure to register or remit payroll tax may result in enforcement action, including interest, penalty tax, and garnishee orders.

Application to *Labour Hire Licensing Act 2017* Prescribed Work Industries

Entities operating under the *Labour Hire Licensing Act 2017* must self-assess their payroll tax liability and register with RevenueSA if liable. The Commissioner of State Taxation may use data from State and Federal agencies to enforce compliance.

Section 42 of the *Payroll Tax Act 2009* allows the Commissioner of State Taxation to disregard the employment agency contract and deem the client entity liable for payroll tax if the Employment Agent fails to register or remit payroll tax.

For example, if a horticultural entity engages a Labour Hire Services entity that fails to comply, the horticultural entity may be deemed liable.

Voluntary Disclosure

This Circular applies retrospectively from 1 July 2021.

Employment Agents and client entities are encouraged to make voluntary disclosures if they believe payroll tax obligations have not been met.

Benefits of disclosure include full remission of penalty tax on undeclared wages.

Failure to disclose may result in full penalty tax and potentially higher penalties depending on the circumstances.

Julie Holmes
COMMISSIONER OF STATE TAXATION

Further Information

For further guidance, refer to:

- Information Circular 28 – Employment Agency
- Guide to Legislation - Payroll Tax
- *Labour Hire Licensing Act 2017*