

Revenue Ruling

Payroll Tax Act 2009

PTA026[V1]

EMPLOYMENT AGENCY CONTRACTS DECLARATION BY EXEMPT CLIENTS

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The *Payroll Tax Act 2009* (the “Act”), which commenced on 1 July 2009, rewrote and repealed the *Pay-roll Tax Act 1971* and provides fully harmonised legislation with New South Wales, Victoria, Tasmania and Northern Territory.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

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 or **Section 50** (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 as their sole or dominant purpose a charitable purpose;
- ▶ Public benevolent institutions;
- ▶ Religious institutions;
- ▶ Certain non-profit schools providing education at or below the secondary level;
- ▶ Public and non-profit private hospitals;
- ▶ 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.

RevenueSA’s payroll tax form: **Employment Agency Contracts - Declaration by Exempt Client** which is available on www.revenuesa.sa.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 Taxation (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, 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, 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.

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.

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 18** of the *Taxation Administration Act 1996* (the "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 23** 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.

Mike Walker
COMMISSIONER OF STATE TAXATION
1 July 2009