

SOUTH AUSTRALIA



STATE TAXATION OFFICE

**Pay-roll Tax**

**Circular No. 35**  
**(formerly PRT Circular No. 8)**

**PAY-ROLL TAX (MISCELLANEOUS) AMENDMENT  
ACT, 1991-no. 55 OF 1991  
EMPLOYMENT AGENTS**

**1 INTRODUCTION**

Certain anti-avoidance amendments to the Pay-roll Tax Act were effected by the Pay-roll Tax (Miscellaneous) Amendment Act, 1991. These measures are aimed at schemes designed to avoid liability for pay-roll tax by severing the employer-employee relationship and to clarify liability to pay-roll tax where a person's services are obtained through an employment agent.

The amendments deal with:

- certain contract situations (called "Service Contracts" under section 4 of the Act;
- the provision of contract workers by employment agents;
- the payment of wages by or to third parties.

A general anti-avoidance provision has also been enacted.

**This circular contains detailed explanations of the "Employment Agents" provisions.**

Explanations relating to Service Contract and Third Party Payments are contained in separate pay-roll tax circulars numbered 7 and 9 respectively.

Pay-roll tax circular number 6 provides a general overview of the amendments effected by the Pay-roll Tax (Miscellaneous) Amendment Act, 1991 together with a detailed explanation of the concessions provided; namely:

a reduction in the rate of pay-roll tax from 6.25% to 6.1% in respect of wages paid on or after 1 December, 1991

and

increases in the general exemption level to \$444,000 per annum from 1 January, 1992 and \$456,000 from 1 July, 1992.

## **2 EFFECTIVE DATE**

The amending legislation was assented to on 28 November, 1991.

The new Section 4 a of the Act, relating to “Employment Agents” will, by proclamation, apply from 1 April, 1992 to amounts paid or payable on or after that date.

The Section applies in respect of any relevant employment agency contract or arrangement regardless of when the relevant agreement, arrangement, or undertaking was effected or given or when the relevant transaction occurred but, pay-roll tax is only payable in respect of any (deemed) wages paid or payable on or after 1 April, 1992.

## **3 EMPLOYMENT AGENTS**

3.1 The information set out below in relation to “Employment Agents” is of necessity brief. The precise nature and scope of the employment agents amendments and related changes to the Act must be taken from the reading of the provisions as set out in full in the amending Act in conjunction with the Pay-roll Tax Act, 19971.

### **3.2 Who is and Employment Agent?**

For the purposes of the Act an employment agent is a person-

- (a) who, by arrangement, procures the services of another person (called “the contract worker”) for a client of the agent and;
- (b) to whom, a lump sum or on-going fee is payable (either directly or indirectly) during or in respect of the period in which the services are rendered to the client by the contract worker.

### **3.3 What is and “employment agency contract”?**

For the purposes of the Act an employment agency contract is any contract or arrangement under which and “Employment Agent” provides the services of a contract worker to his or her client, for a fee relating to the period of service, where the contract is not a contract of employment.

Placement and/or introductory services are not within the scope of Section 4a. Liability, if any, in respect of contracts arising out of these services will depend on the circumstances and whether or not they are contracts of employment or contracts for service.

### **3.4 How is liability for pay-roll tax determined?**

For the purpose of determining any pay-roll tax liability that may arise under a contract relating to the engagement of an employment agency “contract worker” it is necessary to consider whether the contract is a contract of service (ie a contract of employment) or a contract for service.

Where a contract of employment is entered into, liability for pay-roll tax is to be determined in accordance with the provisions applying to employers generally.

However, where a contract for service arises (ie no employer/employee relationship exists) the agent will be liable for pay-roll tax under the Employment Agents provisions contained at Section 4a of the Act.

These provisions include any situation where the services of a natural person (the contract worker) are provided by a sub-contracting partnership, trust or company engaged by the employment agent.

### **3.5 Deemed Employer, Employee and Wages under an Employment Agency Contract**

Unless a contract of employment arises, the following applies in respect of the parties to an employment agency contract:

- (a) **Deemed employer:** the employment agent will be taken to be an employer;
- (b) **Deemed employee:** the contract worker will be taken to be an employee of the employment agent;
- (c) **Deemed wages:** any remuneration paid or payable to the contract worker for the provision of his or her services under an employment agency contract will be taken to be wages paid or payable by the employment agent. Taxable wages do not include:
  - (i) any amount in respect of the employment agent’s fee, or
  - (ii) amounts that would have been exempt from pay-roll tax, **if they had been paid by the client of the employment agent as an exempt organisation to an employee of that organisation.**

Where it is not reasonably practicable to precisely ascertain the extent of the amount paid or payable to a contract worker as remuneration under an employment agency contact the Commissioner may:

- (a) accept a return on the basis of estimates, or,
- (b) estimate the amount of remuneration paid or payable when making an assessment.

## **4 AGREEMENT ETC. TO REDUCE OR AVOID LIABILITY TO PAY-ROLL TAX**

Any agreement, arrangement or transaction relating to the performance of services by natural persons may be disregarded where the Commissioner has reason to believe or suspect that the purpose of the agreement etc. is to avoid the liability of any person to pay-roll tax.

.In respect of any such agreement, arrangement or transaction the Commissioner may, for the purposes of the Act, determine that any party to the agreement etc. is to be taken as an employer and any payment made (under the agreement) is to be taken as wages. Notice of the determination and the facts relied upon must be served on the person taken to be the employer.

12 December 1991

**COMMISSIONER OF STAMPS**

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