

Payroll Tax Ruling PTA028

Employment Agency Contracts – Workers On-Hired to Government

Version	Issued	Dates of Effect	
1	6 July 2009	From: 1 July 2009	To: Current

PREAMBLE

The *Payroll Tax Act* (the Act), which commenced on 1 July 2009, rewrites the *Pay-roll Tax Act* to largely harmonise it with the legislation of other states.

The employment agency provisions in Division 8 of 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 Payroll Tax 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 Commonwealth is not liable for payroll tax. Examples of Commonwealth departments are Department of Defence and Department of the Treasury.

Although the Commonwealth is not liable for payroll tax, an employment agent is still liable for payroll tax on wages paid to workers on-hired to Commonwealth 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:

1. the wages would have been exempt from payroll tax under Part 4 except for Division 4 or 5 of that part, section 50 or clause 17 of schedule 2 had the on-hired worker been paid directly by the client as an employee; and
2. 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.

State and Territory Government

Most State and Territory government departments are liable for payroll tax in their respective state. Therefore, an employment agent must pay payroll tax on wages paid to workers on-hired to Northern Territory government departments under an employment agency contract. Examples of Northern Territory government departments are the Department of Business and Employment, and the Northern Territory Police, Fire and Emergency Service.

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 (none have listed at the date of issue of this ruling).

Please note that rulings do not have the force of law. Each decision made by the Territory Revenue Office is made on the merits of each individual case, having regard to any relevant ruling. Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Ruling. All Circulars, Guidelines and Rulings are available from www.revenue.nt.gov.au.



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