

# Revenue Ruling

Ruling Number	:	PTA028.2
Title	:	Employment Agency Contracts – Workers on-hired to government
Tax Line	:	Payroll Tax
Legislative Reference	:	<a href="#">Payroll Tax Act 2008</a>
Previous Ruling	:	PTA028
Date of Ruling	:	30 September 2014
Attachments	:	Nil

## Preamble

The [Payroll Tax Act 2008](#) (the Act), which commenced on 1 July 2008, rewrote the *Pay-roll Tax Act 1971* and harmonised payroll tax legislation in Tasmania with Victoria and New South Wales. However, one area not fully harmonised in Tasmania is the treatment of government departments and local councils for payroll tax. As a result, this Revenue Ruling is unique to Tasmania. A summary of the jurisdictions that have adopted various Revenue Rulings is available at: <http://payrolltax.gov.au/revenue>.

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 from a service provider (the worker) and 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 ruling is to clarify the correct payroll tax treatment of payments made by an employment agent to a worker on-hired to a client of the employment agent who is a Commonwealth, State or Local government department/body.

## Ruling

An exemption is only available to an employment agent under section 40(2) of the Act on payments to the service provider 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) 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 worker.

## **Commonwealth Government**

Generally, the Crown in right of the Commonwealth is not liable for payroll tax. Examples of Commonwealth Government departments are the Department of Defence and The Treasury.

Although the Commonwealth Government itself is not liable for payroll tax, organisations exempt from payroll tax listed in Part 4 do not include the Commonwealth Government. Consequently, an employment agent is still liable for payroll tax on wages paid to service providers on-hired to Commonwealth government departments under an employment agency contract. This is because payroll tax is imposed on employment agents and the exemption in section 40(2) does not extend to the Commonwealth Government.

## **State Government**

In Tasmania, wages paid by State Government departments that have been proclaimed exempt by the Minister are exempt from payroll tax<sup>1</sup>.

Whilst specified Government departments themselves enjoy an exemption from payroll tax, the section 40(2) exemption does not generally apply to workers on-hired to State Government departments via an employment agent. This is because wages paid to workers on-hired by an employment agent only get the benefit of the exemption if the wages would ordinarily be exempt under Part 4 (excluding Division 4 and 5 of that Part and s50), whereas the exemption for Government departments is contained in section 7A of Part 4 of Schedule 2 of the Act.

The only exception to this rule is that wages paid to workers on-hired by an employment agent to a health care service provider<sup>2</sup> and certain schools and colleges<sup>3</sup> remain exempt. Therefore, subject to the stated exceptions, an employment agent must pay payroll tax on wages paid to workers on-hired to Tasmanian Government departments under an employment agency contract.

## **Local Government**

Wages paid by local government (municipal councils) are subject to payroll tax in Tasmania notwithstanding that such wages are exempt in other harmonised jurisdictions. Consequently, payroll tax is imposed on wages paid by employment agents to workers on-hired to a municipal council.

**Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling.**

## **More information**

Enquiries about this Revenue Ruling should be directed to the Legislation, Communication and Review Section by calling 03 6166 4400 or emailing [revenuereview@treasury.tas.gov.au](mailto:revenuereview@treasury.tas.gov.au).

All rulings must be read subject to Revenue Ruling, PUB-GEN-2014-5, "[Explanation and Status of Revenue Rulings](#)".



JC Root  
**COMMISSIONER OF STATE REVENUE**

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<sup>1</sup> Section 7A of Part 4 of Schedule 2 of the Act and the Minister's Notice of 17 June 2013 published in the *Gazette* of 4 July 2013.

<sup>2</sup> See section 51 and the definition of 'health care service provider' in Division 2 of Part 3 of Schedule 2.

<sup>3</sup> See section 49 and the definition of Schools and Colleges in Division 1 of Part 3 of Schedule 2