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Public Ruling
Payroll Tax Act—Harmonised:
EMPLOYMENT AGENCY CONTRACTS—
WORKERS ON-HIRED TO GOVERNMENT

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Pay-roll Tax (Harmonisation) Amendment Act 2008* amended the *Payroll Tax Act 1971* (the Payroll Tax Act) with effect from 1 July 2008 to harmonise certain aspects of Queensland's payroll tax system with the systems of other jurisdictions.
2. The employment agency provisions in Part 2, Division 1B of the Payroll Tax 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.
3. Under the employment agency provisions, the employment agent is taken to be the employer¹ and the on-hired worker is taken to be the employee.² Amounts paid or payable under the employment agency contract are taken to be wages.³ Consequently, the employment agent is liable to pay payroll tax on the amounts taken to be wages.⁴
4. The purpose of this Public 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.

¹ Section 13H of the Payroll Tax Act

² Section 13I of the Payroll Tax Act

³ Section 13J(1) of the Payroll Tax Act

⁴ Section 13K of the Payroll Tax Act

Ruling and explanation

Commonwealth Government

5. Generally, the Crown in right of the Commonwealth is not liable for payroll tax. Examples of Commonwealth Government departments are Department of Defence and Department of the Treasury.
6. Although the Commonwealth Government is not liable for payroll tax, an employment agent is still liable for payroll tax on wages paid to workers on-hired to Commonwealth Government departments under an employment agency contract. This is because payroll tax is imposed on employment agents.
7. An exemption is only available to an employment agent under s.13J(2) of the Payroll Tax Act on payments where:
 - (a) the wages would have been exempt from payroll tax under Part 2, Division 2 of the Payroll Tax Act, other than ss.14(2)(j), (k) or (l) or 14A had the on-hired worker been paid directly by the client as an employee, and
 - (b) the client had made a declaration to that effect to the employment agent, in respect of the on-hired worker.
8. Organisations exempt from payroll tax listed in Part 2, Division 2 of the Payroll Tax Act do not include the Commonwealth Government.

State Government

9. In Queensland, wages paid or payable by Queensland Government departments⁵ (except to the extent those wages are paid or payable by a commercialised business unit⁶) and Hospital and Health Services established for Queensland under the *Hospital and Health Boards Act 2011* (Qld) are exempt from payroll tax under Part 2, Division 2 of the Payroll Tax Act.⁷ Therefore, an employment agent is exempt from paying payroll tax on wages paid to workers on-hired to these entities under an employment agency contract.

Local Government

10. Wages paid by local government (local councils) are exempt from payroll tax under Part 2, Division 2 of the Payroll Tax Act, except for wages for or related to certain activities that are outlined in s.14(2)(e) of the Payroll Tax Act. Consequently, an employment agent is exempt from payroll tax on wages to workers on-hired to local councils if the workers are not engaged in the activities listed in s.14(2)(e) of the Payroll Tax Act.

⁵ See the definition of 'department' in section 14(9) of the Payroll Tax Act.

⁶ See the definition of 'commercialised business unit' in section 14(9) of the Payroll Tax Act.

⁷ Section 14(2)(da) of the Payroll Tax Act

Date of effect

11. This Public Ruling takes effect from 1 July 2014.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 2 October 2014

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA028.2	2 October 2014	1 July 2014	Current
PTA028.1	19 February 2013	1 July 2008	30 June 2014