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Public Ruling
Payroll Tax Act—Harmonised:
EMPLOYMENT AGENCY CONTRACTS—
DECLARATION BY EXEMPT CLIENTS

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 an employment agency contract, which is defined as a contract under which a person (the employment agent) procures the services of another person (the service provider) for a client of the employment agent. The provisions are designed to apply to labour hire arrangements where the employment agent contracts with the client for the provision of labour where there is no agreement between the service provider and the client.
3. Under the employment agency provisions, the employment agent is taken to be the employer¹ and the person who performs work for or in relation to which services are supplied to the client under an employment agency contract (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. However, certain types of payments are exempt from payroll tax under s.13J(2) of the Payroll Tax Act. The exemption applies where:
 - (a) the wages would have been exempt from payroll tax under Part 2, Division 2 of the Payroll Tax Act, other than under ss.14(2)(j),(k) or (l) or 14A (the Relevant Provisions) had the service provider been paid directly by the client as an employee

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

and

- (b) the client has made a declaration in the approved form to that effect to the employment agent, in respect of the service provider (the Relevant Declaration).
5. Organisations that are exempt from payroll tax under the Relevant Provisions include public hospitals, charitable institutions and local governments for certain activities.
 6. This public ruling explains the operation of the exemption under s.13J(2) of the Payroll Tax Act and its requirements.

Ruling and explanation

Relevant declaration

7. To claim the exemption under s.13J(2) of the Payroll Tax Act, the employment agent has to obtain a Relevant Declaration from its client. The Relevant Declaration must be in the approved form and must state that the wages paid or payable to or in relation to the service provider for the provision of services in connection with the employment agency contract would be exempt under the Relevant Provisions had the service provider been paid by the client as an employee.
8. The Relevant Declaration is Form QRO – P9 *Employment agency contracts—declaration by exempt client* and is available online (www.publications.qld.gov.au).

Example 1

TempStaff Agency on-hired a worker to Southern Benevolent Foundation, a charitable institution. The worker performed work for Southern Benevolent Foundation in respect of its work for a qualifying exempt purpose.

Had the worker been paid directly by Southern Benevolent Foundation as an employee, the wages would be exempt under the Relevant Provisions. Therefore, TempStaff Agency is entitled to the exemption under s.13J(2) of the Payroll Tax Act provided it obtains a Relevant Declaration from Southern Benevolent Foundation for the worker.

Example 2

Recruitment Solutions Agency on-hired a worker to the Northern Region Shire Council. The worker performed work for the Northern Region Shire Council in connection with the supply of electricity (which is a non-exempt activity under s.14(2)(e) of the Payroll Tax Act).

Had the worker been paid directly by the Northern Region Shire Council as an employee, the wages would not be exempt under the Relevant Provisions. Therefore, Recruitment Solutions Agency is not entitled to the exemption under s.13J(2) of the Payroll Tax Act in respect of the wages it pays the worker.

Incomplete or incorrect declaration

9. 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.
10. If a client has provided a Relevant Declaration which is later found to be incorrect (because the wages paid to or in relation to the service provider would not have been exempt under the Relevant Provisions had the service provider been paid by the client as an employee), the employment agent will be liable to pay payroll tax on the amounts paid to the on-hired workers provided to that client.
11. If an employment agent wishes to confirm that a Relevant Declaration from a client is correct, the agent may contact QRO. The confidentiality provisions contained with Part 8 of the *Taxation Administration Act 2001* (the Administration Act) prevent QRO from disclosing confidential information to the agent unless the agent first obtains written consent from the client that will enable QRO to provide information about its payroll tax status.

Frequency of declaration

12. The Payroll Tax Act requires a separate Relevant Declaration for each employment contract entered into between the employment agent and their client(s). However, the Commissioner recognises that this requirement may be impractical and onerous.
13. For this reason, the Commissioner will be satisfied if the employment agent obtains one Relevant Declaration from its exempt client for each financial year if the type of work performed by all persons on-hired by that employment agent to that client is similar.
14. Where a contract for the provision of the workers goes beyond a financial year, only one declaration is required.
15. Employment agents must ensure that a Relevant Declaration is obtained before the end of the relevant financial year.

Example 3

ABC Personnel Agency on-hired six workers to Western Public Hospital for two financial years. All six workers performed accounts payable work for Western Public Hospital for the whole period.

ABC Personnel Agency is entitled to the exemption under s.13J(2) of the Payroll Tax Act as the wages would have been exempt under the Relevant Provisions had the on-hired workers been paid directly by Western Public Hospital as employees. To claim this exemption, ABC Personnel Agency must obtain a Relevant Declaration from Western Public Hospital before the end of the first financial year for the six workers. As the contract to provide the six workers relates to a period of two financial years, ABC Personnel Agency will not be required to obtain a subsequent Relevant Declaration in the second year in respect of the six workers.

Example 4

In the 2011–12 financial year, TempPeople Agency on-hires three nurses to Eastern Public Hospital. TempPeople Agency is entitled to the exemption under s.13J(2) of the Payroll Tax Act as the wages would be exempt under the Relevant Provisions had the three nurses been paid directly by Eastern

Public Hospital as employees. TempPeople Agency must obtain a Relevant Declaration from Eastern Public Hospital for the three nurses by the end of the financial year.

Later that year, TempPeople Agency on-hires two accounts payable workers to Eastern Public Hospital. TempPeople Agency is entitled to the exemption under s.13J(2) of the Payroll Tax Act as the wages would be exempt under the Relevant Provisions had the two on-hired workers been paid directly by Eastern Public Hospital as employees. The Relevant Declaration already obtained by TempPeople Agency from Eastern Public Hospital for that financial year relates to the provision of the nurses. As the work provided by the two accounts payable workers is not similar to nursing services, TempPeople Agency must obtain a further Relevant Declaration from Eastern Public Hospital in respect of the two accounts payable workers.

Application for refund made by an employment agent

16. If an employment agency becomes aware that its client is exempt under the Relevant Provisions of the Payroll Tax Act after having paid payroll tax on the wages under an employment agency contract, the employment agency may request the Commissioner to make a reassessment of payroll tax under s.17 of the Administration Act.
17. 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.
18. The Commissioner cannot make a reassessment more than five years after the assessment notice for the original assessment was given.⁵
19. Section 37 of the Administration Act provides for a refund of overpaid payroll tax to be made when a reassessment reduces the liability to payroll tax, subject to certain administrative provisos contained in ss.38 and 39 of the Administration Act.

Record keeping by employment agent

20. All Relevant Declarations must be kept by the employment agent for five years.⁶ Employment agents must ensure that all Relevant Declarations can be readily produced upon request by the Commissioner.

Anti-avoidance provisions

21. If an employment agency contract has the effect of reducing or avoiding payroll tax, s.13L of the Payroll Tax 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 agent or the service provider.
22. Section 13LA of the Payroll Tax Act also contains specific anti-avoidance provisions in relation to certain types of arrangements involving employment agency contracts.

⁵ Section 21 of the Administration Act and definition of "limitation period" in the Dictionary in Schedule 2 of the Administration Act

⁶ Section 118 of the Administration Act

Date of effect

23. This public ruling takes effect from 1 July 2011.

Tony Kulpa
Deputy Commissioner of State Revenue
Date of issue: 30 June 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA026.1 ⁷	30 June 2011	1 July 2011	Current

⁷ PTA026 is issued as version 2 in some jurisdictions.