

BUSINESS NSW

18 January 2021

The Hon. Daniel Mookhey, MLC
Chair
Select Committee on the Future of Work

By email: futureofwork@parliament.nsw.gov.au

Dear Mr Mookhey

RESPONSE TO QUESTION ON NOTICE – PAYROLL TAX

Business NSW thanks the committee for its interest in our views on the NSW payroll tax system.

Business NSW's members regard payroll tax to be one of the top impediments to growing and creating economic opportunity in their communities. While *Business NSW* accepts that payroll tax is an important revenue source for the Government, we have previously proposed changes to the payroll tax system to make it easier for businesses to administer.

Many of these proposals were presented in our submission to the *2018 Review of Payroll Tax Administration* conducted by the NSW Productivity Commissioner. This submission is **attached** for your information. We note that several of these proposals were accepted as recommendations of the review.

As noted in our submission, concerns relating to the contractor provisions of the *Payroll Tax Act 2007* are difficult to resolve without a broader review of the payroll tax base and potential alternative approaches.

These issues are subject to ongoing deliberations by the chamber movement. *Business NSW* is actively working with our state and territory counterparts and the Australian Chamber of Commerce and Industry to identify potential options for a national approach to reform. *Business NSW's* view is that considering federal financial relations and our tax system in unison will yield the most fruitful opportunities for reform.

Business NSW has also raised member concerns relating to the treatment of payroll tax in chain of on-hire arrangements. The concerns relate to the potential for ambiguity as to which party is liable for payroll tax in these arrangements. A summary of the issues is provided on the following pages for your information.

Yours sincerely

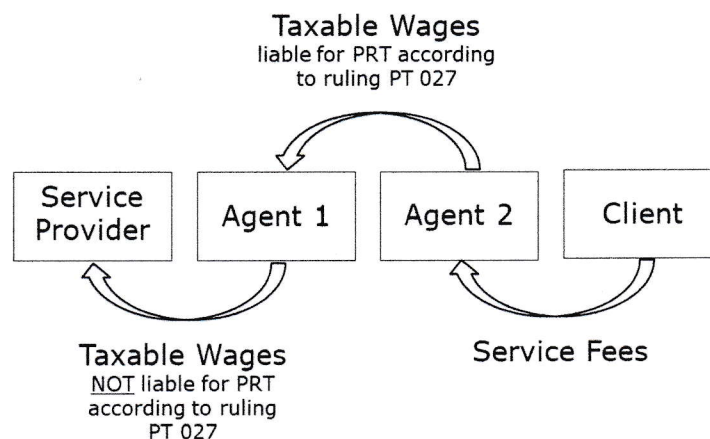
Elizabeth Greenwood
Policy Manager, Workers Compensation, WHS and Regulation

Summary: Chain of on-hire arrangements

- The employment agency provisions of the *Payroll Tax Act 2007* require all employment agents in a chain of on-hire arrangement to pay payroll tax, but provides discretion to Revenue NSW to determine which employment agents in the arrangement are liable to avoid double taxation of the same wages.
- Revenue NSW has issued advice to business, in the form of a revenue ruling, setting out the treatment of chain of on-hire arrangements, including which employment agent is liable for payroll tax. This advice states that only the employment agent closest to the ultimate client (or end user) will be liable for payroll tax.
- *Business NSW* is aware of circumstances where this revenue ruling is open to multiple interpretations depending on whether a client is viewed as being the end user. Where businesses have made a different interpretation to Revenue NSW, businesses have had to absorb costs associated with back-dated payroll tax assessments as they cannot incorporate these revised costs in prices charged to clients.
- As payroll tax is a self-reporting system, ambiguity over the party responsible for payroll tax on wages paid in chain of on-hire arrangements has the potential to result in over taxation (including double taxation of the same wages). It also creates additional red tape, uncertainty and record keeping requirements for business.

Case study

- A chain of on-hire arrangement occurs when an employment agent on-hires a service provider (a person who performs duties to the benefit of a client) to another employment agent who in turn on-hires the service provider to its client.
- A strict application of the employment agency provisions in a chain of on-hire arrangement would mean both employment agents are liable for payroll tax on essentially the same employment agency arrangement. The legislation contemplates this and provides Revenue NSW (via the Chief Commissioner) with the discretion to impose payroll tax on any one of those employment agents.
- Revenue NSW has previously issued a revenue ruling setting out how it will treat payroll tax liabilities for chain of on-hire arrangements in light of this discretion (PTA 027 refers). This ruling, as illustrated in the diagram below, advises that only the employment agent closest to the ultimate client will be liable for payroll tax.



- *Business NSW* is aware of instances where it has not been clear to employer which party is the ultimate client (or end user) and therefore which party is liable for payroll tax.
- In *Southern Cross Group Services Pty Ltd v Chief Commissioner of State Revenue* (2019) the court upheld that there may be more than one employment agent liable for payroll tax and it is not only the employment agent closest in that chain to the end user who is liable. The court also upheld that the Chief Commissioner had discretion to determine which party was liable and that its revenue ruling (PTA 027) was not legally binding. An implication of this is that a business may not be able to challenge an unreasonable assessment of which party is the end user.
- In this case, a concern arises because while acting in good faith the business took a different interpretation to Revenue NSW as to whether their client was the end user (and therefore were under a different understanding as to how Revenue NSW's discretion would be applied). The plaintiff was ordered to pay \$1,655,652.69 plus court costs. These costs can no longer be recovered from clients.