



Office of State Revenue  
NSW TREASURY

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## Revenue Ruling No. PT 64

# Exemption of Personal Services Income Paid or Payable by Australian Financial Services Licensees to Authorised Agents

*(Section 3A Pay-roll Tax Act, 1971)*

### Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PT 64	19 July 2004	01 July 2003	30 June 2007	Obsolete

### Preamble

1. Financial products offered by life agents, general insurance agents, brokers and financial planners are governed by the Corporations Act 2001 as amended by the Financial Services Reform Act (FSRA) from 11 March 2004. The FSRA commenced on 11 March 2002, but as part of the transitional arrangements industry participants operating at that date were not required to be licensed under the new regime until 11 March 2004. Some existing industry participants opted into the new regime prior to 11 March 2004, while others used the full transitional period to be licensed under the Corporations Act 2001 as amended by FSRA.
2. Under Section 3A of the Pay-roll Tax Act 1971 ("the Act"), payments to life agents, general insurance agents, brokers and financial planners may be liable to pay-roll tax under section 3A (the "relevant contracts" provisions) of the Pay-roll Tax Act, except in respect of payments to sellers of insurance, which are exempt under section 3A(1A)(b) of the Act.
3. Approval has been granted by the Treasurer for section 3A to be administered with effect from 1 July 2003, on the basis that the exemption for insurance sellers also applies to financial planners who operate a personal services business providing other financial product advice to third parties, subject to specified criteria being met.
4. The purpose of this ruling is to advise of the criteria which must be met to qualify for the exemption.

### Ruling

5. From 1 July 2003, a payment by an AFSL holder (the employer) that comprises personal services income, to or in relation to a financial planner (defined below) who is an Authorised Representative, is exempt from pay-roll tax despite section 3A of the Act if the following conditions are met:
  - (a) the payment is made for or in connection with services supplied by an Authorised Representative of the AFSL holder;
  - (b) The Authorised Representative conducts a personal services business pursuant to section 87-40 of the Income Tax Assessment Act 1997 of the Commonwealth (the ITAA) – the relevant criteria in section 87-40 is outlined in paragraph 6 below;
  - (c) The authorised representative is not a common law employee of the AFSL holder;
  - (d) The payment is personal services income of the authorised representative as defined in section 84(5) of the ITAA;

- (e) The personal services income is either:
    - (i) paid or payable to the authorised representative by the AFSL holder; or
    - (ii) included in a payment by the AFSL holder to another entity which then pays the personal services income component to the authorised representative.
6. An agent must meet the following tests for the purpose of determining whether the agent is conducting a personal services business:
    - (a) At least 75% of the agent's income from activities referred to in paragraph 6(b) must be commission or fees, based on the agent's performance in providing services to the customers on the principal's behalf ie no more than 25% of the agent's income may be paid as a retainer.
    - (b) The agent must actively seek other entities to whom the agent could provide services on the principal's behalf, or must service existing clients.
    - (c) The agent did not provide services to third party customers on the principal's behalf, using premises that the principal or an associate owns, or in which the principal or an associate has a leasehold interest, unless the agent uses the premises under an arrangement entered into at arm's length.
  7. For the purposes of the exemption, an employer will be regarded as being an AFSL holder for the whole of the 2003-04 financial year if the person was an AFSL holder on 11 March 2004. An employer who did not become an AFSL holder by that date will be regarded as being an AFSL holder for that part of 2003-04 prior to 11 March 2004 during which the employer was registered under Commonwealth legislation in force prior to the Financial Services Reform Act.
  8. Similarly, for the purposes of this exemption a financial planner who was appointed as an authorised agent of the AFSL holder by 11 March 2004 will be regarded as being an authorised agent for the whole of the 2003-04 financial year. A financial planner who did not become an authorised agent by that date, will be regarded as being an authorised agent for that part of 2003-04 prior to 11 March 2004 during which the financial planner was appointed as a representative of the employer under Commonwealth legislation applying prior to FSRA.
  9. For the purposes of this ruling, a financial planner is a natural person who
    - (a) provides financial services by:
      - (i) providing financial product advice; or
      - (ii) dealing, as agent, in a financial product (other than by underwriting securities or managed investment products); or
      - (iii) both (a)(i) and (a)(ii); and
    - (b) provides these services as:
      - (i) an authorised representative of a financial services licensee; or
      - (ii) a representative of a regulated principal described in column 2 of items 1, 2, 5, 6 or 7 of the table in sub-section 1430(1) of the Corporations Act 2001 (Cth).

10. For the purposes of this Ruling, the terms:

- "financial services"
- "dealing"
- "managed investment product"
- "financial services licensee"
- "regulated principal"
- "financial product advice"
- "securities"
- "authorised representative"
- "representative"

have the same meaning as given in the Corporations Act 2001 (Cth).

11. The exemption explained in this ruling does not affect existing exemptions from pay-roll tax that may be applicable under section 3A of the Act.

12. This variation to statute will operate in respect of assessments of payments to financial planners for services supplied on or after 1 July 2003. It will also apply to assessments issued on or after 1 July 2003, in respect of payments to financial planners paid or payable before that date, unless the employer has paid tax or has been assessed in respect of such payments under an assessment issued before 1 July 2003.

**Peter Achterstraat**  
Chief Commissioner of State Revenue  
19 July 2004