



REVENUE CIRCULAR PTA016
Profit Distributions and Loan Accounts – <i>Payroll Tax Act 2011</i>
Issue Date: 30 June 2011
Status: Current – Effective from 1 July 2011
Previous Circular: PTX016

Preamble

The *Payroll Tax Act 2011* (the Act), which commenced on 1 July 2011, rewrites the *Payroll Tax Act 1987* (the 1987 Act) and harmonises the payroll tax legislation in the Australian jurisdictions.

1. The definition of wages in section 13 of the Act includes any wages, remuneration, salary, commission, employer superannuation contributions, bonuses or allowances paid or payable to or in relation to an employee. This definition is extended by section 14 of the Act to include fringe benefits as defined in the *Fringe Benefits Tax Assessment Act 1986* (Cwth) (FBT Act).
2. A question may arise as to whether payments and loans made to a proprietor of a business, who is also an employee of that business, are subject to payroll tax. The purpose of this circular is to provide clarification regarding the payroll tax treatment of these payments.

Circular

Profit Distributions and Loan Accounts

3. For a payment to be subject to payroll tax, the payment must be made to an employee (or a person taken to be an employee) in his or her capacity as an employee, and not in any other capacity (e.g. a shareholder). Therefore, distributions of profit (i.e. amount of surplus after deducting all expenses) to persons who are both owners and employees of the business are not wages under the Act.
4. Similarly, trust distributions (whether income or capital) and company dividends are not subject to payroll tax when paid to beneficiaries or shareholders, even if they are also employees. These payments must be clearly shown in the books of account as profit distributions and not expenses of the business.
5. Whether a loan made to a beneficiary or shareholder who is also an employee of the business is subject to payroll tax depends on how the loan is regarded under the income tax legislation and the FBT Act. If the loan is deemed to be income to the beneficiary or shareholder for income tax purposes, it is not subject to payroll tax. On the other hand, if it is regarded as a loan benefit under the FBT Act, the taxable value calculated using the formula for Type 2 Benefit (as specified in the FBT Act) is subject to payroll tax.

6. Employers/employees should contact the Australian Taxation Office for more information on income tax and fringe benefits tax.
7. If the loan repayment is offset against the beneficiary's or shareholder's remuneration, the amount of the remuneration offset will be subject to payroll tax. If the loan repayment is offset against trust distributions to the beneficiary or dividends to the shareholder, the amount offset is not subject to payroll tax.
8. A partnership is not a legal entity. Therefore, any payment to the partners, (whether the payments are described as 'wages' or 'loans') are regarded as payments or drawings in respect of partnership profits and are not subject to payroll tax.

SIGNED

David Read
Commissioner for ACT Revenue
30 June 2011