



REVENUE CIRCULAR PTA077
Payments to and by third persons or through interposing partnerships, trusts or companies <i>Payroll Tax Act 2011</i>
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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 Act imposes a liability to ACT payroll tax on an employer for any wages paid or payable by the employer for services rendered or performed in, or partly in, the ACT.
2. This circular provides guidelines on the application of the Act to payments not made directly by an employer to an employee where they are paid to or by another person, or paid by a person on behalf of the employer to or in relation to an employee.

Circular

Wages paid to or by another person

3. Under the definition of “wages” in sections 13 and 46 of the Act, employers are liable for payroll tax on amounts paid or payable where such payments are not made directly by an employer to an employee.
4. There are two basic categories of such arrangements.

Payment by a person on behalf of the employer to or in relation to an employee

5. Any payment in cash or in kind to or in respect of an employee or a salaried director made under an arrangement with the employer, on account of the employee’s employment, is liable to payroll tax.
6. For example, the payment of school fees by a "Scholarship Trust" set up by the employer, whether paid to the employee, the school, to members of the employee’s family or to a family trust, etc.

Payment by the employer to a person other than the employee

7. Any payment in cash or in kind by the employer to any person (other than the employee) or body whereby a benefit is conferred upon an employee or salaried director is liable to payroll tax.

8. For example, the payment of health insurance directly to a health fund by the employer as an expense of the business and not by way of deduction from the employee's gross wages. The latter has always been taxable as part of gross wages. A further example is the payment by the employer to an employee's wife or his family trust in relation to his employment.

Interposing Partnerships, Trusts and Companies

9. Under section 47 of the Act, the Commissioner for ACT Revenue (the Commissioner) may disregard any agreement, transaction or arrangement under which an employee performs service for which payment is made to a related third party and the effect of the arrangement is to reduce or avoid payroll tax.
10. A typical situation which the anti-avoidance measure aims to counter is as follows:

A trust, partnership or company enters into an agreement with the employer to provide certain services. The employee agrees to work for that trust, partnership or company instead of for the employer. The payments for the services rendered are then paid to the trust, partnership or company, which is related to the employee. By this method no employer/employee relationship arises under the Act and therefore the payments made to the trust, partnership or company are not wages liable to payroll tax.
11. If the effect is to reduce or avoid payroll tax the Commissioner may deem a party to the arrangement to be an employer and any payment made under the arrangement to be wages for the purpose of the Act.
12. Payroll tax will therefore be assessed on the amounts of those payments. The section applies to such agreements, transactions or arrangements whether in writing or otherwise.

SIGNED

David Read
Commissioner for ACT Revenue
30 June 2011