



**Revenue Circular PTA074.2**  
***Payroll Tax Act 2011***  
**Exemptions for Employment Agents**

**Circular history**

Circular number	Issued date	Dates of effect		Status
		From	To	
No 65	18 May 1999	From 6 May 1999	10 November 1999	Superseded by No 69
No 69	11 November 1999	11 November 1999	30 June 2008	Republished as PTX023 with minor amendments
PTX023	30 June 2008	1 July 2008	30 June 2010	Republished as PTX023.1 with minor amendments
PTX023.1	30 June 2010	1 July 2010	30 June 2011	Republished as PTA074 with minor amendments
PTA074	30 June 2011	1 July 2011	30 September 2013	Republished as PTA074.1 with amendments (in relation to 'genuine employer')
PTA074.1	3 March 2014	1 October 2013	15 April 2014	Republished as PTA074.2 with minor amendments
PTA074.2	16 April 2014	16 April 2014	-	Current

**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. Under schedule 2, part 2.3 of the Act wages paid or payable by an employment agent to a subcontractor are exempt wages in the hands of an employment agent, provided the subcontractor can demonstrate that it is a *bona fide* employer in its own right.

*Note - The exemption regime commenced on 6 May 1999. For contracts entered into by an employment agent prior to 6 May 1999 where the terms of the contract were reliant upon the previous exemption regime and evidenced in writing, the contract remains subject to the previous exemption regime for the term of that contract or until 30 June 2000, whichever occurs first.*

**Circular**

3. This circular is to assist employment agents to determine the application of the exemption provisions on their own payroll tax liability.

## **Exemptions under schedule 2, part 2.3 of the Act**

4. Schedule 2, part 2.3 of the Act provides a payroll tax exemption for wages paid or payable by an employment agent to a person (the subcontractor) under a contract between the agent and the subcontractor for work performed by the subcontractor for a client of the agent in any of the following cases:

- (a) the subcontractor also supplies goods to the client under the contract and the wages amount to less than 50% of the value of the consideration paid or payable by the agent to the subcontractor for services and goods supplied to that client;
- (b) the services provided by the subcontractor to the client are of a kind not ordinarily required by the employment agent and the subcontractor ordinarily renders services of that kind to the public generally;
- (c) the subcontractor is a body corporate and individuals of both the following kinds perform the work for which the wages are paid or payable:
  - (i) a director or shareholder of the body;
  - (ii) an employee of the body who is not a director or shareholder;
- (d) the subcontractor is a partnership and individuals of both the following kinds perform the work for which the wages are paid or payable:
  - (i) a partner;
  - (ii) an employee of the partnership;
- (e) the subcontractor is a sole trader and individuals of both of the following kinds perform the work for which the wages are paid or payable:
  - (i) the subcontractor;
  - (ii) an employee of the subcontractor;
- (f) the individuals who perform the work for which the wages are paid or payable together work for not more than 8 days in any month under a contract with the agent;
- (g) the subcontractor is a genuine employer of the individuals who perform the work for which the wages are paid.

## **Treatment of 'genuine employer' under schedule 2, part 2.3, section 2.14 (1)(g)**

5. There is no specific definition of 'genuine employer' in the Act. The ACT Revenue Office interprets *individuals* in subsection 2.14(1)(g) as referring to both the plural and the singular. Therefore, to qualify as a 'genuine employer', the subcontractor who is engaged to perform the work for which the wages are paid should fulfil all of the following requirements:

- (a) have a minimum of one employee who performs the services of a type that is ordinarily provided by the subcontractor;

- (b) pay PAYG tax for its employee/s;
  - (c) pay workers' compensation payments for its employee/s; and
  - (d) pay the superannuation guarantee for its employee/s.
6. If all of the above requirements are met, the employment agent may apply the exemption to those wages paid to that subcontractor for services provided under that contract.
7. The ACT Revenue Office will accept a statutory declaration from the employment agent testifying that the subcontractor is a 'genuine employer', made in lieu of other documentation not being available. The employment agent should consider the above indicators and must be satisfied that the subcontractor is a 'genuine employer'.

**Documentation for wages exempted under schedule 2 part 2.3**

8. Payroll tax is a self-assessed tax. It is the employment agent's responsibility to determine the liability, or otherwise, of the arrangements made with their subcontractors under schedule 2, part 2.3. The employment agent must also retain relevant documentation for exempt wages paid to subcontractors.

SIGNED

Kim Salisbury  
 Commissioner for ACT Revenue  
 16 April 2014

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