

REVENUE CIRCULAR PTA022
Contractors: Services Not Ordinarily Required – <i>Payroll Tax Act 2011</i>
Issue Date: 30 June 2011
Status: Current – Effective 1 July 2011
Previous Circular: PTX022

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. Parties to a ‘relevant contract’ are deemed to be employers and employees (section 33 and 34 of the Act) and payments made under a contract are deemed to be wages (section 35 of the Act). Deemed wages are subject to payroll tax under section 36 of the Act.
2. While most contracts for the provision of services come within the meaning of ‘relevant contract’ under section 32 of the Act, certain types of contracts are specifically excluded from the definition of ‘relevant contract’. A contract is not a ‘relevant contract’ if the Commissioner for ACT Revenue (the Commissioner) is satisfied that the services under the contract are services not ordinarily required by the principal and the person who provides the services ordinarily renders services of that kind to the general public in that financial year.
3. This circular provides the criteria that the Commissioner takes into consideration in exercising his or her discretion under section 32(2)(b)(i) of the Act to exempt payments made under such contracts from payroll tax.

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4. From time to time, businesses may require services that are not associated with their mainstream business activities. As these services are required so infrequently, it would be more practical for businesses to engage contractors instead of permanent staff to perform these services when the need arises.
5. In exercising the discretion under section 32(2)(b)(i) of the Act to exempt payments made under the above contracts from payroll tax, the Commissioner needs to be satisfied that the following criteria apply:

- (a) the services provided by the contractor must not ordinarily be required by the principal (e.g. services provided by painters and decorators engaged by a bank to paint and decorate its office); and
 - (b) the contractor must ordinarily render the services in question to the public generally.
6. To satisfy the second criterion, the contractor would need to have derived less than 40 per cent of gross trading income from the principal during the relevant financial year.
 7. For the purposes of this circular, gross trading income is the gross income earned by the contractor in the conduct of the contractor's business excluding any investment income or wages.
 8. A principal who does not satisfy the above criteria but who believes that it is entitled to this exemption may apply to the Commissioner for a determination.

SIGNED

David Read
Commissioner for ACT Revenue
30 June 2011