

Revenue Circular PTA074.4

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No 65	18 May 1999	From 6 May 1999	10 November 1999	Superseded by No 69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	31 December 2014	Republished as PTA074.3 with amendments (in relation to 'genuine employer')
PTA074.3	5 December 2014	1 January 2015	Superseded	Superseded by PTA074.4
PTA074.4	3 February 2015	1 January 2015	-	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.

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, section 2.14 (1) 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.

5. The exemption found at section 2.14 (1) (a) focuses on the provision of goods by the subcontractor, as opposed to labour services, when the wages constitute less than 50 per cent of the consideration paid for the total of the goods and services. This exemption would be applicable in many trade-based industries where the provision of goods may exceed the value of the consideration paid for the services.

6. Section 2.14 (1) (b) only applies when an employment agent has obtained the services of a subcontractor for a client, and those services are ordinarily provided by the subcontractor to the public generally, and are not of a kind ordinarily required or sourced by the employment agent for its clients. This exemption does not apply when the employment agent is receiving the services of the subcontractor itself.

- a. For example, the exemption may apply if an employment agent usually sources IT subcontractors for its clients, but on one occasion sources a gardener for those same clients (and the gardener provides those services to the public generally).

7. The exemptions found at sections 2.14 (1) (c) (d) and (e) require two or more people to be engaged to perform the work for the client, under the conditions prescribed by those sections. If a service contract engages only a single person, these exemption categories will not apply. Where a contractor is a body corporate, partnership or sole

trader and has two people working on a single contract, one of whom is the employee of the business, the payroll tax exemptions will apply.

a. These exemptions can only be accessed if the employment agent engages the subcontractors under one contract. If each contractor is engaged under separate contracts (for example, the director under one contract and the employee under another), the exemptions do not apply as the legislative conditions for the exemption of the wages have not been met.

8. The details of a contract as completed between the company and the client (for example, in relation to budgets, assignment of tasks or rectification of unsatisfactory deliverables) is not relevant for the purposes of the exemptions at section 2.14 (1) (c) (d) and (e); rather, the director, partner or sole trader and one or more of their employees must perform the work under one contract between the employment agent and the contractor.

9. For the exemption at section 2.14 (1) (f), a calendar day on which work is performed under a contract is considered a 'day' in determining the number of days on which work is performed by a contractor, regardless of the amount of time worked on that day. Further information on this exemption is provided in Revenue Circular [PTA014](#).

Treatment of Wages

10. Sections 37 to 40 of the Act determine the treatment of wages in the hands of an employment agent. Employment agents are required, as the employer, to pay payroll tax on employment agency contracts (if liable). The person who performs the work under an employment agency contract (the subcontractor) is taken to be an employee.

11. The structure of the employment contract between the relevant parties will depend on the terms and conditions of individual contracts and the commercial arrangements in place. Should an employment agent choose to recover the payroll tax liability from a contractor, this is an internal commercial decision made at the discretion of the employment agent and any dispute about this decision must be dealt with between the parties involved (the ACT Revenue Office has no involvement in such a decision).

12. Wages paid by an employment agent under an employment agency contract include any amount paid or payable to the service provider in relation to the provision of services in relation to the contract. The whole amount paid to a subcontractor by an agency is liable to payroll tax. The provisions of the Act should be relied upon to establish what constitutes taxable wages in the hands of the employment agent (the employer).

a. Additional allowances under a contract between the agent and the subcontractor (for example, on-call allowances or after-hours additional payments) would be subject to payroll tax as they form part of the service provided by the subcontractor.

13. In the event a subcontractor is performing work across a number of jurisdictions, such as the ACT and NSW, payroll tax must be paid by the employment agent in accordance with the nexus provisions (detailed in Revenue Circular [PTA039](#)), unless the wages are exempt under the remaining exemptions at schedule 2, part 2.3 of the Act.

Double Taxation

14. Section 41 of the Act provides that if payroll tax is paid by the employment agent, then no-one else is liable to payroll tax in relation to the payment of wages. Employment agents are thus required to include the payments made to service providers in their payroll tax calculations. Consequently, any payments for the provision of an employee of the service provider to an employment agent would not need to be included in the service provider's determination of their own liability for payroll tax (if any).

Chain of On-Hire

15. A chain of on-hire occurs when an employment agent on-hires a service provider to another employment agent who in turn on-hires the service provider to its client. Revenue Circular [PTA027](#) and the associated declaration form ([PTF027](#)) have been adopted in the ACT to address any double taxation issues that may arise from the chain of on-hire scenario.

16. The chain of on-hire declaration form provides fields for all the relevant information required to understand the chain of on-hire scenario, whether there are two employment agents or more. The ACT Revenue Office will accept [PTF027](#) as completed by and between, for example, Agents 2 and 3 as appropriate, and again by Agents 1 and 2 as appropriate. The form can be amended to reflect the number of agents in the chain, as long as the liability (if any) to payroll tax and the on-hire chain can be clearly discerned and can be provided for compliance purposes.

Removal of the 'genuine employer' Exemption

17. Effective 1 January 2015, the 'genuine employer' exemption for wages paid to subcontractors by employment agents was removed from the Act (formally at schedule 2, part 2.3 section 2.14 (1) (g) of the Act). Please refer to previous Revenue Circulars [PTA074.1](#) and [PTA074.2](#) for information on the treatment of the 'genuine employer' exemption.

18. Any wages paid or payable by an employment agent to a subcontractor during January 2015 and in subsequent months will be subject to payroll tax in the hands of the employment agent, if any remaining employment agent exemptions do not apply, even if the work was performed prior to 1 January 2015.

19. In relation to wages and the terms 'paid' or 'payable', paid is taken to mean the date when the payment for the wages is actually made (by whatever means); payable refers to the date when the wages were due for payment under the terms of the contract. The term 'payable' in the Act has no correlation to the dates when the work was performed.

Documentation for wages exempted under schedule 2 part 2.3

20. 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.

21. The employment agent must retain relevant documentation for exempt wages paid to subcontractors, such as the employment agency contract which identifies the subcontractors engaged to provide the service. Any taxation liabilities, deductions or exemptions must be supported by documentary evidence retained by the employment agent.

SIGNED

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