



REVENUE CIRCULAR PTA074.5
Employment Agents – <i>Payroll Tax Act 2011</i>
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Introduction

The *Payroll Tax Act 2011* (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.

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.

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

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 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:

- the subcontractor also supplies goods to the client under the contract and the wages amount to less than 50 per cent of the value of the consideration paid or payable by the agent to the subcontractor for services and goods supplied to that client;
- 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;
- the subcontractor is a body corporate and individuals of both the following kinds perform the work for which the wages are paid or payable:
 - a director or shareholder of the body;
 - an employee of the body who is not a director or shareholder;

- the subcontractor is a partnership and individuals of both the following kinds perform the work for which the wages are paid or payable:
 - a partner;
 - an employee of the partnership;
- 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:
 - the subcontractor;
 - an employee of the subcontractor;
- 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.

Subcontractor supplies goods; wages are less than 50 per cent

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.

Services not ordinarily required; subcontractor provides services to public generally

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.

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).

Two or more people perform work for the client

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. 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.

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.

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.

Work performed 8 days or less in a month

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 the latest version of Revenue Circular *What Constitutes a Day's Work?* (PTA014).

Treatment of wages

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.

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).

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.

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 the latest version of Revenue Circular *Payroll Tax Nexus Provisions* (PTA039)), unless the wages are exempt under the remaining exemptions at schedule 2, part 2.3 of the Act.

Double taxation

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

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 *Employment Agent Contracts – Chain of On-Hire* (PTA027) has been adopted in the ACT to address any double taxation issues that may arise from the chain of on-hire scenario.

Applications can be lodged with the declaration form for chain of on-hire available through the ACT Revenue Office website at www.revenue.act.gov.au. The 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.

Application must be completed by and between, for example, Agents 1 and 2 as appropriate, and again Agents 2 and 3 as appropriate. The form allows for customisation 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.

Documentation for wages exempted under schedule 2 part 2.3

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 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

Kim Salisbury
Commissioner for ACT Revenue
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