

1999

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PAYROLL TAX (AMENDMENT) BILL 1999

EXPLANATORY MEMORANDUM

Circulated by the authority of the Chief Minister and Treasurer

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Payroll Tax (Amendment) Bill 1999

Summary

The Payroll Tax (Amendment) Bill 1999 provides ACT employment agents with a more objective regime of exemptions to determine their liability for payroll tax purposes.

2. From 1 November 1989 the Payroll Tax Act 1987 provided that **all** payments made to a person engaged under an agency arrangement through an employment agent, irrespective of who makes the payments (ie. employment agent or client) were subject to payroll tax. This is the case whether or not the person supplying the services or labour does so as a natural person, a partnership or through a company or trust.
3. In 1993 amendments were made to the Act effective from 17 September 1991, to provide certain exemptions from payroll tax including an exemption requiring the Commissioner for ACT Revenue to be satisfied that the agent has procured the services of a person who is bona fide rendering services to the public generally.
4. To assist employment agents to determine whether or not particular contracts would satisfy the exemption criteria, including those granted under the Commissioner's discretion, Revenue Circular No. 39 (RC 39) was issued on 27 August 1993.
5. Despite RC 39, employment agents have often expressed their concern at the difficulties they face in obtaining information to satisfy these exemptions and/or complying with the requirements of the tests, particularly in relation to the aggregation of 90 days employment in a financial year.
7. In addition, the Commissioner is burdened in determining exemptions in each individual case. Accordingly it is proposed to move the guidelines from RC39 into the Act, making amendments as appropriate to clarify provisions. This will provide greater certainty for taxpayers and reduce the cost of compliance to business and government.

Financial implications

This measure is revenue neutral. It has no additional regulatory or financial implications for ACT taxpayers.

Details of the Bill are attached.



Details of the Payroll Tax (Amendment) Bill 1999

Title

Clause 1 provides for the short title for this Act to be the Payroll Tax (Amendment) Act 1999.

Commencement

Clause 2 provides for the commencement of this Act.

Principal Act

Clause 3 refers to the Principal Act being amended as the Payroll Tax Act 1987.

Exemption from tax

Clause 4 amends section 9 of the Principal Act by omitting subsection (3) and substituting a new subsection (3) which provides that:

- section 6 of the Act 'does not apply to wages paid or payable by an employment agent to a person under a contract between the agent and that person in relation to the performance of work by that person for a client of the employment agent' in four primary cases:
 - a) where the employment agent procures the services of a person, the supply of goods or equipment is more than 50% of the value of the contract [current 9(3)(a) of the Principal Act];
 - b) where the employment agent procures the services of a person where those services are not of a type ordinarily offered by the agent and those services are provided by persons who normally render those services to the general public [current 9(3)(b)(i) of the Principal Act];
 - c) where the employment agent procures the services of a person/s, and the person/s engaged to perform the services under the agency agreement are/is -
 - i) a body corporate, where one or more directors/shareholders and one or more employees of the body corporate (not being any other director/shareholder) are performing the work;
 - ii) a partnership of natural persons, where one or more of the partners and one or more employees of the partnership are performing the work; or
 - iii) a sole trader, where the sole trader and one or more employees of the sole trader are performing the work.
 - d) where the employment agent procures the services of a person, that person engaged to perform the work does so for less than 8 days in any month.

- Subsection 9(3) paragraph (b)(ii) of the Principal Act, which deals with the Commissioner's discretion to determine the substantive independence of a business, has been omitted.

Repeal

Clause 5 repeals section 21 of the Principal Act. This clause removes earlier transitional provisions which are now spent.

