

REVENUE CIRCULAR

RC-PRT-001:

2008-09 PAYROLL TAX CHANGES

Purpose

This Circular provides information on amendments to the *Pay-roll Tax Act* that implement the 2008-09 Budget revenue measures announced by the Treasurer on 6 May 2008 and the payroll tax harmonisation measures first announced on 29 March 2007.

Summary of measures

From 1 July 2008:

- 1) the payroll tax rate is reduced from 6.2 per cent to 5.9 per cent in respect to wages paid or payable on or after 1 July 2008;
- 2) the operation of the Northern Territory's *Pay-roll Tax Act* is harmonised with every other state and the territory in the following areas:
 - a) lodgement and payment dates;
 - b) motor vehicle allowances;
 - c) accommodation allowances;
 - d) a range of fringe benefits;
 - e) work performed in another country;
 - f) superannuation contributions;
 - g) employee share acquisition schemes; and
 - h) grouping of employers; and
- 3) the *Pay-roll Tax Act* is updated in relation to the levying of payroll tax on termination payments, as a result of the Commonwealth's superannuation reforms.

These measures are explained in more detail below.

Payroll tax harmonisation

To simplify administration and reduce red tape, the states and territories agreed to harmonise eight areas of the payroll tax legislation. For the Northern Territory to meet this agreement, changes were required to six of the eight areas.

These are the treatment of motor vehicle allowances, accommodation allowances, employee share acquisition schemes, fringe benefits, work performed in another country and grouping of employers. No changes were required to the two other areas being lodgement and payment dates and the treatment of superannuation contributions as the treatment was already consistent with the harmonised approach.

All of the changes were based on the New South Wales and Victorian harmonised payroll tax legislation.

A summary of these changes are provided below. Moreover, further information on the operation of these measures is provided in Territory Revenue Office (TRO) publication *Employers' Guide to Payroll Tax in the Northern Territory*, available from the TRO website.

Motor vehicle and accommodation allowances

Motor vehicle allowances and overnight accommodation allowances will be exempt from payroll tax up to thresholds based on rates used by the Australian Taxation Office (ATO).

From 1 July 2008, the exempt rates will be:

- for motor vehicle allowances, 70 cents per business kilometre travelled for the use of an employee's own motor vehicle. The rate is based on the ATO large car rate using the 'cents per kilometre method'.
- for accommodation allowances, the ATO rate per night for overnight accommodation allowances, where an employee is required to stay away from his or her usual place of residence. The exempt rate is based on the total reasonable amount for daily travel allowance expense as determined by the ATO for the lowest capital city in the lowest salary band.

The ATO reviews the rates annually and publishes them in a Taxation Determination titled *Income tax: what are the reasonable travel and meal allowance expense amounts?* The determination can be accessed from the ATO website (law.ato.gov.au/atolaw/index.htm). The rate for 2008-09 is expected to be determined in late June 2008. Amounts paid above the exempt rate will be subject to payroll tax. As an indication, the ATO rate for 2007-08 is \$201.25 per night.

Fringe Benefits

A change is made to the treatment of living-away-from-home allowances. Currently, this allowance is taxed like all other allowances, that is, subject to payroll tax on the full value, rather than the concessional fringe benefits tax value.

From 1 July 2008, this allowance will no longer be excluded as a fringe benefit for payroll tax purposes. Therefore, the value for payroll tax purposes will be the value determined in accordance with the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth. If the allowance does not qualify as a living-away-from-home allowance benefit under the Commonwealth Act, the allowance will be taxed in the same manner as an accommodation allowance (that is on the full amount of the allowance).

Work performed in another country

Wages paid in the Territory for services performed in another country for more than six months are currently exempt from payroll tax, but not the first six months. From 1 July 2008, this exemption will be extended to include the first six months. That is, an employer will be able to claim the exemption upfront where it is anticipated that an employee is sent on assignment in another country for a continuous period of more than six months.

Wages paid for services performed in another country for six months or less will still be liable to payroll tax. Where the exemption is claimed but the employee does not satisfy the six month continuous service rule, the employer will be required to make an adjustment to the relevant return and pay the additional tax payable.

The six-month period does not have to be within the one financial year, but must be for a continuous period. This continuous period may have commenced before 1 July 2008. Furthermore, under the transitional arrangements, where an employee commences service in another country prior to 1 July 2008 but completes the six month continuous service after 1 July 2008, wages paid for services on or after 1 July 2008 are exempt from payroll tax.

Employee share and option schemes

Since 1 July 1999, the contribution of a share or option by an employer to an employee share acquisition scheme has been subject to payroll tax. As a result of the harmonisation measures, the *Pay-roll Tax Act* has been amended to follow a new method agreed between the states and territories for taxing employee share and option schemes.

The new method (like the former) treats the grant of a share or option to an employee or a director or former director as wages. However, the new method differs in the following manner.

Election to pay payroll tax on the date a share or option is granted or vested.

Under the former method, the grant of a share or option was subject to payroll tax at the time and value of the share or option was granted to the employee. Under the new method, the employer can elect to return payroll tax at the time the share or option is granted to the employee or the date the securities vest in the employee.

The 'granting' of a share or option occurs if a person acquires a share or (in the case of an option) a right to the share. The 'vesting date' for a share is the date when any conditions applying to granting the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded. The 'vesting date' for an option is the earlier of:

- when the share to which the option relates is granted to the employee; or
- when the right under the option to have the relevant share transferred, allotted or vested is exercised by the employee.

If the grant of a share or option constitutes wages, the amount of the wages is the market value of the share or option at the date it is granted or vested as determined in accordance with Part III, Division 13A of the *Income Tax Assessment Act 1936* of the Commonwealth less the consideration (if any) given by the employee for the grant (excluding consideration in the form of services rendered).

Where the value of a share or option is not included in the wages of an employer for the financial year in which they were granted, the employer will be taken to have elected to treat the value of the share or option as wages at the vesting date. Similarly, where the share or option has no value at the date granted, and therefore would not be liable to payroll tax, the employer is taken to have made an election to treat the share or option as wages at that time.

Reducing taxable wages due to rescission

Under the former method, payroll tax was payable on the grant of a share or option irrespective of whether the employer subsequently rescinded the grant. Under the new method, the employer may reduce the taxable wages declared by the value of any previously declared share or option, if the grant of a share or option was rescinded because the vesting conditions have not been met. However, this reduction in the taxable wages would not apply in circumstances where the employee decided not to exercise the option. The reduction does not apply to a rescission of a share or an option that was granted prior to 1 July 2008.

If an employer withdraws or exchanges the grant of a share or option before vesting in return for another form of payment, payroll tax is to be paid on the amount of the payment made.

New nexus rules

Under the former method, payroll tax was payable on employee share acquisition schemes in the Territory where the services provided by the employee were rendered wholly in the Territory or if the services were not provided wholly in any state or territory, if they were provided to the employee in the Territory.

The new method clarifies that where the services are not provided wholly in any state or territory, they are taken to be paid in the state or territory of registration or incorporation of the company concerned.

For payroll tax purposes, the grant of a share or option, which may otherwise be classified as a fringe benefit under the *Fringe Benefit Tax Assessment Act 1986* is not treated as a fringe benefit, but rather as wages subject to the employee share and option provisions. However, the granting of a unit in a unit trust scheme is to be taxed as a fringe benefit.

Grouping of businesses

The manner in which businesses are grouped for payroll tax purposes remains fundamentally the same. That is, businesses constitute a group where:

- they are related corporations within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth; or
- there is inter-use of employees between two entities; or
- the same person(s) have a controlling interest of more than 50 per cent in two or more businesses.

Under the harmonised arrangements, common terminology has been adopted in addition to the following changes:

- the definition of 'business' has been aligned;
- a common test for grouping businesses through inter-used employees will be introduced;
- the test for determining controlling interests will be aligned;
- in determining controlling interests, a new category of grouping will be adopted that provides for the tracing of interests in corporations (see below); and
- the Commissioner's discretion to exclude a member from a group will be broadened to apply to members who have been grouped under any grouping provision, other than those that are related corporations within the meaning of the *Corporations Act 2001*. The Commissioner's narrower discretion to exclude will continue to apply in respect of earlier financial years.

Tracing provisions

Tracing provisions will operate to group an entity, being a person or set of associated persons, with a corporation if the entity has a controlling interest in the corporation. A controlling interest exists if the entity has a direct interest, an indirect interest, or an aggregate interest in the corporation and the value of that interest exceeds 50 per cent.

A set of associated persons may include direct family members and corporations in which that family has a majority shareholding.

A direct interest exists if the entity can directly or indirectly exercise the voting power attached to the voting shares in the corporation.

An indirect interest in a corporation (the 'indirectly controlled corporation') exists if the entity is linked to that corporation by a direct interest in another corporation which has a direct or indirect interest in the indirectly controlled corporation.

The value of an indirect interest in an indirectly controlled corporation is determined by multiplying the value of the entity's direct interest in the directly controlled corporation by the value of the directly controlled corporation's interest in the indirectly controlled corporation.

An aggregate interest in a corporation exists if an entity has a direct and an indirect interest, or two or more indirect interests. The amount of an entity's aggregate interest is the sum of the entity's direct and indirect interests in that corporation.

For more detailed information on the application of the grouping provisions, refer to the *Employers' Guide to Payroll Tax in the Northern Territory*.

Termination Payments

The Commonwealth amended its legislation governing superannuation on 1 July 2007. These amendments redefined the range of payments made on the termination of an employee that are concessionaly taxed for income tax purposes. These payments are now defined as 'employment termination payments'.

This change has had an impact on the *Pay-roll Tax Act*, as payroll tax applies to the range of termination payments formerly defined as 'eligible termination payments'. References in the *Pay-roll Tax Act* have been updated to clarify that payroll tax continues to apply to the same range of termination payments as it did prior to the Commonwealth's superannuation changes.

The updated provisions are based on the New South Wales and Victorian harmonised payroll tax legislation.

For further information on termination payments, please refer to Commissioner's Guideline CG-PRT-005: *Payroll tax on employment termination payments*.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular. All Circulars and Guidelines are available from TRO's website.

Refer to the Pay-roll Tax Amendment (Harmonisation) Bill 2008 (and explanatory statement) for precise details of the amendments.



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