



## Pay-roll Tax

### Wages Definition

*Pay-roll Tax Assessment Act 2002*

**As at 1 July 2012**

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#### What payments are taxable?

The definition of wages is to be found in Part 2 of Division 2A of the *Pay-roll Tax Assessment Act 2002* ('PTA Act'). The following payments are taxable:

- **Salaries and wages**

The gross salary or wage of an employee is liable to pay-roll tax, including entitlements and deductions made to or in relation to an employee (e.g. income tax, hospital benefit fund contributions, union fees, superannuation, holiday pay and termination payments such as accrued leave entitlements or deferred wages). Payments can be paid or payable, in cash or in kind, at piece rates or otherwise and be either to or in relation to an employee. These payments are also liable if paid or payable to the employee by someone acting on behalf of the employer.


- **Commissions, bonuses and allowances**

Commissions, bonuses and allowances paid or payable to or in relation to employees, whether in cash or in kind are liable to pay-roll tax. These payments are also liable if paid or payable by someone acting on behalf of the employer.

Exemptions are provided for reasonable motor vehicle and accommodation allowances. For more detailed information, please refer to [Revenue Ruling PTA 005 Exempt Allowances - Motor Vehicle and Accommodation](#).

- **Director's remuneration**

Remuneration paid or payable to a director, whether as a working director or not is liable to pay-roll tax.



- **Superannuation contributions**

Employer contributions to an employee's superannuation fund are liable to pay-roll tax. For a detailed explanation of the pay-roll tax liability of contributions to an employee's superannuation fund, please refer to the [Superannuation](#) fact sheet.

- **Contracting arrangements**

Payments made to certain workers (often called contractors or subcontractors) will be taken to be wages liable for pay-roll tax if they are engaged under a contract of service (i.e. have a common law relationship of employer/employee).

If the worker is a specific individual, is essentially only providing the labour (and in the case of a tradesperson the tools of trade) and is being paid an hourly or piecemeal rate, then it will generally be considered that they are engaged under a **contract of service**, even if the payment for the work performed is being made to the worker's company, partnership or family trust.

The engaging party is deemed to be the employer, and as such is liable for pay-roll tax on those wages. For more information please refer to [Revenue Ruling PT 6 Guidelines on Subcontracting Arrangements - Employment Agents](#).

A determination can be made on submission of the [Questionnaire - Contractor Payments](#).

- **Employment agents**

Payments made by a person (often an employment agent) directly or indirectly to another person who was engaged to perform services for a client of the first person (the employment agent) are wages for the purposes of pay-roll tax.

The employment agent is deemed to be the employer, and as such is liable for pay-roll tax on the payments made. For more information please refer to [Revenue Ruling PT 6 Guidelines on Subcontracting Arrangements - Employment Agents](#).

- **Fringe benefits**

Fringe benefits, as defined and valued for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (Cwth), are generally liable to pay-roll tax.

From 1 January 2002 the grossed-up fringe benefits amount is taxable using both type 1 and type 2 rates. From 1 July 2009 only the type 2 rate is applicable for pay-roll tax purposes.

For a detailed explanation of the pay-roll tax liability of fringe benefits, please refer to the [Fringe Benefits](#) fact sheet.

## ▪ Salary sacrifice

A salary sacrifice arrangement refers to an arrangement between an employer and the employee whereby the employee agrees to forego part of their future salary or wage in return for some other form of non-cash benefits of equivalent cost to the employer.

The non-cash benefits provided may include pre-tax superannuation contributions, the provision of a motor vehicle, a laptop computer or similar portable computer, car parking fees, payment of school fees or the payment of membership fees and subscriptions.

The ATO treats 'effective salary sacrificing arrangements' and 'ineffective salary sacrificing arrangements' differently. Please contact the ATO for further information about the income tax treatment of 'effective' and 'ineffective' salary sacrifice arrangements.

Under an effective salary sacrifice arrangement:

1. the employee pays income tax on the reduced salary or wage;
2. salary sacrificed (pre-tax) superannuation contributions are classified as employer contributions (not employee contributions); and
3. the employer may be liable to pay fringe benefits tax on the fringe benefits provided.

The pay-roll tax treatment under an effective salary sacrifice arrangement is as follows:

1. the reduced salary or wage on which the employee pays income tax is treated as taxable wages;
2. the pre-tax superannuation contribution classified as the employer contribution is taxable; and
3. the taxable value of the benefit under the FBTA Act, grossed-up by the Type 2 factor as shown on the FBTA Act return is taxable.

If the benefit provided to the employee is exempt from fringe benefits tax (e.g. laptop computer) no pay-roll tax is payable in respect of the amount sacrificed for that benefit. Pay-roll tax is payable only on the reduced salary on which the employee pays income tax.

Some employees agree to make regular donations to charitable organisations of their choice under a 'Workplace Giving' program. This arrangement is not a salary sacrifice arrangement because the ATO requires that the normal gross salary must be stated on the employee's payment summary. Pay-roll tax is payable on the normal gross salary.

The following examples outline the pay-roll tax treatment of various salary sacrifice arrangements:

1. An employee has a current salary of \$70,000 per annum. The employee negotiates with the employer for the provision of a car under a salary sacrifice arrangement. The new salary will be reduced to \$58,000 per annum. The taxable value grossed-up by the Type 2 factor of the motor car for fringe

benefits tax purposes is \$6,350. Pay-roll tax will be payable on the \$58,000 salary and the FBT taxable value grossed-up by the Type 2 factor of \$6,350.

2. An employee's current salary is \$65,000 per annum. The employee negotiates with the employer for the purchase of a laptop computer (cost of \$3,000) under a salary sacrifice arrangement. The new salary will be reduced to \$62,000 per annum. The laptop is exempt from FBT. Therefore pay-roll tax is payable on the \$62,000 salary.
3. An employee's current annual salary is \$60,000. The employee also makes after-tax (personal) superannuation contributions of \$5,400 per annum. The employee negotiates with the employer to replace the after-tax superannuation contributions with salary sacrifice (pre-tax) contributions.

Therefore, the salary for the next financial year will be reduced to \$54,600 and the employer will make a pre-tax superannuation contribution of \$5,400. Pay-roll tax is payable on the \$54,600 salary and the employer pre-tax superannuation contribution of \$5,400.

### ▪ Termination payments

The amount of a termination payment made by an employer to an employee, or by a company to a director, in consequence of the retirement or termination of the services or office of the employee or director is liable for pay-roll tax. Termination payments include:

- unused annual leave payments - see section 83-10 of the *Income Tax Assessment Act 1997* (Cwth) ('ITAA');
- unused long service leave payments - see section 83-75 of the ITAA;
- employment termination payments ('ETPs') as defined by section 82-130 of the ITAA;
- ETPs also include a transitional termination payment - see section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* (Cwth); and
- a payment that would be an ETP but for the fact it may be paid later than 12 months after termination occurred.

If a director (executive or otherwise) is paid an amount that would be considered to be an ETP if paid to an employee, then that amount is liable to pay-roll tax.

Typical payments falling within ETPs can be:

- payments in lieu of notice;
- unused sick leave;
- gratuity payments/golden handshakes;
- compensation for loss of job;
- compensation for wrongful dismissal;

- invalidity payments for a permanent disability (other than compensation for personal injury);
- bona fide redundancy and approved early retirement scheme payments in excess of a tax free amount (the tax free amount is indexed annually);
- certain payments after the death of an employee; and
- payments for unused rostered days off.

#### ▪ **Specified taxable benefits**

A number of benefits that are not fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* are generally liable for pay-roll tax as specified taxable benefits.

These benefits are contributions by an employer to:

- an industry redundancy fund; and
- a portable long service leave fund.

#### ▪ **Industry redundancy fund**

Employer contributions to a fund that operates to provide redundancy benefits for employees on their retrenchment, on leaving the industry or on retirement, are liable to pay-roll tax.

Liability for pay-roll tax occurs at the time the contributions are paid or payable by the employer to the fund.

#### ▪ **Portable long service leave**

Employer contributions to a portable long service leave fund are liable for pay-roll tax. Liability for pay-roll tax occurs at the time the contributions are paid or payable by the employer to the fund.

In the circumstances where an employer pays the employee's long service leave wages directly, those wages are exempt from pay-roll tax to the extent of the amount that the employer is entitled to recover from the fund.

#### ▪ **Employee share acquisitions**

From 1 July 2009 the grant of a share or option is included in the definition of wages if the share or option is an Employee Share Scheme ('ESS') interest within the meaning of section 83A-10 of the *Income Tax Assessment Act 1997* (Cwth) and it is granted to the employee under an employee share scheme within the meaning of that section. An employee share scheme is a scheme under which ESS interests in a company are provided to employees (or associates of employees), including past and prospective employees of the company or any subsidiary of the company.

These provisions do not apply if the grant of the share or option is wages under any other provision. Note that a grant of a share or option that is not an ESS interest will be liable to pay-roll tax as a fringe benefit under subdivision 2 of Division 2A of Part 2 of the Act.

Employers will in most circumstances now be able to elect the date pay-roll tax is payable on the liability of an ESS interest.

For more information on employee share acquisitions please refer to the [Employee Share Acquisitions](#) fact sheet.

## What payments are not taxable?

The following payments are not taxable:

- wages paid in the first two years of employment to new employees with a disability who commence employment on or after 1 July 2012, for whom the employer receives or is entitled to receive a wages subsidy under the Commonwealth Government's Disability Employment Services program, or where the employee is eligible for any form of support from the Western Australian Disability Services Commission. For more information please refer to [Circular 7 - 2012-13 Budget Measures](#);
- payments to apprentices (including trainees) under a training contract registered under Part 7 of Division 2 of the *Vocational Education and Training Act 1996*;
- payments to employees under the provisions of the *Workers Compensation and Injury Management Act 1981*;
- payments to employees who are absent in the defence forces;
- parental leave from 1 July 2009 (includes maternity, parental and adoption leave);
- payments to volunteer emergency services workers;
- wages paid to an employee in Western Australia are exempt where the wages are paid in respect of services performed by the employee wholly in another country, for a continuous period exceeding six months. For more detailed information, please refer to [Revenue Ruling PTA 039 Nexus Provisions](#);
- reasonable motor vehicle allowances are exempt, to the extent that they do not exceed the Australian Taxation Office's ('ATO') large car rate. The exempt per-kilometre rate of motor allowance is applicable only to business travel undertaken in a vehicle provided by or maintained by the employee, and is only applicable where records are maintained throughout the financial year to verify business kilometres travelled. Full details of the record keeping requirements are contained in Part 3 of the *Pay-roll Tax Assessment Regulations 2003*. For more detailed information on exempt allowances for motor vehicles, please refer to [Revenue Ruling PTA 005 Exempt Allowances - Motor Vehicle and Accommodation](#); and
- accommodation allowances are exempt from tax up to certain limits. These limits reflect the ATO rates for reasonable travel allowance amount for lowest salary / lowest city rate, or by an amount prescribed. Amounts paid in excess of ATO rates

are liable to pay-roll tax. For more detailed information, please refer to [Revenue Ruling PTA 005 Exempt Allowances - Motor Vehicle and Accommodation](#).

## **Exemptions from pay-roll tax liability**

Exemptions are provided for religious organisations, hospitals, schools below tertiary level, government departments, public benevolent institutions and certain charitable institutions.

Applications for exemption should be made in writing accompanied by a copy of the organisation's constitution and details of its nature, aims and objects.

## **Is pay-roll tax payable on any Goods and Services Tax component of wages?**

Pay-roll tax is not payable on any component of wages that is directly attributed to the Goods and Services Tax ('GST'), other than wages comprising fringe benefits.

Under the Act, certain payments such as payments to contractors can be deemed to be wages for the purposes of the Act and these payments may include a GST component.

Where this occurs, pay-roll tax is not payable on the GST component of the payment.

For example, you make a payment to a contractor for \$2,200 (inclusive of GST) for services performed. Where this payment is determined to be wages under the Act, the GST component of the payment is not included in determining liable wages for pay-roll tax purposes. Therefore only \$2,000 will be included as wages for pay-roll tax purposes.

Accordingly, all wages subject to pay-roll tax are treated consistently in respect of the GST and the amount of pay-roll tax paid by an employer is not increased by the GST amount.

**Note:** The information contained in this FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Pay-roll Tax Assessment Act 2002* and reference should be made to the Act for complete details.

## Contact the Office of State Revenue

<b>Office</b>	Office of State Revenue Plaza Level 200 St Georges Terrace PERTH WA 6000	<b>Telephone</b>	(08) 9262 1300 1300 368 364 (WA country STD callers only – local call charge)
<b>Office hours</b>	8:00 am – 5:00 pm Monday to Friday	<b>Facsimile</b>	(08) 9226 0841
<b>Postal</b>	Office of State Revenue GPO Box T1600 PERTH WA 6845	<b>Web Enquiry</b>	<a href="http://www.osr.wa.gov.au/PayrollEnquiry">www.osr.wa.gov.au/PayrollEnquiry</a>
		<b>Website</b>	<a href="http://www.osr.wa.gov.au">www.osr.wa.gov.au</a>