

COMMISSIONER'S GUIDELINE

CG-PRT-004:

Contributions to worker entitlement funds

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	9 November 2005	1 April 2003	31 December 2007
2	2 January 2008	1 January 2008	Current

Purpose

This Guideline clarifies the payroll tax treatment of contributions made by an employer to a fund that is established to meet employee leave and redundancy entitlement obligations. These funds are often referred to as worker entitlement funds or redundancy funds and while they may operate in a variety of ways, their purpose is to manage and provide portability and protection of employee entitlements.

Wages, fringe benefits and exempt benefits

The term 'wages' as defined in the *Pay-roll Tax Act* (PRT Act) includes a 'fringe benefit' under the *Fringe Benefit Tax Assessment Act 1986* (Cth) (FBTA Act).¹

The PRT Act provides that an exempt benefit under the FBTA Act is not wages for the purpose of the Act unless it is:

- 1) a prescribed benefit; or
- 2) an exempt benefit under section 58W of the FBTA Act.²

The only prescribed benefit provided by the PRT Act are contributions made to an employee share scheme.³

Benefits under section 58W of the FBTA Act are deposits made under the *Small Superannuation Accounts Act 1995* (Cth) in respect of the employment of an employee. These deposits are liable to payroll tax as a 'superannuation benefit'.⁴ Commissioner's Guideline CG-PRT-001: *Payroll tax on superannuation contributions made by an employer* provides more information on the payroll tax treatment of employer superannuation contributions.

¹ Section 3(1) (definition of 'wages'; FBTA Act) and section 3B of the PRT Act.

² Section 3(3) of the PRT Act.

³ Regulation 27N of the *Pay-roll Tax Regulations*.

⁴ Section 3(1) ('wages'; 'superannuation fund'; 'superannuation scheme') and section 3A of the PRT Act.

Contributions to worker entitlement funds are generally exempt benefits under the FBTA Act and accordingly are not wages for the purpose of the PRT Act. More specifically, a contribution to a worker entitlement fund is an exempt benefit under the FBTA Act where the following conditions apply.⁵

- 1) The fund is an 'approved worker entitlement fund', meaning that the fund is either:
 - a. a long service leave fund established under a Commonwealth, State or Territory law and is operating under that law;⁶ or
 - b. a fund that is prescribed for the purposes of section 58PB(2)(a) of the FBTA Act.⁷ This means that the fund is listed in regulation 6 of the *Fringe Benefits Tax Regulations 1992* (Cth).
- 2) The contribution is made under an 'industrial instrument'.
- 3) The contribution is paid by the employer to the fund:
 - a. to meet the employer's obligation under the industrial instrument to make leave or redundancy payments; or
 - b. for the reasonable administrative costs of the fund.⁸

An 'industrial instrument' is a Commonwealth, State or Territory law or an award, order, determination or industrial agreement in force under such a law.⁹

Transitional arrangements

Transitional arrangements under section 58PC of the FBTA Act provide that certain contributions that are made to a fund that is not an 'approved worker entitlement fund' and/or not made under an 'industrial instrument' are exempt benefits for the fringe benefits tax years beginning 1 April 2003, 2004 and 2005 and accordingly are not liable to payroll tax.

For these FBT years, if the fund is not an 'approved worker entitlement fund', it must be an 'existing worker entitlement fund', which means that the fund accepted contributions from employers in the FBT year beginning 1 April 2002 for the purposes of allowing those employers to meet obligations to make leave or redundancy payments.¹⁰

Where the contribution is not made under an 'industrial instrument', the contribution must be made in accordance with 'existing industrial practice', which means that the employer or someone in the employer's industry made payments to either an:

- 1) 'existing worker entitlement fund' in the FBT year beginning on 1 April 2002; or

⁵ Section 58PA of the FBTA Act.

⁶ Section 58PB(1) of the FBTA Act.

⁷ Section 58PB(2)(a) of the FBTA Act.

⁸ Section 58PA(3) of the FBTA Act.

⁹ Section 136 of the FBTA Act ('industrial instrument').

¹⁰ Sections 58PC(1)(a) and (2) of the FBTA Act.

- 2) 'approved worker entitlement fund' in the FBT year beginning on 1 April 2003.¹¹

The transitional arrangements ceased from 1 April 2006. From that date, contributions are exempt benefits only if made to an 'existing worker entitlement fund' and made under an 'industrial instrument'. If these conditions are not met, the contribution is liable to FBT and payroll tax.

More information

For more information on the FBT exemption for worker entitlement funds or whether your fund is approved, contact your Fund Manager, the Australian Taxation Office (ATO) on 13 28 66 or visit the ATO website (www.ato.gov.au).

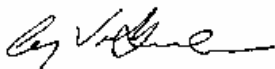
NT Build

NT Build is a portable long service leave scheme for members of the construction industry established on 1 July 2005 under the *Construction Industry Long Service Leave and Benefits Act*. Contributions to the scheme are not liable to payroll tax as it is an 'approved worker entitlement fund' under the FBTA Act.

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 Guideline. All Circulars and Guidelines are available from TRO's website.

Date of effect

This version of the Guideline takes effect 1 January 2008.



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