

PAY-ROLL TAX REFORM AMENDMENTS

Pay-roll Tax Act

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PRT 003

Postal Address: Commissioner of Taxes, GPO Box 154, Darwin NT 0801
Office Location: Commissioner of Taxes, 38 Cavenagh Street, Darwin NT 0800
Internet Address: www.nt.gov.au/ntt/revenue

Telephone: (08) 8999 7910
Facsimile: (08) 8999 5577
Email: ntrevenue.treasury@nt.gov.au

Purpose of this circular

1. The purpose of this circular is to inform employers and advisers of legislative changes to the Northern Territory pay-roll tax regime put in place by *the Pay-roll Tax Amendment Act 1999*. These amendments take effect from 1 July 1999.
2. Employers and advisers are also referred to *An Employer's Guide to Pay-roll Tax in the Northern Territory* for more detailed information on the operational aspects and obligations of employers under the *Pay-roll Tax Act* ("the Act").
3. Revenue Circular RA 001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this circular.

Introduction

4. The *Pay-roll Tax Amendment Act 1999* and consequential amendments to *the Pay-roll Tax Regulations* came into operation on 1 July 1999. In summary, the amendments:
 - a) reform the tax rate and general exemption regime by:
 - replacing the three rates with a single rate of 6.75%;
 - increasing the maximum general exemption from \$520 000 to \$600 000; and
 - replacing the reducing general exemption regime with a flat general exemption regime. That is, it no longer reduces as total wages increase (thus, it is available to all employers and does not phase out to nil once wages exceed \$1 300 000);
 - b) include fringe benefits, prescribed benefits and superannuation contributions into the pay-roll tax base;
 - c) allow certain apprentice/trainee wages to be claimed as an exemption in pay-roll tax returns (rather than claimed as a rebate in arrears); and
 - d) make a number of miscellaneous changes to:
 - allow refunds on annual adjustments to be made without the requirement for an application from the taxpayer;
 - allow the Commissioner to assign or remove designated group employer status from a group member;
 - provide a "separate status" for Government Business Divisions from General Government for the purposes of pay-roll tax;
 - deem wages referred to in paragraph (ca) in the definition of "wages" to be paid or payable by the employer; and
 - revise the Court imposed penalty regime for offences under the Act to ensure they are in keeping with current values and aligned with other Territory taxes.

Reforming the tax rate and general exemption regime

5. Prior to 1 July 1999, a 3-tier rate regime applied with a reducing general exemption of \$520 000. The rates (and relevant wage levels) were:

Annual Wages	Tax Rate
Up to \$1 250 000	5%
\$1 250 001 to \$10 000 000	6%
\$10 000 001 and greater	7%

6. The general exemption of \$520 000 reduced by \$2 for every \$3 in wages that exceeded \$520 000 and phased out to nil at a wage level of \$1 300 000.
7. From 1 July 1999, a single marginal rate of 6.75% applies in place of the 3-tier rate scheme with a flat general exemption of \$600 000. That is, the full \$600 000 (or relevant proportion in respect of employers who pay interstate wages) can be claimed irrespective of the wage level.
8. Where the total taxable wages paid throughout Australia by an employer (or group of employers) does not exceed \$600 000 per annum, then no pay-roll tax is payable.
9. Under both the new and former general exemption regimes:
- only one general exemption is available to group members; and
 - for employers paying interstate wages, the deduction entitlement reduces in proportionate to the Northern Territory component of the employer's Australia-wide wages.

Broadened pay-roll tax base

10. The definition of "wages" under the Act has been broadened to specifically include fringe benefits, prescribed benefits and superannuation benefits.

Fringe Benefits

11. Prior to 1 July 1999, the definition of "wages" included "other benefits" paid or payable by an employer to an employee in cash or in kind. However, in some instances, it was not clear what constituted a benefit or how certain benefits should be valued for pay-roll tax purposes. Revenue Circular PRT 001 details the means by which "other benefits" were included for pay-roll tax. PRT 001 remains valid only for benefits provided prior to 1 July 1999.
12. From 1 July 1999, the Act includes fringe benefits in the pay-roll tax base by adopting the Commonwealth *Fringe Benefits Tax Assessment Act* ("the FBTA Act") to identify and value "other benefits" for the purposes of the Act.
13. The reliance on the FBTA Act removes the uncertainty regarding what benefits constitute taxable wages and their value for pay-roll tax purposes.
14. The amendments also provide the ability to exclude certain fringe benefits from the pay-roll tax base by prescription in the regulations.

15. In this regard, Living-Away-From-Home Allowance (“LAFHA”) fringe benefits have been excluded from fringe benefits for pay-roll tax purposes. Notwithstanding that LAFHAs are excluded from being fringe benefits for pay-roll tax purposes, they remain liable for pay-roll tax as an allowance.
16. Prima facie, the value of Northern Territory fringe benefits (ie. benefits provided to employees receiving Territory wages) should be included in pay-roll tax returns on the basis of the actual benefits provided in the relevant pay-roll tax return period. However, it is recognised that many employers may not track their actual fringe benefits on a monthly basis. Thus, employers can elect (using an approved form) to return their fringe benefits on an estimated basis.
17. The estimated method allows for pay-roll tax to be paid on Northern Territory fringe benefits based on the value of fringe benefits (adjusted to exclude LAFHA fringe benefits) declared in the FBT return immediately preceding the current financial year.
18. Employers who elect to use the estimated method declare in each of the eleven monthly pay-roll tax returns from July to May, one twelfth of the adjusted value of Northern Territory fringe benefits provided in the FBT year ending 31 March immediately preceding the commencement of a financial year. A fringe benefits reconciliation is required in the June pay-roll tax return for the difference between the value of Northern Territory fringe benefits provided in the FBT year ending 31 March immediately preceding the June return, and the total amount of fringe benefits included in the pay-roll tax returns for the previous eleven months. An example is set out in Chapter 7 of *An Employer's Guide to Pay-roll Tax in the Northern Territory*.
19. Employers registered for pay-roll tax on an annual basis simply declare the adjusted value of NT fringe benefits for the FBT year immediately preceding their return for 30 June of each year.
20. An election to return on the estimated method can only be made where the employer has been paying fringe benefits tax on Northern Territory benefits to the Australian Taxation Office, for at least fifteen (15) months prior to the commencement of the financial year. Where an employer does not meet the 15 month qualifying period, the Commissioner may approve the value of fringe benefits to be included in the returns on such terms and conditions as the Commissioner determines.
21. An election to return on the estimated basis can only be made with effect from the commencement of a financial year. However, at any time an employer may, subject to the Commissioner's approval, terminate their election make subsequent returns on an actual basis. Where an election has been cancelled throughout the year, the employer is required make an adjustment in the next June return to convert fringe benefits returned during the financial year from the estimates to the actual basis.
22. Where an employer receives an amended FBT assessment from the Australian Taxation Office (ATO) under the FBTA Act, the employer must provide a copy of the amended assessment to the Commissioner within 30 days.

Prescribed Benefits – Employee Share Scheme

23. The amendments also permit other benefits to be specifically prescribed for the purposes of pay-roll tax. At this stage, the only benefit prescribed for the purposes of the Act are contributions made by an employer to an employee share scheme.
24. These benefits are taxed as income under the Commonwealth's *Income Tax Assessment Act 1936* rather than fringe benefits for the purposes of the FBTA Act. Their prescription recognises that such benefits represent remuneration to an employee and therefore are a substitute for cash wages.
25. *The Pay-roll Tax Regulations* provide the mechanism to value employee share schemes for the purposes of pay-roll tax. The mechanism operates in a similar manner to Division 13A of the Commonwealth's *Income Tax Assessment Act 1936*.

Superannuation Benefits (Employer Contributions)

26. Prior to 1 July 1999, employer superannuation contributions were taxable only to the extent that the contribution exceeded the minimum amount required under the superannuation guarantee legislation (currently 7% of wages) or an industrial award.
27. From 1 July 1999, the definition of wages was broadened to include all employer superannuation contributions (not just the excess).
28. Accordingly, superannuation contributions that are paid or payable (whether in cash or in kind) by employers to a superannuation fund of a person, are to be included for assessment of pay-roll tax when the amount paid or payable is in respect of services performed or rendered after 1 July 1999.
29. For pay-roll tax purposes, superannuation contributions include any of the following:
 - a) where an employer has paid or is required to pay to a regulated superannuation fund, the amounts paid or payable, including any administration charges paid in respect of the superannuation fund;
 - b) where an employer has incurred a superannuation guarantee charge shortfall, the amount of the shortfall together with any administration charges but excluding ATO penalties;
 - c) where an employer that is a participant in:
 - an unregulated superannuation scheme; or
 - a regulated superannuation scheme that is unfunded;that provides a defined benefit, an actuarially determined amount shall be the superannuation contribution; and
 - d) where an employer contributes to an unregulated superannuation scheme which does not provide a defined benefit, the amount credited in respect of the contribution, whether or not an amount is physically paid, is the superannuation contribution.
30. Revenue Circular PRT 002 provides more information on the pay-roll tax position in respect of employer superannuation contributions both before and after 1 July 1999.

Government Agencies

31. Special rules apply to Government Agencies (excluding Government Business Divisions) where such agencies contribute to unfunded public sector schemes which provide a defined benefit.
32. Government Agencies (excluding Government Business Divisions) are to include deemed superannuation contributions of an amount equal to multiplying the applicable superannuation guarantee "charge percentage rate" with the agency's wages (excluding any fringe benefits or actual superannuation contributions).
33. In the case of Government Business Divisions, superannuation contributions are determined using the actuarial calculation.

Prepaid Superannuation Contributions made prior to 1 July 1999

34. As a transitional anti-avoidance measure, the amendments also provide that "prepayments" of superannuation contributions made between (and including) 27 April 1999 and 30 June 1999 are subject to pay-roll tax if the contributions relate to services to be performed after 30 June 1999. In this regard, the contribution will be deemed as if were made on 1 July 1999.

Exemption for certain apprentice/trainee/graduate wages (replaces rebate system)

35. Prior to 1 July 1999, the Act allowed an employer to claim a rebate of pay-roll tax on wages paid to persons employed under various trainee or graduate schemes.
36. The amendment abolishes the rebate system and in its place allows an exemption to be self-assessed by taxpayers. The exemption is to be claimed as a reduction to the taxpayer's monthly pay-roll tax return. A savings provision in the amendments preserves the employer's rights to claim a rebate for wages paid prior to 1 July 1999.

Miscellaneous Measures

Allowing refunds arising from an annual reconciliation to be made by the Commissioner without the requirement for an application from the taxpayer

37. At the end of each financial year, employers are required to reconcile their annual tax liability and, in certain circumstances, lodge an application for a refund or rebate. Prior to the amendments, the Commissioner had no capacity to make a refund or rebate without an application from the taxpayer.
38. To assist with the administration of the Act, the amendments allow the Commissioner to make refunds or rebates without the necessity of an employer, or a designated group employer, lodging a specific application.

Allowing the Commissioner to appoint or remove a designated group employer status

39. The Act permits members of a group to designate one of its members to be the designated group employer (DGE) for the purposes of the Act. Where employers are grouped, the designation of a group employer is necessary to allow the general exemption to be calculated for the purposes of the group. Where there is no designation, the general exemption cannot be claimed.

40. The amendments allow the Commissioner to designate a group member as the DGE where there had been no such designation made by the group or the designation is no longer relevant (for example, where the DGE is sold from the group). The designation allowed by this amendment will enable the group to obtain the general exemption where the group has not provided a designation.
41. The amendments also permit the Commissioner to remove such a designation where a group applies for another group member to be the DGE.

Government Business Divisions

42. The amendments clarify that wages paid to government employers who are Government Business Divisions for the purposes of the *Financial Management Act* are to be treated as employers which are separate to the Territory's General Government Agencies for the purposes of pay-roll tax. This will require Government Business Divisions to return pay-roll tax separately to General Government and enable the \$600 000 general exemption deduction to be claimed separately.
43. This approach ensures that Government Business Divisions are treated the same as the private sector for the purposes of pay-roll tax.

"Wages" under sub-section 3(1)(ca) are deemed to be paid or payable by the employer

44. Paragraph (ca) of subsection 3(1) of the Act includes in the definition of "wages" remuneration paid to or in relation to an employee by a person other than the employer. While the Act deems such payments to be wages, it does not clearly specify that the wages have been paid by the employer.
45. The amendments clarify that an employer is liable for pay-roll tax where its employee is remunerated by another person or persons in respect of services provided by the employee. It does this by deeming the wages to be paid or payable by the employer.

Revision of Court imposed penalties for offences under the Act

46. The existing Court imposed penalty regime for offences under the Act has not been amended since 1978, and as such, is of little deterrent value in current circumstances.
47. The amendments provide a revised regime for maximum penalty limits set by a 3-tiered system and based on penalty units under the *Penalties Act 1999* (NT) comprising of:
 - a) a general offence maximum penalty of up to \$5 000 (50 penalty units);
 - b) a serious offence maximum penalty of up to \$10 000 (100 penalty units); and
 - c) a very serious offence maximum penalty of up to 2 years imprisonment.

Reference should be made to the *Pay-roll Tax Act* and *Pay-roll Tax Regulations* for precise details. General information may be obtained by contacting the Returns Officer on (08) 8999 7910 or facsimile on (08) 8999 5577.