



## Payroll Tax

### Wages Definition

*Pay-roll Tax Assessment Act 2002*

**As at 27 June 2016**

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The '[Payroll Tax Employer Guide](#)' should be read in conjunction with this fact sheet.

#### **Taxable Payments**

Wages are defined in Part 2 of Division 2A of the *Pay-roll Tax Assessment Act 2002* ('PTA Act') as including the types of payments identified below.

#### **Salaries and wages**

The gross salary or wage of an employee is liable to payroll tax. This includes entitlements and deductions made to or in relation to an employee, such as 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 payroll 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 payroll tax.

#### **Superannuation contributions**

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

## Contracting arrangements

Payments made to certain workers (often called contractors or subcontractors) will be taken to be wages liable to payroll tax if they are engaged under a contract of service (that is, they have a common law relationship of employer/employee).

If the worker is an individual who 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, it will generally be considered 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 is liable to payroll tax on those wages. For more information please see Revenue Ruling PT 6 ['Guidelines on Subcontracting Arrangements - Employment Agents'](#).

A determination can be made on submission of form FPRT6 ['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 payroll tax.

The employment agent is deemed to be the employer and is liable to payroll tax on the payments made. For more information please see Revenue Ruling PT 6 ['Guidelines on Subcontracting Arrangements - Employment Agents'](#) and Revenue Ruling PT 7 ['Employment Agency Arrangements – Chain of On-hire'](#).

## Fringe benefits

Fringe benefits, as defined and valued for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (Cth) ('FBTA Act'), are generally liable to payroll tax.

For a detailed explanation of the payroll 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 or similar portable computer, car parking fees, payment of school fees or the payment of membership fees and subscriptions.

Under an *effective*<sup>1</sup> salary sacrifice arrangement:

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

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<sup>1</sup> An effective salary sacrifice arrangement is defined by the [Australian Taxation Office](#).

With regard to payroll tax, under an effective salary sacrifice arrangement:

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

If the benefit provided to the employee is exempt from fringe benefits tax, payroll tax is payable only on the reduced salary on which the employee pays income tax, not the amount sacrificed for that benefit.

Some employees agree to make regular donations to charitable organisations of their choice under a 'Workplace Giving' program. This arrangement is not considered a salary sacrifice arrangement.

The following examples outline the payroll tax treatment of various salary sacrifice arrangements:

- An employee with a current salary of \$70,000 per year negotiates with their employer for the provision of a car under a salary sacrifice arrangement. As a result, their salary will be reduced to \$58,000 per year. The taxable value grossed-up by the Type 2 factor of the car for fringe benefits tax purposes is \$6,350. Payroll tax will be payable on the \$58,000 salary and the FBT taxable value of \$6,350.
- An employee's current salary is \$65,000 per year. The employee negotiates with the employer for the purchase of a laptop computer under a salary sacrifice arrangement, reducing their salary to \$62,000. As the laptop is exempt from FBT, payroll tax is payable on the \$62,000 salary.
- As well as their current annual salary of \$60,000, an employee makes after-tax (personal) superannuation contributions of \$5,400 per year. The employee negotiates with the employer to replace the after-tax superannuation contributions with salary sacrifice (pre-tax) contributions. For the next financial year, the employee's salary will be reduced to \$54,600 with the employer making a pre-tax superannuation contribution of \$5,400. Payroll tax is payable on both the salary and the pre-tax superannuation contribution.

### **Termination payments**

The amount of a termination payment made by an employer to an employee, or by a company to a director, is liable to payroll tax. Termination payments are defined in the *Income Tax Assessment Act 1997* (Cth) to include:

- unused annual leave payments;
- unused long service leave payments;
- employment termination payments ('ETP') including a transitional termination payment; 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 payroll tax.

Typical payments falling within ETPs include:

- 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.

For more information, please see Revenue Ruling PTA 004 [‘Termination Payments’](#).

### **Specified taxable benefits**

Contributions by an employer to an industry redundancy fund or a portable long service leave fund are not fringe benefits under the FBTA Act and are generally liable to payroll tax as specified taxable benefits.

#### **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 payroll tax. Liability arises 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 to payroll tax. Liability arises at the time the contributions are paid or payable by the employer to the fund.

Where an employer pays the employee's long service leave wages directly, those wages are exempt from payroll tax to the extent of the amount the employer is entitled to recover from the fund.

#### **Employee share acquisitions**

Provided these are not wages under any other provisions, the grant of a share or option is considered to be wages if the share or option is an Employee Share Scheme (‘ESS’) interest within the meaning of section 83A-10 of the ITAA and it is granted to the employee under an employee share scheme within the meaning of that section.

A grant of a share or option that is not an ESS interest will be liable to payroll tax as a fringe benefit.

Employers are, in most circumstances, able to elect the date payroll tax is payable on the liability of an ESS interest.

For more information on employee share acquisitions, please see the [‘Employee Share Acquisitions’](#) fact sheet.

## Non-taxable Payments

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 see ['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*. For more information, please see ['Circular – Amendments to Payroll Tax – Exemptions for Wages Paid to Apprentices/Trainees'](#);
- payments to employees under the provisions of the *Workers Compensation and Injury Management Act 1981*;
- payments to employees who are absent due to defence forces commitments;
- maternity, parental and adoption leave. For more information, please see Revenue Ruling PTA 012 ['Exemption for Maternity, Parental and Adoption Leave Pay'](#) and Revenue Ruling PTA 037 ['Paid Parental Leave'](#);
- payments to volunteer emergency services workers;
- wages paid in respect of services performed by an employee wholly in another country for a continuous period exceeding six months. For more information, please see Revenue Ruling PTA 039 ['Nexus Provisions'](#); and
- motor vehicle and accommodation allowances, to the extent that they do not exceed rates set by the ATO. Amounts paid in excess of ATO rates are liable to payroll tax. For more information, please see Revenue Ruling PTA 005 ['Exempt Allowances - Motor Vehicle and Accommodation'](#).

## Exemptions from payroll tax liability

In certain circumstances, an exemption is provided for wages paid by a charitable body or organisation. An application for exemption must be made using form FPRT41 ['Application: Charitable Exemption'](#) and should be accompanied by a copy of the organisation's constitution and details of its nature, aims and objects. For more information, please see Revenue Ruling DA/PT/LT 18 ['Charitable Exemptions'](#).

## Goods and Services Tax

Payroll 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.

Where a taxable wage includes a GST component, payroll tax is not payable on that GST component.

For example, where a payment is to a contractor for \$2,200 (inclusive of GST), only \$2,000 will be included as wages for payroll tax purposes.

## Contact the Office of State Revenue

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

**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 this Act for complete details.