

SOUTH AUSTRALIA



STATE TAXATION OFFICE

**Pay-roll Tax**

**Circular No. 163**  
(Replaces Circular 137)

## **A GUIDE TO LEGISLATION**

### **PAY-ROLL TAX ACT 1971**

This Circular has been prepared as a general guide to the provisions of the *Pay-roll Tax Act 1971* (the "Act"). It is not intended to be a complete statement of the law and must not be construed to waive or modify any legal obligation provided by the Act.

With effect from 1 July 1997, the *Taxation Administration Act 1996* (the "TAA") was introduced and replaced the administrative provisions of the Act. The areas which are covered by the TAA are indicated in the index section of this Circular.

We hope you find this publication to be worthwhile and we would certainly welcome any comments or suggestions as to improvements.

Printed copies of the Act and its regulations are available from the State Information Centre, Australis Building, 77 Grenfell Street, Adelaide.

For further details on any matters relating to the Act mentioned in this guide, please feel free to contact the State Taxation Office on (08) 8204 9880.

10 February 1998

COMMISSIONER OF STATE TAXATION

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**This is a guide to the:-**

- obligation of an employer to register under the Act;
- grouping of employers for pay-roll tax purposes;
- completion and submission of pay-roll tax returns;
- calculation of tax payable;
- payments of tax, interest and penalty tax;
- rights of an employer in relation to assessments of tax.

The contents of this Circular are current at the time of printing but are subject to change in the future.

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# **1 OUTLINE OF PAY-ROLL TAX**

## **INTRODUCTION**

Pay-roll tax is imposed and collected in South Australia in accordance with the provisions of the Pay-roll Tax Act, 1971 (the "Act") and the Taxation Administration Act, 1996 (the "TAA").

Pay-roll tax was payable to the Commonwealth Government from 1941 until 31 August 1971, when its collection was transferred to the States. Similar legislation applies in all Australian States and Territories, although the Acts differ in some details.

The Commissioner of State Taxation (the "Commissioner") is responsible for the administration of the Act.

The majority of the Act has not been affected by the TAA, other than the administrative provisions relating to Levying of Interest/Penalty Tax, Lodgement of Objections & Appeals, Refunds, Offsetting of Tax, Liquidators, Trustees & Agents.

## **BASIS OF TAX**

### **General**

Pay-roll tax collections are made on the basis that it is a self-assessing tax which requires each employer to establish whether the wages paid or payable require the employer to apply for registration under the provisions of the Act. An employer who is required to apply for registration must:-

- lodge returns on a monthly basis disclosing the total taxable wages paid or payable in the preceding month; and,
- calculate the tax payable in respect of each return of taxable wages and remit the tax due when the return is lodged.

Compliance monitoring for pay-roll tax purposes is carried out by the State Taxation Office Compliance Branch.

### **Liability to Register**

Generally, an employer is liable to register for pay-roll tax purposes where the amount of any wages paid (or payable) throughout Australia exceeds the deduction entitlement available to the employer and the employer pays wages in South Australia.

However, where a member of a group of employers pays any taxable wages in South Australia, registration is required, regardless of the wage level as group members have no direct deduction entitlement.

### Deduction from Taxable Wages

Deductions are not available to all employers.

The amount of deduction available to an employer varies according to whether the employer employs in South Australia only or is a member of a group (as defined in the Act) and according to whether the employer or any group member employs elsewhere in Australia.

For employers and groups of employers who employ both in South Australia and elsewhere in Australia, monthly deductions are established on the basis of estimated wages for the forthcoming financial year.

At the close of the financial year, actual wage figures are used to calculate the annual deduction amount and to effect an annual adjustment of pay-roll tax liability.

For details of the amounts of maximum deduction applying from time to time please refer to Appendix A.

### Deduction Entitlement - Non-Grouped Employers

For employers who are not group members, the deduction is available on the following basis:-

- where an employer carries on employment activity only in South Australia, the employer is entitled to a full deduction;
- where an employer carries on employment activity, both in South Australia and elsewhere in Australia, the employer is entitled to a proportional deduction only. The proportional entitlement bears the same relationship to the maximum deduction as South Australian wages bear to total Australian wages.

#### EXAMPLE:

Wages paid:	South Australia	<u>\$400,000</u>
	Victoria	<u>\$400,000</u>
	Australian Total	\$800,000

Deduction entitlement =  $\frac{\text{South Australian wages}}{\text{Australian wages}} \times \text{Maximum deduction}$   
(e.g. \$456,000 from 1/7/92)

Calculation:  $\frac{\$400,000}{\$800,000} \times \$456,000$

Result = \$228,000

### Deduction Entitlement - Grouped Employers

Deduction entitlements for groups of employers are determined by reference to the total South Australian (and Australian) wages of the group as if the group is a single employer.

The group is required to designate one of its members to claim the deduction entitlement on behalf of the group. Other group members are not able to claim any deduction in their returns.

For a group of employers the deduction is available on the following basis:-

- where the group of employers carries on employment activity only in South Australia, the group is entitled to a full deduction (claimed by the Designated Group Employer);
- where at least one member of the group carries on employment activity in South Australia and any member carries on employment activity elsewhere in Australia, the group is entitled to a proportional deduction only. The proportional entitlement bears the same relationship to the maximum deduction as the group's South Australian wages bear to the group's Australian wages.

#### EXAMPLE:

Wages paid by all members of the group:

South Australia	500,000.00
Victoria	<u>\$1,000,000.00</u>
Australian Total	\$1,500,000.00

Deduction entitlement =  $\frac{\text{South Australian wages}}{\text{Australian wages}} \times \text{Maximum deduction}$   
(e.g. \$456,000 from 1/7/92)

Calculation:  $\frac{\$500,000}{\$1,500,000} \times \$456,000$

Result = \$152,000

### Returns and Payments

Pay-roll tax returns are generally issued to employers on a monthly basis and must be lodged with the Commissioner with payments by the seventh day of the month following the month to which the return relates. Under certain circumstances, the Commissioner may approve lodgement of returns other than on a monthly basis. Where returns are required to be lodged on a quarterly, half-yearly or annual basis, the return and tax must be lodged within seven (7) days of the close of the return period.

Deduction entitlements are deducted from taxable wages and tax is paid on the difference at the appropriate tax rate.



## **RATES OF TAX**

Refer to Appendix A for details of the tax rates.

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## TAXABLE WAGES

Wages liable to pay-roll tax in South Australia are wages that are paid or payable anywhere by an employer to an employee in a particular month ("the relevant month") provided that those wages:-

- are paid or payable in South Australia in the relevant month and relate in their entirety to services performed or rendered (or to be performed or rendered) wholly or partly in the State; or
- are paid or payable in South Australia in the relevant month and are related in their entirety to services performed or rendered (or to be performed or rendered) outside Australia and the employee has, during the six months preceding the relevant month, performed or rendered services for the employer in the State; or
- are paid or payable in Australia (but outside South Australia) in the relevant month and relate in their entirety to services performed or rendered (or to be performed or rendered) wholly in the State; or
- are paid or payable outside Australia and relate in their entirety to services performed or rendered (or to be performed or rendered) mainly in South Australia; or
- *are not* exempt from pay-roll tax under Section 12 of the Act (see page 28).

## WAGES

### Wages Defined

Wages are defined by the Act to include any wages, remuneration, salary, commission, bonuses or allowances paid or payable to a person in relation to his or her capacity as an employee and, without limiting the generality of the foregoing, includes:-

- any amount paid or payable by way of remuneration to a person holding office under the Crown, or in the service of the Crown, in the right of the State of South Australia;
- any amount paid or payable under any contract of a prescribed class to the extent to which that payment is attributable to labour;
- any amount paid or payable by a company by way of remuneration to a director or member of the governing body of that company;
- any amount paid or payable by way of commission to an insurance or time-payment canvasser or collector;

- the value of any fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986 (Commonwealth)*, other than:-
  - (a) a tax-exempt body entertainment fringe benefit; or
  - (b) any benefit that is prescribed not to be a fringe benefit for the purposes of the Act;
- the value of any payments made in kind;
- any other amount determined by or under a provision of this Act to be wages, including:-
  - payments deemed to be wages under the "Service Contract" provisions in Section 4 of the Act;
  - payments deemed to be wages under the "Employment Agents" provisions in Section 4A of the Act;
  - payments made by or to third parties in relation to the rendering of services by an employee or deemed employee where those payments are deemed to be wages under the "Third Party Payment" provisions in Section 4B of the Act;
  - payments made in respect of an agreement, arrangement or transaction which the Commissioner has reason to believe or suspect that the purpose is to reduce or avoid the liability of any person to pay-roll tax;
  - and from 1 December 1994, a superannuation benefit (see page 23).

Refer to page 12 herein for further details regarding circumstances where payments are deemed to be wages under the Act. A list of taxable or non-taxable items is shown in Appendix B.

### **Taxable Value of Fringe Benefits**

From 1 October 1990, the meaning of wages for the purposes of the Act, was extended to include the value of any fringe benefit (as defined in the *Fringe Benefits Tax Assessment Act 1986 (Commonwealth)*) provided to an employee as such.

The Act was further amended, with effect from 1 April 1992, to make payments of wages made by or to third parties or directly to a person in relation to his or her capacity as an employee liable to pay-roll tax and deemed certain service contractors and employment agent workers to be employees for the purposes of the Act.

Thus from 1 April 1992, payments of wages (including the value of fringe benefits provided) made to or in relation to a person's employment or deemed employment, became liable to pay-

roll tax and liability was no longer restricted to circumstances where payments were made or benefits provided directly to an employee as such.

Where benefits are provided the amount to be included as taxable wages under the Act is the taxable value of the fringe benefit as determined under the provisions of the *Fringe Benefits Tax Assessment Act 1986 (Commonwealth)*.

**Note: The grossing up of fringe benefit values for Fringe Benefits Tax calculations is to be disregarded,** ie for pay-roll tax purposes the taxable value (prior to grossing up) remains the value to be included in total taxable wages paid by an employer.

Where a component of wages is covered by two or more subsections of the wages definition, it should only be included once in the calculation of total wages.

In order to follow as closely as possible the effect of the Commonwealth's FBT legislation, the Commissioner of State Taxation has adopted the rulings issued by the Commonwealth Commissioner of Taxation.

The lodgement requirements for Commonwealth fringe benefits returns are based on an accounting year ending 31 March and, therefore, will differ from those relating to State pay-roll tax returns. Accordingly, the amending Act provides the Commissioner with discretionary power to accept a monthly return in which the value of fringe benefits included is an estimate of those fringe benefits. An election form is to be used to nominate the basis on which fringe benefits amounts are being declared.

A supplementary return will be forwarded to relevant employers with the June pay-roll tax return to enable details of the value of actual fringe benefits declared to be provided to this Office and for a reconciliation to be made between declared and actual.

The difference between the value of actual benefits provided and the estimated amounts declared in monthly returns must be declared in the June return in each financial year.

The new estimate to be included in the July return and subsequent returns will be 1/12th of the value of benefits declared in the Commonwealth FBT return for the FBT year ended March of that year.

### **Travelling & Accommodation Allowances Paid from 1 July 1985**

- (a) A travelling allowance paid or payable to an employee is taxable only to the extent that it exceeds a prescribed rate per kilometre or an amount calculated at the prescribed rate. Refer to Appendix A for details of the prescribed rate.

Where a travelling allowance is paid as a set allowance (rather than on a cents per kilometre basis), the taxable amount is the amount by which the set allowance exceeds the amount calculated by multiplying the actual kilometres travelled by the prescribed rate.

The exemption of a prescribed portion of a travelling allowance payment applies only where the travelling allowance is paid or payable for business travel purposes using a motor vehicle supplied by the employee.

Fares allowances and other forms of allowances relating to expenses incurred or time lost in travelling to or from a work site are not included in the exemption, even though they may, in some instances, be calculated on a cents per kilometre basis and involve the use of the employee's private vehicle. Allowances paid in respect of the

use of a private vehicle for travel between work sites are considered to be within the ambit of the exemption.

It is emphasised that for any part of a travelling allowance to be excluded from taxable wages, the travelling allowance must be designed to recompense the employee for expenses incurred in providing his or her private vehicle for use by the business in which he or she is employed. It is essential that employers retain appropriate records to enable the calculation of exempt travelling allowances to be verified.

From 1 July 1993, if an employee is paid a travelling allowance on a cents per kilometre basis for the use of his or her vehicle, and that payment is classified as an "exempt car expense payment benefit" under Section 22 of the *Fringe Benefits Tax Assessment Act 1986*, then it will also be exempt from pay-roll tax.

- (b) An accommodation allowance paid or payable to an employee is taxable only to the extent that the allowance exceeds a prescribed daily rate. Refer to Appendix A for details of the prescribed rate.

The exemption applies only where the accommodation allowance is designed to compensate an employee for accommodation and directly related meal expenses necessarily incurred where an employee is required, in the course of employment, to be absent overnight from his/her usual place of residence.

Other allowances, such as a locality allowance or a tools and equipment allowance, are considered to be fully liable to pay-roll tax **except** where it can be shown that the amount paid or payable is a direct and exact reimbursement of an expense incurred by an employee on behalf of his or her employer.

### **Employee Leave, Workers Compensation & Termination Payments**

- (a) Annual, Sick and Long Service Leave Payments

Annual leave, sick leave and long service leave payments made to an employee who will be continuing in the service of his employer and payments made in lieu of accrued annual or pro-rata leave, sick leave or long service leave at termination of employment, are liable

to pay-roll tax where any such payment represents a reward for service to which the employee has a pre-existing enforceable right.

Payments relating to accrued leave entitlements are liable to pay-roll tax, whether paid on, before or after termination of the employee's services.

Similarly, any payment of deferred or accrued wages, salaries, commissions, bonuses, allowances, etc. are liable to pay-roll tax whenever paid.

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(b) Workers Compensation

An employer is not liable to pay-roll tax in respect of payments made to an employee under the provisions of the *Workers Rehabilitation and Compensation Act 1986* (*WorkCover*) including compensation payments made by a (*WorkCover*) exempt employer and income maintenance payments of not more than two weeks' wages made under the provisions of that Act.

(c) Payments on Termination, Voluntary Separation or Redundancy

Incentive or compensatory payments (eg "golden handshake" payments) made under a voluntary separation or redundancy scheme, in lieu of notice or other termination payments made solely as a consequence of cessation of employment, and not as a reward for service, if made to an ex-employee or his or her legal personal representative, are not liable to pay-roll tax.

This includes such payments where, for the sake of convenience, payment is made some days prior to the actual date of termination of services but **does not** include payments made in respect of accrued annual or pro-rata leave, sick leave or long service leave where any such payment represents a reward for service to which the employee has a pre-existing enforceable right.

### Exempt Wages

The Act provides exemption from pay-roll tax liability in respect of specified categories of wages paid or payable by employers and in respect of certain activities undertaken by various organisations, such as public hospitals, public benevolent institutions and specified non-profit societies and associations. Refer to Section 3 herein for details of the exemptions provided under the provisions of the Act.

### DEEMED WAGES

#### Deemed Wages, Deemed Employer and Deemed Employee

The Act contains provisions which deem certain payments including any fringe benefits provided, pursuant to certain arrangements, to be wages and also deems specified parties to the arrangements to be an employer and employee respectively.

These provisions, referred to in the Act as:

- **Service Contracts;**
- **Employment Agents;**
- **Third Party Payments; and**
- **General Avoidance Provisions**

are aimed at schemes designed to avoid liability for pay-roll tax by severing the employer/employee relationship.

These provisions have, with effect from 1 December 1994, been extended to include a superannuation benefit within the amounts to be taken as wages for the purposes of the Act.

The circumstances relevant to each of these aspects are as follows:-

### **Service Contracts**

A "service contract" is a contract relating to the performance of work under which, a person, in the course of carrying on a business:-

- supplies services to another person;
- is supplied with services of another person;
- supplies goods for return after work is performed by another person;
- *unless* at least one of the following exclusion provisions apply and provided it is not a contract of employment.

### **Services Ancillary to the Supply of Goods**

Contracts for the supply of goods by way of sale, exchange, lease, hire or hire purchase which involve the provision of labour by the supplier of the goods are excluded where the labour is ancillary (ie secondary) to the supply of the goods. [Section 4(2)(a)(i)]

This exclusion recognises that a contractor, in supplying goods, may also provide some labour but the supply of goods is the fundamental object of the contract. For example:-

- A contract, between a vendor of air-conditioning systems and a purchaser **to supply and install** an air-conditioning system is an example of the kind of contract excluded by this provision.
- However, a further contract between a vendor and an installer for the performance of the actual installation work would not fall within this exclusion provision.

### **Services Ancillary to the Use of Goods**

Contracts for the use of goods which involve the provision of labour by the owner of the goods are excluded where the labour is ancillary to the use of the goods (ie the use of the goods is the fundamental object of the contract). [Section 4(2)(a)(ii)]



A hire contract for the use of a crane which includes the supply of the crane operator is an example of the kind of contract excluded by this provision, the labour of the crane operator being merely ancillary to the use of the crane.

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### **Classes of Contracts Specifically Excluded**

The following classes of contracts are specifically excluded from the operation of the service contracts provisions as provided at Section 4 of the Act:

- (a) **“OWNER/DRIVER” contracts where the services are only ancillary to the carriage of goods by means of a vehicle provided by the goods carrier.**
- (b) **“INSURANCE SALES AGENTS” contracts where the services are supplied to a person (eg an insurance company) for the purposes of selling insurance policies of that person.**
- (c) **“DOOR-TO-DOOR SALES AGENTS” contracts where the services are supplied to a person whose goods are offered for sale by the door-to-door sales agent.**

Should the Commissioner determine that the contract or arrangement under which any of the abovementioned services are supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person, then exclusion does not apply.

### **Contracts Where The Contractor Employs or Uses Two or More Persons to Perform the Actual Work Under the Contract**

A contract is excluded where contractors (sole proprietors, partnerships, corporations etc) in the course of business engage other people to do all or part of the work required under the contract.

Under this exclusion, the persons engaged by the contractor must be engaged to perform the actual work that is the object of the contract.

The number of persons required to be provided to gain this exemption varies according to the nature of the entity through which the services are provided and are as follows:-

- Where the contracting entity is a sole trader, the number of persons who must be employed or engaged by the sole trader includes the sole trader and one or more other persons, or alternatively two or more other persons (not being the sole trader);
- Where the contracting entity is a partnership, the number of persons who must be employed or engaged by the partnership includes *at least one partner* and one or more other persons (not being a partner) or alternatively two or more other persons (not being partners);
- Where the contracting entity is a company, the number of persons who must be employed or engaged by the company includes two or more persons;
- Where the contracting entity is a trustee, the number of persons that are employed or engaged by the trustee includes two or more persons.

Where one of the persons engaged by the contractor does general administrative and clerical work only, that work is not considered as being work performed pursuant to the contract. Accordingly, such a person is not considered relevant for the purposes of applying this exemption.

The exclusion does not apply if the Commissioner determines that the contract or arrangement under which the services are supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

### **Services Provided for Less Than 90 Days**

A contract for the provision of the services where, in relation to the contract, services are provided on no more than 90 days, or services are provided over a number of periods which in aggregate do not exceed 90 days in a financial year, are excluded unless;

- the contractor (whether an individual, partnership or corporation) provides under another contract or other arrangement similar services to the same person,
- the person who performs the actual work under the contract also performs similar work for the person who engaged the contractor. [Section 4(2)(b)]

In determining whether or not work, under a contract or arrangement, is performed on more than 90 days, the primary criterion does not require that the elapsed period be wholly within a financial or calendar year. If work is performed on more than 90 days, at any time, the exclusion does not apply. Where the secondary criterion applies (ie broken periods under the same contract or arrangement are to be aggregated), the total number of days worked is determined by reference to the financial year in which the work is performed.

In this exclusion the number of “days” is a reference to the number of days on which work is performed. The number of hours worked is not relevant because the subject “days” are not determined by an accumulation of hours worked. This provision excludes payments under contracts where the services or work are only required on a short term or casual basis. It does, however, recognise that a subcontractor may perform similar services for the same principal under a different contract or arrangement.

In these circumstances, the total days worked by the subcontractor, regardless of the arrangements, must be included in counting total days worked.

Examples of situations addressed by the provision include:

- A person contracts as a “carpenter” in the first instance and as a “shopfitter” in the second, but is providing the same (or similar) services, then both terms of service must be added together to determine eligibility for the 90 days exclusion criteria.

- “A Pty Ltd” provides services and “B Pty Ltd” provides similar services and the person actually performing the work is the same person, then those periods must be aggregated.

It is recognised that difficulties may be encountered in predicting the actual number of working days which may elapse in the carrying out of contract work.

**Accordingly, the Commissioner will, as a “rule of thumb” accept that a “120 CALENDAR days” measure may be used instead of the primary 90 WORKING days criterion when such difficulties are encountered. The 120 CALENDAR days are to be determined by reference to the expected commencement and finishing dates of the contract work to be performed.**

Difficulty may also be encountered in determining whether or not the “90 working days” criterion is applicable in some other situations. This may lead to uncertainty as to whether progress payments made pursuant to a contract are, at the time they are made, liable to tax.

Examples of situations where liability to tax may not be determinable at the time payments are made, are:

- the anticipated term of a contract is uncertain but it is likely that work will be performed on approximately 80 to 100 days (ie the number of days worked may be either less or more than 90 days) or,
- a person may be engaged to provide a particular service involving the performance of work on 80 days but it is possible that similar work may be performed by the same person later in the same financial year which when added to the first 80 days may exceed the 90 days criterion.

To resolve these difficulties, the Commissioner will accept that affected payments need not be included until such time as it is clear that exclusion will not apply. However, all payments made under such contracts, prior to determination of liability, must be included when it is clear that no exclusion applies. Should payment be included in taxable wages and it is subsequently found that an exclusion is applicable, a written request for refund should be lodged with the Commissioner.

### **Services Ordinarily Required For Less Than 180 Days**

Contracts where the services provided are of a kind or **a type ordinarily required in the course of a person’s ongoing business for less than 180 days in a financial year** are excluded.

For example, a seasonal worker for a primary producer may be hired for more than 90 days but as the primary producer does not normally hire seasonal workers for more than 180 days in a financial year, the contract is excluded.

The exclusion recognises that businesses require various ad hoc services allied to the mainstream of the work of the business, but so infrequently that permanent workers are not engaged.

The “days” in this exclusion refers to days on which any work of the kind or type is performed or required. The total number of “days” is counted by reference to the elapsed calendar days for which work is performed or required.

Where two or more contractors are engaged at the same time, only the elapsed days on which the work is required are counted (ie on any day where both are contracted to work, that day is counted only once) but where two contractors are engaged at different times during the year, the two elapsed periods are added together. Thus, if two contractors are engaged for 100 days at the same time, the count would be 100 days, but if they are engaged in different periods, the count would be 200 days.

#### **Services Ancillary to the Conduct of a Business Where the Supplier also Provides Such Services to the Public Generally**

A contract where the services provided are of a type not ordinarily required in the course of a person’s ongoing business and those services are provided by a person who normally renders services of that type to the public, generally is excluded.

This exclusion recognises that many transactions are contracts for services which are not part of the mainstream of a person’s business (ie they are not normally required by the business in an ongoing sense). It applies where the work of this type is performed by persons who are bona fide rendering services to other business and the public generally.

For example, where a small retailer engages an independent shopfitter to refit the interior of the retailer’s premises, this would not be regarded as a regular requirement of the retail business as both of the exclusion tests of this provision would be satisfied. In this arrangement, the shopfitter provides his services to shopkeepers generally and not exclusively or extensively to the one shopkeeper.

Conversely, where a large chain store, which due to the scale of its operations required ongoing shopfitting in various stores, engages a shopfitter permanently on contract or by way of a series of contracts, this service would be regarded as a normal requirement of the business and the exclusion tests would not be satisfied.

Other types of contracts excluded under this provision include:

- provision of professional services by accountants, solicitors, doctors, engineers and architects to members of the general public. This provision does not exclude professional persons engaged solely by a single corporation or other entity; and

- trades person providing labour only services to the public generally where such services are not ordinarily required on a regular basis.

### **Services Rendered to the Public Generally**

Contracts may be excluded where the Commissioner is satisfied that the services are supplied by a person who ordinarily renders services of that kind to the public generally.

This exclusion allows for referral to the Commissioner for a determination in situations where none of the other exclusion provisions apply but it can be demonstrated to the Commissioner's satisfaction that the service provider usually renders services of the subject kind to the public generally (ie the service provider normally conducts a genuinely independent business and his or her services are not integral to the conduct of the business of another person).

An application for exclusion under this section will be favourably considered where it can be shown, to the satisfaction of the Commissioner, that the contractor regularly conducts an independent trade or business and has been consistently rendering such services to a significant range of unrelated clients.

In most cases, it is unlikely that applications will be favourably considered where the contractor has:-

- been consistently working for one principal (or for persons who are members of the same group) or,
- 80% or more of the contractor's income is derived from the one principal (or from persons who are members of the same group).

To assist in the identification of contractor payments which may be excluded under this provision and to reduce the need for referral to the Commissioner, the following guidelines have been adopted:-

- Where a contractor works intermittently (ie not continuously) for a principal or for members of the same group in the course of a financial year and the contractor is paid less than 40% in total of the equivalent award in that financial year by that principal or that group, payment to that contractor will be regarded as non-taxable, in short, it will be accepted that the contractor supplies services of that kind to the public generally.
- Where a building trade contractor in respect of the services designated below, is able to genuinely satisfy all of the criteria specified below, for the purposes of the exclusion provisions of the Act, it will be accepted that the contractor supplies services of that kind to the public generally.

### **Specified Criteria**

The Contractor:-

- conducts an independent trade or business;
- takes an entrepreneurial risk in the way that services are provided;
- is not providing essentially labour-only services;
- does not simply charge for services at an hourly rate and merely adds the cost of materials purchased to the total hourly charge;
- quotes competitively for jobs on an all inclusive basis for the cost of all labour and material specified in quotes;
- bears the cost and responsibility for any faulty workmanship or materials specified in the quote;
- provides his/her own vehicle and equipment;
- does not purchase the materials necessary to fulfil the contract from the person who engaged the contractor; and
- usually renders services of the subject kind to a range of unrelated clients.

### **Specified kind of contractor service**

- (a) **Contracting Electrician** - The type of materials referred to in the above specified criteria are electrical cabling, switches, power boxes etc and not prime cost decor fittings such as light fittings.
- (b) **Contracting Plumber** - The type of materials referred to in the above specified criteria are tubing, pipes, bends, tapes, spouting, downpipe etc and not major prime cost decor fittings such as basins, taps etc.
- (c) **Contracting Cabinet Makers** - In this class of contract the materials referred to in the above specified criteria are all the raw materials necessary to manufacture the cabinets on the contractor's premises using his own equipment.

### **Exclusion by Regulation**

**Should anomalies arise in the administration of the service contracts provisions under Section 4 of the Act, regulations may be made to exclude any class of contract from the operation of the section.**

### **Allowances for Equipment and Material Costs under a Service Contract**

To avoid the necessity of having to refer individual contracts to the Commissioner for determination, under Section 4(4) of the Act, where a contract does not distinguish between labour and other costs, the Commissioner has made the following determinations of general application where the contractor is providing materials or equipment.

Historical Use Only



**DETERMINATION BY THE COMMISSIONER OF AMOUNTS TO BE EXCLUDED FROM A SERVICE CONTRACT PAYMENT FOR MATERIALS AND EQUIPMENT:**

CONTRACTOR CLASS	PERCENTAGE DEDUCTION
Architects	5%
Bricklayers	30%
Building Supervisors who provide their own vehicles and inspect more than six sites per week	25%
Carpenters	25%
Carpet Layers	25%
Computer Programmers	5%
Draughtspersons	5%
Engineers	5%
Fencing Contractors	25%
Painters	15%
Painters (where the painter provides the paint)	30%
Plasterers (other than plaster board fixers)	20%
Resilient Floor Layers	37%
Roof Tilers	25%
Tree Fellers	25%

Should an employer maintain that a greater percentage applies to non-labour costs in relation to a particular contract, or class of contract, or in cases where no general determination has been made, details should be submitted at the time the appropriate pay-roll tax return is lodged.

**Deemed Wages, Employer and Employee under a Service Contract**

***Deemed Wages:***

Any amount paid or payable (or benefit provided) under a service contract is, to the extent that it relates to the performance of work or the resupply of goods, deemed to be "wages".

***Deemed Employer:***

A person who is supplied with services or gives out goods under a service contract is deemed to be an employer.

***Deemed Employee:***

A person who performs the work or resupplies goods under a service contract is deemed to be an employee.

Employment agency contracts are excluded from the service contracts provisions.

### **Employment Agents**

An employment agent is liable for the payment of pay-roll tax in respect of "wages" deemed to be paid or payable to an agency worker who is not an employee of either the agent or client.

An employment agent is a person who:

- procures the services of a person for a client; or
- receives a fee in respect of the period in which the services are rendered.

### **Employment Agency Contract**

For the purposes of Section 4A of the Act, an employment agency contract is any contract or arrangement under which an "Employment Agent" provides the services of a contract worker to his or her client, for a fee relating to the period of service, where the contract is **not** a contract of employment.

Placement and/or introductory services are not within the scope of Section 4A. Liability, if any, in respect of contracts arising out of these services will depend on the circumstances and whether or not they are contracts of employment or contracts for service.

### **How is Liability for Pay-roll Tax Determined?**

For the purposes of determining any pay-roll tax liability that may arise under a contract relating to the engagement of an employment agency "contract worker" it is necessary to consider whether the contract is a contract **of** service (ie a contract of employment) or a contract **for** service.

Where a contract of employment is entered into, liability for pay-roll tax is to be determined in accordance with the provisions applying to employers generally.

However, where a contract **for** service arises (ie no employer/employee relationship exists), the agent will be liable for pay-roll tax under the Employment Agents provisions contained at Section 4A of the Act.

These provisions include any situation where the services of a natural person (the contract worker) are provided by a sub-contracting partnership, trust or company engaged by the employment agent.

### **Deemed Employer, Employee & Wages under an Employment Agency Contract**

Unless a contract of employment arises, the following applies in respect of the parties to an employment agency contract:-

Historical Use Only

***Deemed employer:***

the employment agency will be taken to be an employer;

***Deemed employee:***

the contract worker will be taken to be an employee of the employment agent;

***Deemed wages:***

any remuneration paid or payable to the contract worker for the provision of his or her services under an employment agency contract will be taken to be wages paid or payable by the employment agent. Taxable wages do not include:

- any amount in respect of the employment agent's fee; or
- amounts that would have been exempt from pay-roll tax, **if they had been paid by the client of the employment agent as an exempt organisation to an employee of that organisation.**

Where it is not reasonably practicable to precisely ascertain the extent of the amount paid or payable to a contract worker as remuneration under an employment agency contract the Commissioner may:

- accept a return on the basis of estimates; or
- estimate the amount of remuneration paid or payable when making an assessment.

**Third Party Payments**

Under Section 4B of the Act, payments made or benefits provided to or by third parties in relation to the performance of work by an employee are taken to be wages paid or payable by the employer to his/her employee.

**Payment Deemed to be Wages**

- Where the payments are made by an employer to a person other than the employee;
- Where the payments are made by a person other than the employer to an employee; and
- Where the payments are made by a person other than the employer to a person other than the employee.

In each of these circumstances, pay-roll tax would have been payable if the payments had been made directly by the employer to the employee.

## Non-Taxable Payments

Section 4B only extends liability for pay-roll tax to payments that are made to or by third parties “in relation to the performance of work by an employee”. Payments that do not meet this criterion are not, under Section 4B, liable to pay-roll tax.

Accordingly, no pay-roll tax liability arises in respect of the following payments:

- workers’ compensation payments;
- “make-up” pay for an employee absent on leave as a member of the Defence Forces.

## General Avoidance Agreements etc

Where the Commissioner has reason to believe or suspect that the purpose of an agreement, arrangement or transaction (under which a natural person performs or renders services and any payment related to those services is made to some other person) is to reduce or avoid the liability of any persons to pay-roll tax, the Commissioner may:-

- disregard the agreement, arrangement or transaction;
- deem any party to the agreement etc, to be an employer; and
- deem any payment made (or benefit provided) in respect of the agreement etc, to be wages for the purposes of the Act.

## Superannuation Benefit

With respect to payments made on or after 1 December 1994, the definition of wages has been extended to include a superannuation benefit.

"Superannuation benefit" means:-

- (a) a payment of money by an employer on behalf of an employee to, or the setting apart of money by an employer on behalf of an employee as a superannuation fund within the meaning of the *Occupational Superannuation Standards Act 1987 (Commonwealth)*; or
- (b) a payment by an employer of a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992 (Commonwealth)*; or
- (c) a payment of money by an employer on behalf of an employee to, or the setting apart of money by an employer on behalf of an employee as any other form of superannuation, provident retirement fund or scheme.

## 2 **PERSONS LIABLE TO TAX**

### **REGISTRATION OF EMPLOYERS**

An employer (or deemed employer) is any person, partnership, company, association or other entity who pays or is liable to pay any wages or amounts deemed to be wages under the provisions of the Act.

Employers are required to register where:

- during any month the employer pays or has paid any wages in South Australia that exceed the prescribed weekly rates shown in Appendix A; or
- the employer is a member of a group that pays any wages that are liable for tax in South Australia.

Applications are required to be lodged within seven (7) days after the close of the month in which the liability to register first arises, together with an Election Form regarding fringe benefits. Penalties and/or interest may be levied in event of failure to register.

Applications for registration must be submitted on a form obtainable from the State Taxation Office.

### **GROUPING OF EMPLOYERS**

In certain circumstances, employers may be "grouped" for pay-roll tax purposes. Where a group exists, taxable wages paid or payable anywhere by each member of the group are aggregated to ascertain the deduction available which is claimed by the "Designated Group Employer" (refer to page 5 herein for further details of deduction entitlements).

#### **How is a Group Constituted?**

A group is constituted where:-

***Corporations are related companies***, ie corporations are related companies by reason of Section 50 of the Corporations Law, either as holding and subsidiary companies or as subsidiaries of a common holding company.

***Employees are used in another business***, ie where employees of an employer are solely or mainly used for or in connection with another business or where an agreement exists between their employer and a person who carries on another business for their use in that other business.

***Businesses are commonly controlled***, ie where the same person (or persons) has a controlling interest in two or more businesses in any of the following circumstances:-

- (a) where a director or majority of directors of a corporation who can exercise a majority in voting power at directors' meetings are accustomed or under an obligation to act in accordance with the instructions of a person (or persons);
- (b) where a person (or persons together) can influence 50% or more of the voting power attached to shares issued by a corporation;
- (c) where a person (or persons together) owns 50% or more of the capital or is entitled to 50% or more of the profits of a partnership;
- (d) in respect of a business carried on by a trust, where a person (or persons) is a beneficiary in respect of 50% or more of the interests in a trust. It should be noted that a beneficiary under a discretionary trust is deemed to be a beneficiary in respect of 50% or more of the interests in that trust;
- (e) where a person (or persons), whether or not as a trustee of a trust, is the owner of a business.

Where the same person has (or persons have together) a controlling interest in each of two businesses, the persons carrying on those businesses constitute a group.

Regulations may be made specifying the circumstances in which two or more persons shall constitute a group or declaring that two or more persons shall constitute a group.

Smaller groups are subsumed into larger groups, ie where a person is a member of two or more separate groups, all members of those groups together constitute one group.

### **Registration of Group Members**

Each employer who is a member of a group is required to register separately as an employer with the State Taxation Office, regardless of the level of the wages paid. Each group member is also required to lodge separate returns.

### **Exclusion from a Group**

Under Section 18I(1) of the Act, the Commissioner may exclude a member from any group where he is satisfied having regard to:-

- the nature and degree of ownership or control of a business;
- the nature of a business; and
- any other matter he considers relevant;

that a business carried on by a member of a group is carried on substantially independently of and is not substantially connected with the carrying on of a business carried on by any other member of that group.

However, Section 18I(2) of the Act provides that corporations which are "related" corporations within the meaning of the Corporations Law cannot be excluded from a group.

In submitting an application for exclusion from a group, an employer should supply full details in respect of each company in the group including the name of the directors, the issued share capital, the shares held by each shareholder and the voting rights of each shareholder, whether any shares are held in trust for any other person, the nature of the business conducted, the appointment of executives and other matters considered relevant to satisfying the Commissioner that he should exclude that employer from the group.

### **Designated Group Employer**

Where a group exists, its members may nominate one of the members to be the Designated Group Employer. Only the Designated Group Employer of the group may claim a deduction from taxable wages.

The State Taxation Office must be informed whenever there is a change in group membership. This Office will advise the action to be taken to establish the deduction entitlement of the group.

An application for determining the Designated Group Employer and the deduction from taxable wages must be made on a special form obtainable from the State Taxation Office.

### **Annual Adjustment of Pay-roll Tax**

At the close of a financial year, an annual calculation of the pay-roll tax liability of a designated group employer is made for the purpose of adjusting the amount of deduction made in returns of taxable wages by that group member (on behalf of the group).

The deduction made in returns is determined on the basis of forward estimates, whereas the annual amount is calculated by reference to the actual wages paid or payable by all members of the group during the relevant year. The process is referred to as the "annual adjustment" of pay-roll tax paid or payable and may result in either further tax being payable or a refund to the designated group employer.

Where further tax is payable and the designated group employer fails to pay any amount due upon annual adjustment, all relevant members of the group become jointly and severally liable to pay that amount to the Commissioner.

### **Joint and Several Liability of Group Members**



Any tax (including interest and/or penalties) payable under the Act by a member or members of a group is a debt due jointly and severally by every person who was a member of the group during the period in respect of which the tax became due.

Historical Use Only

## **CANCELLATION OF REGISTRATION OF AN EMPLOYER**

The Commissioner may cancel the registration of an employer:

- when an employer, who is not a member of a group, ceases paying wages in excess of the prescribed weekly rates shown in Appendix A; or
- when an employer ceases to be a group member and ceases paying wages in excess of the prescribed weekly rate.

An employer seeking cancellation of registration should forward a written request to the State Taxation Office. A questionnaire may be sent for completion to enable finalisation of cancellation requirements.

## **DUTIES OF AGENTS, TRUSTEES, LIQUIDATORS, ETC (A REPRESENTATIVE OF AN EMPLOYER)** **TAXATION ADMINISTRATION ACT 1996**

An agent, trustee, executor or a liquidator is answerable as an employer for doing all things required by the Act in respect of wages paid as a representative. The representative must register as an employer, lodge pay-roll tax returns and pay tax thereon if the wages paid or payable by the representative are liable for pay-roll tax.

Each pay-roll tax return by a representative must be separate and distinct from any other return. A representative is entitled to recover any tax paid in that capacity from the person on whose behalf it was paid or the representative may deduct the tax from any money belonging to that person held by the representative.

A representative is personally liable for the tax payable if, after the Commissioner has requested the representative to make a return or while the tax remains unpaid, the representative disposes of funds or assets from which the tax legally could be paid without the written permission of the Commissioner.

The returns lodged by an executor of a deceased estate must be the same, as far as practicable, as the deceased person, if living, would have been liable to make. The Commissioner has the same powers to recover tax from the trustee or executor or administrator of an estate as he would have had against the employer if that person was alive.

## **LIQUIDATORS** **TAXATION ADMINISTRATION ACT 1996**

A liquidator is required to give notice to the Commissioner of his/her appointment as liquidator within fourteen (14) days of that appointment.

### **3 EXEMPTIONS**

Wages paid by the following organisations to employees engaged exclusively in the work ordinarily performed in connection with the conduct of the specified organisations are exempt from pay-roll tax:-

- (a) a religious or public benevolent institution, or a public hospital;
- (b) a hospital carried on by a society or association other than for the purpose of profit or gain to the individual members of the society or association;
- (c) a school or college which is carried on by a body corporate, society or association other than for the purpose of profit or gain to its individual members, and is not carried on by or on behalf of the State, and provides education at or below but not above the secondary level of education;
- (d) a child care centre which is an eligible organisation within the meaning of the *Child Care Act 1972 (Commonwealth)*;
- (e) a kindergarten conducted by an employer other than for the purpose of profit or gain;
- (f) an employer who provides health services other than for the purpose of profit or gain. "Health services" being defined as:-
  - any service designed to promote health;
  - any therapeutic or other service designed to cure, alleviate, or afford protection against, any mental or physical illness, abnormality or disability;
  - any paramedical or ambulance service;
  - the care of, or assistance to, sick or disabled persons at their place of residence; or
  - any prescribed service.

Other organisations exempt in respect of wages paid by them include:-

- (a) the Family Planning Association of South Australia Incorporated;
- (b) a council (eg a local Government authority, a local Board of Health), *except* to the extent that wages are paid or payable for or in connection with the generation or supply of electricity or gas, or in connection with water supply, sewage, the conduct of abattoirs, of

public markets, of parking stations, of cemeteries, of crematoria, of hostels or of public transport. In addition, wages paid by a council for or in connection with the construction of any works or the installation of plant, machinery or equipment for use in connection with any of the above activities are *not* exempt from tax;

- (c) an employer, in respect of the wages of a person employed in accordance with the agreement between the Commonwealth and the State for the implementation of the Australian Traineeship System, where these wages are paid or payable before 1 July 1995 under a contract of training registered with the Industrial and Commercial Training Commission;
- (d) a consular or other representative other than a diplomatic representative in Australia of the Government of any other part of Her Majesty's Dominions or of any other country;
- (e) the Commonwealth War Graves Commission;
- (f) Australian/American Educational Foundation;
- (g) an employer in respect of wages paid or payable to a person who is on leave by reason of being a member of the Defence Forces of the Commonwealth or of the Armed Forces of any part of Her Majesty's Dominions;
- (h) a university (residential) college affiliated with the University of Adelaide or the Flinders University of South Australia;
- (i) a motion picture production company, being wages paid or payable to a person who is involved in the production of a feature film.

The motion picture production company needs to satisfy the Treasurer that:-

- the film will be produced wholly or substantially within the State;
- the production of the film will involve or result in the employment of South Australian residents; and
- the production of the film will result in economic benefits to the State of South Australia.

## **4 CALCULATION AND PAYMENT OF TAX**

### **Returns**

Every employer or deemed employer who is registered or required by the Act to apply for registration must, within seven (7) days after the close of each month, lodge to the Commissioner

a return showing all taxable wages that were paid or payable by the employer during the previous month.

A return must be lodged each month whether or not tax is payable. Failure to do so will result in a default assessment being issued. However, in special circumstances, the Commissioner may extend the time within which returns may be lodged or may authorise the lodging of returns at less frequent intervals than monthly, eg half-yearly or yearly.

A return form is sent to each registered employer by the Commissioner in sufficient time to enable the return to be lodged to the State Taxation Office by the due date. The form will include employer details and stipulate any deduction entitlement for the period covered by the return.

The employer is required to complete the return, calculate the tax payable and send the lower portion of the pay-roll tax return form, together with payment of tax, to the State Taxation Office. Both parts of the form should be brought to the State Taxation Office if payment is being made "over the counter."

The Commissioner may, at any time by notice in writing, require an employer to lodge further or fuller returns.

### **Calculation of Tax**

Each employer must calculate the tax payable at the appropriate rate when lodging a return, taking into account the wages paid and the deduction (if any) to which the employer is entitled. The amount calculated is to be shown on the return form by the employer.

The basis upon which deduction entitlements are calculated is shown at page 6 herein and full details of the tax and deduction rates are set out in Appendix A.

Where wages paid in any month are less than the available deduction for that month, the unclaimed portion of the deduction cannot be carried forward to a subsequent return but there is provision for an annual adjustment of tax.

### **Payment of Tax**

Each employer is required to pay the pay-roll tax due when lodging a return, ie within seven (7) days after the end of the month in which the wages were paid. In special circumstances, an extension of time may be granted by the Commissioner for an employer to lodge the return and pay tax.

Payment may be made by delivery or by post to the State Taxation Office. If payment is made by cheque, the tax is not deemed to have been paid until the cheque has been met on presentation.

If tax is not paid by the due date, interest/penalty tax may be imposed.

### **Annual Adjustment of Tax**

An annual adjustment of tax is made at the end of each financial year where an employer (or a group of employers) has claimed or has established an entitlement to claim a deduction from taxable wages during that year.

If the annual amount of tax payable is greater or less than the tax actually paid or payable during the year, the State Taxation Office will seek further payment or forward a refund to the employer concerned.

## **5 COLLECTION AND RECOVERY OF TAX**

### **TAXATION ADMINISTRATION ACT 1996**

#### **Lodgement of Returns**

Returns must be lodged by the employer within seven (7) days of the close of each month. The Commissioner may extend the time within which returns must be provided and may approve the lodgement of returns on a half-yearly or annual basis.

The Commissioner, may by notice in writing, require an employer or person to provide returns or any information as required.

Under the Act, an offence is committed if any person fails or neglects to lodge a return or information or comply with any requirement of the Commissioner.

#### **Interest For Late Payment of Tax**

Under the TAA, an interest charge will apply in all cases of late payment of tax, and will comprise two components; a "market rate" and a premium component. The "market rate" will mirror the rate set out in Section 214A(8) of the *Income Tax Assessment Act 1936* or, a rate specified by the Minister. The "market rate" for the six months commencing 1 July 1997 to 31 December, 1997 is 9.8% per annum. The "market rate" component may change bi-annually, therefore, to obtain current rates applicable after 31 December 1997, contact should be made with this office.

The "market rate" component is designed to reflect the opportunity cost to the Government of not having the use of the revenue for the period that it remains unpaid. The second component of the interest charge will be 8% per annum, charged as a disincentive to taxpayers not meeting their tax obligations in a timely manner. Thus the current rate of interest on amounts of unpaid tax is 17.8% per annum.

While a debt remains outstanding, interest will continue to accrue based on the daily outstanding balance until such time that the full amount payable is received. Similarly, if a return remains unlodged, interest payable will be calculated at the time of assessment.

Therefore, if pay-roll tax or penalty tax is not paid before the expiration of the time provided in the Act, or within such time allowed by the Commissioner, additional late payment interest is payable on the following basis:-

$$\frac{\text{Days late}}{\text{Total days in year}} * \text{Total tax assessed} * \text{Current interest rate(\%)} = \text{Interest payable}$$

Historical Use Only

### For Example

*Return & payment is late:* 20 days  
*Tax Assessed is:* \$3,000.00  
*Current interest rate is:* 17.8%

*Calculation for interest is:*  $\frac{20}{365} * \$3,000.00 * 17.8\%$

***Interest payable = \$29.26***

### **Penalty Tax For Late Payment of Tax**

In addition to interest, the Act imposes a penalty in circumstances where the Commissioner believes that a tax default was deliberate or was a result of the taxpayer (or a person acting on behalf of the taxpayer) failing to take reasonable care to comply with the requirements of a taxation law. The Act sets a flat 75% of the unpaid tax in instances of a deliberate non payment or 25% for any other situation. Provision is made for reduction of these penalties, subject to the taxpayer making voluntary disclosures in relation to non-payment, either before (80% reduction) or during (20% reduction) a tax audit. Provision is made for increasing the penalty if a taxpayer engages in obstructive behaviour while subject to a tax audit (20% increase).

No penalty will be payable where the Commissioner is satisfied that the non-payment was not deliberate and did not result from a failure of the taxpayer to take reasonable care to comply.

The rates for both interest and penalty tax adopt a realistic approach to ensuring timely compliance with taxation laws. The new interest and penalty tax substantially reduce many previous more severe imposts, while reflecting a balance between cost recoupment, and encouraging taxpayers to meet their obligations.

The Commissioner has discretionary powers to remit both interest and penalty tax.

### **Assessments**

When it is found that pay-roll tax is payable by an employer, the Commissioner may assess the amount of taxable wages paid or payable and calculate the pay-roll tax due including interest/penalty tax (if applicable). A notice in writing of the assessment will be provided to the employer by the Commissioner.

### **Books and Records**

The TAA provides that every employer shall keep or cause to be kept in South Australia, sufficient records which enable the employer's liability in respect of pay-roll tax to be calculated accurately. Those records must be preserved in this State for a period of not less than five years following the completion of any transaction to which they relate.



The Commissioner, or any person authorised by the Commissioner, shall at all reasonable times, have full and free access to all buildings, places and records for any of the purposes of the TAA and may make extracts from or copies of such records.

The Commissioner may require an employer or any person to attend and give evidence for the purpose of inquiring into that person's liability or entitlement under the Act and may require production of all records.

"Records" are defined to include documentary records and all other kinds of records whether made by an electronic, electromagnetic, photographic process or any other means.

## **6 OBJECTIONS AND APPEALS**

### **TAXATION ADMINISTRATION ACT 1996**

The TAA has standardised the administrative provisions relating to objections and appeals, including those relating to the Act.

#### **Lodgement of Objections**

A person who is dissatisfied with an assessment or any other reviewable decision of the Commissioner may, not later than 60 days after the service of the assessment, or notification of a reviewable decision, lodge a written notice of objection with the Minister stating fully and in detail, the grounds on which the person relies.

This means that objections that commence after 1 July 1997 will no longer be considered by the Pay-roll Tax Appeal Tribunal.

While the Minister has a discretion to permit a person to lodge an objection after the end of the 60 day period, the failure or refusal of the Minister to grant permission is a non-reviewable decision.

#### **Lodgement of Appeals**

An appeal to the Supreme Court against a decision of the Minister to an objection may be made within 60 days of the date of the Minister's determination. Appeals need not be restricted to the grounds of the original objection.

Where an appeal is made to the Supreme Court on the grounds of the Minister's failure to give a determination within 90 days of the lodgement of an objection, an appeal may be lodged at any time, provided the Commissioner is given not less than 14 days written notice of the person's intention to make the appeal.

The Supreme Court has a discretion to allow a person to appeal after the end of the 60 day period.

## **7 PAY-ROLL TAX REBATES**

A number of pay-roll tax rebate schemes have been introduced from time to time as measures to aid in the creation of employment opportunities and to assist in the continued development and generation of value added export markets for South Australian goods and services.

Details of the eligibility criteria applicable to each of the schemes are contained in separate State Taxation Office Circulars issued by the Commissioner as follows:-

### **Circular 158 (Replaces Circular No 140) Exporters Pay-roll Tax Rebate Scheme**

Employers who are or will be exporters of value added goods or services in 1997-98 may claim a rebate of 20% of pay-roll tax payable on the wages of employees engaged in generating eligible export earnings.

This rebate is equal to 20% of the proportion of total pay-roll tax paid in South Australia which is attributable to South Australian export earnings in the rebate period.

Employers eligible for the scheme must apply on the approved application form which will be sent to employers immediately before the close of each eligible six month period. The rebate entitlement should not be deducted from an employer's pay-roll tax liability.

Continuation of this scheme after 30 June 1998 will be subject to annual review.

### **Circular 144 (Replaces Circular No 131) Young Persons Employment Pay-roll Tax Rebate Scheme**

Where eligibility criteria are met, employers who are or will engage employees under the age of 21 years at the commencement of employment are entitled to a rebate for the first 12 months of employment. Where employees are between the ages of 21 and 25 years inclusive at the commencement of employment, the rebate applies for the first 6 months of employment only.

The maximum rebate available is an amount equal to the amount of pay-roll tax paid by the employer in respect of wages paid to young persons engaged in young persons employment incentive arrangements.

**Upon application to the Commissioner**, eligible employers now have the potential to deduct the rebate amount for the return period from their pay-roll tax liability.

This scheme will now be administered on a half-yearly basis commencing from 1 July 1997.

### **Circular 144 - Trainee Wages Pay-roll Tax Rebate Scheme**

Employers who pay wages to employees engaged in accredited apprenticeships or as trainees under an approved training scheme are entitled to a rebate of up to 98% of the pay-roll tax paid in respect of wages paid to these employees, where eligibility criteria are met.

The approved schemes are:

- The Australian Vocational Training Scheme;
- The Career Start Training Scheme;
- The Australian Traineeship System; and
- The National Training Wage Traineeship Scheme.

**On application to the Commissioner**, eligible employers will now have the potential to deduct the rebate amount for the return period from their pay-roll tax liability.

This scheme will also be administered on a half yearly basis commencing from 1 July 1997.

## **8 OVERPAYMENT OF TAX**

### **TAXATION ADMINISTRATION ACT 1996**

#### **Application for Refund**

Refund requests may be made in respect of tax paid within the last five years. Applications for a refund as a consequence of over-declared wages must be made in writing setting out the wage details which have been over-declared. A refund cannot be approved until such advice has been received. Refunds due as a consequence of an annual adjustment are issued automatically.

#### **Power to Offset a Credit**

The Commissioner has the power to offset an existing debt due under a taxation law. Taxpayers may, as an alternative to seeking a refund, allow the Commissioner to offset a refund against a future tax liability. For example, an overpayment of pay-roll tax in month 1 could be offset against the tax due in month 2.

## **9 AUDITS AND INVESTIGATIONS**

The South Australian State Taxation Office conducts an active compliance program. Employers are targeted for audit on the basis of information obtained from a variety of sources. These audits vary from the more cursory desk audits to the more complex ones which address all areas of pay-roll tax liability.

In the majority of cases, audits commence with an employer being contacted by telephone or through the mail. An initial request for certain records and documents may be made or a suitable time arranged for the investigator to attend at the employer's premises to examine records.

The types of records and documents requested are those which will enable the investigator to determine whether the employer has been complying with the Act, and may include:-

- Detailed Financial Statements/Annual Reports;
- Copies of Trust Deeds;
- Details of wages paid, including group certificates, wage books and fringe benefit and superannuation working papers;
- Details of contractors engaged, including PPS dockets and invoices;
- Cash payment journals;
- Cheque stubs;
- General ledger and chart of accounts;
- Share/Unit Registers.

The initial request will be for specified periods and depending upon the investigator's findings, the scope of the audit may be extended to include additional records and documents, or include further periods.

## **10 MISCELLANEOUS**

### **Signing of Applications and Returns**

Every application, statement, return, certificate, nomination, claim, notice or other communication required by the Act or the regulations to be made, given, forwarded or lodged to or served on the Commissioner shall be signed personally:-

- (a) in the case of an individual - by that individual;
- (b) in the case of trustees - by a trustee resident in Australia, or where there is no trustee resident in Australia - by an agent of the trustees who is resident in Australia;
- (c) in the case of a company - by the public officer, director, secretary or agent of the company;
- (d) in the case of a municipal corporation, local governing body or a public authority - by the officer duly authorised by the corporation, local governing body or public authority;
- (e) in the case of a partnership - by a partner or the public officer of the partnership; and
- (f) in the case of an incorporated or unincorporated association - by the secretary, public officer or a seal holder of the association.

Where it is not possible or practicable for the person specified above personally to sign documents, or where, on account of special circumstances the Commissioner permits, the person specified above may authorise, in writing, another person to sign the documents in his or her place.

### **Contacting the State Taxation Office**

#### *Location*

State Taxation Office  
State Administration Centre  
Victoria Square East  
ADELAIDE SA 5000

#### *Office Hours*

9.00 am to 5.00 pm Monday to Friday

#### *Postal Address*

Commissioner of State Taxation  
GPO Box 1353  
ADELAIDE SA 5001

#### *Telephone*

(08) 8204 9880

#### *Facsimile*

(08) 8226 3805

#### *Website*

<http://www.treasury.sa.gov.au/tax.html>

### **Methods of Payment**

- At the State Taxation Office at the above address.
- By remittance posted to the above postal address.
- Electronic Funds Transfer (by prior approval only).

## APPENDIX A

### PRESCRIBED TAX RATES, ALLOWANCES AND DEDUCTIONS

#### 1. PAY-ROLL TAX RATES

The prescribed rates of tax that have applied since 1 September 1971 are:-

From 1/9/71 to 31/8/73 .....	3.5%
From 1/9/73 to 31/8/74 .....	4.5%
From 1/9/74 to 30/9/90 .....	5.0%
From 1/10/90 to 30/11/91 .....	6.25%
From 1/12/91 to 30/11/94 .....	6.1%
From 1/12/94 .....	6.0%

#### 2. REGISTRATION REQUIREMENT

From July 1985 the weekly rate of total taxable wages paid or payable at which an employer is liable to register is:-

<i>PERIOD</i>	<i>WEEKLY WAGE RATES</i>
	\$
From July 1985.....	4,800
From September 1986.....	5,150
From October 1988.....	5,700
From April 1989.....	6,300
From October 1989.....	6,900
From April 1990.....	7,600
From October 1990.....	7,500
From January 1992.....	8,000

#### 3. TRAVELLING AND ACCOMMODATION ALLOWANCE RATES FROM 9 JUNE 1988

The rates fixed by regulation are:-

EFFECTIVE DATE	MOTOR VEHICLE ALLOWANCE	ACCOMMODATION ALLOWANCE
From 09/06/88	46.3 cents per kilometre	\$101.40 per day
From 01/01/90	56.0 cents per kilometre	\$127.60 per day

#### 4. DEDUCTION RATES

##### 4.1 Maximum deductions from 1 July 1985 (shown by financial years) are:-

<i>PERIOD</i>	<i>MAXIMUM DEDUCTION BY FINANCIAL YEARS</i>	
From 1/7/85	\$250,000	Reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$250,000
From 1/7/86	\$266,666	Reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$266,666
From 1/7/87	\$270,000	Reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$270,000
From 1/7/88	\$300,000	Reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$300,000
From 1/7/89	\$362,500	Reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$362,500
From 1/7/90	\$100,000	Reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$100,000 (3 months)
From 1/10/90 (9 months)	\$307,000	A fixed deduction of \$307,000 applies Note that where wages for the period 1/7/90 to 30/6/91 do not exceed \$407,000, there is no liability.
From 1/7/91	\$438,000	A fixed deduction of \$438,000 applies
From 1/7/92	\$456,000	A fixed deduction of \$456,000 applies

##### 4.2 Maximum deduction applicable from 1 July 1985 are:-

From 1/7/85	\$250,000 per annum reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$250,000.
From 1/9/86	\$270,000 per annum reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$270,000.
From 1/10/88	\$300,000 per annum reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$300,000.
From 1/4/89	\$330,000 per annum reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$330,000.
From 1/10/89	\$360,000 per annum reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$360,000.
From 1/4/90	\$400,000 per annum reducing to NIL by \$1 for each \$4 that the taxable wages exceed \$400,000.
From 1/10/90	\$400,000 per annum with a fixed deduction entitlement of \$33,333 per month.
From 1/1/91	\$414,000 per annum with a fixed deduction entitlement of \$34,500 per month.
From 1/7/91	\$432,000 per annum with a fixed deduction entitlement of \$36,000 per month.
From 1/1/92	\$444,000 per annum with a fixed deduction entitlement of \$37,000 per month.
From 1/7/92	\$456,000 per annum with a fixed deduction entitlement of \$38,000 per month.

## APPENDIX B

<b>CHECKLIST OF TAXABLE ITEMS</b>		
<b>Remuneration Item</b>	<b>Taxable or Exempt</b>	<b>Reference</b>
Accommodation	*Fringe benefit	
Accommodation allowances	Taxable under certain conditions	Page 10
Annual Leave	Taxable	
Apprentices Wages	Taxable	
Benefits	*Fringe benefit	
Board & Quarters	*Fringe benefit	
Bonuses	Taxable	
Car Parking	*Fringe benefit	
Clothing Allowance	Taxable	
Commissions	Taxable	
Consultants fees	Taxable under certain conditions	Pages 13 & 21
Contractors	Taxable under certain conditions	Page 13
Debt waivers	*Fringe benefit	
Defence force payments	Exempt	
Directors Fees	Taxable	
Dirt Allowances	Taxable	
Discounted staff purchases	*Fringe benefit	
Education expenses	*Fringe Benefit	
Employment agency personnel	Taxable under certain conditions	Page 21
Entertainment allowances	*Fringe Benefit	
Entertainment allowances - Tax Exempt Body	Exempt wages	
Footwear allowances	Taxable	
Gratuitous payments	Not taxable	
Gross Wages	Taxable	
Health Insurance	*Fringe benefit	
Holiday pay	Taxable	
Housing	*Fringe benefit	
In lieu of notice	Not taxable	
Leave loading	Taxable	
Living away from home allowances	*Fringe benefit	
Loans (Interest free/low interest)	*Fringe benefit	
Long service leave	Taxable	
Make up pay	Taxable	
Meals	*Fringe benefit	
Meal allowances	Taxable	
Motor vehicles	*Fringe benefit	
Motor vehicle allowances	Taxable under certain conditions	Page 10
Overtime	Taxable	
Overtime meal allowances	Taxable	



Partners drawings	Not taxable	
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Historical Use Only

Piece-work payments	Taxable	
Prizes	*Fringe benefit	
Professional advice	*Fringe benefit	
Redundancy payments	Not taxable	
Relocation expenses	*Fringe benefit	
Reimbursements (business expenses)	Not taxable	
Rental subsidy allowances	*Fringe benefit	
School fees	*Fringe benefit	
Share schemes	*Fringe benefit	
Shift allowances	Taxable	
Sick pay	Taxable	
Site allowances	Taxable	
Staff discounts	*Fringe benefit	
Subcontractors	Taxable under certain conditions	Page 12
Subscriptions	*Fringe benefit	
Superannuation contributions (employer)	Taxable	Page 23
Taxi Fares	*Fringe benefit	
Telephone account payments	*Fringe benefit	
Termination payments		
* <i>Accrued leave</i>	Taxable	
* <i>Payments in lieu of notice</i>	Not taxable	
* <i>Redundancy payments</i>	Not taxable	
Tool allowances	Taxable	
Travel allowances	Taxable under certain conditions	Page 10
Uniform allowances	Taxable	
Workers compensation payments	Not taxable	

**Notes:**

- (1) Fringe Benefits - Taxability to be determined in accordance with the *Fringe Benefits Tax Assessment Act 1986*.
- (2) Exemptions applying to organisations specified under Section 12 of the Act are listed on page 28.