



PAY-ROLL TAX ACT 1971

Circular No. 266
(Replaces Circular 221)

A GUIDE TO LEGISLATION

This Circular has been prepared as a general guide to the provisions of the *Pay-roll Tax Act 1971* ('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.

Authorised copies of the Act and the Regulations are available for purchase from the Service SA Government Legislation Outlet, Ground Floor, 101 Grenfell Street, Adelaide.

The Parliament of South Australia has online versions of State Legislation at:
<http://www.parliament.sa.gov.au/>

For further details on any matters relating to the Act mentioned in this guide, please contact RevenueSA on (08) 8204 9880.

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COMMISSIONER OF STATE TAXATION



**Government of
South Australia**

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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.

Historical Use Only

1 **OUTLINE OF PAY-ROLL TAX**

INTRODUCTION

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

Similar legislation applies in all Australian States and Territories, although the Acts differ in some details.

The Commissioner of State Taxation ('Commissioner') is responsible for the administration of the Act, together with the TAA.

The administrative provisions relating to levying of interest and penalty tax, lodgement of objections and appeals, refunds of tax, offsetting of tax, and the appointment of liquidators, trustees and agents are incorporated in the TAA.

BASIS OF TAX

General

Pay-roll tax payments are made on the initial basis that it is a self-determined 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 periodic basis as determined by the Commissioner, calculating the actual tax payable for each return period and remit the tax due when the return is lodged; and
- perform an Annual Reconciliation at the end of the financial year to ensure the correct liability is paid.

The Compliance Services Branch of RevenueSA conducts compliance monitoring for pay-roll tax purposes.

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 full South Australian 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 amount of those wages, as group members have no direct deduction entitlement (ie, the individual group members who pay wages in South Australia should register for pay-roll tax where the total wages paid or payable throughout Australia by all of the group members exceed the full South Australian deduction).

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 reconciliation 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	\$400,000
	Victoria	<u>\$400,000</u>
	Australian Total	\$800,000

Deduction entitlement = $\frac{\text{South Australian wages}}{\text{Australian wages}} \times \text{Maximum deduction (currently \$504,000)}$

Calculation: $\frac{\$400,000}{\$800,000} \times \$504,000$

Result = \$252,000

Deduction Entitlement - Grouped Employers

Deduction entitlements for groups of employers are determined by reference to the total South Australian (and Australian) wages of the members 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. This member is known as the Designated Group Employer. Remaining 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); or
- 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 = $\frac{\text{South Australian Group wages}}{\text{Australian Group wages}} \times \text{Maximum deduction (currently \$504,000)}$

Calculation: $\frac{\$500,000}{\$1,500,000} \times \$504,000$

Result = \$168,000

Returns and Payments

The tax payable for each return period is required to be lodged with the Commissioner 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 on an annual basis. This annual reconciliation return and the tax payable in relation to it must be lodged by 28 July following the end of the financial year.

In July each year, all employers (irrespective of the period in which returns are required to be submitted) will be required to lodge a return detailing the full taxable wages for the previous financial year. Tax for the month of June will be incorporated in this return. This return, known as the Annual Reconciliation, will require details of the more common components that make up the total taxable wages. The Annual Reconciliation return must be submitted electronically via RevNet at <http://www.revnet.sa.gov.au>.

The Annual Reconciliation return also confirms a registered employer's status. Whether an organisation:-

- is a grouped or non-grouped employer;
- pays wages in States and/or Territories, other than South Australia; or
- has been nominated by the group to claim the deduction entitlement;

will determine the wage information required from the employer and will impact on their overall pay-roll tax liability.

The wage components that are required for the reconciliation are shown on the top portion of the periodic return form.

A return booklet will be issued once a year, but not to taxpayers who elect to pay via RevNet on the Internet. This booklet will contain monthly payment advices.

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

RATES OF TAX

Refer to Appendix A for details of the tax rates.

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 ('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).

The following table illustrates when an employer's wages are taxable in South Australia.

Where the wages are paid in a month	Where the services performed in a month are	Are the wages taxable in SA?
In SA	Wholly or partly in SA	Yes
In SA	In two or more States or Territories other than SA	Yes
In SA	Partly interstate and partly overseas	Yes
In SA	Overseas but the employee worked in SA for the employer in the last six months immediately before working overseas	Yes
In SA	Overseas and the employee has not worked in SA for the employer in the past six months	No
In SA	Wholly in one other State or Territory	No
In another State or Territory or overseas	Not wholly outside SA or not mainly overseas	No
In another State or Territory or overseas	Wholly in SA	Yes
In another State or Territory or overseas	Wholly outside SA	No

Where an employee has worked in South Australia in the previous six months and then works overseas for the same employer, the first six months of their wages earned overseas are taxable in South Australia where they continued to be paid or payable in South Australia. If the employee continues to work overseas, the wages paid from the seventh month onwards are not taxable.

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, include:-

- 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* (Cth), ('FBT Act') 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 FBT 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 of which is to reduce or avoid the liability of any person to pay-roll tax;
 - superannuation benefits (see page 24); and
 - Building Industry Redundancy Scheme Trust ("BIRST").

Refer to page 14 herein, (Heading: Deemed Wages) 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

The definition of wages for the purposes of the Act, includes the value of any fringe benefit (as defined in the FBT Act) provided 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 FBT Act.

Up until 30 June 2002, the grossing up of fringe benefit values for Fringe Benefits Tax calculations was disregarded for pay-roll tax purposes. Since 1 July 2002, pay-roll tax has been payable on the “grossed up” value of fringe benefits provided to employees.

Grossing up is necessary to reflect the gross salary that would have to be paid to an employee to enable them to purchase the benefit from their after-tax salary or wage.

The lodgement of Commonwealth fringe benefits tax returns is based on an accounting year that ends on 31 March. In order to simplify the process for pay-roll tax taxpayers, the Commissioner has exercised his power under the Act to allow this figure (representing the period, April year one to March year two) to be applied at the time of pay-roll tax Annual Reconciliation which occurs at 30 June each year (representing the period, July year one to June year two).

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 has adopted the rulings issued by the Commonwealth Commissioner of Taxation.

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 Act return for the year ended March of that year.

The difference between declared and actual benefits provided and estimated amounts declared in returns throughout the year must be declared at the time of the Annual Reconciliation each financial 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.

Fare 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 FBT Act, 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. is liable to pay-roll tax whenever paid.

(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.

In relation to self-insurers, all compensation made pursuant to the provisions of worker's compensation legislation is exempt from pay-roll tax, regardless of whether the compensation is paid by the insurer or the employer. However, compensation paid to incapacitated workers by the insurer or employer, in excess of the amount prescribed by the relevant workers' compensation legislation ("make-up pay") will be subject to pay-roll tax.

(c) Payments on Termination, Voluntary Separation or Redundancy

Effective from 1 July 2002, all termination payments are taxable to the extent that the payment is taxable to the employee for income tax purposes. An eligible termination payment (ETP) has the meaning given by Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936 (Cth)*. This means ETP's currently subject to the Commonwealth income tax regime, either when paid on termination or deferred by rollover, will attract pay-roll tax.

Prior to 30 June 2002 payments made to an employee upon termination of employment attracted a pay-roll tax liability where the payment represents a reward for service to which the employee had a pre-existing enforceable right to the payment. These payments include accrued annual, sick, long service or pro-rata leave.

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, were not liable to pay-roll tax up until 30 June 2002.

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 and superannuation payments provided, pursuant to certain arrangements, to be wages and also deem specified parties to the arrangements to be an employer and employee respectively.

These provisions are aimed at schemes designed to avoid liability for pay-roll tax by severing the employer/employee relationship, and are referred to in the Act as:

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

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, (not being a contract of employment) under which, a person, in the course of carrying on a business:-

- supplies services to another person; or
- is supplied with services of another person; or
- supplies goods in return, for work performed by another person.

All service contracts are liable for pay-roll tax, where the total wages, including deemed wages paid (or payable), exceed the deduction entitlement available, *unless* at least one of the following exclusion provisions applies.

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) of the Act].

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) of the Act].

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.

Classes of Contracts Specifically Excluded

The following classes of contracts are specifically excluded from the operation of the service contracts provisions 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 were supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person, then an exclusion will 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 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.

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 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, or a trustee, the number of persons who must be employed or engaged by the company or trustee includes two or more persons.

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

Services Provided for Less than ninety Days

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

- the contractor (whether an individual, partnership or corporation) provides under another contract or other arrangement similar services to the same person; or
- 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) of the Act].

In determining whether or not work under a contract or arrangement, is performed on more than ninety 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 ninety 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 ninety 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 that 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 NINETY 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 “ninety 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 eighty to one hundred days (ie. the number of days worked may be either less or more than ninety days) or,
- a person may be engaged to provide a particular service involving the performance of work on eighty 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 eighty days may exceed the ninety 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 ninety 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 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 total 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 were engaged for one hundred days at the same time, the count would be one hundred days, but if they were engaged in different periods, the count would be two hundred 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 where those services are provided by a person who normally renders services of that type to the general public, is generally 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 work of this type is performed by persons who are *bona fide* rendering services to other businesses 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 granted 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 granted where the contractor has:-

- been consistently working for one principal (or for persons who are members of the same group);or,
- eighty percent 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 on an intermittent basis for a principal or for members of the same group in the course of a financial year and the contractor is paid less than forty percent 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.

Determination by the Commissioner of Amounts to be excluded from a Service Contract Payment for Materials and Equipment

CONTRACTOR CLASS	PERCENTAGE DEDUCTION
Architects	5%
Blind and Curtain Fitters	25%
Blind and Curtain Sales Persons who provide their own vehicles and ancillary equipment.	25%
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%
Kitchen Fixers	30%
Painters	15%

Painters (where the painter provides the paint)	30%
Plasterers (other than plaster board fixers)	20%
Plumbers	25%
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:-

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**; or
- a deduction obtained by the employment agent for the non-labour component of any payment to the contract worker.

Where it is not reasonably practicable to precisely ascertain 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 was extended to include a superannuation benefit.

"Superannuation benefit" means:-

(a)—

- (i) 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 *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
- (ii) a payment by an employer of a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; or
- (iii) 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 or retirement fund or scheme; or
- (iv) —
 - (A) the crediting of an account of an employee, or any other allocation to the benefit of an employee (other than the actual payment of a benefit), so as to increase the entitlement or contingent entitlement of the employee under any form of superannuation, provident or retirement fund or scheme; or
 - (B) the crediting or the debiting of any other account, or any other allocation or deduction, so as to increase the entitlement or contingent entitlement of an employee under any form of superannuation, provident or retirement fund or scheme;

- (b) in the case of a person who is a member of the old or new scheme under the *Superannuation Act 1988* or of any other unfunded or partly funded scheme of superannuation—the Treasurer's estimate of the contingent liability of the person's employer for superannuation benefits under that Act or scheme in respect of that person.

Employers who make payments to a superannuation fund(s) of its employee(s) or director(s) choice as part of a salary packaging arrangement (salary sacrifice arrangements) are subject to pay-roll tax.

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 amounts 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 where an employer fails to register within the required time.

Applications for registration must be submitted on a form obtainable from RevenueSA or the RevenueSA website at <http://www.revenuesa.sa.gov.au>.

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 6 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 Act 2001*, ("Corporations Act") 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.

This can be broken into four parts, namely:-

1. where employees of an employer perform duties solely or mainly for a business carried on by that employer and others;
2. where employees of an employer perform duties solely or mainly in connection with a business carried on by that employer and others;
3. where employees of an employer perform duties solely or mainly for a business carried on by other persons; or
4. where employees of an employer perform duties solely or mainly in connection with a business carried on by other persons.

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 the directors or one or more directors of a corporation who can exercise a majority in voting power at director 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 fifty percent or more of the voting power attached to shares issued by a corporation.

- (c) Where a person (or persons together), owns fifty percent or more of the capital or is entitled to fifty percent or more of the profits of a partnership.
- (d) In respect of a business carried on under a trust, where a person (or persons) is a beneficiary in respect of fifty percent 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 fifty percent 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 a corporation has a controlling interest in a business, ie. equal partnership with another corporation (joint venture), or has just fifty percent of the voting shares in another corporation, and the corporation is related by section 50 of the Corporations Act to another corporation which operates a business, then the corporation has a controlling interest in two businesses and the persons who carry on those businesses are grouped.

Where a person is a beneficiary or two or more persons are beneficiaries under a trust in respect of fifty percent or more of the value of interests in the trust and the trustee of the trust has a controlling interest in a business, the person(s) is (are) deemed to have a controlling interest in the business.

Where a person has a controlling interest or persons together a controlling interest in a business and the parties carrying on that business have a controlling interest in another business, the person(s) is (are) deemed to have a controlling interest in the second mentioned 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.

Note: In respect to the grouping provisions, the definition of “person” includes a company and the definition of “company” includes all bodies or associations (corporate or unincorporated) and partnerships.

Registration of Group Members

Each employer who pays wages in SA and is a member of a group is required to register separately as an employer with RevenueSA, regardless of the level of the wages paid by the individual employer. 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 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. Factors taken into consideration include:-

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

However, section 18I(2) of the Act provides that corporations, which are “related” corporations within the meaning of the Corporations Act, 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 must 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.

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

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.

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 amounts 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 RevenueSA. A questionnaire may be sent for completion to enable finalisation of cancellation requirements.

DUTIES OF AGENTS, TRUSTEES, LIQUIDATORS, ETC (AS A REPRESENTATIVE OF AN EMPLOYER)

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 lodged 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 were alive.

LIQUIDATORS

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

In all cases, except applications by motion picture production companies, employers **must** apply, in writing, to the Commissioner. They must provide full details relating to the operations of the organisation, as well as a copy of the Constitution of the organisation.

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, 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 *A New Tax System (Family Assistance) (Administration) Act 1999 (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 together with the tax payable for the required return period.

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, quarterly, half-yearly or yearly.

A return booklet containing monthly pay-roll tax payment worksheets and detachable payment slips will be sent to each registered employer by the Commissioner at the beginning of each financial year. A return booklet will not, however, be issued to taxpayers who have elected to pay via the internet.

The employer is required to calculate the tax payable and send the payment of tax, to RevenueSA.

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

Calculation of Tax

Each employer must calculate the tax payable at the appropriate rate taking into account the wages paid and the deduction (if any) to which the employer is entitled.

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 period but there is provision for this in the annual reconciliation 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, or other agreed period, 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 is preferred electronically via RevNet as it presents many benefits for the taxpayer. If payment is made by cheque, the tax is not deemed to have been paid until the cheque has been cleared on presentation.

Alternatively payment may be made via BPay for non-credit card accounts.

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

Annual Reconciliation of Pay-roll Tax

At the end of each financial year, all taxpayers are required to lodge an Annual Reconciliation by 28 July following the end of the financial year to which the Annual Reconciliation return relates. The Annual Reconciliation should include details of taxable wages, and the various components that make up these wages. Details of any interstate wages are also required for both the taxpayer and any other group members to determine the deduction entitlement amount.

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

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

The Annual Reconciliation must be lodged via RevNet at <http://www.revnet.sa.gov.au>. Prior to 28 July each year, a letter is sent to all taxpayers advising of the need to lodge the Annual Reconciliation and providing taxpayers with their RevNet username and password details.

5 COLLECTION AND RECOVERY OF TAX

Lodgement of Returns

The employer must lodge returns 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 an annual basis.

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

Under the TAA, 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, based upon the ninety-day Bank Accepted Bill rate, is published by the relevant Minister, the Treasurer, by way of a notice in the South Australian Government Gazette. The market rate from 7 July 2005 is 5.68% per annum and is subject to annual review. To ascertain the current rates at any point in time, contact should be made with this Office, or by viewing RevenueSA's website at: <http://www.revenuesa.sa.gov.au/circulars/interest.pdf>.

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 is 8% per annum, and is charged as a disincentive to taxpayers not meeting their tax obligations in a timely manner. The current rate of interest on amounts of unpaid tax is 13.68% per annum (comprising the 5.68% and the 8% components).

While a debt remains outstanding, interest will continue to accrue on a daily basis on any outstanding balance until such time that the full amount payable is received. Similarly, if a return remains outstanding, 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 TAA, or within such time allowed by the Commissioner, additional late payment interest is payable on the following basis:-

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

For Example

Return & payment is late: 20 days
 Tax Due is: \$5,000.00
 Current interest rate is: 13.68%

Calculation for interest is: $\frac{20}{365} \times \$5,000.00 \times 13.68\%$

Interest payable = \$37.48

Penalty Tax For Late Payment of Tax

In addition to interest, the TAA 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 TAA 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 and reflect 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

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 sixty 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.

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

It should be noted however, that even though an objection is pending, it does not in the meantime affect the assessment to which the objection relates and the Commissioner may recover the tax assessed as if no objection were pending.

Lodgement of Appeals

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

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

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

An appeal cannot be exercised against the decision of the Commissioner or by the Minister on the objection unless the tax assessed which relates to the appeal has been fully paid.

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 RevenueSA Circulars issued by the Commissioner. They are: -

Circular No. 210 Exporters Pay-roll Tax Rebate Scheme

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

This rebate is equal to twenty percent 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 2006 will be subject to annual review.

Circular No. 212 - Trainee Wages Pay-roll Tax Rebate Scheme

Employers who pay wages to employees engaged as trainees and apprentices under twenty-five years of age and pursuant to an approved Contract of Training are entitled to a rebate of up to eighty percent of the pay-roll tax paid in respect of wages paid to these employees, where all the eligibility criteria are met.

For the purposes of the Scheme, an approved traineeship or apprenticeship is a Contract of Training approved by the State's Training and Skills Commission, pursuant to Part 4 of the *Training and Skills Development Act 2003*.

The rebate for existing trainees or apprentices over twenty-five years of age will be restricted to the remaining contract term of their traineeship or apprenticeship, or four years, whichever is the lesser.

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

This scheme is also administered on a half-yearly basis.

8 OVERPAYMENT OF TAX

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 requests have been received. Refunds due as a consequence of an Annual Reconciliation 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 one could be offset against the tax due in month two.

9 AUDITS AND INVESTIGATIONS

RevenueSA promotes voluntary disclosure by an employer of any tax defaults prior to commencing any investigation or audit activity. Such disclosures may result in a reduced rate of penalty tax and interest assessed to the client. To be considered a voluntary disclosure, written information should be provided to the Commissioner detailing the employer, the nature of the tax default, and the amount of taxable wages for the relevant financial period(s).

RevenueSA 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 routine desk audits to the more complex audits, 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 or Share or Unit Trust Registers or Partnership agreements (for grouping purposes);
- details of wages paid, including group certificates, wage books and fringe benefit and superannuation working papers;
- details of contractors engaged and any associated records;
- cash payment journals;
- cheque stubs;
- general ledger and chart of accounts;
- Australian Taxation Office Fringe Benefits Tax Return (if applicable), and any Fringe Benefits Tax working papers;
- details of wages recorded in computerised or manual pay-roll system records;
- PAYG Payment Summary Statement, and
- Employer Superannuation Statements from Superannuation Funds.

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, the TAA or the regulations that is to be made, given, forwarded, lodged 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.

Methods of Payment

- In person to RevenueSA at the address below.
- By remittance posted to the address below.
- Internet via RevNet at: <http://www.revnet.sa.gov.au>
- BPay for non-credit card accounts.

FURTHER INFORMATION

Further information regarding these amendments may be obtained from RevenueSA.

Location

RevenueSA
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

Postal

Commissioner of State Taxation
RevenueSA
GPO Box 2418
ADELAIDE SA 5001

Telephone

(08) 8204 9880

Facsimile

(08) 8226 3805

Website

<http://www.revenuesa.sa.gov.au>

E-mail

payrolltax@saugov.sa.gov.au

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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 to 30/6/01	6.0%
From 1/7/01 to 30/6/02	5.75%
From 1/7/02 to 30/6/04	5.67%
From 1/7/04	5.50%

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 July 1992	8,000
From July 2002	9,600

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:-

PERIOD	MAXIMUM DEDUCTION BY FINANCIAL YEARS
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	\$307,000 A fixed deduction of \$307,000 applies (9 months) 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.
From 1/7/02	\$504,000 A fixed deduction of \$504,000 applies.

4.2 Maximum deductions 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.
- From 1/7/02 \$504,000 per annum with a fixed deduction entitlement of \$42,000 per month.

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APPENDIX B

CHECKLIST OF TAXABLE ITEMS		
Remuneration Item	Taxable or Exempt	Reference
Accommodation	*Fringe benefit	
Accommodation allowances	Taxable under certain conditions	Page 11
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 14 & 22
Contractors	Taxable under certain conditions	Page 15
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 prior to 30/6/2002 Taxable from 1/7/2002	Page 13
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 12
Overtime	Taxable	
Overtime meal allowances	Taxable	
Partners drawings	Not taxable	

Piece-work payments	Taxable	
Prizes	*Fringe benefit	
Professional advice	*Fringe benefit	
Redundancy payments	Not taxable prior to 30/6/2002 Taxable from 1/7/2002	
Relocation expenses	*Fringe benefit	
Reimbursements (business expenses)	Not taxable	
Rental subsidy allowances	*Fringe benefit	
School fees	*Fringe benefit	
Shift allowances	Taxable	
Sick pay	Taxable	
Site allowances	Taxable	
Staff discounts	*Fringe benefit	
Subcontractors	Taxable under certain conditions	Page 14
Subscriptions	*Fringe benefit	
Superannuation benefits (employer)	Taxable	Page 24
Taxi Fares	*Fringe benefit	
Telephone account payments	*Fringe benefit	
Termination payments * <i>Accrued leave</i> * <i>Payments in lieu of notice</i> * <i>Redundancy payments</i>	Taxable Not taxable prior to 30/6/2002 Taxable from 1/7/2002 Not taxable prior to 30/6/2002 Taxable from 1/7/2002	Page 13
Tool allowances	Taxable	
Travel allowances	Taxable under certain conditions	Page 11
Uniform allowances	Taxable	
Workers compensation payments	Not taxable	

Notes:

- (1) Fringe Benefits - Taxability to be determined in accordance with the FBT Act. **From 1 July 2002, the grossed up value of fringe benefits is to be included in the total taxable wages paid by an employer.** Grossing up is necessary to reflect the gross salary that would have to be paid to an employee to enable them to purchase the benefit from their after-tax salary or wage.
- (2) Exemptions applying to organisations specified under section 12 of the Act are listed on page 30.
- (3) Eligible Termination Payments - **From 1 July 2002, eligible termination payments became taxable.** Eligible termination payment (ETP) has the meaning given by Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* (Cth). This means ETP's currently subject to the Commonwealth income tax regime, either when paid on termination or deferred by rollover, attract pay-roll tax.