

Information Circular No: 54

Payroll Tax Act 2009

Employee Share Schemes / Maternity & Adoption Leave Exemption

Issued 6 December 2012

Background

The *Payroll Tax (Miscellaneous) Amendment Act 2012* (the "Amending Act") was today assented to by His Excellency the Governor.

The Amending Act contains two amendments to the *Payroll Tax Act 2009* (the "PRT Act") in order to maintain payroll tax harmonisation across Australia, as follows:

- ▶ removes outdated references to Commonwealth legislation in the employee share scheme provisions; and
- ▶ clarifies a provision that exempts from payroll tax wages paid or payable in respect of 14 weeks maternity leave or adoption leave.

Discussion

Employee Share Schemes

The grant of shares and options to employees and directors are subject to payroll tax. Provisions of the *Income Tax Assessment Act 1936* (Cwlth) (the "ITAA 1936") are currently applied for the purposes of determining when a grant of shares and options becomes liable for payroll tax, and in determining their taxable value.

The Commonwealth Government announced changes to the method of taxing employee share schemes in the 2009 Budget, to take effect from 1 July 2009. Retrospective Commonwealth legislation was assented to on 14 Dec 2009, and included the transfer of the relevant provisions from the ITAA 1936 to the *Income Tax Assessment Act 1997* (Cwlth) (the "ITAA 1997").

The *Acts Interpretation Act 1915* makes provision for the references in the PRT Act to the ITAA 1936 to be read as references to the new provisions in the ITAA 1997. However, the retrospective effect of the Commonwealth legislation and changes in the way the new Commonwealth legislation taxes shares and options have made it necessary to amend the payroll tax provisions to reflect the Commonwealth changes.

Amendments to Section 18(1) of the PRT Act provide that a grant of shares or options is liable for payroll tax in accordance with Division 4 of Part 3 of the PRT Act only if the share or option is an ESS interest as defined in the ITAA 1997. An ESS interest is defined as shares or options in the employer company or its parent company. Other shares and options will be taxable as fringe benefits under Division 2 of Part 3 of the PRT Act, which means the grossing up provisions, apply for the purpose of determining their taxable value.

Amendments to Section 24 of the PRT Act make it clear that the grant of shares or options by a company to its directors is also taxed on the same basis as grants to employees.

The amendments retain provisions in Section 19 of the PRT Act which allow employers to elect to pay payroll tax on shares or options at the time they are granted or when they vest. Amendments to Section 19 of the PRT Act set out the circumstances in which a share or option is taken to be granted. This provision replaces a reference to a repealed Commonwealth provisions. Other amendments to Section 19 of the PRT Act provide that shares or options are taken to vest at the end of 7 years after the grant of the share or option, if vesting has not occurred before that date. This is consistent with the new Commonwealth legislation.

The PRT Act currently provides that the value of shares or options is to be determined in accordance with repealed Commonwealth provisions. Amendments to

Section 23 of the PRT Act maintain consistency with the valuation methods specified in the new Commonwealth legislation. That is, shares and options may be valued using an acceptable market value methodology, or a method specified in the Commonwealth Regulations. The employer may choose between these valuation methods. The taxable value of shares and options is the value less any consideration paid by the employee or director. Note that an employee includes a worker who is deemed to be an employee under the PRT Act.

These amendments take effect from 1 July 2013.

Transitional provisions will allow employers to pay payroll tax on the grant of shares and options from 1 July 2009 to before 1 July 2013 under the current provisions or under the proposed new provisions.

Maternity and Adoption Leave Exemption

Section 53 of the PRT Act provides an exemption for wages paid or payable in respect of maternity or adoption leave. [Revenue Ruling PTA012](#) provides further detail on the operation of this exemption.

The Amending Act amends Section 53 with effect from 1 July 2013. The amendment clarifies that:

- ▶ the 14 week maximum entitlement is based on the wages that would normally have been paid or payable for the period of maternity or adoption leave; and
- ▶ the exemption can be pro-rated for part-time employees who take leave for a period of more than 14 weeks at a reduced rate of pay. For example, the exemption may apply to wages paid or payable for maternity leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.

Mike Walker
COMMISSIONER OF STATE TAXATION

6 December 2012

Further Information

Further information in relation to any of the above measures can be obtained from RevenueSA.

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