

## **EXEMPTION FOR MATERNITY AND ADOPTION LEAVE PAY**

The *Pay-roll Tax (Harmonisation Project) Amendment Act 2008*, which was assented to on 26 June 2008 and comes into operation on 1 July 2008, makes amendments to the *Pay-roll Tax Act 1971* (the "Act") to harmonise legislative and administrative arrangements with other States and Territories. One of the areas that has been harmonised is the provision of an exemption for maternity and adoption leave payments.

Section 12(1)(n) of the Act exempts from pay-roll tax, wages paid or payable to employees on maternity leave or adoption leave. The exemption:

- applies to wages paid or payable to female employees taking maternity leave and male and female employees taking adoption leave;
- applies to all wages other than fringe benefits;
- is limited to a maximum of 14 weeks pay;
- applies irrespective of whether the leave is taken before or after the birth or adoption; and
- must be supported by keeping relevant records.

The purpose of this Circular is to explain the application of the exemption for maternity and adoption leave pay and clarify the elements of the exemption.

### **Definition of maternity leave (section 12(1)(n)(i) of the Act)**

Maternity leave is defined in the Act as leave given to a female employee in connection with her pregnancy or the birth of her child. The female employee may take maternity leave before or after the birth of her child.

Sick leave, recreation leave, annual leave or any similar leave taken in connection with a pregnancy or the birth of a child is not considered as maternity leave for pay-roll tax purposes. This exemption does not apply to paternity leave which is granted to a male employee after his spouse (or *de facto* spouse) has given birth.

### **Example 1**

In relation to the birth of her child, Mary took long service leave of 10 weeks, annual leave of 4 weeks and unpaid leave of 38 weeks. The wages paid for all the leave taken by Mary are taxable.

**Example 2**

In relation to the birth of her child, Mary took long service leave of 10 weeks, annual leave of 4 weeks, paid maternity leave of 12 weeks and unpaid leave of 26 weeks. Only the wages paid for the 12 weeks maternity leave are exempt. Wages paid for the long service leave and annual leave are taxable.

**Definition of adoption leave (section 12(1)(n)(ii) of the Act)**

Adoption leave refers to leave given to an employee (male or female) in connection with the adoption of a child. The employee may take the adoption leave before or after the adoption of a child. As with maternity leave, sick leave, recreation leave, annual leave or any similar leave taken in relation to the adoption is not exempt.

**Example 3**

John has taken paid adoption leave in 3 distinct parts: 1 week to familiarise himself with the adoption process, 2 weeks to go interstate/overseas to meet the child and a further 3 weeks after the child arrived in Melbourne. All 6 weeks are considered to be adoption leave. Consequently, wages paid for the 6 weeks leave are exempt.

**Types of wages that are exempt**

Exempt wages include wages/salaries, employer superannuation contributions, allowances, bonuses and commissions. Fringe benefits provided to an employee on maternity or adoption leave are generally not exempt (section 12(1)(n)(iv) of the Act).

**Maximum entitlement**

For any one pregnancy or adoption, the exemption is limited to wages for a maximum of 14 weeks full time leave for a full time employee or the equivalent amount if taken over a longer period e.g. 28 weeks leave being paid at half pay. In the case of a part-time employee, the exemption is limited to a maximum of 14 weeks leave paid at the applicable part-time rates of pay.

**Example 4**

Cathy is a part-time employee. She works 3 days a week at a rate (including employer superannuation contributions) of \$100 per day. The maximum amount of exempt wages that can be paid to Cathy is \$4,200 (\$100 x 3 days x 14 weeks).

**Example 5**

XYZ Pty Ltd has a policy of providing 12 weeks paid maternity leave. Stella, a full time employee elects to take the maternity leave over 24 weeks at half pay. Wages relating to this period are fully exempt.

**Record keeping**

To claim the maternity leave exemption, an employer must obtain a medical certificate or statutory declaration from the employee. These documents must specify that the employee was pregnant or that the employee has given birth and the date of birth (section 12(5)(a) of the Act).

To claim the adoption leave exemption, an employer must obtain a statutory declaration from the employee stating that a child has been placed in the employee's custody pending the making of an adoption order or that an adoption order has been made or recognised in the employee's favour (section 12(5)(b) of the Act).

The records substantiating a claim for the maternity and adoption leave exemption must be kept for 5 years (section 53 of the *Taxation Administration Act 1996*).

This Circular is effective from 1 July 2008.

**Please note that circulars do not have the force of law.**

#### **FURTHER INFORMATION**

Further information regarding these amendments may be obtained from RevenueSA.

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COMMISSIONER OF STATE TAXATION