



## PAY-ROLL TAX ACT 1971

**Circular No. 303**  
(Replaces Circular 266)

### A GUIDE TO LEGISLATION

This Circular has been prepared to replace Circular 266 with an updated general guide to the provisions of the *Pay-roll Tax Act 1971* (the "Act"). It is not intended to be a complete statement of the law and must not be construed to waive or modify any legal obligation provided by the Act.

Authorised copies of the Act and the *Pay-roll Tax Regulations 2001* (the "Regulations") are available for purchase from the Service SA Government Legislation Outlet, Ground Floor, 101 Grenfell Street, Adelaide.

Online versions of State Legislation are available at the South Australian legislation website, [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

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

03/07/2008

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 and any applicable interest and/or penalty tax.
- Rights of an employer in relation to an assessment of tax.

The contents of this Circular are current at the time of issue 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, the Regulations and the *Taxation Administration Act 1996* (the "TAA").

Similar pay-roll tax legislation applies in all Australian States and Territories, although that legislation differs in some details.

The Commissioner of State Taxation (the "Commissioner") is responsible for the administration of the Act, the Regulations and the TAA.

The administrative provisions relating to assessments and collection of pay-roll tax and any interest and/or 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, for services rendered in South Australia throughout Australia exceeds the full South Australian deduction entitlement available to the employer.

However, where a member of a group of employers pays taxable wages for services rendered in South Australia, registration of every group member that pays wages in South Australia is required, regardless of the amount of those wages, where the total wages paid or payable throughout Australia by all of the group members exceed the full South Australian deduction entitlement.

## Deduction from Taxable Wages

A deduction entitlement is not available to all employers.

The amount of deduction entitlement 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 deduction entitlements are calculated on the basis of estimated wages for the forthcoming financial year.

At the close of the financial year, actual wages paid or payable during that year are used to calculate the annual deduction entitlement and to effect an annual reconciliation of pay-roll tax liability.

For details of the amount of maximum deduction entitlement applying from time to time, please refer to Appendix A.

### Deduction Entitlement - Non-Grouped Employers

For employers who are not group members, the deduction entitlement is available on the following basis (if the employer has employed for the full financial year):

- where an employer carries on employment activity only in South Australia, the employer is entitled to a full deduction, or
- 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	=	$\frac{\text{South Australian wages}}{\text{Australian wages}}$	x Maximum deduction (currently \$552 000)
Calculation:		$\frac{\$400\,000}{\$800\,000}$	x \$552 000
Result	=	\$276 000	

### Deduction Entitlement - Grouped Employers

For employers who are group members, the deduction entitlement is 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 entitlement in their returns.

For a group of employers, the deduction entitlement is available on the following basis (if the group has employed for the full financial year):

- 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 total Australian wages.

#### **EXAMPLE:**

Wages paid by <u>all</u> members of the group:	South Australia	\$ 500 000
	Victoria	<u>\$1 000 000</u>
	Australian Total	\$1 500 000
Deduction entitlement	= $\frac{\text{South Australian Group wages}}{\text{Australian Group wages}}$	x Maximum deduction (currently \$552 000)
Calculation:	$\frac{\$ 500 000}{\$1 500 000}$	x \$552 000
Result	=	\$184 000

### **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 [www.revnet.sa.gov.au](http://www.revnet.sa.gov.au). If the Annual Reconciliation is not lodged by 28 July following the end of the financial year, penalty tax and interest may be applied for late lodgement.

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 the employers' overall pay-roll tax liability.

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

A return booklet will be issued once a year, which will contain monthly payment advices. A booklet will not be issued to taxpayers who elect to pay via RevNet, either from a nominated bank account or via Electronic Fund Transfer.

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

For more information please refer to section 4 – **Calculation and Payment of Tax**.

## **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 relate in their entirety to services performed or rendered (or to be performed or rendered) by a person wholly in another country for a continuous period of more than 6 months beginning on the day on which wages were first paid or payable to that person for services so performed or rendered (or to be performed or rendered); 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 32).



The following table illustrates when an employer's wages are taxable in South Australia. A reference to South Australia includes the area within the territorial (coastal), limits of South Australia.

<b>Where the wages are paid in a month</b>	<b>Where the services performed in a month are</b>
In SA	Wholly or partly in SA
In SA	In two or more States or Territories other than SA
In SA	Partly interstate and partly in another country (or countries)
In SA	Wholly in another country (or countries) on an assignment of less than 6 continuous months
In SA	Wholly or partly outside any State or Territory (as defined under the respective pay-roll tax legislation of the relevant State or Territory) but not in another country
In another State or Territory	<u>Wholly in SA</u>
Outside Australia	More than 50% performed in SA

In circumstances other than those shown above, wages are not taxable in SA, but may be taxable in another State or Territory.

Where an employee is working outside any State (as defined under the respective pay-roll tax legislation of the relevant State), but not in another country, the wages are taxable under the Act if they are paid in South Australia. Employees working on an oil rig would not be considered as working in another country unless the oil rig is physically located in another country.

Where services are performed in another country by an employee whose wages are paid in South Australia, the following matters need to be considered.

- Wages are exempt only if the employee has worked in another country for a continuous period of more than 6 months (i.e. the exemption from pay-roll tax applies for the whole assignment, including the first 6 months).
- The 6-month period does not have to be within the one financial year but must be a continuous period.
- An employee working in another country will be considered to have worked continuously if the employee returns to Australia under the following circumstances:
  - for a holiday, or
  - to perform work exclusively related to the overseas assignment for a period of less than one month.

In either case, the employee must return immediately to that country or another country to perform further work on the assignment.

Please refer to Circular No 297 entitled "Expatriate Employees" for further details on employees working in another country.

## 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), (the "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 the 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 27); and

- Building Industry Redundancy Scheme Trust.

Refer to page 16 - 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.

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 the total wages.

### **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.

Under the FBT Act, fringe benefits are categorised into two types depending on the GST implications. The Type 1 fringe benefits for which the employer can claim a GST input tax credit are grossed up by a factor of 2.0647 and Type 2 fringe benefits for which the employer cannot claim a GST input tax credit are grossed up by a factor of 1.8692.

From 1 July 2008, the fringe benefit taxable value for pay-roll tax purposes is determined by grossing up all fringe benefits by using only the Type 2 factor of 1.8692.

Before 1 July 2008, the fringe benefit taxable value for pay-roll tax purposes was the grossed up value of the fringe benefit as calculated under the FBT Act.

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).

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

More information in relation to fringe benefits can be found in Circular No 299.

## Shares and Options

From 1 July 2008, the value of an employer's contribution to any grant of a share or option to an employee or deemed employee, a director or former director, member (or former member) of the governing body of the company constitutes wages and is subject to pay-roll tax.

The granting of a share or an option occurs if a person acquires a share or (in the case of an option), a right to the share.

The value of the share or option becomes liable on the "relevant day". The employer can elect to treat the relevant day as either the date that the share or option is granted to the employee, or the "vesting date".

The vesting date for a share is the date when any conditions applying to granting the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded. The vesting date for an option is the earlier of either one of two dates:

- when the share to which the option relates is granted to the employee, or
- when the right under the option to have the relevant share transferred, allotted or vested is exercised by the employee.

If the grant of a share or option constitutes wages, the amount of the wages is the market value of the share or option on the relevant day, less the consideration (if any) paid or given by the employee for the grant (excluding consideration in the form of services rendered), as determined in accordance with the Commonwealth income tax provisions.

The employer may reduce the taxable wages declared by the value of any previously declared share or option value, if the grant of a share or option was rescinded because the vesting conditions have not been met. However, this reduction in the taxable wages would not apply in circumstances where the employee decided not to exercise the option.

If the grant of a share or option is withdrawn, cancelled or exchanged before the vesting date for some valuable consideration (other than the grant of other shares or options), the following provisions apply:

- the date on which that occurs is deemed to be the vesting date; and
- the market value of the share or option is taken to be the amount of the valuable consideration (and, accordingly, that amount is the amount paid or payable as wages on that date).

It is sometimes necessary to determine the correct jurisdiction for pay-roll tax liability in the case of employment in multiple jurisdictions. In respect of shares or options, the payment is deemed to be in the state or territory of registration or incorporation of the company in which the share or option is granted.

The granting of a share or option, which is classified as a fringe benefit under the FBT Act, is for pay-roll tax purposes, treated as taxable wages rather than a fringe benefit.

Before 1 July 2008, the value of shares and options granted to employees were subject to pay-roll tax through general provisions in the Act relating to the definition of wages

## Motor Vehicle & Accommodation Allowances

### (a) Motor Vehicle Allowances

A motor vehicle 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. From 1 July 2008, the exempt component is calculated as follows:

$$E = K \times R$$

where

E is the exempt component

K is the number of business kilometres travelled during the financial year

R is the exempt rate

The number of business kilometres travelled during the financial year is determined by either:

- a continuous recording method during the financial year, or
- the ATO 12-week averaging method; or
- some other method the Commissioner may approve in writing.

The exempt rate for pay-roll tax purposes is the rate prescribed by the regulations under section 28-25 of the *Income Tax Assessment Act 1936* (Cth) (the "ITAA") for calculating a deduction for car expenses for a "large car" using the "cents per kilometre method" for the previous financial year.

Where a motor vehicle 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 motor vehicle 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 motor vehicle allowance to be excluded from taxable wages, the motor vehicle 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 an exempt motor vehicle allowance to be verified.

If an employee is paid a motor vehicle 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) Accommodation Allowances**

An accommodation allowance paid or payable to an employee is taxable only to the extent that the allowance exceeds a prescribed daily rate. From 1 July 2008, wages do not include an accommodation allowance that does not exceed the exempt rate.

The exempt rate for pay-roll tax purposes is based on the related ATO figure, and is the total reasonable amount for daily travel allowances using the lowest capital city for the lowest salary band for the financial year.

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.

Information regarding the treatment of motor vehicle and accommodation allowances is available in Circular No 298.

**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, sick, long service or pro-rata 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* (the "WorkCover Act") 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 the WorkCover 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**

From 1 July 2008, pay-roll tax applies to an employment termination payment (formerly eligible termination payment) ("ETP"), as defined in section 82-130 of the ITAA, when paid by an employer as a result of an employee's termination.

The amount subject to pay-roll tax is the whole of the ETP paid by the employer (whether paid to the employee or to a roll-over fund), less any component, which is exempt income when received by the employee. ETPs paid by employers may include payments for:

- unused sick leave or rostered days off;
- *ex gratia* payments or 'golden handshakes';
- payment in lieu of notice or service contract payouts;
- compensation for loss of job or wrongful dismissal; or
- *bona fide* redundancy or early retirement payments in excess of the income tax free limit. (The income tax free components of such payments do not form part of an ETP and are, therefore, not subject to pay-roll tax).

Prior to 1 July 2008, an amount paid or payable by an employer, as a result of the termination of employment, is subject to pay-roll tax if it falls within the definition of an eligible termination payment given by Subdivision AA of Division 2 of Part III of the ITAA.

More information in relation to termination payments can be found in Circular No 302.

**(d) Construction Industry Long Service Leave Contributions**

Construction Industry Long Service Leave Contributions made under the *Construction Industry Long Service Leave Act 1987* are exempt from all taxes and other charges imposed under the law of South Australia and therefore not taxable for pay-roll tax purposes.



## 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 – **Exemptions** 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 (i.e., 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 (i.e. the use of the goods is the fundamental object of the contract), [section 4(2)(a)(ii) of the Act].

For example, a hire contract for the use of a crane, which includes the supply of the crane operator, is a 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:

- “(OWNER/DRIVER)” contracts where the services are only ancillary to the carriage of goods by means of a vehicle provided by the goods carrier.
- “(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.
- “(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 two or more other people to do the work required under the contract.

Under this exclusion, the two or more 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, 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 90 Days**

A contract for the provision of the services where, in relation to the contract, services are provided on no more than 90 days, or services are provided over a number of periods which in aggregate do not exceed 90 days in a financial year, 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 90 days, the primary criterion does not require that the elapsed period be wholly within a financial or calendar year. If work is performed on more than 90 days, at any time, the exclusion does not apply. Where the secondary criterion applies (i.e., 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 exclusion provision include:

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

It is recognised that difficulties may be encountered in predicting the actual number of working days 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 **90 WORKING** days criterion when such difficulties are encountered. The **120 CALENDAR** days are to be determined by reference to the expected commencement and finishing dates of the contract work to be performed.

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

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

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

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

### **Services Ordinarily Required for Less than 180 Days**

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

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

The exclusion recognises that businesses require various *ad hoc* services allied to the mainstream 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 (i.e. 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 100 days at the same time, the count would be 100 days, but if they were engaged in different periods, the count would be 200 days.

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

A contract where the services provided are of a type not ordinarily required in the course of a person's ongoing business and 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 (i.e. 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 shop fitting 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
- trade persons 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 above 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 (i.e. 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
- 80% or more of the contractor's income is derived from the one principal (or from persons who are members of the same group).

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

- where a contractor works 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

- **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.
- **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.
- **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: -

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, to the extent that it relates to the performance of work or the resupply of goods, is 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 under an employment agency contract who is not an employee of either the agent or the 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 (i.e. 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 (i.e., 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.

The employment agent 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 is taken to be the employer.

#### Deemed Employee:

The contract worker is 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 is 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**

In each of the following circumstances, the amount or value of the payment will be taken to be wages paid or payable by the employer to the employee:

- 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.

**Non-Taxable Payments**

Section 4B of the Act 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, 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

The definition of wages includes 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.

Until 30 June 2008, South Australia did not impose pay-roll tax on superannuation payments to non-employee directors. From 1 July 2008, consistent with the arrangements in other States or Territories, all superannuation contributions to non-employee directors will be 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 for services rendered 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. Penalty tax and/or interest may be levied where an employer fails to register within the required time.

Applications for registration are completed online and can be accessed via RevNet at [www.revnet.sa.gov.au/pint/registrationWelcome.do](http://www.revnet.sa.gov.au/pint/registrationWelcome.do).

### **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 for further details of Deduction Entitlements).

The Act provides definitions of "**business**" and "**group**" for the purposes of the grouping provisions.

From 1 July 2008, the definition of business has been aligned with other States and Territories and includes "the carrying on of a trust (including a dormant trust)" and "the activity of holding any money or property used for or in connection with another business".

## How is a Group Constituted?

A group is constituted where:

**Corporations are related companies**, i.e., corporations are related companies by reason of section 50 of the *Corporations Act 2001*, (the “Corporations Act”), either as holding and subsidiary companies or as subsidiaries of a common holding company.

**Employees are used in another business**, i.e. an employer will be grouped with the person(s) carrying on another business or other businesses where:

- one or more employees of the employer perform duties for or in connection with one or more businesses carried on by the employer and one or more other persons;
- one or more employees of the employer are employed solely or mainly to perform duties for or in connection with one or more businesses carried on by one or more other persons; or
- one or more employees of an employer performs duties for or in connection with one or more businesses carried on by one or more other persons, and being duties performed in connection with, or in fulfilment of the employer’s obligation under an agreement, arrangement or undertaking for the provision of services to any one or more of those persons in connection with that business or those businesses.

**Businesses are commonly controlled**, i.e. 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 exercise more than 50% of the voting power attached to shares issued by a corporation.
- (c) Where a person (or persons together), owns more than 50% of the capital or is entitled to more than 50% 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 more than 50% 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 more than 50% 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 person is a beneficiary or two or more persons are beneficiaries under a trust in respect of more than 50% 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 have 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, i.e. 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.

**Tracing provisions**, i.e. where a corporation has direct, indirect or aggregate ownership connections exceeding 50% in the corporation.

Tracing establishes control in a ‘chain’ of corporations. A relevant entity will control a corporation if it controls more than 50% of the voting shares held either directly, indirectly or through aggregation of interests.

A relevant entity is a person or two or more associated persons. Associated persons are established by examining the relationships between individuals, partners, private companies, bodies corporate, trustees and beneficiaries of trusts. Examples of associated persons include, but are not limited to:

- individuals who are partners in a partnership;
- private companies in which common shareholders have a majority interest;
- related persons, for example:
  - husband and wife; domestic partners; parent and child; sister and brother;
  - an individual and trustee of a trust (other than public unit trust) of which the individual is a beneficiary;
  - private companies that are related bodies corporate.

### **Registration of Group Members**

Each employer who pays wages in South Australia 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 independently of, and is not 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 penalty tax) 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. Each request should state the date the organisation is to be cancelled from and the reason for the cancellation. A cancellation form will be issued 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 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 religious or public benevolent institution, or a public hospital;
- 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;



- 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;
- a child care centre which is an eligible organisation within the meaning of the *Child Care Act 1972* (Cth), which requires that the organisation operate other than for the purpose of profit or gain;
- a kindergarten conducted by an employer other than for the purpose of profit or gain;
- an employer who provides health services other than for the purpose of profit or gain;

"Health services" means:

- 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:

- Sexual Health Information Networking and Education SA Incorporated;
- 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;
- 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;
- the Commonwealth War Graves Commission;
- Australian-American Fulbright Commission;
- 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;
- a university (residential) college affiliated with the University of Adelaide or the Flinders University of South Australia;

- 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.

From 1 July 2008, South Australia has also introduced exemptions for:

#### Not-for-Profit Organisations with Wholly Charitable Objects

Wages paid by a non-profit organisation having wholly charitable purposes (but not including a school, an educational institution, an educational company or an instrumentality of the State) are exempt from pay-roll tax. The exemption is restricted to wages paid to a person engaged exclusively in work of a kind ordinarily performed in connection with the charitable purposes of the body.

Further information regarding the charities exemption is contained in Circular No 301.

#### Maternity and Adoption Leave

Wages paid to employees on maternity leave or adoption leave are exempt from pay-roll tax. The exemption applies as follows:

- all wages (other than fringe benefits) paid to female employees taking maternity leave and male or female employees taking adoption leave are exempt;
- the exemption is limited to a maximum equivalent of 14 weeks full-time pay for full-time employees and 14 weeks part-time pay for part-time employees; and
- the exemption applies irrespective of whether the leave is taken before or after the birth or adoption.

The exemption does not apply to paid sick leave, annual leave, recreation leave, long service leave or similar leave taken while the employee is absent due to a pregnancy or adoption.

Employers who claim the exemption for maternity leave must obtain a medical certificate or statutory declaration from the employee in relation to the pregnancy or birth of the child. Similarly, employers who claim the exemption for adoption leave must obtain a statutory declaration from the employee that an adoption order has been made or that the child is in the employee's custody pending such an order.

Please refer to Circular No 300 for further details on the maternity and adoption leave exemption.

#### Volunteer Bushfire and Emergency Services Workers

Wages paid or payable to an employee in relation to any period during which the employee was engaged as a volunteer member of an emergency services organisation under the *Fire and Emergency Services Act 2005* in responding to any situation that involved or may have involved an emergency under that Act are exempt from pay-roll tax.

Exemptions will not apply to paid sick leave, annual leave, long service leave or similar leave taken while the employee is absent due to these volunteer activities.

#### Community Development Employment Project

Wages paid to an aboriginal person who is employed under a Community Development Employment Project funded by the Commonwealth Department of Employment and Workplace Relations, or the Torres Strait Regional Authority, will be exempt from pay-roll tax.

## **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.

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 RevNet.

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.

## Payment of Tax

Each employer is required to pay the pay-roll tax due when lodging a return, i.e., 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 the 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. Cheque payments should be made payable to the "Commissioner of State Taxation". RevenueSA has also introduced Electronic Funds Transmission (EFT) facilities for the remittance of pay-roll tax. An EFT Application Form is available under the "Forms" Menu on RevenueSA's website at [www.revenuesa.sa.gov.au](http://www.revenuesa.sa.gov.au).

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

If pay-roll tax is not paid by the due date, interest and/or 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 [www.revnet.sa.gov.au](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. Penalty tax and/or interest may be applied to the late lodgement of an Annual Reconciliation.

## 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 90 day Bank Accepted Bill rate, is published by the relevant Minister, the Treasurer, by way of a notice in the South Australian Government Gazette and is subject to annual review. To ascertain the current rate at any point in time, contact should be made with this Office, or by viewing RevenueSA's website at: [www.revenuesa.sa.gov.au/circulars/interest.pdf](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 premium 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.

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:

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

### EXAMPLE

Return & payment is late:	20 days	
Tax Due is:	\$5 000	
Current interest rate is:	15.75%	(made up of the Market Rate and the Premium Component as described above.)

Calculation for interest is:  $\frac{20}{365} \times \$5\,000 \times 15.75\%$

**Interest payable = \$43.15**

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

In addition to interest, the TAA imposes penalty tax 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 sufficient disclosure 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 tax 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 and/or 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 a documentary record or a record made by an electronic, electromagnetic, photographic or optical process or any other kind of record.

## **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 60 days after the service of the assessment, or notification of a reviewable decision, lodge a written notice of objection with the Minister stating fully and in detail, the grounds on which the person relies.

While the Minister has discretion to permit a person to lodge an objection after the end of the 60-day period but not later than after 12 months, 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 60 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 60-day period but not later than after 12 months.

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

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. 222 - Exporters Pay-roll Tax Rebate Scheme***

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

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

Employers eligible for the scheme must apply on the approved application form, which will be sent to employers immediately before the close of each eligible 6-month period. The rebate entitlement should not be deducted from an employer's pay-roll tax liability.

Continuation of this scheme 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 25 years of age and pursuant to an approved Contract of Training are entitled to a rebate of up to 80% 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*.

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.

Application forms for both schemes are available under the "Forms" menu on RevenueSA's website at [www.revenuesa.sa.gov.au](http://www.revenuesa.sa.gov.au).



## 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 (visit RevenueSA's website [www.revenuesa.sa.gov.au](http://www.revenuesa.sa.gov.au) for further details). 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 (may include written or electronic records and documents), 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: [www.revnet.sa.gov.au](http://www.revnet.sa.gov.au)
- BPay for non-credit card accounts.

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

**FURTHER INFORMATION**

Further information may be obtained from RevenueSA.

**Location**

RevenueSA  
State Administration Centre  
200 Victoria Square East  
ADELAIDE SA 5000

**Telephone**

(08) 8204 9880

**Website**

[www.revenuesa.sa.gov.au](http://www.revenuesa.sa.gov.au)

**Postal**

Commissioner of State Taxation  
RevenueSA  
GPO Box 2418  
ADELAIDE SA 5001

**Facsimile**

(08) 8226 3805

**Email**

[payrolltax@saugov.sa.gov.au](mailto:payrolltax@saugov.sa.gov.au)

Historical Use Only

## APPENDIX A

### PRESCRIBED TAX RATES, ALLOWANCES AND DEDUCTIONS

#### 1. PAY-ROLL TAX RATES

The prescribed rates of tax that have applied since 1 July 2002 are: -

From 1/7/02 to 30/6/04 .....	5.67%
From 1/7/04 to 30/6/07 .....	5.50%
From 1/7/07 to 30/6/08 .....	5.25%
From 1/7/08 .....	5.00%

#### 2. REGISTRATION REQUIREMENT

From July 2008 the weekly rate of total taxable wages paid or payable at which an employer is liable to register is \$10 000.

#### 3. TRAVELLING AND ACCOMMODATION ALLOWANCE RATES FROM 1 January 1990

EFFECTIVE DATE	MOTOR VEHICLE ALLOWANCE	ACCOMMODATION ALLOWANCE
From 01/01/90	56.0 cents per kilometre	\$127.60 per day
From 01/07/08	70.0 cents per kilometre	\$218.30 per day

These motor vehicle and accommodation rates are aligned with specified ATO rates, which are reviewed annually.

#### 4. DEDUCTION RATES

**4.1 Maximum deductions from 1 July 2002 (shown by financial years) are: -**

***PERIOD            MAXIMUM DEDUCTION BY FINANCIAL YEARS***

From 1/7/02    \$504 000 A fixed deduction of \$504 000 applies.

From 1/7/08    \$552 000 A fixed deduction of \$552 000 applies.

**4.2 Maximum deductions applicable from 1 July 2002 are: -**

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

From 1/7/08    \$552 000 per annum with a fixed deduction entitlement of \$46 000 per month.

## APPENDIX B

CHECKLIST OF TAXABLE ITEMS		
Remuneration Item	Taxable or Exempt	Reference
Accommodation	Fringe benefit	
Accommodation allowances	Taxable under certain conditions	Page 13
Adoption Leave (1 July 2008 onwards)	Exempt wages	
Allowances	Taxable under certain conditions	
Annual Leave	Taxable	
Apprentices Wages	Taxable	
Benefits	Fringe benefit	
Board & Quarters	Fringe benefit	
Building Industry Redundancy Scheme Trust	Taxable	
<i>Bona fide</i> redundancy payments (tax-free component)	Not taxable	
Bonuses	Taxable	
Car Parking	Fringe benefit	
Clothing Allowance	Taxable	
Commissions	Taxable	
Construction Industry Long Service Leave Contributions	Not taxable	
Consultants fees	Taxable under certain conditions	
Contractors	Taxable under certain conditions	Page 16
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 24
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	Taxable	Page 15
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	
Maternity Leave (1 July 2008 onwards)	Exempt wages	
Meals	Fringe benefit	

Meal allowances	Taxable	
Motor vehicles	Fringe benefit	
Motor vehicle allowances	Taxable under certain conditions	Page 13
Overtime	Taxable	
Overtime meal allowances	Taxable	
Paternity Leave	Taxable	
Partners drawings	Not taxable	
Piece-work payments	Taxable	
Prizes	Fringe benefit	
Professional advice	Fringe benefit	
Redundancy payments	Taxable under certain conditions	
Relocation expenses	Fringe benefit	
Reimbursements (business expenses)	Fringe benefit	
Rental subsidy allowances	Fringe benefit	
School fees	Fringe benefit	
Share Schemes	Taxable	
Shift allowances	Taxable	
Sick pay	Taxable	
Site allowances	Taxable	
Staff discounts	Fringe benefit	
Subcontractors	Taxable under certain conditions	Page 16
Subscriptions	Fringe benefit	
Superannuation benefits (employer)	Taxable	Page 27
Taxi Fares	Fringe benefit	
Telephone account payments	Fringe benefit	
Termination payments <i>Accrued Annual leave and long service leave</i>	Taxable	Page 15
<i>Employment termination payments</i>	Taxable	
<i>Bona-fide Redundancy payments (income tax free component)</i>	Exempt	
<i>Bona-fide redundancy payments in excess of tax free component</i>	Taxable	
Tool allowances	Taxable	
Trainee wages	Taxable	
Uniform allowances	Taxable	
Volunteer Emergency Workers (1 July 2008)	Exempt wages	
Workers compensation payments	Not taxable	