



## STATE TAXATION OFFICE

**Pay-roll Tax****Circular No. 114****RE: LUMP SUM PAYMENTS ON TERMINATION OF EMPLOYMENT**

The purpose of this ruling is to inform employers about the liability to pay-roll tax of lump sum payments made on the termination of employment.

The definition of wages in Section 3 of the Pay-roll Tax Act, 1971 includes wages, remuneration, salaries, commissions, bonuses or allowances paid or payable to a person in relation to his or her capacity as an employee.

An employee's entitlement to wages, as defined in the Act, is usually established by legislation, an industrial award or an agreement between employer and employee(s) whether or not in writing.

A recent decision given by the Western Australian Supreme Court in Abrasiflex (WA) Pty Ltd v the Commissioner of State Taxation, clarified the pay-roll tax position in respect of payments made to an employee on termination of employment. Termination payments may arise from the resignation, retirement, retrenchment, death or dismissal of an employee.

**RULING**

The Commissioner's policy, following the decision given in the Abrasiflex case, is as follows:-

***Termination Payments Liable to Pay-roll Tax***

Pay-roll tax is payable in respect of a payment made to an employee on termination of his or her employment where that payment represents a reward for service to which the employee has a pre-existing enforceable right.

Components of a termination payment which are taxable under this ruling would include:-

- payment of accrued leave entitlements (eg accrued annual leave or long service leave);
- a payment made wholly or partly in lieu of unused sick leave where entitlement to the payment as a reward for services is established by legislation, an industrial award or an agreement between an employer and an employee or an employer and employees;
- payment of deferred or accrued wages, salaries, commissions, bonuses, allowances etc.

### ***Termination Payments Not Liable to Pay-roll Tax***

Pay-roll tax is not payable in respect of a payment that does not represent a reward for service and that payment is made to an employee solely as a result of termination of his or her employment or the payment is made gratuitously.

Components of a lump sum termination payment which are not taxable would include:-

- payments in lieu of notice;
- gratuitous payments, eg "golden handshakes and payments in lieu of sick leave where no pre-existing enforceable right to the payment existed under a legislative enactment, an employment award or an employment agreement";
- genuine redundancy or severance payments that are additional to the amount that would have been received had the employee voluntarily retired.

### ***Payments Which are Partly Liable***

Circumstances may arise where a termination payment includes components which are liable to pay-roll tax and components which are not liable to pay-roll tax eg payments made in respect of accrued leave as part of a total payment made on termination of employment under a redundancy scheme.

Care must be taken to ensure that pay-roll tax is paid on component payments made in respect of deferred or accrued leave entitlements, wages, salaries, commissions, bonuses, allowances etc which are liable to pay-roll tax.

**Date of operation**

The ruling will commence operation from 1 July, 1994.

Thus, any component of a termination payment which represents a reward for service to which the employee has a pre-existing enforceable right is required to be included in returns of taxable wages where those amounts are paid or payable on or after 1 July, 1994.

**ENQUIRIES**

Enquiries regarding the subject matter of this circular or other aspects of the Pay-roll Tax Act may be made in person or by post at the following addresses:-

**Location**

State Taxation Office  
Enquiry and Payments Centre  
Ground Floor, State Administration Centre  
Victoria Square East  
ADELAIDE SA 5000

**Postal**

Commissioner of Stamps  
Pay-roll Tax Office  
Box 2418 GPO  
ADELAIDE SA 5001

**Telephone Enquiries**

(08) 226 3735

June, 1994

COMMISSIONER OF STAMPS