

**SOUTH AUSTRALIA**



**STATE TAXATION OFFICE**

**Pay-roll Tax**

**Circular No. 36  
(formerly PRT Circular No. 9)**

**PAY-ROLL TAX (MISCELLANEOUS) AMENDMENT  
ACT, 1991 - No. 55 OF 1991**

**THIRD PARTY PAYMENTS**

**1 INTRODUCTION**

Certain anti-avoidance amendments to the Pay-roll Tax Act were effected by the pay-roll Tax (Miscellaneous) Amendment Act, 1991. These measures are aimed at schemes designed to avoid liability for pay-roll tax.

The amendments deal with:

- certain contract situations (called Service Contracts under Section 4 of the Act);
- the provision of contract workers by employment agents;
- the payment of wages by or to third parties.

A general anti-avoidance provision has also been enacted.

**This circular contains detailed explanations of the “Third Party Payments” provisions.**

Explanations relating to Service Contracts and the provision of contract workers by Employment Agents are contained in separate pay-roll tax circulars numbered 7 and 8 respectively.

Pay-roll tax circular number 6 provides a general overview of the amendments effected by the Pay-roll Tax (Miscellaneous) Amendment Act, 1991 together with a detailed explanation of the concessions provided; namely:

a reduction in the rate of pay-roll tax from 6.25% to 6.1% in respect of wages paid on or after 1 December, 1991.

and

increases in the general exemption level to \$444,000 per annum from 1 January, 1992 and \$465,000 from 1 July, 1992.

## **2 EFFECTIVE DATE**

The amending legislation was assented to on 28 November, 1991.

The new Section 4b of the Act, relating to third party payments will, by proclamation, apply from 1 April, 1992 to amounts paid or payable on or after that date.

The Section applies in respect of any relevant third party payment arrangement regardless of when the relevant arrangement or undertaking was effected but, pay-roll tax is only payable in respect of any (deemed) wages paid or payable on or after 1 April, 1992.

## **3 THIRD PARTY PAYMENTS**

3.1 The information set out below in relation to "Third party Payments" is of necessity brief. The precise nature and scope of the third party payments amendments (the new Section 4 b of the Act) and related changes to the Act must be taken from the reading of the provisions as set out in the amending Act in conjunction with the Pay-roll Tax Act, 1971.

### **3.2 Payment deemed to be wages**

The introduction of the new Section 4b and related amendments means that payments made in relation to the performance of work by an employee in the following circumstances are deemed to be "wages" for the purposes of the Act:

- (a) where the payments are made by an employer to a person other than the employee;
- (b) where the payments are made by a person other than the employer to an employee;  
and
- (c) where the payment are made by a person other than the employer to a person other than the employee.

In each of these circumstances pay-roll tax would have been payable if the payments had been made directly by the employer to the employee.

### **3.3 Exempt Third Party Payments**

#### **3.3.1 Employers superannuation contributions**

Provision has been made to ensure that the exempt status of employer contributions to recognised superannuation schemes and award superannuation funds is maintained. Where the employer is entitled or would be entitled to claim a deduction from taxable income under Section 82AAC of the Income Tax Assessment Act (Commonwealth), such contributions are exempt.

However, employee contributions deducted from his or her gross pay continue to form part of the taxable wages paid or payable by an employer.

### **3.3.2 Other non-taxable payments**

The new Section 4b only extends liability for pay-roll tax to payments that are made to or by third parties “in relation to the performance of work by an employee”. Payments that do not meet this criterion are not, under the new Section 4b, liable to pay-roll tax.

Accordingly, no pay-roll tax liability arises in respect of the following payments:

- (a) worker’s compensation payments;
- (b) payments made as a consequences of the termination of an employee’s services (such as redundancy and voluntary separation payments and payments made in lieu of accrued holidays or long service leave);
- (c) “make-up” pay for an employee absent on leave as a member of the Defence Forces.

## **4 AGREEMENT ETC. TO REDUCE OR AVOID LIABILITY TO PAY -ROLL TAX**

Any agreement, arrangement or transaction relating to the performance of services by natural persons may be disregarded where the Commissioner has reason to believe or suspect that the purpose of the agreement etc. is to avoid the liability of any person to pay-roll tax.

In respect of any such agreement, arrangement or transaction the Commissioner may, for the purposes of the Act, determine that any party to the agreement etc. is to be taken as an employer and any payment made (under the agreement) is to be taken as wages. Notice of the determination and the facts relied upon must be served on the person taken to be the employer.