

Payroll Tax Guide to Legislation 2018-19 up to 31 December 2018

Payroll tax is a state tax calculated on wages paid or payable and applies in all states and territories. It is collected and administered in accordance with the *Payroll Tax Act 2009* and *Taxation Administration Act 1996*.

This Guide to Legislation provides a general guide to payroll tax in South Australia.

Payroll Tax Act 2009



**Government of
South Australia**

This Guide to Legislation ("Guide") provides a general guide for employer's of their South Australian payroll tax responsibilities under the *Payroll Tax Act 2009* but it does not constitute a Revenue Ruling.

If any uncertainty exists with a particular aspect of the information provided, please seek advice from RevenueSA. The information provided in this Guide is correct at the time of publication.

In this Guide:

- ▶ all references made to sections, parts, divisions, schedules or clauses relate to the *Payroll Tax Act 2009*, unless otherwise specified;
- ▶ a reference to the Commissioner is a reference to the Commissioner of State Taxation;
- ▶ a reference to Australian jurisdictions includes all the states and territories of Australia; and
- ▶ a reference to state(s) or interstate includes the Australian Capital Territory and the Northern Territory.

Julie Holmes
A/COMMISSIONER OF STATE TAXATION
2 July 2018

Further Information

Further information can be obtained from RevenueSA.

Website revenuesa.sa.gov.au **Email** payrolltax@sa.gov.au **Telephone** (08) 8204 9880

Authorised copies of the Act can be purchased from the Service SA, EDS Centre, 108 North Terrace, Adelaide.

Online versions of state legislation are available at the South Australian legislation website:

legislation.sa.gov.au

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What is payroll tax?

Introduction

Payroll tax is a state tax that is calculated on wages paid or payable. Payroll tax is payable when an employer's (or group of employers') total Australian wages exceeds the South Australian threshold. An employer's Australian wages comprise its South Australian wages and all interstate wages. In South Australia, payroll tax is collected and administered in accordance with the Act.

The Act must be read in conjunction with the provisions of the *Taxation Administration Act 1996* (the "TAA").

The administrative provisions relating to assessments, reassessments, refunds, interest, penalty tax, objections, appeals and investigative powers are incorporated in the TAA.

South Australian wages are the wages liable to tax under the Act. Interstate wages are taxable wages in another state under that state's legislation. Generally, employers are required to self-determine their liability on a monthly basis by calculating the actual tax payable for each return period and remit the tax due when the return is lodged. Employers are then required to perform an annual reconciliation at the end of the financial year to ensure the correct liability is paid.

Revenue Rulings

RevenueSA publishes Revenue Rulings designed to help employers meet their obligations under the Act and provide RevenueSA with an effective way of communicating decisions on the interpretation of legislation.

A significant number of payroll tax Revenue Rulings have been developed covering a wide range of topics. These can be accessed via our website at:

revenuesa.sa.gov.au

In addition to legislative harmony, South Australia and its counterparts are committed to greater administrative consistency. As a result, South Australia have harmonised their Revenue Rulings with those of other Australian jurisdictions.

RevenueSA Online

RevenueSA Online is an Internet based system that allows an easy, flexible and more effective way for you to do business with RevenueSA.

RevenueSA Online facilitates the online lodgement and payment of monthly returns and the annual reconciliation return. All payroll tax returns must be lodged via RevenueSA Online.

For more details on the functions provided through RevenueSA Online please visit revenuesa.sa.gov.au/RevenueSAOnline.

Resetting your RevenueSA Online password

If the password associated with a RevenueSA Online login is forgotten, it can be reset automatically through RevenueSA Online.

This can be done by clicking the **request a reset** link on the RevenueSA Online login page. An email will be sent to you with a link to change your password.

If you experience any problems accessing RevenueSA Online with the new password please contact our RevSupport team on **(08) 8207 2333**.

Basis of tax

Who must register for payroll tax

Employers who pay wages in South Australia must register for payroll tax if their weekly wages exceeds \$11 538.

For simple administration, employers are recommended to register if during any one month, their total Australian wages exceed the relevant monthly threshold (currently \$50 000). If the employer is a member of a group, the total Australian wages paid or payable by all members of the group determines whether the employer should register for payroll tax.

See **[tax rates and thresholds](#)** for more details.

Employers must pay tax by the seventh (7th) day of the month following the month in which their wages exceeded the threshold. Interest and penalty tax may be payable on any unpaid tax if an employer who is liable for payroll tax fails to register.

See **[grouping of employers](#)** for more details.

[Registrations](#) are completed online and can be accessed from the payroll tax menu on revenuesa.sa.gov.au

Cancelling 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 monthly threshold; or
- ▶ ceases to be a group member and ceases paying wages in excess of the prescribed monthly threshold.

Employers who estimate that wages may be below the prescribed monthly threshold may request, in writing, an annual return cycle for lodgement.

An employer seeking cancellation of payroll tax registration during the financial year can cancel their payroll tax registration via RevenueSA Online, where an organisation is:

- ▶ no longer employing in South Australia; or

- ▶ is a single company or a group whose total taxable Australian wages is below the relevant South Australian monthly threshold (currently \$50 000).

Details explaining how to enter the [cancellation and complete the reconciliation](https://revenuesa.sa.gov.au) are on revenuesa.sa.gov.au

If you require further assistance please email payrolltax@sa.gov.au

Exempt based employers

Wages paid by certain employers are exempt from payroll tax as provided under **Part 4** and **Schedule 2**. An exemption will generally apply to wages paid by the following types of organisations:

- ▶ non-profit organisations having as their sole or dominant purpose a charitable purpose (but not including a school, a college, an educational institution, and educational company or an instrumentality of the State); and
- ▶ religious or public benevolent institutions.

Wages must be paid to a person engaged exclusively for work of a kind ordinarily performed in connection with the charitable, religious or benevolent purpose of the organisation. People engaged directly in the primary work or in administrative or management work which is predominately associated with the organisation's charitable or similar work are accepted as being exclusively engaged in that work.

What is a charity?

To be recognised as a charity, an organisation must be non-profit, for the public benefit, and be for the:

- ▶ relief of poverty or sickness or the needs of the aged;
- ▶ advancement of education;
- ▶ advancement of religion; or
- ▶ other purposes beneficial to the community.

What is a public benevolent institution?

To be classed as a public benevolent institution, an organisation must be non-profit and set up, usually in perpetuity, for the:

- ▶ relief of sickness, suffering, distress, misfortune, destitution or helplessness; or
- ▶ benefit of members of a community or of a particular locality, who are suffering from a particular disadvantage.

The institution must provide services without discrimination to every member of that section of the public for which the institution was created according to its constitutional documents.

Other exempt employers

- ▶ public and non-profit private hospitals;
- ▶ non-profit schools or colleges for wages paid to persons providing education at or below (but not above) the secondary level of education;
- ▶ non-profit child care centres and kindergartens;
- ▶ councils, other than wages paid or payable in connection with specified business activities such as the supply of electricity or gas, or in connection with water supply, sewerage, the conduct of abattoirs, of public markets, of parking stations, of cemeteries, of crematoria, of hostels or of public transport;
- ▶ non-profit health services providers, where:
 - “**Health services**” means:
 - a 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
 - a prescribed service; or
- ▶ 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 South Australia;
 - 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.

The above list of exempt employers is not exhaustive. If you require confirmation or clarification that your organisation is exempt from payroll tax, please contact RevenueSA.

Applying for an exemption

How do I apply for an exemption?

To apply for an exemption from payroll tax, you must submit an Application and provide:

- ▶ your organisation's Constitution and/or Memorandum and Articles of Association or proof of incorporation under the Associations Incorporation Act, including the organisation's rules. This must show the organisation's objectives and non-profit status. All documentation must be signed and dated and should support the date you are requesting the exemption to start
- ▶ a copy of the organisation's last audited annual report;

- ▶ details of the day-to-day activities and services provided by the organisation;
- ▶ details of other jurisdictions where wages are paid; and
- ▶ any other relevant information in support of your application.

An **Application** is available on revenuesa.sa.gov.au

What if the organisation's circumstances change?

You must tell us anytime there is a change to the organisation's governing rules, specifically the organisation's objects and/or non-profit status, to confirm your exemption remains valid. These include the organisation's:

- ▶ constitution;
- ▶ rules;
- ▶ memorandum/articles of association; and
- ▶ organisation name.

Will the organisation's exemption status be reviewed?

Your organisation's exemption status will be reviewed every five years to ensure the exemption remains valid.

Returns

The two types of returns required are monthly returns and annual reconciliation returns.

Monthly 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 with the Commissioner a return together with the tax payable for the required return period. RevenueSA will accept lodgement of returns on the next business day where the 7th falls on a weekend or public holiday.

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 must be lodged or may authorise the lodging of returns on an annual basis.

See the **Lodgement Dates** page on revenuesa.sa.gov.au for more details.

All monthly lodgements are completed online on RevenueSA Online:

revenuesaonline.sa.gov.au

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.

Annual reconciliation

Each financial year, all registered employers must lodge an annual reconciliation return. The annual reconciliation gives employers the opportunity to review their tax paid for the financial year, make any necessary adjustments to correct overpayments or underpayments made during the year and confirm a registered employer's status.

Tax for the month of June will be incorporated in the annual reconciliation return. The annual reconciliation should include details of taxable wages, and the various components that make up these wages.

The due date for completion and lodgement of the annual reconciliation return is **21 July**. RevenueSA will accept lodgement of returns on the next business day where 21 July falls on a weekend or public holiday.

The 2018-19 Annual Reconciliation is due on Monday, 22 July 2019

Completion of the annual reconciliation return is an online process conducted on RevenueSA Online:

revenuesaonline.sa.gov.au

Information about the annual reconciliation process is sent to registered employers in June each year.

Interest and/or penalty tax may be applied to the late lodgement of an annual reconciliation.

Modifying your annual reconciliation

If needed, an annual reconciliation can be modified if lodged within the last five financial years.

Annual reconciliations lodged via RevenueSA Online can be modified online via RevenueSA Online.

Where a modification is required for an annual reconciliation not lodged via RevenueSA Online, an email should be sent to

payrolltax@sa.gov.au

detailing the financial year, amounts and reasons why the changes are required. Please ensure that the email includes the entity's taxpayer number and contact details.

Calculation of payroll tax

Payroll tax is generally payable monthly.

The tax payable is calculated using the formula below:

$$\left(\begin{array}{c} \text{Gross Taxable} \\ \text{South Australian} \\ \text{Wages} \end{array} - \text{Deduction} \right) \times \text{Tax Rate} = \text{Payroll Tax Payable}$$

This basic formula varies based on group membership and interstate wages.

Tax rates and thresholds

Effective Dates	Annual Australian Taxable Payroll			
	Does not exceed \$600 000	Exceeds \$600 000 but not \$1 million	Exceeds \$1 million but not \$1.5 million	Exceeds \$1.5 million
From 1 July 2017	nil	2.5%	variable from 2.5% to 4.95%	4.95%
1 July 2009 to 30 June 2017	nil	4.95%		

The Government has announced amendments to the Act to reduce payroll tax for small businesses.

With these amendments, from 1 January 2019, businesses with annual taxable wages of up to \$1.5 million will be exempt from payroll tax and those with wages between \$1.5 million and \$1.7 million will benefit from a reduced payroll tax rate. The legislative amendments to implement the above measures are contained in the *Payroll Tax (Exemption for Small Business) Bill 2018* (the "Bill"), which was introduced into Parliament on 20 June 2018.

The following rates are proposed in the Bill:

Annual Australian Taxable Payroll from 1 January 2019		
Does not exceed \$1.5 million	Exceeds \$1.5 million but not \$1.7 million	Exceeds \$1.7 million
nil	variable from 0% to 4.95%	4.95%

A second edition of this Guide will be released once the Bill comes into force as an Act.

Which rate do I use?

The rate will be calculated based on the employer's total Australian wages. If the employer is part of a group, it will be calculated on the group's total Australian wages.

The actual payroll tax rate that will apply for an employer cannot be finalised until the annual reconciliation process is completed in July each year.

However, to ensure that eligible employers that lodge monthly payroll tax returns can pay payroll tax at the lower rates, an indicative payroll tax rate for the employer will be determined based on the employer's estimated annual taxable Australian wages declared at the start of the financial year. RevenueSA Online will calculate the indicative payroll tax rate.

Use the calculator on the [Rates and Thresholds](#) page to work out an estimate of the rate you may pay.

Differences between the indicative payroll tax rate and actual payroll tax rate will be determined as part of the annual reconciliation process, with any over or under payment of payroll tax being resolved at that time. This will mean that:

- businesses will be entitled to a refund where the indicative rate is higher than the actual rate for the financial year; but
- for businesses where the indicative rate is lower than the actual rate for the financial year the business will be required to pay any shortfall as part of the annual reconciliation process.

In light of the above, and to ensure that there is not an underpayment of tax at the annual reconciliation, businesses are encouraged to review their individual and total group Australian (if applicable) estimates both at the start of the year and throughout the year to ensure that the appropriate rate is being applied.

What is my deduction?

Employers are entitled to a deduction amount which is subtracted from their wages paid. The maximum deduction available is \$600 000.

The deduction an employer is entitled to claim may vary according to whether the employer is a member of a group, how much of the financial year the employer (or group) employ and the employer's (or group's) interstate wages.

See [grouping of employers](#) for more details.

Employers who do not employ in South Australia for the full financial year will receive a proportionate amount of the deduction.



Employers not wishing to claim an exemption threshold amount are required to pay tax at the relevant rate on all South Australian wages for the month.

For employers who also employ interstate, their deduction entitlement is calculated using the formula below:

$$\left(\frac{\text{Taxable South Australian Wages}}{\text{Taxable Australia Wide Wages}} \right) \times \text{Maximum Deduction} \times \frac{\text{No. of Days Employing in SA}^*}{365^{**}}$$

* Equals the number of days in the relevant financial year of which the employer paid or was liable to pay taxable wages.

**366 days should be used if a leap year

Employers who are members of a group are not all entitled to a deduction. 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 (also referred to as DGE). Remaining group members are not able to claim any deduction entitlement in their returns unless, during the annual reconciliation process, it is identified that there is an unused component of the deduction.

RevenueSA must be informed, in writing, whenever there is a change in the group membership. RevenueSA will advise the action to be taken to establish the deduction entitlement of the group.

Calculation of tax: employers and groups who only pay wages in South Australia

If an employer carries on employment activity only in South Australia and for the full financial year the employer is entitled to a full deduction. If a group exists, the Designated Group Employer may claim the full deduction; all other members of the group are required to pay tax on their total South Australian wages.

Example: Non-group - small business

Tiny Pty Ltd is a non-group employer who pays wages in South Australia only. The estimated total wages for the 2018-19 financial year are \$840 000.

During July 2018, Tiny Pty Ltd paid wages of \$70 000.

The company's payroll tax liability for July 2018 is:

$$(\$70\,000 - \$50\,000) \times 2.5\% = \$500.00$$

Example: Non-group

M.Ployer Pty Ltd is a non-group employer who pays wages in South Australia only. The estimated total wages for the 2018-19 financial year are \$1 620 000.

During July 2018, M.Ployer Pty Ltd paid wages of \$130 000.

The company's payroll tax liability for July 2018 is:

$$(\$130\,000 - \$50\,000) \times 4.95\% = \$3960.00$$

Example: Group

M.Ployer Pty Ltd and I.2.M.Ploy Pty Ltd are group employers. They pay wages in South Australia only and M.Ployer Pty Ltd is the group's designated employer. The estimated total group wages for the 2018-19 financial year are \$2 220 000.

The wages paid during July 2018 are:

M.Ployer Pty Ltd	\$125 000
I.2.M.Ploy Pty Ltd	<u>\$60 000</u>
Total Wages	\$185 000

The companies payroll tax liabilities for July 2018 are:

M.Ployer Pty Ltd	(\$125 000 - \$50 000)	x 4.95%	=	\$3712.50
I.2.M.Ploy Pty Ltd	\$60 000	x 4.95%	=	\$2970.00
Total tax payable				\$6682.50

M.Ployer is entitled to the full deduction as they are the designated group employer and the group only pay wages in South Australia. I.2.M.Ploy Pty Ltd is not entitled to a deduction and must pay tax on the full wages amount.

Calculation of tax: employers and groups that pay wages in South Australia and interstate

Where an employer, or at least one member of a group, carries on employment activity, both in South Australia and elsewhere in Australia, they are 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: Non-group - small business

Tiny Pty Ltd is a non-group employer who pays wages in South Australia and Victoria. The total estimated wages for 2018-19 are as follows:

South Australia	\$400 000
Victoria	<u>\$400 000</u>
Australian Total	\$800 000

The deduction entitlement is calculated as follows:

$$\frac{\text{South Australian Wages}}{\text{Australian Wages}} \times \text{Maximum deduction (currently \$600 000)}$$

$$\frac{\$400\,000}{\$800\,000} \times \$600\,000 = \$300\,000 \text{ } (\$25\,000 \text{ per month})$$

During July 2018, Tiny Pty Ltd paid \$40 000 wages in South Australia.

The company's payroll tax liability for July 2018 is:

$$(\$40\,000 - \$25\,000) \times 2.5\% = \$375.00$$

Example: Non-group

M.Ployer Pty Ltd is a non-group employer who pays wages in South Australia and Victoria. The total estimated wages for 2018-19 are as follows:

South Australia	\$400 000
Victoria	<u>\$1 200 000</u>
Australian Total	\$1 600 000

The deduction entitlement is calculated as follows:

$$\frac{\text{South Australian Wages}}{\text{Australian Wages}} \times \text{Maximum deduction (currently \$600 000)}$$

$$\frac{\$400\,000}{\$1\,600\,000} \times \$600\,000 = \$150\,000 \text{ } (\$12\,500 \text{ per month})$$

During July 2018, M.Ployer Pty Ltd paid \$40 000 wages in South Australia.

The company's payroll tax liability for July 2018 is:

$$(\$40\,000 - \$12\,500) \times 4.95\% = \$1361.25$$

Example: Group

M.Ployer Pty Ltd and I.2.M.Ploy Pty Ltd are group employers. They pay wages in South Australia and Victoria. M.Ployer Pty Ltd is the group's designated employer. The group's total estimated wages for 2018-19 are as follows:

South Australia	\$800 000
Victoria	<u>\$1 200 000</u>
Australian Total	\$2 000 000

The deduction entitlement is calculated as follows:

<u>South Australian Wages</u>	x	Maximum deduction (currently	
Australian Wages		\$600 000)	
<u>\$800 000</u>	x	\$600 000	= \$240 000
\$2 000 000			(\$20 000 per month)

During July 2018, M.Ployer Pty Ltd paid \$65 000 and I.2.M.Ploy Pty Ltd \$40 000 wages in South Australia.

The companies' payroll tax liability for July 2018 are:

M.Ployer Pty Ltd

(\$65 000 - \$20 000) x 4.95% = \$2227.50

I.2.M.Ploy Pty Ltd

\$40 000 x 4.95% = \$1980.00

Total tax payable \$4207.50

Payment of payroll tax

RevenueSA Online facilitates the online lodgement and payment of monthly returns and the annual reconciliation return. All payroll tax returns must be lodged via RevenueSA Online.

For more details on the functions provided through RevenueSA Online please visit revenuesa.sa.gov.au/RevenueSAOnline.

If payroll tax is not paid by the due date, interest and/or penalty tax may be imposed. RevenueSA Online also allows a 'nil' return to be lodged if there is no payroll tax liability for a particular month.

Payment of payroll tax may be made via one of the following options:

Payroll Tax Electronic Payment Authority (EPA)

Taxpayers paying via EPA are required to nominate a bank account for payment. The electronic payment must be initiated by the user within RevenueSA Online, RevenueSA does not independently access the taxpayer's bank account. An employer needs to complete an application to use this facility on RevenueSA Online.

An **Application** is available on revenuesa.sa.gov.au

Payroll Tax Electronic Funds Transfer (EFT)

Users must log into RevenueSA Online to lodge and complete an expected EFT return each month. This will generate an EFT Payment Advice containing the BSB, Account Number and Payment Reference Number.

The Payment Reference Number changes for each return period. The correct Payment Reference Number for the return period must be used when making payment. If the incorrect number is used, payment may be returned and non-payment penalties and bank fees may result. The correct Payment Reference Number for each return period is only provided after an expected return on RevenueSA Online is submitted.

Once a Payment Advice is generated the details contained are used to make payment via EFT with a financial institution.

The payment advice generated from RevenueSA Online is not required to be submitted if payment is made by EFT.

BPay

If payment is made by BPAY it is important that the correct Biller Code and Reference Number printed on the Payroll Tax Payment Advice (generated from RevenueSA Online) or Assessment Payment Advice is used. This will ensure correct allocation of the payment. If the incorrect number is used, the payment may not be allocated as intended and penalties may result. **Please note that a different reference number is provided on each Payroll Tax Payment Advice or Assessment Payment Advice.**

The Payment Advice generated from RevenueSA Online is not required to be submitted if payment is made by BPAY.

BPAY payments for payroll tax from a credit account will not be accepted.

Cheque

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**. Payment can be made by mail or by courier. In all cases the cheque must be accompanied with the Payroll Tax Payment Advice (generated from RevenueSA Online) or Assessment Payment Advice.

Standard Business Reporting (SBR)

RevenueSA will accept the lodgement of payroll tax monthly returns through your business system, if it is SBR-enabled. The 2018-19 annual reconciliation (due 22 July 2019) can also be lodged through SBR.

Taxpayers wishing to use this lodgement facility must be a registered RevenueSA Online user and register with AUSkey.

For more details on:

SBR visit sbr.gov.au

AUSkey visit abr.gov.au/auskey

Using RevenueSA Online through SBR visit revenuesa.sa.gov.au

Wages subject to payroll tax

When are wages subject to payroll tax in South Australia?

The nexus provisions determine in which Australian jurisdiction a payroll tax liability arises.

The nexus provisions only affect circumstances where employees provide services in more than one Australian jurisdiction or partly in more than one Australian jurisdiction and partly overseas in a calendar month. Where an employee provides services wholly in one Australian jurisdiction, payroll tax will continue to be paid in the jurisdiction where those services are performed.

The nexus provisions provide a four tiered test to determine a payroll tax liability where the employee provides services in more than one Australian jurisdiction and/or partly overseas. This test is as follows:

1. Payroll tax is payable in the jurisdiction where the employee's principal place of residence (PPR) is located.
2. If an employee does not have a PPR in any Australian jurisdiction during the relevant month, payroll tax is payable in the jurisdiction where the employer has registered their Australian Business Number (ABN) address.

If the employer does not have a registered ABN address, or has two or more ABN addresses in different jurisdictions, payroll tax is payable in the jurisdiction where the employer has their principal place of business (PPB).

3. If the employee does not have a PPR in any jurisdiction and the employer does not have an ABN address or PPB in any Australian jurisdiction, payroll tax is payable in the jurisdiction where the wages are paid or payable in that calendar month.

If wages are paid by the employer into an employee's bank account, the wages are deemed to be paid in the jurisdiction in which the employee holds their bank account. If wages are paid or payable in a number of jurisdictions, payroll tax is paid in the jurisdiction where the largest proportion of the employee's wages is payable.

4. If both the employee and employer are not based in any Australian jurisdiction and wages are not paid in Australia, a payroll tax liability arises in South Australia if the services are mainly performed in South Australia (including South Australian coastal waters) in that calendar month (that is, the work performed in South Australia during that month is greater than 50%).

For further information see [Revenue Ruling PTA039: Nexus Provisions](#)

Overseas employment

Employees working in another country for six months or less

Where an employee is working in another country or countries for a period of six months or less, a payroll tax liability arises in South Australia if the wages are paid or payable in South Australia.

Employees working in another country for more than six months

If an employee is working in another country or countries for a continuous period of more than six months, then the wages paid or payable to that employee for the whole period will be exempt from payroll tax. In these circumstances, the six month period need not be within the same financial year, but must be a continuous period.

Should an employee that is working in another country return to Australia, it will not be considered to be a break in continuity of their overseas employment 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 immediately return to that country or another country to continue their overseas employment.

Services performed offshore

Where an employee is working outside all Australian jurisdictions, but not in another country, the wages are taxable in the Australian jurisdiction in which the wages are paid or payable. The exemption available for employees working in another country or countries would not apply in this circumstance.

Shares and options

Where wages comprise the grant of a share or option, the payroll tax liability (for the grant of a share or option) is also governed by the new nexus rules.

For further information on shares and options, refer to [definition of wages](#)

However, certain circumstances relating to shares and options attract different nexus rules. These are outlined as follows:

- (a) The employee performs services in more than one Australian jurisdiction and/or partly overseas, and the employee does not have a PPR in an Australian jurisdiction, and the employer does not have a registered business address or a PPB in an Australian jurisdiction and the shares/options relate to an Australian company.
- (b) The employee performs services wholly outside all Australian jurisdictions for less than six months but is paid in an Australian jurisdiction.

In these situations, where the grant of a share or option constitutes wages, the shares or options are taken to be paid or payable in the jurisdiction where the Australian company is registered.

For further guidance on the application of the nexus provisions, please refer to [Revenue Ruling PTA039: Payroll Tax Nexus Provisions](#).

Definition of wages

Having established the circumstances in which wages are taxable in South Australia, it is necessary to consider what constitutes 'wages'.

The definition of 'wages' in the Act is broad and is not restricted to wages or salaries.

The term 'wages' includes:

- ▶ salaries and wages;
- ▶ remuneration;
- ▶ bonuses;
- ▶ commissions;
- ▶ allowances;
- ▶ employment termination payments and accrued leave paid on termination;
- ▶ fringe benefits;
- ▶ shares and options;
- ▶ employer-funded (pre-income tax) superannuation contributions including non-monetary contributions;
- ▶ salary sacrifice; and
- ▶ any remuneration paid to or in relation to company directors or members of the governing body (e.g. directors' fees).

This list is not exhaustive.

Please refer to the [checklist of taxable items](#) for further guidance on the types of payments that are subject to payroll tax.

Payments to on-hired employment agency workers or relevant contractors may also be taxable

For further information see [contractors](#) and [employment agency contracts](#)

If you are uncertain on whether a particular class of worker or payments made to them is subject to payroll tax please contact RevenueSA.

Indirect payments

'Wages' do not have to be paid directly by an employer to an employee in order to be taxable. Payments to a person other than an employee, or payments by a person other than the employer, are subject to tax where the payments are made in relation to an employee's services. For example, an entertainment allowance paid to an employee's spouse is taxable as it is a payment to a third party in relation to the employee's services.

Wages & salaries

Taxable wages and salaries are the gross wages and salaries paid including any Pay-As-You-Go (PAYG) withholding amounts or other deductions made by an employer on behalf of an employee. Taxable wages include such payments as overtime pay, penalty payments, sick pay, holiday pay and leave loadings.

Goods & Services Tax (GST)

Payroll tax is not payable on the Goods and Services Tax (GST) component that may arise in payments to employees or deemed employees.

Annual, sick & 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 payroll 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 payroll 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 payroll tax whenever paid.

Jury duty

There is no exemption in respect of payments made to an employee who is on jury duty.

Allowances

As a general rule, allowances are taxable in full even if they are paid to compensate an employee for an expense which may be (or has been) incurred in relation to work (e.g. uniform allowances). This is the case even if an allowance is paid under an award or employment agreement (e.g. overtime meal allowances).

For further information see [Revenue Ruling PTA005\[V2\]: Exempt Allowances](#)

The only exceptions to the general rule that allowances are taxable in full are motor vehicle allowances, accommodation allowances and living away from home allowances.

Motor vehicle allowances

A motor vehicle allowance paid or payable to an employee is taxable only to the extent that it exceeds the exempt rate per kilometre, or an amount calculated at the exempt component. 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;
- ▶ the Australian Taxation Office (ATO) 12-week averaging method; or
- ▶ some other method the Commissioner may approve in writing.

If the number of business kilometres is not recorded via one of the methods described above, the full allowance will be taxable.

The prescribed rate is aligned with the rate determined by the Federal Commissioner of Taxation.

The current prescribed rate can be located on the [Rates and Thresholds](#) page.

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.

For further information see [Revenue Ruling PTA005\[V2\]: Exempt Allowances](#)

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.

For information on motor vehicle allowances paid to real estate salespersons, see [Revenue Ruling PTA025: Motor Vehicle Allowance Paid to Real Estate Salespersons](#)

Accommodation allowances

An accommodation allowance paid or payable to an employee is taxable only to the extent that the allowance exceeds the exempt rate. Wages do not include an accommodation allowance that does not exceed the exempt rate.

The exempt rate for payroll 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 current prescribed rate can be located on the [Rates and Thresholds](#) page.

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 their usual place of residence.

For further information see [Revenue Ruling PTA005\[V2\]: Exempt Allowances](#)

For information on accommodation allowances paid to truck drivers, see [Revenue Ruling PTA024: Overnight Accommodation Allowances Paid to Truck Drivers](#)

Living away from home allowances

A living away from home allowance is paid to compensate an employee for additional expenses they may incur as a result of being required to temporarily live away from home in order to perform their duties of employment. This usually occurs where the employee has been required to work temporarily at another location, which necessitates a temporary change in residence. The allowance will include components designed to compensate for additional food and accommodation costs. It is distinguishable from a travel allowance which is paid to an employee to compensate for accommodation, meals and incidental expenses incurred while the employee is travelling on a short-term assignment not involving a temporary relocation of the employee's place of employment.

Generally, a living away from home allowance is a fringe benefit under Section 30 of the *Fringe Benefits Taxation Assessment Act 1986* (Cwlth) (the "FBT Act").

If the allowance falls within the definition of a living away from home allowance under Section 30 of the FBT Act, the taxable value of the benefit under the FBT Act, grossed-up by the Type 2 factor as shown on the FBT Act return is subject to payroll tax. However, if the allowance is not considered a living away from home allowance under the FBT Act, the treatment of the allowance for payroll tax purposes will be the same as the treatment of an accommodation allowance (see above).

Reimbursements

Reimbursements of expenses incurred by employees on behalf of their employers are not taxable unless they have a taxable value under the FBT Act.

For a payment to be considered a reimbursement, it must have the following two characteristics:

1. the expense must be incurred by the employee and the precise amount is reimbursed, or if the payment was made in advance, a receipt relating to the expense must be given to the employer along with any change; and

2. the expense must be incurred in the course of the employer's business.

If a payment does not have both characteristics, it is not considered a reimbursement and is generally taxable in full.

Termination payments

The Act provides that certain payments made to an employee on termination of employment are subject to payroll tax. Specifically, the following payments are taxable:

- ▶ payments for actual services rendered up to the date of termination;
- ▶ accrued annual and long service leave; and
- ▶ employment termination payments.

Accrued leave

Both accrued annual leave and long service leave payments are taxable when paid to an employee on termination of the employee's services. It should be noted that leave payments paid to a continuing employee are also subject to payroll tax.

Employment termination payments

Payroll tax applies to an employment termination payment (formerly eligible termination payment) (ETP), as defined in Section 82-130 of the *Income Tax Assessment Act 1997* (Cwlth) (the "ITAA 1997"), when paid by an employer as a result of an employee's termination.

The amount subject to payroll 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 payroll tax).

Fringe benefits

The definition of wages for payroll tax purposes includes any fringe benefits as defined in the FBT Act.

Therefore, as a general rule, benefits that are taxable under the FBT Act are also taxable under the Act and must be declared as wages for payroll tax purposes. The only exception to this general rule is a tax-exempt body entertainment fringe benefit as defined in the FBT Act. Although tax-exempt body entertainment fringe

benefits are subject to FBT, they are specifically exempt for payroll tax purposes.

If a benefit is exempt under the FBT Act (e.g. a laptop computer) it is also exempt from payroll tax. In addition, if a fringe benefit has a nil taxable value for FBT purposes (e.g. the taxable value is reduced to nil under the otherwise deductible rule), it also has a nil taxable value for payroll tax purposes.

Records used to substantiate FBT claims made to the ATO are also acceptable for payroll tax.

Calculating the fringe benefit value

Under the FBT Act, fringe benefits are categorised into two types depending on the GST implications:

- ▶ Type 1 fringe benefits for which the employer can claim a GST input tax credit; and
- ▶ Type 2 fringe benefits for which the employer cannot claim a GST input tax credit.

The fringe benefit taxable value for payroll tax purposes is determined by grossing up all fringe benefits by using only the **Type 2 factor**.

Gross-up rates for fringe benefits are available on the [ATO website](#)

Please note that the ATO requires that certain fringe benefits, referred to as the 'reportable fringe benefits amount', must be shown on the employee's payment summary if the benefits amount exceeds \$2000. These reportable fringe benefits may not include the value of all fringe benefits provided to employees and is not necessarily the amount to be used for payroll tax purposes.

Declaring fringe benefit value

Employers are required to declare in their monthly returns the actual value of fringe benefits provided in each month. However, for administrative ease, past and present payroll tax legislation allows employers to formally elect to adopt an alternative method, whereby the amounts declared are based on the FBT returns submitted to the ATO.

Where such an election is made, employers must include in each monthly payroll tax return from July to May, one-twelfth of the taxable value (for payroll tax purposes) of fringe benefits using the FBT return for the year ending 31 March immediately preceding the start of each financial year. The annual reconciliation for each financial year will include the taxable value (for payroll tax purposes) of fringe benefits declared in the FBT return ending 31 March immediately before the annual reconciliation.

Where an employer had made an election to adopt the alternative method of declaring fringe benefits under the old Act, the election remains in force and the employer is not required to make a further election under the Act.

Once an election is made, an employer will not be permitted to revert to declaring the actual value of

fringe benefits in monthly payroll tax returns, unless the Commissioner gives approval in writing.

An employer must not use a combination of methods.

Share & options

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 payroll 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.

A 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 the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded. From 1 July 2013, the vesting date for a share is the earlier of either the date as defined above or the date at the end of seven years from the date on which the share is granted to the employee.

The vesting date for an option is the earlier of either one of two dates (and from 1 July 2013, one of the three dates). The dates are:

1. when the share to which the option relates is granted to the employee;
2. when the right under the option to have the relevant share transferred, allotted or vested is exercised by the employee; or
3. from 1 July 2013, at the end of the period of seven years from the date on which the option is granted to the employee.

If the granting of a share or option constitutes wages, the amount of the wages is the value of the share or option on the relevant day, less any consideration paid or given by the employee for the grant (excluding consideration in the form of services rendered). The value of a share or an option is the market value or the amount determined as provided for in Section 83A-315 of the ITAA 1997 and Division 83A of the *Income Tax Assessment Regulations 1997* (Cwlth).

If an employer does not include the value of a grant of a share or option in its taxable wages for the financial year in which the grant occurred, the wages constituted by the grant are taken to have been paid or payable on the vesting date of the share or option.

Therefore, where a share or option granted after 1 July 2007 has not been declared for payroll tax purposes before 1 July 2013, i.e. the employer elects the relevant date as the vesting date, the seven year vesting date is the latest date for vesting unless the other specified vesting events occur before the end of the seven years.

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 date on which that occurs is deemed to be the vesting date and the taxable amount is taken to be the value of the consideration.

The seven year vesting date still applies to shares and options that have been forfeited or lapsed prior to seven years from the grant date if the other specified events have not occurred for those cases where the employer has elected the vesting date as the relevant date. However, as such shares/options have been forfeited or lapsed prior to seven years from the grant date, the value of the shares/options at the seven year vesting date is regarded as being nil because the share/option does not exist at that time.

Superannuation contributions

The definition of wages includes all employer-funded superannuation contributions.

Superannuation subject to payroll tax includes employer contributions paid or payable:

- ▶ to a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth);
- ▶ as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cwlth);
- ▶ to or as a form of superannuation, provident or retirement fund or scheme, including to the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* (Cwlth), and a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* (Cwlth);
- ▶ involving 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 contribution), or 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 the employee under any form of superannuation, provident or retirement fund or scheme; or
- ▶ in respect of an employee who is a member of the old or new scheme of superannuation under the *Superannuation Act 1988* (Cwlth) or of any other unfunded or partly funded scheme of superannuation. The Treasurer may estimate the contingent liability of an employer for contributions that will be payable and that estimate may be treated as a contribution paid or payable by an employer

in respect of an employee for the purposes of the definition of a superannuation contribution.

Please note that taxable superannuation contributions include:

- ▶ superannuation contributions paid or payable in respect of a company director (including a non-employee director), or in respect of a person taken to be an employee under the contractor provisions in **Division 7**;
- ▶ non-monetary contributions to a superannuation fund on behalf of an employee, a contractor deemed to be an employee or a director. The value of these contributions is to be worked out in accordance with **Section 43**.

Contribution holidays

In respect of contribution holidays, where it is determined that an employer is on a contribution holiday, as a result of a superannuation fund being in surplus, and the trustee(s) during that period nonetheless credit amounts to accounts of individual members of the fund, such crediting will be considered a superannuation benefit, and therefore will constitute wages liable to payroll tax.

Salary sacrifice arrangements

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 payroll tax.

A salary sacrifice arrangement refers to an arrangement between an employer and the employee whereby the employee agrees to forego part of their future salary or wage in return for some other form of non-cash benefits of equivalent cost to the employer.

The non-cash benefits provided may include pre-tax superannuation contributions, the provision of a motor vehicle, a laptop computer or similar portable computer, car parking fees, payment of school fees or the payment of membership fees and subscriptions.

The ATO treats 'effective salary sacrificing arrangements' and 'ineffective salary sacrificing arrangements' differently.

Please contact the ATO for further information about the income tax treatment of 'effective' and 'ineffective' salary sacrifice arrangements

Under an effective salary sacrifice arrangement:

1. the employee pays income tax on the reduced salary or wage;
2. salary sacrificed (pre-tax) superannuation contributions are classified as employer contributions (not employee contributions); and
3. the employer may be liable to pay FBT on the fringe benefits provided.

The payroll tax treatment under an effective salary sacrifice arrangement is as follows:

1. the reduced salary or wage on which the employee pays income tax is treated as taxable wages;
2. the pre-tax superannuation contribution classified as the employer contribution is taxable; and
3. the taxable value of the benefit under the FBT Act, grossed-up by the Type 2 factor as shown on the FBT Act return is taxable.

If the benefit provided to the employee is exempt from FBT (e.g. laptop computer) no payroll tax is payable in respect of the amount sacrificed for that benefit. Payroll tax is payable only on the reduced salary on which the employee pays income tax.

Some employees agree to make regular donations to charitable organisations of their choice under a 'Workplace Giving' program. This arrangement is not a salary sacrifice arrangement because the ATO requires that the normal gross salary must be stated on the employee's payment summary. Payroll tax is payable on the normal gross salary.

The following examples outline the payroll tax treatment of various salary sacrifice arrangements.

Example

1. An employee has a current salary of \$70 000 per annum. The employee negotiates with the employer for the provision of a car under a salary sacrifice arrangement.

The new salary will be reduced to \$58 000 per annum. The taxable value grossed-up by the Type 2 factor of the motor car for FBT purposes is \$6350. Payroll tax will be payable on the \$58 000 salary and the FBT taxable value grossed-up by the Type 2 factor of \$6350.

2. An employee's current salary is \$65 000 per annum. The employee negotiates with the employer for the purchase of a laptop computer (cost of \$3000) under a salary sacrifice arrangement.

The new salary will be reduced to \$62 000 per annum. The laptop is exempt from FBT. Therefore, payroll tax is payable on the \$62 000 salary.

3. An employee's current annual salary is \$60 000. The employee also makes after-tax (personal) superannuation contributions of \$5400 per annum. The employee negotiates with the employer to replace the after-tax superannuation contributions with salary sacrifice (pre-tax) contributions.

Therefore, the salary for the next financial year will be reduced to \$54 600 and the employer will make a pre-tax superannuation contribution of \$5400. Payroll tax is payable on the \$54 600 salary and the employer pre-tax superannuation contribution of \$5400.

Remuneration to directors or members of the governing body

Remuneration to directors or members of the governing body, such as director fees, superannuation, allowances, fringe benefits and shares and options, are subject to payroll tax. This applies for both working and non-working directors or members of the governing body.

Contractors

Under certain circumstances, payments to contractors are taxable. Generally, those circumstances are where the contractor:

- ▶ provides essentially labour services; and
- ▶ works exclusively or primarily for one principal.

The provisions relating to contractors deem such contractors to be 'employees' and the payments made to them, excluding GST, are deemed to be wages.

The term 'contractors' is a generic one, which includes sub-contractors, consultants and outworkers. The provisions apply regardless of whether the contractor provides services via a company, trust, partnership or as a sole trader.

In practical terms, the contractor provisions initially capture all contracts for the performance of work. However, the provisions contain several exemptions and if any one exemption applies to a particular contract, the payments under that contract are not taxable.

These provisions also allow the Commissioner to disregard, and treat as taxable, an arrangement that exists only to reduce or avoid payroll tax.

For certain types of contractors where the contractor provides equipment and/or materials, the Commissioner allows a percentage deduction from gross payments for non-labour components.

Types of contractors and their deduction percentages are outlined in [Revenue Ruling PTA018: Contractor Deductions](#).

Two [contractor decision tools](#) are available to assist you in determining whether any payments made to contractors are liable for payroll tax.

Employment agency contracts

The employment agency provisions in **Division 8, Part 3** apply to a labour hire arrangement where a person (the employment agent) contracts with another (the client) for the provision of labour where there is no agreement between the service provider (i.e. contract worker) and the client. Employment agencies who engage persons to provide services to their clients under an employment agency contract are liable to payroll tax. Payroll tax is calculated on any amount paid to the contract worker from any source in relation to that contract and the value of any fringe benefits and superannuation contributions provided for the contract worker.

Section 38 deems an employment agent under an employment agency contract to be the employer, and the contract worker under an employment agency contract to be an employee of the employment agent.

Any payments made by the employment agent to or on behalf of the contract worker, including fringe benefits and superannuation, are deemed to be wages for payroll tax purposes and are subject to payroll tax.

Care should be taken in determining if the employment agency provisions contained in **Section 37** apply to your organisation.

These provisions apply regardless of whether the relationship between the contract worker and the employment agency is one of principal/contractor or employer/employee.

Where the Employment Agency provisions **DO** apply the following amounts will not be taxable:

- ▶ any amount paid in respect of the employment agent's fee(s);
- ▶ any amount paid in respect of services provided to a client that was an **exempt employer** under the provisions of **Part 4** except for **Division 4** or **5** of that Part, **Section 50** or under **Part 3** of **Schedule 2** (other than clause 17). In these situations, the **exempt employer** is to provide the employment agent with a statement stating that they are exempt from payroll tax.

Please note that the **relevant contractor provisions are not applicable** where a contract worker is provided under an employment agency contract.

For further information see [Information Circular No 28: Employment Agency](#) and [Revenue Ruling PTA026 \[V2\]: Employment Agency Contracts Declaration by Exempt Employees](#).

Exempt wages and other non-liable payments

Workers compensation

An employer is not liable to payroll tax in respect of payments made to an employee under the provisions of the *Return to Work Act 2014* (the "R2W Act"), including compensation payments made by a ReturnToWorkSA exempt employer and income maintenance payments of not more than two weeks wages made under the provisions of the R2W Act.

In relation to self-insurers, all compensation made pursuant to the provisions of workers compensation legislation is exempt from payroll 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 payroll tax.

Redundancy payments

A genuine redundancy payment or early retirement payment paid to an employee on termination is exempt from payroll tax if it is exempt from income tax. However, the exemption applies only to the income-tax-free component of such a payment. Any amount of a genuine redundancy payment or early retirement payment, paid in excess of the income-tax-free limit, is subject to payroll tax.

Maternity & adoption leave

Wages paid to employees on maternity leave or adoption leave are exempt from payroll 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 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;
- ▶ 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.

For further guidance on the treatment of maternity and adoption leave, please refer to [**Revenue Ruling PTA012: Exemption for Maternity and Adoption Leave Pay**](#).

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.

Payments made by an employer to an employee under the Commonwealth Paid Parental Scheme are not taxable for payroll tax as they are not payments for services performed by the employee.

For further guidance on the treatment of payment made under the Commonwealth Paid Parental Scheme, please refer to [**Revenue Ruling PTA037: Paid Parental Leave**](#).

Defence force payment

Payments to employees who are absent from work due to being a member of the Defence Force of the Commonwealth or the armed forces of any part of the Commonwealth of Nations are exempt from payroll tax. It does not apply to employees who are on official leave (e.g. recreation or long service leave).

Volunteer emergency workers

Payments to employees who are absent from work to volunteer as fire fighters, or to respond to other emergencies, are exempt from payroll tax. This exemption may apply to emergency workers volunteering for organisations such as the South Australian:

- ▶ Country Fire Services (CFS);
- ▶ Metropolitan Fire Services (MFS); and
- ▶ State Emergency Services (SES).

It does not apply to employees who are on official leave (e.g. recreation or long service leave).

Community Development Employment Project (CDEP)

Wages paid to an indigenous person who is employed under a Community Development Employment Project funded by the Commonwealth Department of Education, Employment and Workplace Relations, or the Torres Strait Regional Authority, are exempt from payroll tax.

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 payroll tax purposes.

Grouping of employers

The Act contains provisions that allow for the grouping of employers.

The grouping provisions have the effect of adding together the wages paid by group employers and allowing only the designated group employer to claim the deduction.

See [**tax rates and thresholds**](#) for further details of deduction entitlements

A group will exist where any of the following four circumstances applies:

- (a) corporations are related under Section 50 of the *Corporations Act 2001* (Cwlth);
- (b) there is an inter-use or sharing of employees between two or more businesses;
- (c) the same person has (or two or more persons, together, have) a controlling interest in each of two or more businesses (where those businesses are carried on by separate legal entities); or
- (d) an entity (i.e. a person or set of associated persons) has a controlling interest in a corporation.

If a person is a member of two or more groups, the member of all the groups together constitute a group.

For further information see [Information Circular No 4: Payroll Tax Groupings](#)

It is important to note that where the same person owns two or more businesses (that operate under the same Australian Business Number [ABN]), it is not necessary to consider the grouping provisions. In such cases, there is only one employer for payroll tax purposes and the wages paid in respect of each business must be combined in the return lodged by that employer.

Joint and several liability of group members

Any tax (including interest and/or penalty tax) payable under the Act and/or TAA by a member, or members of a group, is a debt due jointly and severally by every group member (employer or not) who was a member of the group during the period in respect of which the liability arose.

Exclusion from a group

The Commissioner has discretion to exclude a member from a group if satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the Commissioner considers relevant, that a business conducted by that member is carried on independently of, and is not connected with the carrying on of, a businesses carried on by the any other member of the group. However, this discretion is not available for a group constituted under (a) above other than where a corporate trustee is involved.

Administration issues

Duties of agents, trustees, liquidators etc.

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 payroll tax returns and pay the required tax if the wages paid or payable by the representative are liable for payroll tax.

Each payroll 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 payroll tax from any money belonging to that person held by the representative.

A representative is personally liable for the payroll 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 payroll 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 payroll tax from the trustee or executor or administrator of an estate, as they would have had against the employer if that person were alive.

Liquidators

A liquidator is required to give notice to the Commissioner of their appointment as liquidator within 14 days of that appointment.

Duties of employer representatives

Update contact information

Legal entity name and contact details can be modified online via RevenueSA Online, and can be done quickly and easily without the need to notify RevenueSA in writing or send any supporting documentation.

To update contact details online, simply login to RevenueSA Online (using your username and password) and select the **maintain** icon to modify/change current details.

To access RevenueSA Online, please visit:
revenuesaonline.sa.gov.au

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:

1. a market rate; and
2. a premium component (currently 8%).

Pursuant to Section 26(2) of the TAA, the 'market rate', in relation to interest accruing at any time during a particular financial year, is the average rate of the 90-day Bank Accepted Bill Rate prescribed by the Reserve Bank of Australia for the month of May preceding the financial year, unless a Ministerial order setting the rate is in force.

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.

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. In instances of a deliberate default, the TAA imposes a penalty of 75% and in any other case a penalty of 25%.

Provision is made for reduction of these penalties, subject to the taxpayer making sufficient disclosure in relation to tax default, 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).

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/or penalty tax.

Record keeping

The TAA provides that every employer shall keep or cause to be kept, sufficient records, which enable the employer's liability in respect of payroll tax to be calculated accurately. Those records must be preserved for a period of not less than five years following the completion of any transaction to which they relate.

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; and
- ▶ 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.

Audits & investigations

RevenueSA promotes voluntary disclosures 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. To be considered a sufficient disclosure, to qualify for a reduced rate of penalty tax, 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 numerous compliance programs. Employers are targeted for audit on the basis of information obtained from a variety of sources.

In the majority of cases, audits commence with an employer being contacted via letter. 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 (including 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 (but not be limited to):

- ▶ detailed Financial Statements/Annual Reports;
- ▶ copies of Trust Deeds or Share or Unit Trust Registers or Partnership agreements (for grouping purposes);
- ▶ copies of director/shareholder/unit holder/partner meeting Minutes;
- ▶ details of wages paid, including group certificates, wage books and fringe benefit and superannuation working papers;
- ▶ details of wages recorded in computerised or manual payroll system records;
- ▶ details of contractors engaged and any associated records;
- ▶ cash payment journals;
- ▶ general ledger and chart of accounts;
- ▶ Australian Taxation Office FBT Return (if applicable), and any FBT working papers;
- ▶ 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.

On occasions, the Commissioner will enter in to an agreement with interstate counterparts to perform audits on their behalf or to have an audit conducted for RevenueSA. Such audits will be conducted using reciprocal powers pursuant to the provisions of the TAA.

On completion of an investigation, RevenueSA will divulge relevant information to other state revenue offices and/or the ATO where such information is pertinent to the assessment of tax by such organisations pursuant to the TAA.

Visit RevenueSA's website revenuesa.sa.gov.au for further details

Objections & appeals

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 has been customary for the Minister to extend the time frame in almost all eligible cases, however an application in writing must be lodged with the Minister.

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 50% of the tax assessed (not including interest or penalty tax) which relates to the appeal has been paid.

Overpayment of tax

Application for refund

Refund requests may be made in respect of tax paid within the last five years, providing the Commissioner has not previously made an assessment of the tax liability for which the payment was made.

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 a refund or overpayment to an existing debt due under another taxation law. This includes offsetting a refund or overpayment against the debt of another member or members of a group.

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 payroll tax in January could be offset against the tax due in February.

Checklist of taxable items

The following checklist provides guidance on the payroll tax treatment of certain items based on the legislation in effect at the time of publication. It may be subject to future change.

Remuneration Item	Taxable or Exempt	Comments
Accommodation	Fringe benefit - taxable	The supply of the accommodation to an employee.
Accommodation allowances	Fringe benefit - taxable under certain conditions	Allowance paid to an employee to cover short term away from home expenses. Exempt up to an approved rate. Amount paid over the exempt rate is taxable.
Adoption leave	Exempt wages under certain conditions	Exempt up to 14 weeks, if not taken as official leave (annual, long service or sick leave).
Allowances	Taxable under certain conditions	Motor vehicle allowance and accommodation allowance have an exempt component.
Annual leave (recreation leave, holiday pay)	Taxable	This is a component of the gross wage or salary payable to an employee.
Apprentices wages	Taxable	Prior to 30 June 2010, a rebate was available. Between 1 July 2010 and 30 June 2012 an exemption was available. From 1 July 2012 these are taxable, however a grant scheme is administered by DFEEST.
Back pay	Taxable	Taxable as gross wages when paid.
Benefits	Fringe benefit - taxable	An advantage in relation to an employee that has a monetary value.
Building Industry Redundancy Scheme Trust contributions	Not Taxable	
Board & quarters	Fringe benefit - taxable	Meal and board provided to an employee under an arrangement by the employer.
Bonuses	Taxable	Incentive or reward for outstanding service.
Car allowance	Taxable	<i>Please refer to 'motor vehicle allowances'.</i>
Car parking	Fringe benefit - taxable	Employers providing or paying car parking expenses for an employee.
Clothing allowance	Taxable	Compensation for purchases such as overalls.
Commissions	Taxable	An amount paid to an employee based on sales.
Construction industry long service leave contributions	Not taxable	
Consultants fees	Taxable under certain conditions	Taxable if the consultant is an employee or deemed employee.
Contractors	Taxable under certain conditions	Taxable if the contractor is a deemed employee. An exemption under the contractor provisions may apply.
Debt waivers	Fringe benefit - taxable	This is where an employer releases an employee from a debt that is connected to their employment. However, a debt that is written off as a bad debt is not a debt waiver benefit.
Deemed Wages	Taxable	Amounts paid to workers not called employees but where an employer/employee relationship exists.

Defence force payments	Exempt	Payments to employees while absent to to work in the Defence Service. Does not apply if employee is on official leave (e.g. recreational or long service leave).
Directors fees	Taxable	Payment to a director or member of the governing body of that company for service.
Dirt allowances	Taxable	Paid to compensate for working in unusually dirty conditions.
Discounted Staff Purchases	Fringe benefit - taxable	Value of the discount is taxable as a fringe benefit.
Dividends	Not taxable	
Education expenses	Fringe benefit - taxable	The employer pays the employee's enrolment fees and/or other expenses related to education.
Employee Share Acquisition Scheme	Taxable	The value of an employer's contribution to an employee's acquisition of shares or rights to shares is taxable.
Employment agency personnel	Taxable under certain conditions	Where an Employment Agency on hires workers to an employer who then pays a fee to the Employment Agency, the Employment Agency is the deemed employer and liable for payroll tax.
Entertainment allowances	Fringe benefit - taxable	Paid to compensate an employee for such expenses as taking a client to lunch.
Entertainment allowances - tax exempt body	Exempt wages	Wages from exempt bodies are exempt from payroll tax under Section 12 of the <i>Payroll Tax Act 2009</i> .
Footwear allowances	Taxable	Compensation to an employee for having to purchase particular types of footwear, e.g. safety boots.
Fringe benefits	Taxable	Value of benefits grossed up by Type 2 rate. FBT exempt items also exempt from payroll tax.
Golden handshake payments	Taxable	Please refer to 'Termination Payments'.
Government wages	Taxable	Paid to a person holding office under the Crown, or in the service of the Crown, in the right of the State of South Australia, e.g. South Australian State public servants.
Gratuitous payments	Not taxable	'Tips' that a worker may receive from a client, as gratitude for good service. Note: The client must not be their employer or this may form part of a taxable wage.
Gross wages	Taxable	Payments made to an employee for services rendered.
Health insurance	Fringe benefit - taxable	Where an employer pays all or part of an employee's health insurance expense.
Holiday pay	Taxable	<i>Please refer to 'Annual Leave</i> .
Housing	Fringe benefit - taxable	Where an employer gives the employee the right to reside in or use accommodation as a usual place of residence.
Jury duty	Taxable	Payment made to an employee while on jury duty.
Leave loading	Taxable	This is a component of the gross wage or salary payable to an employee.
Living away from home allowances	Fringe benefit - taxable	Payment to the employee to compensate for additional expenses incurred due to living away from home in order to perform their duties.

Loans (Interest free/ low interest)	Fringe benefit - taxable	A loan given to the employee from the employer at an interest rate that is lower than the statutory rate set in the <i>Fringe Benefit Tax Assessment Act 1986</i> .
Long service leave	Taxable	This is a component of the gross wage or salary payable to an employee.
Make up pay	Taxable	<i>Please refer to 'Workers Compensation Payments'.</i>
Maternity leave (from 1 July 2008)	Exempt wages under certain conditions	Exempt up to 14 weeks, if not taken as official leave (recreation, long service or sick leave).
Meal allowances	Taxable	Paid to an employee as recompense for having to purchase a meal, e.g. a State Public Servant who works overtime may be entitled to a meal allowance.
Meals	Fringe benefit - taxable	Any meal provided to an employee under an award or arrangement by the employer.
Motor vehicles	Fringe benefit - taxable	Where a car is owned or leased by an employer and is made available for private use to an employee.
Motor vehicle allowances	Taxable under certain conditions	Paid to compensate the employee for the use of the employee's private motor vehicle. Exempt up to an approved rate. Amount paid over the exempt rate is taxable.
Overtime	Taxable	This is a component of the gross wage or salary payable to an employee.
Paid Parental Leave Scheme (Cwlth)	Not taxable	Payments made to an employee from funds received by employer from Commonwealth Government under PPL Scheme.
Paternity leave	Taxable	Paternity leave is taxable.
Partners drawings	Not taxable	This is the money that a business partner withdraws from their business. It can reduce the partner's equity.
Payment in kind	Taxable	For example, a fruit shop attendant may be given half their pay in cash and half in fruit and vegetables. In such a case the whole value of the payment is taken to be the wage.
Piece-work payments	Taxable	Generally paid on the basis of a set amount per unit of production, e.g. \$100 for every tonne of fruit picked.
Prizes	Fringe benefit - taxable	Fringe benefit when received as a consequence of employment, e.g. a prize of an overseas holiday for achieving certain sales results.
Professional advice	Fringe benefit - taxable	For example, if the employer paid solicitor's fees for an employee in relation to a personal matter.
Profit Distribution	Not Taxable	Profit distributions or dividend payments to a director of a business are not taxable. Distributions of profit are taxable where they are given for work performed or services provided by an employee and are paid in lieu of wages (either wholly or in part).
Redundancy payments	Taxable under certain conditions	<i>Please refer to 'Termination Payments'.</i>
Reimbursements (business expenses)	Fringe benefit - taxable	Where an employer reimburses an employee for a business expense incurred by the employee. Usually for a precise amount based on a receipt.
Relocation expenses	Fringe benefit - taxable	Payments to provide moving costs for an employee.
Rental subsidy allowances	Fringe benefit - taxable	Payments made by an employer to subsidise the rental costs of an employee.

School fees	Fringe benefit - taxable	Payment made by an employer to pay, or part pay, school fees incurred by an employee.
Share & options	Taxable	The value of an employer's contribution to an employee's acquisition of shares or rights to shares is taxable.
Shift allowances	Taxable	Allowances paid to compensate for working specific shifts.
Sick leave	Taxable	This is a component of the gross wage or salary payable to an employee.
Site allowances	Taxable	Allowance paid to compensate for working in particular sites.
Staff discounts	Taxable	Value of the discount is taxable at the FBT Type 2 grossed up value.
Subcontractors	Taxable under certain conditions	Taxable if subcontractor is deemed employee. An exemption under the contractor provisions may apply.
Subsidised wages - Government Grants	Taxable	Subsidies or partial repayment of wages from a government authority.
Subscriptions	Fringe benefit - taxable	Private subscription expenses that is paid by the employer, e.g. membership subscription to the Australian Institute of Management.
Superannuation benefits (employer)	Taxable	All pre-tax employer contributions are taxable.
Taxi fares - business use	Not Taxable	Taxi fares paid or reimbursed by the employer for work related travel.
Taxi fares - private use	Fringe benefit - taxable	These are private taxi fares paid or reimbursed by the employer.
Telephone account payments	Fringe benefit - taxable	Private telephone expenses paid by the employer.
Termination payments	Taxable under certain conditions	All termination payments are taxable. Only income tax exempt amounts relating to genuine redundancy or early retirement schemes are exempt.
Tool allowances	Taxable	Allowances paid to an employee to compensate for tool expenses.
Trainee wages	Taxable	From 1 July 2012 these are taxable.
Uniform allowances	Taxable	Allowances paid to an employee to compensate for uniform expenses.
Volunteer emergency workers	Exempt wages under certain conditions	Payments to employees while absent to perform emergency services duty. Does not apply if employee is on official leave (e.g. recreation or long service leave).
Wages	Taxable	Gross wages are taxable.
Workers compensation payments	Not taxable	Compensation payments made to an employee in accordance with an applicable workers compensation scheme. Any 'top up' payments are taxable.