

Payroll Tax General Information Circular

Payroll Tax Act 2007

Payroll Tax is governed by the *Pay-roll Tax Act 1971* and the *Payroll Tax Act 2007*, which took effect from 1 July 2007. It is a State tax calculated on wages paid or payable and applies in all States and Territories of Australia. It is collected and administered in accordance with the *Taxation Administration Act 1997*.

This circular provides a brief explanation of Victorian payroll tax.



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Preface

This circular provides an explanation of an employer's Victorian payroll tax responsibilities but it does not constitute a Revenue Ruling. If any uncertainty exists with a particular aspect of the information provided, please seek advice from the State Revenue Office. The information provided in this circular is correct at the time of printing.

References and abbreviations frequently used in this circular are as follows:

States	Includes the Australian Capital Territory and the Northern Territory
SRO	State Revenue Office, Victoria
ATO	Australian Taxation Office
the Act	<i>Payroll Tax Act 2007</i> (Victoria)
the old Act	<i>Pay-roll Tax Act 1971</i> (Victoria)
the ITAA	<i>Income Tax Assessment Act 1997</i> (Commonwealth)
FBT	Fringe Benefits Tax
the FBTA	<i>Fringe Benefits Tax Assessment Act 1986</i> (Commonwealth)
the TAA	<i>Taxation Administration Act 1997</i> (Victoria)
GTO	Group training organisation

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 exceed the Victorian general exemption level. An employer's Australian wages comprise its Victorian wages and all interstate wages. In Victoria, payroll tax is collected and administered in accordance with the Act, which replaced the old Act from 1 July 2007. The Act provides for various transitional arrangements relating to the operation of the old Act. Victorian 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-assess their liability on a monthly basis and perform an annual reconciliation at the end of the financial year.

From 1 July 2007, Victoria and New South Wales introduced harmonised payroll tax legislation designed to simplify administration and reduce red tape. The harmonisation of payroll tax legislation means that although each State continues to have different payroll tax rates and general deduction thresholds, the payroll tax legislation in these States is virtually identical. As of 1 July 2008 Tasmania, Queensland and Australian Capital Territory harmonised their payroll tax legislation with Victoria and New South Wales. South Australia and the Northern Territory harmonised their payroll tax legislation on 1 July 2009. At the time of publication (April 2010), Western Australia is in the process of harmonising their payroll tax legislation with all other Australian jurisdictions.

revenue rulings

The SRO publishes Revenue Rulings designed to help employers meet their obligations under the Act and provide the SRO 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 www.sro.vic.gov.au

In addition to legislative harmony, Victoria and its counterparts are committed to greater administrative consistency. As a result, a number of Australian jurisdictions, including Victoria, have commenced the process of harmonising all of their Payroll Tax Revenue Rulings in the harmonised areas. Victoria and New South Wales have already published over 35 joint Revenue Rulings.

Preface

who must register for payroll tax?

Employers who pay wages in Victoria must register for payroll tax if during any one month, their total Australian wages exceed the relevant monthly exemption level. Monthly exemption levels are detailed on page 27 of this circular. 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 page 21 for further details about groups of employers.

Employers must register as described above and pay tax by the seventh day of the month following the month in which their wages exceeded the exemption level. Penalty tax and interest may be payable on any unpaid tax if an employer who is liable for payroll tax fails to register.

Registration must be completed electronically via the 'Register for payroll tax' link on the SRO's website at www.sro.vic.gov.au.

Once your registration has been submitted, the SRO will confirm your registration and provide information on how to access the 'PTXpress' online service.



The SRO has a range of online applications designed to simplify the way employers comply with their payroll tax obligations. Available applications include:

User access	the secure gateway that enables employers to control access levels and securely manage passwords for multiple users
Lodge a monthly return	allows electronic lodgement and online payment of monthly payroll tax liabilities
Electronic annual reconciliation (e-AR)	allows for online submission of end of year reconciliation
Apply for refund	allows for application for refund to be submitted online
Update your records	provides the facility to check and update payroll tax records as held by the SRO
Register for payroll tax	allows employers to register for payroll tax online

For an online demonstration visit our website www.sro.vic.gov.au.

Exempt employers

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

- a non-profit organisation, having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose, for wages paid to persons engaged exclusively in that kind of work
- public benevolent institutions, for wages paid or payable to persons engaged exclusively in work of a public benevolent nature
- religious institutions, for wages paid or payable to persons engaged exclusively in the religious work of that institution
- non-profit non-government schools, for wages paid or payable to persons providing education at or below secondary level
- public hospitals, as listed in Schedule 1 to the *Health Services Act 1988 (Vic)*, for wages paid or payable to persons engaged exclusively in the work of the hospital
- non-profit hospitals, for wages paid or payable to persons engaged exclusively in the work of the hospital
- municipalities, other than wages paid or payable in connection with specified business activities such as the supply of water or electricity
- school councils (from 1 July 2004), within the meaning of the *Education and Training Reform Act 2006 (Vic)*, for wages paid or payable to persons in relation to the provision of education
- approved non-profit GTOs (from 1 January 2005), for wages paid or payable to new entrants (eligible apprentices and trainees)
- an ambulance service, a community health centre, a denomination hospital, a multi-purpose service, a public health service, or the Victorian Institute of Forensic Mental Health (from 1 July 2006), for wages paid or payable to persons engaged exclusively in the work of the organisation

Wages are exempt from payroll tax when wages are paid or payable for work or a kind ordinarily performed in connection with the objects of the organisation.

Employers who believe that they are exempt from payroll tax should apply to the SRO for a private ruling on their exempt status.

Payroll tax returns

The two types of returns required for payroll tax are **monthly returns** and **annual reconciliation returns**.

monthly returns

Every employer registered for payroll tax in Victoria must pay tax every month, unless the Commissioner of State Revenue (the Commissioner) has given approval to pay tax annually. The Commissioner will generally approve this only if the estimated tax payable in a full financial year is less than \$10,000, in which case the employer will only lodge an annual reconciliation return.

Monthly returns are to be lodged via the 'PTXExpress' online service. Payments of tax for wages paid in a calendar month must be made by the seventh day of the following month. Payment options include Online Payment via the 'PTXExpress' online service, Electronic Funds Transfer (EFT) or BPAY. If no tax is payable for a particular month, the employer is still required to lodge a 'nil' return online for that month.

annual reconciliation returns

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 and make any necessary adjustments to correct overpayments or underpayments made during the year.

The due date for completion and lodgement of the annual reconciliation return is 21 July. Completion of the annual reconciliation return is an electronic process conducted via the SRO's website. Full details of the annual reconciliation process are sent to registered employers in the months leading up to June each year.

Over or under-declarations in previous years must not be included in the annual reconciliation form for the current period, but should be disclosed separately. An application for a refund of an over-declaration of payroll tax in the annual reconciliation must be made before the end of the financial year following the financial year in respect of which the refund is due.

(See 'Refunds' section on page 26 for over-declarations of tax and 'Interest and Penalty Tax' section on page 26 for under-declarations of tax).

calculations

The Act provides that when it is necessary to calculate proportions or apply a formula for payroll tax purposes, cents are to be disregarded. If the apportionment of a threshold amount is required, the Act sets out formulae which use the number of days in the financial year as the denominator.

Calculation of payroll tax

Payroll tax is generally payable monthly. The tax payable is calculated by subtracting an approved deduction (if applicable) from the gross taxable Victorian wages and multiplying the difference by the relevant tax rate for that period.

$$(\text{GROSS TAXABLE VICTORIAN WAGES} - \text{DEDUCTION}) \times \text{TAX RATE} = \text{PAYROLL TAX PAYABLE}$$

The deductions and tax rates are detailed on page 27.

Example

M. Ployer Pty Ltd is a non-group employer who pays wages in Victoria only. During October 2008, M. Ployer Pty Ltd paid wages of \$75,000. The company's payroll tax liability for October 2008 is:

$$(\$75,000 - \$45,833) \times 4.95\% = \$1,443.76$$

The deduction an employer is entitled to claim may vary according to whether the employer is a member of a group or an interstate employer.

group employers

Employers who are members of a group (see section on 'Grouping Provisions' on page 21) are not all entitled to a deduction. Only one member who is designated by the group (the designated group employer) is entitled to claim a deduction on behalf of the group. The other members (the ordinary members) are not entitled to claim any deduction and must pay tax on their total Victorian wages.

interstate employers

Employers or groups of employers who also pay interstate wages are only entitled to a partial deduction in Victoria. This partial deduction is the maximum deduction, adjusted by the ratio of the total Victorian taxable wages to total Australian taxable wages. Estimates are provided by the employer in the prior year's annual reconciliation or at the time of registration.

Example

Interstate Pty Ltd provided estimates of wages for 2008-09 as follows:

Victoria	\$400,000
NSW	\$300,000
Queensland	\$100,000
<u>Total</u>	<u>\$800,000</u>

The monthly deduction is calculated as follows:

$$\$45,833 \times \$400,000 \div \$800,000 = \$22,917$$

If the gross taxable Victorian wages for Interstate Pty Ltd for October 2008 were \$35,000, the tax payable would be:

$$(\$35,000 - \$22,917) \times 4.95\% = \$598.10$$

Calculation of payroll tax

In the annual reconciliation return, all employers recalculate the full year's deduction based on actual Victorian and Australian wages. The annual reconciliation is completed electronically and can be accessed from mid-June via the 'PTXExpress' online service at www.sro.vic.gov.au.

part-period employers

Employers or groups of employers who do not pay wages for the whole of the financial year are required to calculate their tax liability using a pro-rata deduction. The reduced deduction is calculated according to the number of days the employer employed anywhere in Australia during the year.

$$\frac{\text{NUMBER OF DAYS EMPLOYER EMPLOYED}}{\text{FINANCIAL YEAR}} \times \text{MAXIMUM DEDUCTION} = \text{DEDUCTION}$$

Example

A company began to employ on 1 October 2008. The deduction for the 2008-09 financial year is as follows:

$$\frac{273}{365} \times \$550,000 = \$411,370$$

365

Wages subject to payroll tax

when are wages subject to payroll tax in Victoria?

The nexus provisions of the Act determine in which Australian jurisdiction a payroll tax liability arises. As at 1 July 2009, the nexus provisions were amended.

Pre 1 July 2009

Prior to 1 July 2009, in order to determine whether wages paid or payable to an employee were subject to payroll tax in Victoria, two factors had to be considered. Those factors were:

- the place where the services were performed, and
- the place where the wages were paid or payable.

As a general rule, where an employee provided services **wholly** in one Australian jurisdiction in a calendar month, payroll tax was paid in the jurisdiction where those services were performed, irrespective of where the wages were paid. However, where an employee provided services in more than one Australian jurisdiction or overseas in a calendar month, it was necessary to consider both where the work was performed and where the wages were paid. For example, where wages were paid by the employer into an employee's bank account, they were deemed to have been paid in the jurisdiction in which the employee held his or her bank account.

The following table illustrates the scenarios under which wages were previously taxable in Victoria:

Place where the wages were paid or payable	Where the services were performed during the calendar month
In Victoria	Wholly or partly in Victoria
In Victoria	In two or more States other than Victoria
In Victoria	Wholly in another country (or countries) on an assignment of less than six continuous months
In Victoria	Wholly or partly outside a State (as defined under the respective payroll tax legislation of the relevant State) but not in another country
In Victoria	Partly interstate and partly in another country (or countries)
In another State	Wholly in Victoria
Outside Australia	More than 50 per cent performed in Victoria

In circumstances other than those shown above, wages were not taxable in Victoria, but could have been taxable in another State.

Post 1 July 2009

The *State Taxation Acts Further Amendment Act 2009* (Vic), which received Royal Assent on 8 December 2009, introduced new nexus provisions in the Act which apply retrospectively from 1 July 2009. These new 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 new 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 Australian 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 or payable in a number of jurisdictions, payroll tax is paid in the jurisdiction where the largest proportion of wages is paid. 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 his or her bank account.

Wages subject to payroll tax

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 Victoria if the services are mainly performed in Victoria in that calendar month (that is, the work performed in Victoria during that month is greater than 50 per cent).

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 Victoria if the wages are paid or payable in Victoria.

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:

- for a holiday, or
- to perform work that exclusively relates to the overseas assignment for a period of less than one month.

In either case, the employee must immediately return to that 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.

For further guidance on the application of the nexus provisions, please refer to Payroll Tax Bulletin 1/10 – Payroll Tax Nexus Provisions.

shares and options

Where wages comprise the grant of a share or option (for further information on shares and options, refer to *Definition of 'wages' – share and options* on page 15), the payroll tax liability (for the grant of a share or option) is also governed by the new nexus rules.

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 principal place of residence in an Australian jurisdiction, and the employer does not have a registered business address or a principal place of business in an Australian jurisdiction.
- 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 share is a share in a local company.

Definition of 'wages'

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

The definition of 'wages' in the Act is very broad and is not restricted to ordinary earnings.

The term 'wages' includes:

- wages
- remuneration
- salaries
- bonuses
- commissions
- allowances
- employment termination payments and accrued leave paid on termination
- fringe benefits
- shares and options
- employer-funded (pre-income tax) superannuation contributions
- any remuneration paid to or in relation to company directors or members of the governing body (e.g. directors' fees)
- payments to contractors in certain circumstances (see 'contractors' on page 17)
- payments to employment agencies in relation to certain on-hired workers up to 31 December 2004 (see 'employment agency contracts' on page 17), and
- payments made by employment agents to workers on-hired from 1 January 2005 (see 'employment agency contracts' on page 17).

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 and 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 payments such as overtime pay, penalty payments, sick pay, holiday pay and leave loadings.

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

Payroll tax is not payable on the GST component that may arise in payments to employees or deemed employees.

Definition of 'wages'

allowances and reimbursements

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).

The only exceptions to the general rule that allowances are taxable in full relate to motor vehicle, accommodation and living away from home allowances. Under the Act, from 1 July 2007, new conditions apply for motor vehicle and accommodation allowances.

MOTOR VEHICLE ALLOWANCES

Motor vehicle allowances are paid to compensate employees for any business use of their own private vehicle.

From 1 July 2007, wages do not include the exempt component of a motor vehicle allowance. Therefore if the motor vehicle allowance does not exceed the exempt component, the allowance is not included as wages. However, any amount in excess of the exempt component is taxable.

The exempt component is calculated using the formula $E = K \times R$

where –

E is the exempt component

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

R is the exempt rate

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

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

The exempt rate for payroll tax purposes is the rate prescribed by the regulations under section 28-25 of the ITAA used to calculate a deduction for car expenses for a large car using the "cents per kilometre method" for the previous financial year.

Payments made to employees in respect of the business use of vehicles provided by the employer are fully taxable for payroll tax purposes.

ACCOMMODATION ALLOWANCES

Accommodation allowances are paid to cover temporary accommodation costs necessarily incurred as a consequence of employment.

From 1 July 2007, wages do not include an accommodation allowance that does not exceed the exempt rate. The 'exempt rate' is based on the related ATO figure, and it is the total reasonable amount for daily travel allowances using the lowest capital city for the lowest salary band for the financial year.

Definition of 'wages'

LIVING AWAY FROM HOME ALLOWANCES

A living away from home allowance is paid to compensate an employee for additional expenses he or she may incur as a result of being required to temporarily live away from home in order to perform his or her 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. This 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 FBTAA.

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

The payroll tax rules for fringe benefits are fully explained on page 14.

For further guidance on the treatment of motor vehicle, accommodation and living away from home allowances, please refer to Revenue Ruling PTA-005 - Exempt Allowances: Motor Vehicle and Accommodation.

REIMBURSEMENTS

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

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

1. the expense must be incurred by the employee with the precise amount then 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. Similarly, if a reimbursement is subject to fringe benefits tax, it is also subject to payroll tax regardless of whether the reimbursement has both of the above characteristics.

For further guidance regarding the treatment of reimbursements, please refer to Revenue Ruling PTA-011 - Allowances and Reimbursements.

termination payments

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

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

Definition of 'wages'

EMPLOYMENT TERMINATION PAYMENTS

Payroll tax applies to an employment termination payment (ETP), as defined in section 82-130 of the ITAA, when paid by an employer as a result of an employee's termination. The amount subject to 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,
- genuine redundancy payment or early retirement payments in excess of the income tax free limit.

For further guidance on the treatment of termination payments, please refer to Revenue Ruling PTA-004 - Termination Payments.

fringe benefits

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

Therefore, as a general rule, benefits that are taxable under the FBTA 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 FBTA. Although tax-exempt body fringe benefits are subject to FBT, they are specifically exempt for payroll tax purposes.

If a benefit is exempt under the FBTA (e.g. a portable electronic device such as a laptop) 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 FRINGE BENEFIT VALUE

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

From 1 July 2007, the fringe benefit taxable value for payroll tax purposes is determined by grossing up all fringe benefits by using only the Type 2 factor of 1.8692.

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 \$1000. 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.

Before 1 July 2007, the fringe benefit taxable value for payroll tax purposes was the grossed up value of the fringe benefit as calculated under the FBTA.

Definition of 'wages'

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 return 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 return.

Where an employer 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 approval is given in writing by the Commissioner.

An employer must not use a combination of methods.

For further guidance on the treatment of fringe benefits, please refer to Revenue Ruling PTA-003 - Fringe Benefits.

shares and options

Before 1 July 2007, the value of shares and options granted to employees was not subject to payroll tax.

However, from 1 July 2007, 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 or member (or former member) of the governing body of the company 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 which apply to granting the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded. The vesting date for an option is the earlier of either one of two dates:

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

If the granting of a share or option constitutes wages, the amount of wages is the market 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), as determined in accordance with the income tax provisions contained in Subdivision F of Division 13A of Part III of the *Income Tax Assessment Act 1936* (Cth).

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.

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 were not met. 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 a share or option, 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 granting of a share or option, which is classified as a fringe benefit under the FBTA is not treated as a fringe benefit, but rather as wages for payroll tax purposes.

Definition of 'wages'

superannuation contributions

The definition of wages includes all employer-funded (before income tax) superannuation contributions in taxable wages.

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

- to superannuation funds within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth)
- as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)
- to the Superannuation Holding Accounts (SHA) special account (formerly known as Superannuation Holding Accounts Reserve) within the meaning of the *Small Superannuation Accounts Act 1995* (Cth)
- to a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* (Cth), and
- as top-up payments to any other form of superannuation fund or scheme including payments to or in relation to unfunded or partly-funded superannuation schemes.

Note that taxable superannuation payments include payments paid in relation to both employees and deemed employees (e.g. certain contractors).

It should also be noted that from 1 July 2007 the value of any non-monetary employer-funded superannuation contribution is taxable for payroll tax purposes.

For further guidance on the treatment of superannuation contributions, please refer to our website at www.sro.vic.gov.au

salary sacrifice arrangements

A salary sacrifice arrangement refers to an arrangement between an employer and 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 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 fringe benefits tax 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 FBTAA, grossed-up by the Type 2 factor as shown on the FBTAA return is taxable.

If the benefit provided to the employee is exempt from fringe benefits tax (e.g. a portable electronic device such as a laptop) 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.

Definition of 'wages'

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

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 fringe benefits tax purposes is \$6,350. Payroll tax will be payable on the \$58,000 salary and the FBT taxable value grossed-up by the Type 2 factor of \$6,350.

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 \$3,000) 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 \$5,400 per annum. The employee negotiates with the employer to replace the post-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 \$5,400. Payroll tax is payable on the \$54,600 salary and the employer pre-tax superannuation contribution of \$5,400.

contractors

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

- essentially provides 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 goods and services tax (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 applies to a particular contract, the payments under that contract are not taxable.

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

For further guidance on the application of the contractor provisions, please refer to our website at www.sro.vic.gov.au

employment agency contracts

The Act also imposes payroll tax on amounts paid under 'employment agency contracts'.

An employment agency contract is defined as:

'a contract, whether formal or informal and whether express or implied under which a person (employment agent) procures the services of another person (service provider) for a client of the employment agent'.

Before 1 January 2005, the client of an employment agent was liable for any payroll tax applicable and a number of arrangements and exemptions existed at that time to reflect that position.

Definition of 'wages'

Effective from 1 January 2005, the employment agency contract provisions were amended to shift the payroll tax liability from the client of the employment agency to the employment agency itself.

For employment agency contracts where services are provided on or after 1 January 2005, the employment agency is liable for payroll tax on the 'wages' paid to the on-hired worker.

Wages paid under an employment agency contract include:

- any amount paid or payable to or in relation to the on-hired worker in respect of the provision of services under the employment agency contract,
- the value of any fringe benefits provided to the on-hired worker, and
- any payment that would be a superannuation contribution if made in relation to the on-hired worker (in the capacity of an employee).

There is an exemption available under these provisions where the worker is on-hired to an employer that is exempt from payroll tax under Part 4 and Schedule 2 of the Act provided that the employer has made a declaration to the employment agency that they are in fact exempt.

An exemption is also provided for wages paid by approved GTOs to new entrants (eligible apprentices or trainees).

For further guidance on the treatment of employment agency contracts, please refer to our website at www.sro.vic.gov.au

Exempt payments

The following payments to employees are exempt from payroll tax:

workers' compensation payments

Payments of compensation made in accordance with any workers' compensation legislation (e.g. WorkCover compensation payments) are not taxable, whether such payments are made by the employer or the insurer. This is subject to a WorkCover claim being lodged with the insurer. The exemption includes the first ten days' compensation which the employer is usually required to pay. However, payments in excess of the amounts prescribed in the workers' compensation legislation (generally referred to as 'make up pay') are taxable. This includes any make up pay paid as part of the first ten days' compensation.

wages paid to apprentices and trainees

From 1 January 2004, wages paid or payable to all apprentices and trainees are subject to payroll tax.

From 1 January 2005, wages paid or payable by prescribed not-for-profit GTOs to apprentices who meet the criteria for funding as a 'new entrant' will be exempt from payroll tax when the apprentice is on-hired to a client of the GTO under an employment agency contract arrangement.

For a list of prescribed not-for-profit GTOs, please refer to Payroll Tax Publication PTX-005 - List of Approved Group Training Organisations.

defence force payments

Payments to employees while on leave to work in the Defence Force are exempt from 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 and adoption leave

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

- all wages (other than fringe benefits) paid or payable to female employees taking maternity leave and male and female employees taking adoption leave are exempt;
- the exemption does not apply to paid sick leave, annual leave, recreation leave, long service leave or any 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 (in respect of any pregnancy or adoption); and
- the exemption applies irrespective of whether the leave is taken before or after the birth or adoption.

To claim the maternity leave exemption, the employer must obtain a medical certificate or statutory declaration from the employee which specifies that the employee was pregnant or that the employee has given birth and the date of birth. To claim the adoption leave exemption, the employer must obtain a statutory declaration from the employee stating that a child has been placed in the employee's custody pending the making of an adoption order or that an adoption order has been made or recognised in the employee's favour.

For further guidance on the treatment of maternity and adoption leave, please refer to Revenue Ruling PTA-012 - Exemption for Maternity and Adoption Leave Pay.

Exempt payments

volunteer emergency workers

From 1 November 2006, payments (wages paid or payable) 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 Country Fire Authority and VicSES, Red Cross, St John's Ambulance, Volunteer Coastguards or Life Saving Victoria. It does not apply to employees who are on official leave (e.g. recreation leave, long service leave or sick leave).

community development employment project

From 1 July 2007, wages paid to an aboriginal person who is employed under a Community Development Employment Project funded by the Commonwealth Department of Employment and Workplace Relations or the Torres Strait Regional Authority will be exempt from payroll tax.

Grouping provisions

grouping provisions

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.

Technically, a group will exist where any of the following four circumstances applies:

- i. corporations are related under section 50 of the *Corporations Act 2001* (Cth)
- ii. there is an inter-use or sharing of employees between two or more businesses
- iii. a person or set of persons together have, a controlling interest in two or more businesses (where those businesses are carried on by separate legal entities), or
- iv. an entity (i.e. a person or set of associated persons) have a controlling interest in a corporation.

It is important to note that where the same person owns two or more businesses, it is not necessary to consider the grouping provisions. In such cases, there is only one legal employer and the wages paid in respect of each business must be combined in the return lodged by that employer.

The Commissioner may exclude a member from a group if he is satisfied that the business conducted by that member is independent of, and unconnected with, the businesses conducted by the other members of the group. This discretion is not available for a group constituted under (i) above.

For further guidance on the application of the grouping provisions, please refer to our website at www.sro.vic.gov.au

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 (April 2010). It may be subject to future change.

Remuneration item	Taxable or exempt
Accommodation	F
Accommodation allowances	C
Adoption leave (1 January 2003 onwards)	E
Agency-supplied staff	C
Allowances	C
Annual leave	T
Annual leave paid on termination	T
Apprentices' wages (pre 1 January 2004)	C
Apprentices' wages (1 January 2004 onwards)	T
Apprentices' wages (approved GTOs) 1 January 2005 onwards	E
Back pay	T
Benefits	F
Board and quarters	F
Bona fide redundancy payments (tax-free component)	E
Bonuses	T
Car allowances	C
Car parking	F
Clothing allowances	T
Commissions	T
Consultants' fees	C
Contractor payments	C
Credit cards	F
Debt waivers	F
Defence Force payments	E
Directors' fees	T
Dirt allowances	T
Discounted staff purchases	F
Education expenses	F
Employer-funded (pre-income tax) superannuation contributions	T
Employment agency personnel	C

T Taxable

C Taxable under certain conditions

F Taxability to be determined in accordance with the *Fringe Benefits Tax Assessment Act 1986* (Cth)

E Exempt

Checklist of taxable items

Remuneration item	Taxable or exempt	
Entertainment allowances	T	T Taxable
Footwear allowances	T	C Taxable under certain conditions
Fringe benefits	F	F Taxability to be determined in accordance with the <i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)
Gifts	F	E Exempt
Gross wages	T	
Health insurance	F	
Holiday pay	T	
Housing	F	
Leave loading	T	
Living away from home allowances	F	
Loans (interest free/low interest)	F	
Long service leave	T	
Make up pay	T	
Maternity leave (1 January 2003 onwards)	E	
Meals	F	
Meal allowances	T	
Motor vehicles	F	
Motor vehicle allowances	C	
Options	T	
Outworker payments	C	
Overtime	T	
Overtime meal allowances	T	
Paternity leave	T	
Pay in lieu of notice	T	
Piece-work payments	T	
Prizes	F	
Professional advice	F	
Redundancy payments	C	
Reimbursements (business expenses)	F	
Relocation payments	F	
Rental subsidy allowances	T	
Representation allowances	T	
School fees	F	

Checklist of taxable items

Remuneration item	Taxable or exempt	
Share schemes	T	T Taxable
Shift allowances	T	C Taxable under certain conditions
Sick pay	T	
Site allowances	T	F Taxability to be determined in accordance with the <i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)
Staff discounts	F	
Subcontractors	C	
Subscriptions	F	
Superannuation contributions (pre-income tax/employer)	T	
Taxi fares	F	E Exempt
Telephone account payments	F	
Termination payments		
· Accrued annual leave and long service leave	T	
· Employment termination payments	T	
· Bona-fide redundancy payments (income tax free component)	E	
· Bona-fide redundancy payments in excess of tax free component	T	
Tool allowances	T	
Trainees' wages (pre-1 January 2004)	C	
Trainees' wages (1 January 2004 onwards)	T	
Travel (free or subsidised)	F	
Travel allowances	C	
Uniform allowances	T	
Vouchers	F	
Workers' compensation payments	E	

Administration issues

All provisions relating to the administration of payroll tax are contained in the TAA. The TAA includes provisions on a broad range of administrative matters including:

- record keeping requirements
- investigative powers
- objections and appeals
- interest and penalty tax
- refunds

record keeping requirements

Employers must keep records necessary to determine their payroll tax liability for five years from the date of a transaction or the date the record was first prepared or obtained unless the Commissioner has approved otherwise. The records must be kept so that they are accessible to the Commissioner and must be kept in English or in a form which is readily translatable into English.

investigative powers

The SRO conducts an investigation program targeting employers of varying size, location and industry.

The TAA contains investigative powers which allow an authorised officer to enter premises at any reasonable time without warrant and having gained entry, to search, inspect and copy records and documents. A person may also be required, by written notice, to provide information either orally or in writing, to produce records or other items, or attend in person and give evidence.

In most cases, investigations begin with the employer being contacted by telephone or in writing. Certain records and documents are requested to enable the investigator to determine if the employer has been complying with the Act. These records and documents may include financial statements, wage records and payment summaries, contractor details such as invoices and service contracts, cheque butts, general ledger and charts of accounts, and fringe benefits tax returns.

At the conclusion of the investigation, the findings of the investigation will be discussed with the employer or their representative.

objections and appeals

If an employer is dissatisfied with an assessment of their payroll tax liability or with certain other decisions, they may object in writing within 60 days of the date of service of the assessment or decision. The objection must be in writing, stating fully and in detail the grounds of the objection.

Similarly, if an employer is dissatisfied with a decision on their objection, within 60 days of that decision they may request in writing that the matter be referred to the Victorian Civil and Administrative Tribunal or the Supreme Court of Victoria for review or appeal.

Administration issues

interest and penalty tax

Both interest and penalty tax may be assessed on the late payment or non-payment of payroll tax.

Interest is calculated on the amount of unpaid tax on a daily basis from the due date of payment until, and including, the day upon which the tax is paid or a date agreed with the Commissioner, whichever is the earlier. Interest is calculated under the provisions of section 25 of the TAA. Interest calculations generally combine two rates: an 8 per cent premium rate and a market rate. Below is a table of the applicable market rates.

1 July 2009 onwards	3.13% pa
1 July 2008 – 30 June 2009	7.75% pa
1 July 2007 – 30 June 2008	6.37% pa
1 July 2006 – 30 June 2007	5.88% pa
1 July 2005 – 30 June 2006	5.68% pa
1 July 2004 – 30 June 2005	5.51% pa
1 July 2003 – 30 June 2004	4.78% pa
1 July 2002 – 30 June 2003	4.84% pa
1 July 2001 – 30 June 2002	4.96% pa
1 July 2000 – 30 June 2001	5.95% pa

The rate of penalty tax is based on the circumstances that led to the late payment or non-payment of tax. The rate varies between 25 per cent of the primary tax in cases of failure to take reasonable care and 75 per cent if there has been an intentional disregard of the law. If the employer voluntarily discloses the non-payment or underpayment before an assessment is issued, the penalty tax rate will be reduced. If the employer obstructs or hinders a tax investigation, the penalty tax rate will be increased.

In circumstances where the Commissioner is satisfied that the employer has taken reasonable care to comply, or the late payment or non-payment occurred due to circumstances beyond their control, no penalty tax will be imposed.

The Commissioner may reduce penalty tax and interest either partly or fully in certain circumstances.

For further guidance on the treatment of interest and penalty tax, please refer to Revenue Rulings PTA-036 - Payroll Tax - Interest and Penalty Tax and TAA-007 - Interest and Penalty Tax.

refunds

If employers believe they have overpaid payroll tax, they are entitled to apply for a refund. An application for a refund of an overpayment made after 1 July 2004 can be made if it is received within five years of the date of the overpayment.

Claims for a refund need to be in a form approved by the Commissioner. Forms can be obtained from the SRO's website or by contacting the SRO.

For further guidance on the treatment of refunds, please refer to Revenue Ruling TAA-002 - Refunds.

Deductions and tax rates

annual

Period	Maximum deduction	Rate
1 July 2010 onwards	\$550,000	4.90%
1 July 2008 to 30 June 2010	\$550,000	4.95%
1 January 2007 to 30 June 2008	\$550,000	5.05%
1 July 2006 to 31 December 2006	\$550,000	5.15%
1 July 2003 to 30 June 2006	\$550,000	5.25%
1 July 2002 to 30 June 2003	\$550,000	5.35%
1 July 2001 to 30 June 2002	\$515,000	5.45%
1 July 2000 to 30 June 2001	\$515,000	5.75%
1 July 1999 to 30 June 2000	\$515,000	5.75%
1 July 1998 to 30 June 1999	\$515,000	6%
1 July 1997 to 30 June 1998	\$515,000	6.25%

monthly

Period	Maximum deduction	Rate
1 July 2010 onwards	\$45,833	4.90%
1 July 2008 to 30 June 2010	\$45,833	4.95%
1 January 2007 to 30 June 2008	\$45,833	5.05%
1 July 2006 to 31 December 2006	\$45,833	5.15%
1 July 2003 to 30 June 2006	\$45,833	5.25%
1 July 2002 to 30 June 2003	\$45,833	5.35%
1 July 2001 to 30 June 2002	\$42,917	5.45%
1 July 2000 to 30 June 2001	\$42,917	5.75%
1 July 1999 to 30 June 2000	\$42,917	5.75%
1 July 1998 to 30 June 1999	\$42,917	6%
1 July 1997 to 30 June 1998	\$42,917	6.25%

Further information

This circular contains guidelines and information which are correct at the time of printing but which may be subject to change.

Further information

For further information or assistance, please contact the State Revenue Office:

Internet	www.sro.vic.gov.au
Email	sro@sro.vic.gov.au
Phone	13 21 61 (local call cost)
Fax	03 9628 6631
In person	State Revenue Office Level 2 121 Exhibition Street Melbourne Victoria For SRO counter service hours, please visit www.sro.vic.gov.au/counter
Mail	State Revenue Office GPO Box 1641 MELBOURNE VIC 3001
or	DX 260090 MELBOURNE

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