

# NSW Payroll Tax 2009

## Seminar Notes



# Contents

	Page
Harmonisation	2
Payroll tax rates	2
NSW taxable wages	3
Wages	5
Exemptions	12
Grouping of employers	14
Registration and returns	18
Taxation Administration Act	18

# Harmonisation

In response to business concerns about the compliance costs of eight different versions of payroll tax around Australia, all jurisdictions agreed to harmonise eight key aspects of payroll tax by 1 July 2008. NSW and Victoria introduced essentially identical legislation from 1 July 2007 and this wording was adopted by Queensland and Tasmania from 1 July 2008. South Australia and the Northern Territory will follow from 1 July 2009.

ACT and Western Australia are harmonised in the eight key areas and may fully harmonise in the future.

Eight key areas. NSW and Victoria 1/7/2007 remainder 1/7/2008

1. Timing of payment
2. Employees working overseas
3. Shares and options
4. Motor vehicle allowances
5. Accommodation allowances
6. Fringe benefits
7. Superannuation contributions
8. Grouping provisions

All jurisdictions are also committed to consistency of interpretation for identical legislation. NSW and Victoria have jointly issued 35 Revenue Rulings and other States have agreed to adopt these rulings when their legislation is the same.

## Payroll tax rates

All jurisdictions have a threshold deduction and the NSW threshold deduction for the 2008–09 financial year is \$623 000. A NSW employer with \$1 000 000 of taxable wages would get a deduction of \$623 000 and pay tax on \$377 000.

The threshold deduction for the 2009–10 financial year is \$638 000. The amount of the deduction is indexed to the Sydney CPI.

### The threshold deduction is reduced in two situations:

1. If the NSW employer pays wages in other States or Territories, the threshold for NSW is reduced on a proportional basis.

#### Example

An employer has total Australian wages of \$2 million with \$500 000 in each of NSW, Victoria, Australian Capital Territory and Western Australia for the 2009–10 financial year.

The NSW threshold deduction would be:

NSW	$\frac{\$ 500\ 000}{\$ 2\ 000\ 000}$	x	\$ 638 000	=	\$ 159 500
			Taxable wages	=	\$ 340 500

- The NSW employer employs in NSW for only part of a financial year.

### Example

An employer ceases to employ on 31/12/2009. That is 184 days out of 365.

$\frac{184 \text{ days}}{365 \text{ days}}$	x	\$ 638 000	=	\$ 321 621
Wages paid in first 184 days \$450 000				
		Taxable wages	=	\$ 128 379

## Rates

The 2008 NSW State budget contained three payroll tax rate reductions from 1/1/2009.

Period	%
1996 to 31/12/2008	6
1/1/2009 to 30/12/2009	5.75
1/1/2010 to 31/12/2010	5.65
1/1/2011 onwards	5.5

## Monthly returns and rates

Monthly returns are due on the seventh day of the month following the month in which taxable wages were paid or payable that exceeded the monthly threshold. The monthly returns for July to December 2008 are at 6 per cent and from January 2009 to December 2009 at 5.75 per cent. From January 2010 the rate changes to 5.65 per cent.

## Annual returns

The 2008–09 annual reconciliation return will use the 6 per cent rate for 184 days and the 5.75 per cent rate for 181 days. Each 6 month period has its own threshold deduction. If the wages in one half of the year are below the threshold deduction for that half, the unused threshold amount will be added to the other half in the annual reconciliation.

All wages paid or payable for services performed up to and including 31 December 2008 must be returned in the July to December returns at 6 per cent including the return due on 7 January 2009 for the December wages.

Wages declared in the Annual return that were not payable for services in any particular month such as FBT adjustments, are declared as June wages at 5.75 per cent.

# NSW taxable wages

All jurisdictions have identical provisions to determine in which State a wage is a taxable wage. A month's wages can only be liable in a single jurisdiction even if work for that month is performed in 2 or more jurisdictions. A wage is taxable in NSW based on two criteria:

- Where the work is performed, or
- Where the wages are received by the employee.

**When all the work in a month is wholly performed in NSW**

All the wages paid or payable for that work are taxable in NSW.

**Work in a month is performed in two or more States in Australia**

All the wages paid or payable for that work are taxable in NSW if the employee is paid for that work in NSW, or paid into an account opened up in NSW.

**Work is performed overseas for up to six continuous months and paid or payable in NSW**

All the wages paid or payable in NSW are taxable in NSW.

**Work is performed overseas for more than six continuous months and paid or payable in NSW**

None of the wages are taxable in NSW.

**Work in a month is mainly performed in NSW and paid overseas**

All the wages are taxable in NSW if more than 50 per cent of the work was performed in NSW that month. The 50 per cent is determined using days worked in a month.

## Where wages are paid or payable

To determine where a wage is paid or payable, the location of the business is not relevant. Where an employee is paid is a simple question of fact.

If an employee is paid:

- into an account, it is the place where the account is held
- by post, it is the physical address the wages are sent to
- by cash in hand, it is the place of payment.

Until an employee changes it, the physical location of the branch in which the employees account was opened will determine in which jurisdiction it is.

## Wages paid for multi month services

Not all taxable wages are paid or payable to an employee in the month of service. A good example is a termination payment such as paid out leave. Paid out leave is not a payable wage in the months and years it accrues and is only taxable when paid. When two or more months of service are involved in a paid wage, only the service in the month of payment is used to determine where the wages are taxable.

**Example**

- Charles Brown ceased employment after eight years service. During that time he worked in both NSW and Queensland. In January 2009, the last month he is paid, he works in both States. Charles is paid into a NSW account so all of the termination payment is taxable in NSW.
- Linda Green has the same work history but in January 2009, the last month she is paid, she works only in NSW. Linda Green's termination payment is all taxable in NSW irrespective of where she is paid.

## Taxable wages revenue ruling

*NSW Payroll Tax Liability for Wages Paid by an Employer (PTA 001)*

# Wages

Payroll tax is a tax on wages and wages are comprehensively defined in nine divisions of the *Payroll Tax Act 2007*.

## Division 1 – General concept of wages

Wages means wages, remuneration, salary, commission, bonuses, or allowances paid or payable to an employee.

Wages also includes any amount paid or payable:

- as remuneration to a person holding office under the Crown, and
- as the labour content under any prescribed class of contract, and
- as remuneration to or in relation to a director of that company, and
- as commission to an insurance or part-time canvasser or collector, and
- as wages under any other provision of the *Payroll Tax Act 2007*.

Wages are taxable wages:

- whether paid or payable, at piece work rates or otherwise, and
- whether paid or payable in cash or in kind.

The general concept of wages is the basis of almost all taxable wages.

## Wages revenue rulings

*Wage Subsidies (PTA 010)*

*Workers Compensation Payments (PTA 015)*

*Profit Distributions and Loan Accounts (PTA 016)*

*GST Considerations for the Calculation of Payroll Tax Liability (PTA 008)*

## Employees

OSR uses the common law precedents established by courts to determine if a worker is a common law employee. The taxation status of the worker or their holding of an ABN is not relevant for common law.

The total relationship between the business and the worker determines the form of contract. If an underlying relationship of employment is found, that will overturn the stated intention of the parties and the employer will become liable for all the costs associated with employees.

Employment law is complex and if unsure of your workforce's employment status you should seek assistance from OSR.

## Incorporation

When an employer contracts with a corporation for the labour of an individual, there is no contract of employment between the individual person and the employer. While the worker is not an employee, the payments to the company can be deemed to be wages as the contract is subject to the contractor provisions, Division 7, *Payroll Tax Act 2007*.

## Division 2 – Fringe benefits

The Commonwealth *Fringe Benefits Tax Assessment Act 1986* has been the basis of taxing benefits since 1990. This includes using the rulings of the Australian Taxation Office in regards to exempt and reportable fringe benefits.

The value for NSW payroll tax from 1 July 2007, is the taxable value of the fringe benefits grossed up using the gross up rate for 'Type 2 benefits' specified in the *Fringe Benefits Tax Assessment Act*. This is the lesser of the two multipliers and does not contain a GST component.

## Example

A business has in their 31 March 2009, FBT return \$100 000 of type 1 Aggregate Fringe Benefits Amounts and \$300 000 of type 2 Aggregate Fringe Benefits Amounts. The total value of \$400 000 is multiplied by 1.8692 to \$747 680. This is used for the July 2009 annual reconciliation and one twelfth (\$62 307) becomes the basis of the monthly returns for 2009–10.

**Note:** The returnable value shown on the taxation statements of employees is not the value to be returned for payroll tax. The full taxable value of the fringe benefits for the employer is the basis of the tax liability.

Employers with 15 months or more of fringe benefit payments may return their FBT wages as one twelfth of the previous year's FBT return. These payments are reconciled against the 30 March FBT return in the current year as part of the annual reconciliation. If an employer has interstate wages they can pro-rata their FBT value for NSW based on the ratio of NSW wages to total Australian wages if they can not accurately determine their NSW fringe benefit value.

## Fringe benefits revenue ruling

*Fringe Benefits (PTA 003)*

## Division 3 – Superannuation contributions

All contributions, including non monetary contributions such as property, made in respect of an employee or deemed employee to a superannuation, provident or retirement fund or scheme are wages. This includes the super guarantee charge; salary sacrificed superannuation and any additional payments paid on behalf of employees and directors, members of a corporation's governing body, contractors under relevant contracts and service providers under the agency provisions. It includes money, or anything worth money, and includes top up payments to an unfunded scheme that were not paid during the time of service of the employee.

## Superannuation contributions revenue ruling

*Penalty Charges under Superannuation Guarantee Charge (PTA 030)*

## Division 4 – Shares and options

If an employer has a share or option scheme for its employees or directors or anyone else in receipt of taxable wages, the value of the shares or options are taxable wages. This provision was introduced on 1 July 2003.

Employers can elect to declare the value on the day of the grant or wait until the shares or options vest. If they don't choose to declare on grant they must declare on vesting. The taxable value of a share or option is the market value determined under the Income Tax Assessment Act less any amount paid by the employee.

Employer share schemes vary enormously and comprehensive information is available on share schemes at [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au)

## Division 5 – Termination payments

Termination payments comprise:

- a) The value of an Employment Termination Payment (ETP) declarable as income for the Australian Taxation Office, and
- b) The value of all paid out annual and long service leave irrespective of when it was accrued.

The value of an ETP for payroll tax is that part of an ETP payment that would be included in the assessable income of that employee, or deemed employees, if the whole of the ETP had been paid to the employee or deemed employee.

Persons taken to be employees include directors, members of a corporation's governing body and contractors or others in receipt of taxable wages.

## **Termination payments revenue ruling**

*Termination Payments (PTA 004)*

## **Division 6 – Allowances**

Allowances paid to employees have always been taxable wages including such allowances as meal and laundry allowances. The *Payroll Tax Act 2007* contains concessions for those two allowances.

### **1. Motor vehicle allowances**

*Exempt Allowances (PTA 005)*

Motor vehicle allowances are only liable on an amount that exceeds the ATO limit on large motor vehicles. Business kilometres must be recorded using either the continuous recording method or averaging method used for ATO purposes.

Real estate agents may use PTA 025. If records of business kilometres are not kept, it sets an assumed distance of 250 kilometres per week.

For 2008–09 the ATO limit is 70 cents per kilometre

For 2009–10 the ATO limit is 75 cents per kilometre

### **2. Accommodation allowances**

For the 2008–09 tax year accommodation allowances are only liable on the amount that exceeds \$218.30 per night. The allowance must include an overnight component.

#### **Example**

An employee from Orange is sent to Sydney for three nights with an allowance of \$252.30 per night. \$252.30 less \$218.30 gives a returnable wage of \$34.00 per night for a total of \$102.00 to be declared as wages.

## **Reimbursements**

A reimbursement of an employee's business expense is not an allowance as long as it is substantiated. Amounts in excess of receipts will be taxable.

From 1 July 2008, OSR NSW accepts that when a daily meal and incidentals allowance is combined with the reimbursement of an accommodation expense, the value of the allowance will only be liable on amounts that exceed the daily limits set out by the ATO for substantiation. For 2008–09 the amount is \$101.30 per day.

#### **Example**

Employee receives daily allowance of \$75 and their accommodation is paid by the employer. As the \$75 is less than the substantiation limit, it is not taxable.

## Living away from home allowances

Such allowances are a fringe benefit subject to reasonable limits. Only the amount in excess of the ATO reasonable limits is liable as a fringe benefit.

## Allowances revenue rulings

*Exempt Allowances: Motor Vehicle and Accommodation (PTA 005)*

*Allowances and Reimbursements (PTA 011)*

*Overnight accommodation allowances paid to truck drivers (PTA 024)*

*Motor vehicle allowance paid to real estate salespersons (PTA 025)*

## Division 7 – Contractor provisions

All payments under contracts for services are potentially taxable wages. The party contracted can be a corporation, consultant, partnership or personal service business. The hiring business has the onus to prove the payments are not taxable wages and they must maintain records to substantiate that an exclusion applies to each contract for services.

### Relevant contracts

A relevant contract is a contract under which a business is supplied with services and includes a contract under which goods are supplied to natural persons for the re-supply of those goods to the business in a modified form.

Under a relevant contract:

- all the payments under the contract (except GST and materials) are taken to be wages.
- the person in receipt of deemed wages is taken to be an employee, and
- the persons (usually a corporation) paying those wages is taken to be an employer.

Nine types of contract are not included as relevant contracts but the nine provisions do not apply to contracts of service (employee contracts) or employment agency contracts.

Relevant contracts do not include:

1. Contracts under which the supply of labour is ancillary to the supply or use of goods owned by a contractor.
2. Contracts for services the business does not ordinarily require and which are provided by a person who provides such services to the general public.
3. Contracts for services ordinarily required for less than 180 days in the financial year by the hiring business.
4. Contracts under which a person provides services for up to or equal to 90 days in any one financial year.
5. Contracts that do not meet any of the above criteria, but the Chief Commissioner is satisfied are contracts for services that are provided by a person who provides services of that kind to the general public within that financial year.
6. Contracts under which the contractor engages additional labour to fulfil the contract. An exclusion is available when the contractor is:
  - a company with two or more employees who fulfil the terms of the contract.
  - a partnership of two or more persons which uses one or more partnership members plus one or more persons employed by, or who provide services for the partnership to fulfil the terms of the contract.

- when the contractor is a natural person and they and one or more persons employed by them, provide services to fulfil the terms of the contract.

If the Chief Commissioner is not satisfied, the additional labour is supplied to fulfil the terms of the contract, eg clerical work by a spouse, the Chief Commissioner may disregard that service and deny the exclusion.

7. A contract for the conveyance of goods in a vehicle provided by the person conveying them, or
8. A contract for services solely related to procuring persons who want to be insured, or
9. A contract for services related to the door-to-door sale of goods solely for domestic purposes.

Businesses that extensively use contractors or engage personal service businesses to perform core business services are those most likely to have payments taken to be wages under the provisions.

### Only the labour content is a taxable wage

Only the labour component of a relevant contract is a wage and so materials provided by the contractor are not wages. The Chief Commissioner accepts the following assumed material component but only when provided by the contractor. No reduction applies for other costs such as transport, home office, etc incurred by the contractor.

The following contains agreed percentage deductions for listed trades:

Trade	%
Architect	5
Bricklayer	30
Building supervisor (own vehicle)	25
Cabinet maker	30
Carpenter	30
Carpet layer	25
Computer programmer	5
Draft person	5
Electrician	25
Engineer	5
Fencer	25
Kitchen fixer	30
Painter with own paint	30
Plasterers (not board fixers)	20
Plumber	25
Roof tiler	25
Tree Feller	25
Vinyl layer	27
Wall and floor tiler	25

The above list only applies when the contractor does provide their own materials. If under the contract the principal provides all of the materials required there is no deduction.

## Example

A computer programmer works at a businesses location using equipment provided by the business. Assuming that the contract is not excluded 100 per cent of the value of the contract will be a wage.

## Contractor revenue rulings

Contractor exclusions and the contractor provisions are explained in 12 Revenue Rulings. Clients should refer to the specific ruling that applies to their situation to assist them in dealing with the meaning of the exclusions.

*Payroll Tax Exemption for Payments to Owner-Drivers (PTA 006)*

*Contractor Provisions – Door-to-Door Sale of Goods (PTA 007)*

*Fees Paid to Golf Professionals by Golf Clubs (PTA 013)*

*What Constitutes a Day's Work (PTA 014)*

*Contractor Deductions (PTA 018)*

*Contractors – Labour and Non-Labour Components (PTA 019)*

*Contractors – 180-Day Exemption (PTA 020)*

*Exemption for Contractors Ordinarily Rendering Services to the Public (PTA 021)*

*Contractors – Services Not Ordinarily Required (PTA 022)*

*Contractors Engaging others (PTA 023)*

*Contractors Services ancillary to the supply of goods (PTA 033)*

*Contractors 90 day exemption (PTA 035)*

## Division 8 – Employment agency contracts

An employment agency contract is a contract under which the agency, or labour hire firm, procures a worker for a client. Under the contract there is no intention to create a direct hire contract between the client and the worker. If a direct hire contract is created, the client will become the liable employer. Under an agency contract the agency is the employer to the exclusion of both the client and the worker.

Under an employment agency contract the amounts paid to the agency by the end user client are not wages. The amounts paid by the agency in connection with the work performed by the service provider are wages. This is so even if the service provider is paid through a corporation.

## Example

- a) An end user client pays \$12 000 to an agency and the agency pays \$10 000 to David Hunt, the service provider. The liable employer is the agency and the \$10 000 is a taxable wage.
- b) A business pays \$1 000 000 to an agency for the services of John Green. The agency pays \$800 000 to Green Pty Ltd. Green Pty Ltd then pays \$700 000 to John Green. The taxable wages are the \$800 000 paid by the agency to Green Pty Ltd.

## Exempt clients

Payments made by the agency to the service provider are exempt from payroll tax if the client of the agency is exempt from payroll tax. Exempt clients should provide an approved declaration that they are exempt. Exempt employers are organisations like public hospitals, religious organisations and charities.

Copies of the declaration form are available at [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au)

## Chain of hire

If two or more agencies are involved in providing a service provider to a client the liable agency is the one paid by the client. In most cases, the amounts paid by the agency to secure the service provider (worker), from another agency will be taxable wages.

### Example

A business pays \$120 000 to Agency 1 which pays \$110 000 to Agency 2 which pays \$100 000 to the service provider. Only Agency 1 is liable and the taxable wages are the \$110 000 paid to Agency 2.

If the Chief Commissioner determines that the effect of an employment agency contract is to reduce or avoid the liability of any party to the contract to payroll tax he may determine that any party to the contract is the liable employer.

## Employment Agencies revenue rulings

*Employment Agency Contracts Declaration by exempt clients (PTA 026)*

*Employment Agency Contracts Chain of on-hire (PTA 027)*

*Employment Agency Contracts - Workers on-hired to Government (PTA 028)*

*Recruitment Agencies/Placement Agencies/Job Placement Agencies (PTA 029)*

## Division 9 – Other taxable wages

### Value of wages paid in kind

Any form of remuneration not returnable as a normal wage, a share or a fringe benefit has a value as a wage equal to the value found in the arrangement between the employer and the employee or the market value, whichever is higher.

### Wages paid by group employers

Group members can include the wages of other group members in their wages.

### Wages paid by or to third parties

If an employee or director provides service to an employer all wages connected to that service are a taxable wage for the employer irrespective of who pays or receives the wage.

Three alternatives exist:

1. The wages are paid to a person other than the employee or director, or
2. The wages are paid by a person other than the employer, or
3. The wages are paid by a person other than an employer, to a person other than the employee or director.

If a director provides services to a corporation, all payments relating to that service are wages for the corporation the services were provided to, even if the payments are paid to another company or to a superannuation fund or other entity.

### Examples

- a) Malcolm's Meats Pty Ltd pays a Christmas bonus of one weeks pay per two years of service to the spouses of its employees. The amounts are taxable wages for Malcolm's Meats Pty Ltd.

- b) Bobs Building Supplies Pty Ltd pays Peter Vince \$90 000 a year as a director's fee and also \$450 000 as a consultancy fee to Peter Vince Consulting Pty Ltd. Both payments are taxable wages for Bobs Building Supplies Pty Ltd .

### **Agreements to reduce or avoid payroll tax**

If a natural person works for a business as an employee but their wages are paid to a company or other person connected to the natural person, and the effect of the agreement is to reduce or avoid the liability of any person to payroll tax, the Chief Commissioner may disregard the agreement and deem any party to the agreement an employer and any payments to be wages. The Chief Commissioner must use a written notice giving reasons for his decision.

### **GST excluded from wages**

If any wage paid by an employer contains a GST component, that component is not included as a wage.

## **Exemptions**

There are two types of payroll tax exemption:

1. Some or all of the wages paid by an organisation are exempt due to the nature of the organisation
2. Some wages are exempt when paid for a specific purpose, eg Maternity leave.

### **Type 1 exemptions**

1. Religious institutions, public benevolent institutions and non profit organisations with charitable objects have an exemption on wages paid to persons engaged in religious, benevolent, philanthropic, patriotic and charitable activities.

The exemption is on wages, not the organisation, and so a public benevolent institution, such as the Royal Blind Society would require 100 per cent of its staff to be engaged in supporting the charitable purposes of the organisation to get a complete exemption.

A non profit organisation that has non charitable objects and staff engaged in lobbying, commercial work, or work not clearly in support of a charitable object will not get an exemption on wages paid to those staff and so the level of exempt wages must be substantiated as part of the exemption request.

2. All non-profit organisations with charitable objects have an exemption on their wages.
3. Local Councils have an exemption on all their wages except those paid to staff engaged in certain trading activities for the supply of:
  - electricity or gas
  - water
  - sewerage, and
  - the operation of abattoirs, public markets, parking stations, cemeteries or crematoria, and hostels.

## Type 2 Exemptions

### 1. Maternity and adoption leave

Wages paid as maternity or adoption leave are exempt up to a 14 week full-time equivalent. The adoption leave exemption can apply to male employees.

This exemption does not apply to other forms of leave, in particular paternity leave.

#### **Example**

A business pays 10 weeks of paid maternity leave in relation to a female employee's pregnancy or birth of their child and the employee uses an extra four weeks annual leave and 10 weeks long service leave. Only the 10 weeks maternity leave is exempt.

### 2. Volunteer fire fighters and emergency service volunteers

A business gets an exemption on any wages paid or payable to an employee for any time they are away from work taking part in either:

- bushfire fighting activities as a volunteer officer or member of a brigade within the meaning of the *Rural Fires Act 1997*, or
- emergency activities within the meaning of the *State Emergency and Rescue Maintenance Act 1989*, as a volunteer emergency worker within the meaning of that Act.

The exemption does not apply to any form of paid leave.

### 3. Defence personnel

Wages paid or payable to any of your employees while they are on military leave as a member of the Defence Force of the Commonwealth or the armed forces or any part of the Commonwealth of Nations are exempt.

### 4. Approved non-profit group apprenticeship and traineeship schemes

Wages, including superannuation, allowances and fringe benefits are exempt wages if they are paid by a non-profit organisation declared to be an approved group training organisation.

## **Rebate for apprentice wages**

From 1 July 2008, employers can claim a rebate on wages paid to apprentices and to trainees (other than existing worker trainees). The rebate applies to all wages including allowances and superannuation. Wages paid to an employee who has worked three months before becoming a trainee do not get the rebate. The rebate can be claimed using the monthly calculator or as part of the annual return.

## **Revenue rulings**

*Payroll Tax Charitable Exemption – Meaning of Exclusively (PTA 009)*

*Exemption from Maternity and Adoption Leave Pay (PTA 012)*

# Grouping of employers

Grouping provisions have two effects on the members of a group:

1. Only a single threshold deduction applies to the group, and
2. Each member of the group is jointly and severally liable for the payroll tax of the group as a whole.

Groups are formed under four main provisions.

## 1. Related corporations

All corporations that are related under the *Corporations Act 2001* are grouped. Companies are taken to be related if two or more companies are:

1. a holding company and a subsidiary
2. both subsidiaries of the same holding company.

Related corporations only applies to companies and involves corporations that have more than a 50 per cent level of control in another or other corporations.

## 2. Common employees

The common employee grouping provision groups two or more business when one or more employees of one business perform duties in connection with:

- their employers business and another business or businesses, or
- one or more other businesses that they perform duties solely or mainly for, or
- one or more other businesses under the terms of an agreement even if the agreement merely states the duties to be performed.

### Examples

- A legal partnership has a service trust which provides the labour of its employees in connection with the business of the legal partnership, or
- A manufacturing business has an agreement with 10 small businesses each of which provides the services of its business to the manufacturing business under a five year agreement.

There is no lower limit of service required to trigger a grouping under this provision and all the businesses receiving or providing the service can be grouped.

## 3. Commonly controlled businesses

Two businesses in which a person has, or persons have together, a controlling interest are grouped. In determining whether a person or persons have together a controlling interest, all interests are combined irrespective of the ratios of those interests or the nature of the relationship between the persons.

### Controlling interest

A business can be carried on by a sole owner, two or more owners, a corporation, a partnership or the trustee of a trust. Each has its own controlling interest provision.

## Sole owner

A business owned by a person, even if a company or trustee, is controlled by that sole owner.

## Joint owners

A business owned by two or more persons, is controlled by those persons together.

## Corporation

A business carried on by a corporation is controlled by:

- one or more directors who are entitled to exercise more than 50 per cent of the voting power at meetings of the directors, or
- a person or set of persons who constitute more than 50 per cent of the board of management of a corporation without share capital, or
- one or more shareholders who can directly, indirectly, exercise, control the exercise, or substantially influence the exercise of, more than 50 per cent of the voting power attached to voting shares

## Partnership

One or more partners who own (beneficially or not) more than 50 per cent of the capital of the partnership, or one or more partners who are entitled (beneficially or not) to more than 50 per cent of the profits of the partnership.

## Trusts

A business carried on under a trust is controlled by beneficiaries entitled to more than 50 per cent of the value of the interests in the trust. A beneficiary of a discretionary trust is taken to have a greater than 50 per cent interest of the value of the interests in the trust.

Once one or more persons are found to have common control of two businesses, the two businesses are grouped. The most common combination is two corporations with common shareholders and/or directors but combinations of corporations and trust businesses are becoming very common as trusts continue to be a preferred business owner.

## Examples

1. Mr Able & Ms Bravo are the majority shareholders of Ginger Pty Ltd and Cloves Pty Ltd. As both businesses are commonly controlled, they are grouped.
2. Mr Red and Ms Green are the only directors of Kilo Pty Ltd. Mr Red and Ms Green are both beneficiaries of the Blue discretionary trust. As Kilo Pty Ltd and the Blue discretionary trust are commonly controlled they are grouped.

## Extended grouping provisions

In recent years, new grouping provisions were introduced to target two types of business structure:

### 1. Interposed trusts

When a person has a controlling interest as a beneficiary of a trust and the trustee of that trust has a controlling interest in any other form of business(es), that person who controls the original trust as a beneficiary is deemed also to have control of the other business(es).

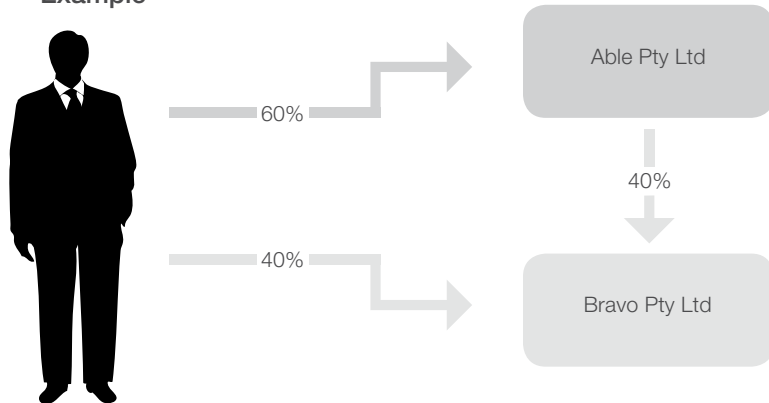
### Example

- Beneficiary has a controlling interest in a trust
- Trustee of that trust has a controlling interest in a corporation.
- The beneficiary controls the corporation

## 2. Tracing of interests in corporations.

Tracing was introduced to counter the use of interposed corporations. When a person has an interest in a corporation and both that corporation and the person have an interest in another corporation the interests are calculated and aggregated to see if they exceed 50 per cent.

### Example



Mr Smith controls 60 per cent of Able Pty Ltd

Mr Smith controls 40 per cent of Bravo Pty Ltd.

Able Pty controls 40 per cent of Bravo Pty Ltd.

Mr Smith has an indirect interest in Bravo Pty Ltd of 24 per cent. (40 per cent of 60 per cent).

Mr Smith has an aggregate interest in Bravo Pty Ltd of 64 per cent. (40 per cent plus 24 per cent).

Mr Smith controls both Able Pty Ltd and Bravo Pty Ltd and they are grouped.

## 4. Subsuming

Common control grouping creates groups of two businesses. In order to form a group of three or more businesses, the businesses must be able to be subsumed.

### Subsuming type 1

A member of a group is a member of two or more groups at the same time.

### Example

Able Pty Ltd is grouped with Bravo Pty Ltd because they have common directors.

Bravo Pty Ltd is grouped with Charlie Pty Ltd because they have common shareholders.

Bravo Pty Ltd is a member of two groups and so all three are subsumed into a larger group.

### Subsuming type 2 introduced from 1 July 2008.

The members of a group have together a controlling interest in another business.

## Example

Delta Pty Ltd and Echo Pty Ltd have common shareholders and are grouped.

- Delta Pty Ltd holds 30 per cent of the units in the Foxtrot Unit trust.
- Echo Pty Ltd holds 30 per cent of the units in the Foxtrot Unit trust.

As Delta Pty Ltd and Echo Pty Ltd are grouped, their interests in the unit trust is combined forming a group of all three businesses.

The ability to form groups is basically a question of fact. Shareholdings, directors, interests in partnerships and trusts and agreements for services between businesses are examined and reviewed to establish a group between businesses.

## Exclusions for members of a group

Recognising that in some circumstances grouping provisions could create groups that contain independent businesses, the Chief Commissioner has the power to remove a business from a group by issuing that business an exclusion order.

From 1 July 2007, the Chief Commissioner may exclude a member from a group created under any grouping provision except related corporations. Prior to 1 July 2007, the ability of the NSW Chief Commissioner to consider an exclusion notice was limited to groups established under common employees, grouped trust businesses and groups established under tracing.

## The basis of granting an exclusion determination

Section 79(2) – The Chief Commissioner must be 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 Chief Commissioner considers relevant, that the business carried on by the applicant is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of that group.

Applications for exclusion from grouping should be in writing, together with supporting information/documentation substantiating the claim that the businesses are carried on independently of one another and are not connected and must address the matters the Chief Commissioner is required to have regard to. Clients are encouraged to be thorough as the client bears the burden of proof to satisfy the Chief Commissioner.

## Grouping revenue rulings

*Payroll Tax Grouping professional practices (PTA 017)*

*Payroll Tax Exclusion from Grouping (PTA 031)*

## Designated group employer

If a business is grouped with one or more other businesses only one threshold deduction is available to the group as a whole. There are only two threshold allocation systems.

1. A NSW business with NSW wages in excess of the Group's NSW threshold entitlement claims the full threshold, or
2. A single member of the group includes the total NSW group wages in their return. This is mandatory if no one NSW employer has sufficient wages to claim the threshold but is optional for any other group.

A member of the group must claim the threshold using either 1 or 2 above or no threshold applies to any member of the group.

## Joint and several liability

If any business in a group fails to pay its payroll tax, the tax can be recovered from any or all of the other group members who were members at the time.

# Registration and returns

## Monthly and annual returns

Registered employers are required to lodge monthly returns within seven days of the end of the month for which the return relates except for the June return which is included as part of the annual reconciliation. Monthly returns must include all taxable wages paid or payable for the relevant month.

The annual reconciliation includes the June wages and is used to include all the annual payments and adjustments and is due on or before the 21 July.

Employers may be allowed by the Chief Commissioner to lodge a single annual return for the full tax years wages. Annual lodgers either have a very small tax liability or a liability that exists for only a few months in a year.

## Paying the tax

There are multiple options for paying payroll tax: electronic funds transfer, BPAY, posted cheques or money orders, or in person at any Australia Post office.

Electronic funds transfer is the most common payment method that clients use.

OSR has an optional online payment system which links the online monthly calculator to an automatic funds transfer that takes place on the evening of the due date. Using the linked payment system ensures the payment is never early or late and ensures it matches the calculation.

## Minor errors

Minor errors discovered after a calculation has been submitted are best dealt with by under or over declaring the next month's taxable wages. Major discrepancies should be dealt with by contacting an OSR officer. Discrepancies that affect prior tax years must be sent to OSR in writing.

## Agents and trustees

A person appointed as trustee, administrator or agent to carry on a business, lodges returns on behalf of the owners but is liable in a representative capacity only.

# Taxation Administration Act

All State tax liabilities are subject to the *Taxation Administration Act 1996*. An initial assessment can be for any number of years but a reassessment is limited to five years after the original assessment. This applies to reassessments that either increase or decrease the tax payable. Any increase in tax will be subject to interest and may be subject to a penalty. A failure to register or pay payroll tax when required also attracts penalties and interest.

## Tax defaults

A tax default for payroll tax may come from a variety of actions:

1. Paying payroll tax after the due date
2. Failing to declare liable wages in a return
3. Failing to register for payroll tax when required.

Each tax default will attract interest and may attract penalties.

## Interest

Interest contains two components, a market rate 7.75 per cent (2008–09) and a premium rate 8 per cent for a total of 15.75 per cent. While the total is normally applied either or both may be remitted in full or in part.

## Penalty tax

Penalty tax has a default rate of 25 per cent but can be imposed at rates ranging from zero to 90 per cent of the outstanding tax depending on the level of culpability of the taxpayer and the level of assistance the taxpayer provides.

## Objections

A client can object to an assessment or decision of the Chief Commissioner for up to 60 days from the date of issue of the assessment or decision. The objection must be sent to the Commissioner in writing. OSR's response will be in writing and may allow, partly allow or disallow the objection.

## Review

If dissatisfied with an objection decision, a client can seek a review from the Administrative Decisions Tribunal or the NSW Supreme Court. The Tribunal is an inexpensive alternative to the Supreme Court and the decisions of the Tribunal are binding on the Chief Commissioner and the plaintiff unless either appeals the decision. Appeals are to the full Tribunal or the NSW Supreme Court.

## Payment pending an objection or appeal

When an employer objects to an assessment they must still pay the tax. If the objection or appeal is successful and a refund applies, the Chief Commissioner will pay interest to the taxpayer at the market rate from the date that the assessment was paid.

## Collection of tax from other parties

The Chief Commissioner may recover unpaid tax, including interest and penalties, from:

- any other member of a group who was a member when the tax was liable, and
- any person holding or accruing money on behalf of a liable employer.

## Recovery from directors and former directors

The Chief Commissioner of State Revenue may issue an order to recover unpaid tax from the directors, or former directors of a corporation.

## Recovery from principal contractors

The unpaid payroll tax of a contractor can be recovered from that contractor's principal in relation to work performed for that principal contractor. In practice, subcontractors declare that they have either paid or are not liable and this declaration protects the principal contractor.



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# Payroll Tax

OPT 017 07-09

## Quick Reference Checklist

This checklist is a **general guide**, designed to assist employers when calculating their payroll tax liabilities. It includes liable wages where errors are commonly made. It does not include **all** liable wages\*

Read more about payroll tax at [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au) or call **1300 139 815**.

<b>Have you included these in your NSW taxable wages?</b>	<b>Yes</b>	<b>No</b>
<ul style="list-style-type: none"> <li>▪ <b>Salaries and wages</b> <ul style="list-style-type: none"> <li>▶ Bonuses and commissions</li> <li>▶ Piecework payments (remuneration per item, rather than by time)</li> <li>▶ Contributions to shares and options schemes</li> <li>▶ Make-up pay (additional payments in excess of workers' compensation)</li> <li>▶ Directors' remuneration</li> </ul> </li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ <b>Fringe benefits</b> The aggregate fringe benefits taxable amount from your FBT return, grossed-up using the Type 2 factor for both Type 1 and Type 2 benefits</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ <b>Employer superannuation contributions</b> All superannuation guarantee, salary sacrifice, or other payments</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ <b>Employment termination payments (ETP)</b> Any ETP amount that would be income taxable if paid to an employee</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ <b>Payment to contractors under relevant contracts</b> The labour content of all contracts is liable unless the contracts are specifically exempted by the payroll tax provisions</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ <b>Allowances</b> Allowances are liable, except the exempt portion of motor vehicle and overnight accommodation allowances</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Other considerations – have you:</b>	<b>Yes</b>	<b>No</b>
<ul style="list-style-type: none"> <li>▪ included your gross interstate wages when calculating your threshold entitlement?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ included all other group members' gross NSW and gross interstate wages when calculating your threshold entitlement if you are the group's DGE?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ deducted all workers compensation payments, and other exempt payments such as payments in respect of maternity or adoption leave?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▪ reported all wages paid to apprentices and new entrant trainees, and then offset these amounts to claim your rebate?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

**\*Note: This is a general guide only.** Other liable wages such as third party payments, payments to expatriate or impatriate employees, or the liability for workers under employment agency contracts are not included in the above checklist.

Read more about liable wages at [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au) or call 1300 139 815.

## MORE INFORMATION



[www.osr.nsw.gov.au](http://www.osr.nsw.gov.au)

### OSR directory

#### Duties

(Conveyances, mortgages, contracts etc)

Phone: 1300 139 814\*

Fax: (02) 9689 8280

Email: [duties@osr.nsw.gov.au](mailto:duties@osr.nsw.gov.au)

#### Duties returns and gaming

(Parking space levy, general insurance, insurance protection tax, gaming and racing)

Phone: 1300 139 817\*

Fax: (02) 9689 8200

Email: [returns@osr.nsw.gov.au](mailto:returns@osr.nsw.gov.au)

#### Payroll tax

Phone: 1300 139 815\*

Fax: (02) 9689 8200

Email: [payrolltax@osr.nsw.gov.au](mailto:payrolltax@osr.nsw.gov.au)

#### Land tax

Phone: 1300 139 816\*

Fax: 1300 363 806

Email: [landtax@osr.nsw.gov.au](mailto:landtax@osr.nsw.gov.au)



Payments by post:

GPO Box 530

Sydney NSW 1159



GPO Box 4042

Sydney NSW 2001

DX 456 Sydney



Phone enquiries

8.30 am – 5.00 pm, Mon. to Fri.

Counter services

8.30 am – 4.30 pm, Mon. to Fri.

### Client account managers



New payroll tax clients

(02) 9761 9366



[prt.newclient@osr.nsw.gov.au](mailto:prr.newclient@osr.nsw.gov.au)

\*Interstate clients please call (02) 9689 6200.  
Help in community languages is available.

## Payroll Tax Incentive Scheme (PTIS)

The Payroll Tax Incentive Scheme is a rebate scheme administered by the Department of State and Regional Development. The scheme is available for eligible businesses in eligible regions and applications are available at: [ptis@business.nsw.gov.au](mailto:ptis@business.nsw.gov.au) or by phoning 1300 733 523. If approved, you pay your payroll tax normally but you receive a rebate on the tax paid from the Department of State and Regional Development.

## Payroll tax e-learning modules

OSR has introduced an e-learning training program that business personnel can access to enhance their payroll tax knowledge. There are a number of modules, such as contractors, that will assist business in keeping up to date with changes in the legislation and will also enhance their ability to use the OSR systems.