Payroll Tax Guide to Legislation 2010-11

The *Payroll Tax Act 2009*, which commenced on 1 July 2009, rewrote and repealed the *Pay-roll Tax Act 1971* and provides fully harmonised legislation with New South Wales, Victoria, Tasmania and Northern Territory.

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

This Guide to Legislation provides a brief explanation of South Australian payroll tax.

Payroll Tax Act 2009

RevenueSA
DEPARTMENT OF TREASURY AND FINANCE

Government of South Australia

Authorised copies of the Act can be purchased from the Service SA Government Legislation Outlet, Ground Floor, 101 Grenfell Street, Adelaide.

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

www.legislation.sa.gov.au

For further details on any matters relating to the Act mentioned in this Information Circular, please contact RevenueSA on (08) 8204 9880.

Minor updates were made to this publication on 19 January 2011 [page 29 & 31] to reflect the withdrawal of Revenue Ruling PTA036 and its replacement with Information Circular 21, regarding the exemption for wages paid to apprentices and trainees.

Contents

Introduction

Preface

This Guide to Legislation ("Guide") provides a brief explanation of an employer's South Australian 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 RevenueSA. The information provided in this Guide is correct at the time of publication.

A reference to state(s) includes the Australian Capital Territory and the Northern Territory.

Mike Walker
COMMISSIONER OF STATE TAXATION

5 August 2010

Overview

Payroll tax is a state tax that is calculated on wages paid or payable. Payroll tax is payable when an employer's (or group of employers') total Australian wages exceeds the South Australian threshold. An employer's Australian wages comprise its South Australian wages and all interstate wages. In South Australia, payroll tax is collected and administered in accordance with the *Payroll Tax Act 2009* (the "Act"), which replaced the *Pay-roll Tax Act 1971* (the "old Act") from 1 July 2009. The Act provides for various transitional arrangements relating to the operation of the old Act.

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

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

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

From 1 July 2009, South Australia introduced harmonised 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 threshold amounts, the payroll tax legislation in New South Wales, Victoria, Tasmania, Northern Territory and South Australia is virtually identical, while Queensland's legislation, although worded differently, has the same outcomes. At the time of publication, Western Australia and the Australian Capital Territory have yet to harmonise their payroll tax legislation with the other Australian jurisdictions.

Revenue Rulings

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

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

www.revenuesa.sa.gov.au.

In addition to legislative harmony, South Australia and its counterparts are committed to greater administrative consistency. As a result, a number of Australian jurisdictions, including South Australia, have commenced the process of harmonising all of their Payroll Tax Revenue Rulings in the harmonised areas. South Australia has already published over 30 harmonised Revenue Rulings.

Basis of Tax

Who must register for payroll tax?

Monthly threshold levels are detailed on page 10

See page 33 for further details about groups of employers

Applications for registration are completed online and can be accessed from the payroll tax menu on www.revenuesa.sa.gov.au

Employers who pay wages in South Australia must register for payroll tax if during any one month, their total Australian wages exceed the relevant monthly threshold (currently $50 000). If the employer is a member of a group, the total Australian wages paid or payable by all members of the group determines whether the employer should register for payroll tax.

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

Cancellation of registration of an employer

Cancellation requests can be emailed to payrolltax@sa.gov.au

To assist with processing, include your taxpayer number

The Commissioner of State Taxation (the "Commissioner") may cancel the registration of an employer:

- when an employer, who is not a member of a group, ceases paying wages in excess of the prescribed monthly threshold; or
- when an employer ceases to be a group member and ceases paying wages in excess of the prescribed monthly threshold.

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

An employer seeking cancellation of registration should forward a written request to RevenueSA. Each request should state the date the organisation is to be cancelled from and the reason for the cancellation. A cancellation form will be issued for completion to enable finalisation of cancellation requirements.

Exempt employers

Wages paid by certain 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:

- from 1 July 2009, non-profit organisations having as their sole or dominant purpose a charitable purpose (Note: prior to 1 July 2009, non-profit organisations were required to have wholly charitable purposes);
- religious or public benevolent institutions;
- public hospitals;
- non-profit private hospitals;
- non-profit schools or colleges for wages paid to persons providing education at or below (but not above) the secondary level of education;
- non-profit child care centres and kindergartens;
- municipalities, other than wages paid or payable in connection with specified business activities such the generation or supply of electricity or gas, or in connection with water supply, sewage, the conduct of abattoirs, of public markets, of parking stations, of cemeteries, of crematoria, of hostels or of public transport;

- non-profit health services providers.

  "***Health services***" means a service designed to promote health; any therapeutic or other service designed to cure, alleviate, or afford protection against, any mental or physical illness, abnormality or disability; any paramedical or ambulance service; the care of, or assistance to, sick or disabled persons at their place of residence; or a prescribed service; and

- a motion picture production company, being wages paid or payable to a person who is involved in the production of a feature film. The motion picture production company needs to satisfy the Treasurer that:
  - the film will be produced wholly or substantially within South Australia;
  - the production of the film will involve or result in the employment of South Australian residents; and
  - the production of the film will result in economic benefits to the State of South Australia.

Wages are exempt from payroll tax when they are paid or payable for work of 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 RevenueSA (except applications by motion picture production companies which must be made to the Treasurer) for a decision on their exempt status. Full details relating to the operations of the organisation, the state/territory where wages are liable and a copy of the Constitution of the organisation must be provided.

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

Returns

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

Monthly returns

Every employer or deemed employer who is registered or required by the Act to apply for registration must, within seven (7) days after the close of each month, lodge to the Commissioner a return together with the tax payable for the required return period. RevenueSA will accept lodgement of returns on the next business day where the 7th falls on a weekend or public holiday.

A return must be lodged each month whether or not tax is payable. Failure to do so will result in a default assessment being issued. However, in special circumstances, the Commissioner may extend the time within which returns must be lodged or may authorise the lodging of returns on an annual basis.

Return booklets containing monthly payroll tax payment worksheets and detachable payment slips are sent to registered employers by the Commissioner at the beginning of each financial year. The return booklet is not issued to employers who have elected:

- to pay via the RevNet Payment Facility, either from a nominated bank account or via Electronic Fund Transfer (EFT); or
- an annual return cycle.

See page 13 for further details about RevenueSA's RevNet Payment Facility

The employer is required to calculate the tax payable and send the payment of tax to RevenueSA.

The Commissioner may, at any time by notice in writing, require an employer to lodge further or more detailed returns.

Annual Reconciliation

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

Tax for the month of June will be incorporated in the annual reconciliation return. The annual reconciliation should include details of taxable wages, and the various components that make up these wages. The wage components that are required for the annual reconciliation are shown on the top portion of the monthly payroll tax payment worksheets.

The due date for completion and lodgment of the annual reconciliation return is **21 July.** Completion of the annual reconciliation return is an online process conducted on RevNet at **www.revnet.sa.gov.au**. Information about the annual reconciliation process is sent to registered employers in June each year.

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

Calculation of Payroll Tax

Payroll tax is generally payable monthly.

The tax payable is calculated using the formula below:

(Gross Taxable South Australian Wages - Deduction) x Tax Rate = Payroll Tax Payable

Tax rates and thresholds

Current and historical rates of payroll tax can be viewed on the RevenueSA website and are displayed in the following table.

Effective Date	Tax Rate %	Threshold Per Annum	Threshold Per Month
1/7/2009	4.95	$600 000	$50 000
1/7/2008	5.00	$552 000	$46 000
1/7/2007	5.25	$504 000	$42 000
1/7/2004	5.50	$504 000	$42 000

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

See page 33 for further details about groups of employers

Employers who are members of a group are not all entitled to a deduction. The group is required to designate one of its members to claim the deduction entitlement on behalf of the group. This member is known as the Designated Group Employer. Remaining group members are not able to claim any deduction entitlement in their returns unless during the annual reconciliation process it is identified that there is an unused component of the deduction.

Employers not wishing to claim an exemption threshold amount are required to pay tax of 4.95% on all South Australian wages for the month

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

Calculation of tax: Employers and Groups who only pay wages in South Australia

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

Example: Non-group

M.Ployer Pty Ltd is a non-group employer who pays wages in South Australia only. During October 2010, M.Ployer Pty Ltd paid wages of $75 000. The company's payroll tax liability for October 2010 is:

($75 000 - $50 000)	x	4.95%	=	$1 237.50

Example: Group

M.Ployer Pty Ltd and I.2.M.Ploy Pty Ltd are group employers. They pay wages in South Australia only and M.Ployer Pty Ltd is the group's designated employer. The wages paid during October 2010 are:

M.Ployer Pty Ltd	$75 000
I.2.M.Ploy Pty Ltd	$60 000
Total Wages	$135 000

The company's payroll tax liability for October 2010 is:

M.Ployer Pty Ltd	($75 000 - $50 000)	x 4.95%	=	$1237.50
I.2.M.Ploy Pty Ltd	$60 000	x 4.95%	=	$2970.00
Total tax payable				$4207.50

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

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

Where an employer, or at least one member of a group, carries on employment activity, both in South Australia and elsewhere in Australia, they are entitled to a proportional deduction only. The proportional entitlement bears the same relationship to the maximum deduction as South Australian wages bear to total Australian wages.

Example: Non-group

M.Ployer Pty Ltd is a non-group employer who pays wages in South Australia and Victoria. The total estimated wages for 2010-11 are as follows:

South Australia	$400 000
Victoria	$400 000
Australian Total	$800 000

The deduction entitlement is calculated as follows:

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

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

During October 2010, M.Ployer Pty Ltd paid $40 000 wages in South Australia:

The company's payroll tax liability for October 2010 is:

($40 000 - $25 000) x 4.95% $742.50

Example: Group

M.Ployer Pty Ltd and I.2.M.Ploy Pty Ltd are group employers. They pay wages in South Australia and Victoria. M.Ployer Pty Ltd is the group's designated employer. The group's total estimated wages for 2010-11 are as follows:

South Australia	$800 000
Victoria	$1 200 000
Australian Total	$2 000 000

The deduction entitlement is calculated as follows:

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

$$\frac{\$800\,000}{\$2\,000\,000} \times \$600\,000 = \$240\,000 \text{ (\$20 000 per month)}$$

During October 2010, M.Ployer Pty Ltd paid $65 000 wages in South Australia:

The company's payroll tax liability for October 2010 is:

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

Payment of Payroll Tax

Payment of payroll tax may be made via one of the following options. If payroll tax is not paid by the due date, interest and/or penalty tax may be imposed.

RevNet Payment Facility

Some of the services RevNet facilitates is the online lodgement and payment of monthly returns and the annual reconcilication return.

Payment via the RevNet Facility is only available to approved applicants. If approved, the nominated Administrators will be provided with login details.

The RevNet Facility also allows a Nil return to be lodged if there is no payroll tax liability for a particular month.

Two payment methods can be utilised through RevNet:

- Payroll Tax Electronic Payment Authority (PRT EPA); and
- Payroll Tax Electronic Funds Transfer (EFT).

The payment slip is not required to be submitted if payment is made through RevNet.

For more details on the functions provided through RevNet, or to register, please visit www.revenuesa.sa.gov.au and select the RevNet menu

Payroll Tax Electronic Payment Authority (PRT EPA)

Taxpayers paying via EPA are required to nominate a bank account for payment. The electronic payment must be initiated by the user within RevNet, RevenueSA does not independently access the taxpayer's bank account.

Payroll Tax Electronic Funds Transfer (EFT)

Users must log into RevNet to complete an expected EFT return each month in order to obtain an EFT Payment Advice containing the BSB, Account Number and Payment Reference Number.

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

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

Cheque

If payment is made by cheque, the tax is not deemed to have been paid until the cheque has been cleared on presentation.

Cheque payments should be made payable to the **Commissioner of State Taxation**. Payment can be made by mail, in person and by courier. In all cases the cheque must be accompanied with the Payroll Tax Payment Slip or Assessment Payment Advice.

See further information on page 40 for location details

BPay

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

The payment slip is not required to be submitted if payment is made by BPAY, unless there is no payroll tax liability for that period, in which case a NIL return is required.

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

Standard Business Reporting (SBR)

From 1 July 2010, RevenueSA will accept the lodgement of payroll tax monthly returns through your business system, if it is SBR-enabled. The 2010-11 annual reconciliation (due 21 July 2011) can also be lodged through SBR.

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

For more details on:

SBR visit
www.sbr.gov.au

AUSkey visit
www.abr.gov.au/auskey

Using RevNet through SBR visit
www.revenuesa.sa.gov.au

Joint and several liability of group members

Any tax (including interest and/or penalty tax) payable under the Act and/or TAA by a member, or members of a group, is a debt due jointly and severally by every person who was a member of the group during the period in respect of which the tax became due.

Wages subject to payroll tax

When are wages subject to payroll tax in South Australia?

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 tax in South Australia, two factors had to be considered:

1. the place where the wages are paid or payable; and
2. the place where the services are performed.

As a general rule, if an employee works 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 when an employer's wages are taxable in South Australia. A reference to South Australia includes the area within the territorial (coastal) limits of South Australia.

Where the wages are paid in a month	Where the services performed in a month are
In SA	Wholly or partly in SA
In SA	In two or more states or territories other than SA
In SA	Partly interstate and partly in another country (or countries)
In SA	Wholly in another country (or countries) on an assignment of less than 6 continuous months
In SA	Wholly or partly outside any state or territory (as defined under the respective payroll tax legislation of the relevant state or territory) but not in another country
In another state or territory	Wholly in SA
Outside Australia	More than 50% performed in SA

In circumstances other than those shown above, wages are not taxable in South Australia, but may be taxable in another state or territory.

Post 1 July 2009

The *Payroll Tax (Nexus) Amendment Act 2010*, which received Royal Assent on 1 July 2010, introduced new nexus provisions into 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.

For further information see Information Circular No 11: Payroll Tax Nexus Provisions

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

   If wages are paid by the employer into an employee's bank account, the wages are deemed to be paid in the jurisdiction in which the employee holds his or her bank account. If wages are paid or payable in a number of jurisdictions, payroll tax is paid in the jurisdiction where the largest proportion of wages is payable.
4. If both the employee and employer are not based in any Australian jurisdiction and wages are not paid in Australia, a payroll tax liability arises in South Australia if the services are mainly performed in South Australia in that calendar month (that is, the work performed in South Australia 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 South Australia if the wages are paid or payable in South Australia.

Employees working in another country for more than six months

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

Should an employee that is working in another country return to Australia it will not be considered to be a break in continuity of their overseas employment if the employee returns to Australia under the following circumstances:

- for a holiday; or
- to perform work exclusively related to the overseas assignment for a period of less than one month.

In either case, the employee must immediately return to that country or another country to continue their overseas employment.

Services performed offshore

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

Shares and options

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

For further information on shares and options, refer to Definition of Wages on page 18

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

(a) The employee performs services in more than one Australian jurisdiction and/or partly overseas, and the employee does not have a PPR in an Australian jurisdiction, and the employer does not have a registered business address or a PPB in an Australian jurisdiction and the shares/options relate to an Australian company.

(b) The employee performs services wholly outside all Australian jurisdictions for less than six months but is paid in an Australian jurisdiction.

For further guidance on the application of the nexus provisions, please refer to Information Circular No 11: Payroll Tax Nexus Provisions

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

Definition of wages

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

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

The term 'wages' includes:

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

This list is not exhaustive.

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

Please refer to the Checklist of Taxable Items section for further guidance on the types of payments that are subject to payroll tax

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

For further information see the Information Circular No 5: Payroll Tax Contractors and Information Circular No 6: Payroll Tax Employment Agency

Indirect payments

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

Wages & salaries

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

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

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

Although apprentice and trainee wages may be exempt, they must be included in the gross wages. See Wages paid to apprentices and trainees on page 29 for details

Annual, sick & long service leave payments

Annual leave, sick leave and long service leave payments made to an employee who will be continuing in the service of his employer and payments made in lieu of accrued annual, sick, long service or pro-rata leave at termination of employment, are liable to payroll tax where any such payment represents a reward for service to which the employee has a pre-existing enforceable right.

Payments relating to accrued leave entitlements are liable to payroll tax, whether paid on, before or after termination of the employee's services.

Similarly, any payment of deferred or accrued wages, salaries, commissions, bonuses, allowances, etc. is liable to payroll tax whenever paid.

Allowances

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

For further information see Revenue Ruling PTA005: Exempt Allowances

The only exceptions to the general rule that allowances are taxable in full are motor vehicle allowances, accommodation allowances and living away from home allowances. Under the Act, new conditions apply for motor vehicle and accommodation allowances from 1 July 2008.

Motor vehicle allowances

A motor vehicle allowance paid or payable to an employee is taxable only to the extent that it exceeds a prescribed rate per kilometre, or an amount calculated at the prescribed rate. The exempt component is calculated as follows:

$$E = K \times R$$

where

E is the exempt component

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

R is the exempt rate

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

- a continuous recording method during the financial year;
- the Australian Taxation Office (ATO) 12-week averaging method; or
- some other method the Commissioner may approve in writing.

From 1 July 2008, the exempt rate for payroll tax purposes is the rate prescribed by the regulations under Section 28-25 of the *Income Tax Assessment Act 1936* (Cwlth) (the "ITAA") for calculating a deduction for car expenses for a "large car" using the "cents per kilometre method" for the previous financial year.

The current prescribed rate can be located in the Information Circular No 14: Payroll Tax Historical Rates

For further information see Revenue Ruling PTA005: Exempt Allowances

Where a motor vehicle allowance is paid as a set allowance (rather than on a cents per kilometre basis), the taxable amount is the amount by which the set allowance exceeds the amount calculated by multiplying the actual kilometres travelled by the prescribed rate.

For information on motor vehicle allowances paid to real estate salepersons, see Revenue Ruling PTA025: Motor Vehicle Allowance Paid to Real Estate Salespersons

The exemption of a prescribed portion of a motor vehicle allowance payment applies only where the travelling allowance is paid or payable for business travel purposes using a motor vehicle supplied by the employee.

Accommodation allowances

For further information see Revenue Ruling PTA005: Exempt Allowances

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

The current prescribed rate can be located in the Information Circular No 14: Payroll Tax Historical Rates

From 1 July 2008, the exempt rate for payroll tax purposes is based on the related ATO figure, and is the total reasonable amount for daily travel allowances using the lowest capital city for the lowest salary band for the financial year.

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

The exemption applies only where the accommodation allowance is designed to compensate an employee for accommodation and directly related meal expenses necessarily incurred where an employee is required, in the course of employment, to be absent overnight from his/her usual place of residence.

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. The allowance will include components designed to compensate for additional food and accommodation costs. It is distinguishable from a travel allowance which is paid to an employee to compensate for accommodation, meals and incidental expenses incurred while the employee is travelling on a short-term assignment not involving a temporary relocation of the employee's place of employment.

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

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

Reimbursements

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

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

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

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

Termination Payments

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

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

Although termination payments paid to apprentices and trainees may be exempt, they must be included in the gross wages. See Wages paid to apprentices and trainees on page 29 for details

Accrued leave

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

Employment termination payments

From 1 July 2008, payroll tax applies to an employment termination payment (formerly eligible 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; or
- *bona fide* redundancy or early retirement payments in excess of the income tax free limit. (The income tax free components of such payments do not form part of an ETP and are, therefore, not subject to payroll tax).

Prior to 1 July 2008, an amount paid or payable by an employer, as a result of the termination of employment, is subject to payroll tax if it falls within the definition of an eligible termination payment given by Subdivision AA of Division 2 of Part III of the ITAA.

Fringe Benefits

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

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

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

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

Although fringe benefits paid to apprentices and trainees may be exempt, they must be included in the gross wages. See Wages paid to apprentices and trainees on page 29 for details

For further information see Revenue Ruling PTA003: Fringe Benefits

Calculating the fringe benefit value

Under the FBT Act, 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.
- 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 2008 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 2008 the fringe benefit taxable value for payroll tax purposes was the grossed up value of the fringe benefit as calculated under the FBT Act.

Declaring fringe benefit value

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

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

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

Once an election is made, an employer will not be permitted to revert to declaring the actual value of fringe benefits in monthly payroll tax returns, unless the Commissioner gives approval in writing.

An employer must not use a combination of methods.

Share & Options

From 1 July 2008, the value of an employer's contribution to any grant of a share or option to an employee or deemed employee, a director or former director, member (or former member) of the governing body of the company constitutes wages and is subject to payroll tax.

The granting of a share or an option occurs if a person acquires a share or (in the case of an option), a right to the share.

The value of the share or option becomes liable on the 'relevant day'. The employer can elect to treat the relevant day as either the date that the share or option is granted to the employee, or the 'vesting date'.

The vesting date for a share is the date when any conditions applying to 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:

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

If the grant of a share or option constitutes wages, the amount of the wages is the market value of the share or option on the relevant day, less the consideration (if any) paid or given by the employee for the grant (excluding consideration in the form of services rendered), as determined in accordance with the Commonwealth income tax provisions.

The employer may reduce the taxable wages declared by the value of any previously declared share or option value, if the grant of a share or option was rescinded because the vesting conditions have not been met. However, this reduction in the taxable wages would not apply in circumstances where the employee decided not to exercise the option.

If the grant of a share or option is withdrawn, cancelled or exchanged before the vesting date for some valuable consideration (other than the grant of other shares or options), the following provisions apply:

- the date on which that occurs is deemed to be the vesting date; and
- the market value of the share or option is taken to be the amount of the valuable consideration (and, accordingly, that amount is the amount paid or payable as wages on that date).

It is sometimes necessary to determine the correct jurisdiction for payroll tax liability in the case of employment in multiple jurisdictions. In respect of shares or options, the payment is deemed to be in the state or territory of registration or incorporation of the company in which the share or option is granted.

The granting of a share or option, which is classified as a fringe benefit under the FBT Act is, for payroll tax purposes, treated as taxable wages rather than a fringe benefit.

Before 1 July 2008, the value of shares and options granted to employees were subject to payroll tax through general provisions in the old Act relating to the definition of wages.

Directors' remuneration

Directors' remuneration, such as director fees, superannuation, allowances, fringe benefits and shares and options, is subject to payroll tax. This applies for both working and non-working directors.

Central Fund Scheme Contributions

Contributions made to a central fund (such as the Building Industry Redundancy Scheme Trust) made by an employer, on behalf of an employee, to cover leave or other entitlements, are treated as wages for the purposes of the Act and therefore are subject to payroll tax.

That is, the value of a contribution that was provided or liable to be provided to a central fund scheme on behalf of an employee constitutes wages paid or payable.

Superannuation Contributions

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

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

- to a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth);
- as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cwlth);
- to or as a form of superannuation, provident or retirement fund or scheme, including to the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* (Cwlth), and to a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* (Cwlth);
- involving the crediting of an account of an employee, or any other allocation to the benefit of an employee (other than the actual payment of a contribution), or the crediting or the debiting of any other account, or any

Although superannuation contributions paid for apprentices and trainees may be exempt, they must be included in the gross wages. **See Wages paid to apprentices and trainees on page 29 for details**

other allocation or deduction, so as to increase the entitlement or contingent entitlement of the employee under any form of superannuation, provident or retirement fund or scheme;

- in respect of an employee who is a member of the old or new scheme of superannuation under the *Superannuation Act 1988* (Cwlth) or of any other unfunded or partly funded scheme of superannuation. In these cases, the Treasurer may estimate the contingent liability of an employer for contributions that will be payable and that estimate may be treated as a contribution paid or payable by an employer in respect of an employee for the purposes of the definition of a superannuation contribution.

Please note that taxable superannuation benefits will include:

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

Contribution holidays

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

Salary sacrifice arrangements

Employers who make payments to a superannuation fund(s) of its employee's or director's choice as part of a salary packaging arrangement (salary sacrifice arrangements) are subject to payroll tax.

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

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

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

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

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

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 FBT Act, grossed-up by the Type 2 factor as shown on the FBT Act return is taxable.

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

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

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

Example

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

   The new salary will be reduced to $58 000 per annum. The taxable value grossed-up by the Type 2 factor of the motor car for fringe benefits tax purposes is $6350. Payroll tax will be payable on the $58 000 salary and the FBT taxable value grossed-up by the Type 2 factor of $6350.
2. An employee's current salary is $65 000 per annum. The employee negotiates with the employer for the purchase of a laptop computer (cost of $3000) under a salary sacrifice arrangement.

   The new salary will be reduced to $62 000 per annum. The laptop is exempt from FBT. Therefore, payroll tax is payable on the $62 000 salary.
3. An employee's current annual salary is $60 000. The employee also makes after-tax (personal) superannuation contributions of $5400 per annum. The employee negotiates with the employer to replace the 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 $5400. Payroll tax is payable on the $54 600 salary and the employer pre-tax superannuation contribution of $5400.

Contractors

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

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

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

For further information see Information Circular No 5: Payroll Tax Contractors

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.

Employment agency contracts

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

For further information see Information Circular No 6: Payroll Tax Employment Agency

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

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

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

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

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

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

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

Exempt Wages and Other Non-liable Payments

Workers compensation

An employer is not liable to payroll tax in respect of payments made to an employee under the provisions of the *Workers Rehabilitation and Compensation Act 1986* (the "WorkCover Act ") including compensation payments made by a WorkCover exempt employer and income maintenance payments of not more than two weeks' wages made under the provisions of the WorkCover Act.

In relation to self-insurers, all compensation made pursuant to the provisions of workers compensation legislation is exempt from payroll tax, regardless of whether the compensation is paid by the insurer or the employer. However, compensation paid to incapacitated workers by the insurer or employer, in excess of the amount prescribed by the relevant workers compensation legislation ('make-up pay') will be subject to payroll tax.

Wages paid to apprentices and trainees

From 1 July 2010, wages paid or payable to an apprentice or trainee in the following circumstances are to be treated by employer as exempt wages:

- by an approved group training organisation; or
- by an employer (not a group training organisation) if the apprentice or trainee is undertaking training under:
  - a school-based training contract;
  - an initial training contract between the employer and the apprentice or trainee; or
  - a training contract entered into prior to 1 July 2010 that is current on that date.

Gross South Australian wages declared in monthly returns should include wages paid or payable to apprentices and trainees. Eligible exempt wages should be declared under the eligible apprentice and trainee component of your return and will be deducted from your gross South Australian wages prior to calculation of payroll tax liability.

For further guidance on the exemption available to wages paid to apprentices and trainees, please refer to Information Circular 21: Exemption for wages paid to apprentices and trainees

Defence force payment

Payments to employees while on leave to work in the Defence Forces 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 & adoption leave

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

- all wages (other than fringe benefits) paid to female employees taking maternity leave and male or female employees taking adoption leave are exempt;
- the exemption does not apply to paid sick leave, annual leave, recreation leave, long service leave or similar leave taken while the employee is absent due to a pregnancy or adoption;
- the exemption is limited to a maximum equivalent of 14 weeks full-time pay for full-time employees and 14 weeks part-time pay for part-time employees; and
- the exemption applies irrespective of whether the leave is taken before or after the birth or adoption.

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

Employers who claim the exemption for maternity leave must obtain a medical certificate or statutory declaration from the employee in relation to the pregnancy or birth of the child. Similarly, employers who claim the exemption for adoption leave must obtain a statutory declaration from the employee that an adoption order has been made or that the child is in the employee's custody pending such an order.

Volunteer emergency workers

From 1 July 2008, payments to employees who are absent from work to volunteer as fire fighters, or to respond to other emergencies, are exempt from payroll tax. This exemption may apply to emergency workers volunteering for organisations such as the South Australian:

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

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

Community development employment project

From 1 July 2008, wages paid to an indigenous 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.

Construction industry long service leave contributions

Construction Industry Long Service Leave Contributions made under the *Construction Industry Long Service Leave Act 1987* are exempt from all taxes and other charges imposed under the law of South Australia and therefore not taxable for payroll tax purposes.

Payroll Tax Rebates

Exporters Payroll Tax Rebate Scheme

Employers who export value added goods or services may claim a rebate of 20% of payroll tax payable on the wages of employees engaged in generating eligible export earnings.

This rebate is equal to 20% of the proportion of total payroll tax paid in South Australia, which is attributable to South Australian export earnings in the rebate period.

Employers eligible for the scheme must apply on the approved application form, which is available from RevenueSA's website at **www.revenuesa.sa.gov.au**. The rebate entitlement cannot be deducted from an employer's payroll tax liability.

This Scheme is administered on a half-yearly basis and continuation of the scheme is subject to annual review.

For further information see the Information Circular No 16: Payroll Tax Rebates

Trainee Wages Payroll Tax Rebate Scheme

Up until 30 June 2010, employers who pay wages to employees engaged as trainees and apprentices under 25 years of age and pursuant to an approved Contract of Training are entitled to a rebate of up to 80% of the payroll tax paid in respect of wages paid to these employees, where all the eligibility criteria are met.

Trainees and apprentices supplied to small businesses by Group Training Companies are able to claim a payroll tax rebate of 98%.

For further information see the Information Circular No 16: Payroll Tax Rebates

For the purposes of the Scheme, an approved traineeship or apprenticeship is a Contract of Training approved by the State's Training and Skills Commission, pursuant to Part 4 of the *Training and Skills Development Act 2008* (Cwlth).

Employers eligible for the scheme must apply on the approved application form, which is available from RevenueSA's website at **www.revenuesa.sa.gov.au.**

From 1 July 2010, the administrative Trainee Wage Rebate Scheme will be abolished and the Act amended to specifically exempt the wages of apprentices and trainees from payroll tax in certain circumstances.

For further information on the new exemption see Information Circular 21: Exemption for wages paid to apprentices and trainees

Please note that employers have until 31 December 2010 to claim rebates for prior periods.

Rebates for Renewable Energy Projects

From 1 July 2010 a rebate is available for payroll tax incurred during the construction phase of eligible, new renewable energy projects subject to certain conditions.

The rebate only applies to wages that are liable for payroll tax in South Australia in respect of the labour associated with direct, on site construction of large scale wind and solar energy projects that begin construction on or after 1 July 2010.

The rebate is equal to 100% of the total payroll tax paid in South Australia that is attributable to the labour associated with direct, on site construction of new, large scale wind and solar energy projects.

Eligible projects must have started the construction phase on or after 1 July 2010.

Information pertaining to the calculation and eligibility of the rebate can be located in Information Circular No 9: Payroll Tax Rebates for Renewable Energy Projects

To be eligible as large scale, the project must have a name plate rating, or combined name plate rating at a single connection point of 30 MW or greater.

Applicants for a rebate must provide RevenueSA with evidence of registration as a generator in the National Electricity Market from the Australian Energy Market Operator

To be eligible as “renewable energy”, the projects must utilise wind or solar technologies. Where projects are combined with conventional fuel, the rebate will only apply to the renewable energy component.

The rebate is capped at $5 million per project for solar and $1 million per project for wind.

The rebate will apply to large scale wind and solar projects in the initial operation of the scheme. The rebate has a fixed life of four years from 1 July 2010 to 30 June 2014. After its first two years of operation, the rebate will be subject to review during which it is intended that the inclusion of other renewable energy technologies will be considered.

Application forms for rebate schemes are available under the Forms menu on RevenueSA’s website at www.revenuesa.sa.gov.au

Grouping of Employers

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

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

Refer to page 10 for further details of Deduction Entitlements

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

(i) corporations are related under Section 50 of the *Corporations Act 2001* (Cwlth);

(ii) there is an inter-use or sharing of employees between two or more businesses;

(iii) the same person has (or two or more persons, together, have) a controlling interest in each of two businesses (where those businesses are carried on by separate legal entities); or

(iv) an entity (i.e. a person or set of associated persons) has a controlling interest in a corporation.

For further information see Information Circular No 4: Payroll Tax Groupings

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

Any tax (including interest and/or penalty tax) payable under the Act and/or TAA by a member, or members of a group, is a debt due jointly and severally by every employer who was a member of the group during the period in respect of which the tax became due.

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. However, this discretion is not available for a group constituted under (i) above.

Duties of Employer Representatives

Duties of agents, trustees, liquidators etc.

An agent, trustee, executor or a liquidator is answerable as an employer for doing all things required by the Act in respect of wages paid as a representative. The representative must register as an employer, lodge payroll tax returns and pay the required tax if the wages paid or payable by the representative are liable for payroll tax.

Each payroll tax return lodged by a representative must be separate and distinct from any other return. A representative is entitled to recover any tax paid in that capacity from the person on whose behalf it was paid or the representative may deduct the payroll tax from any money belonging to that person held by the representative.

A representative is personally liable for the payroll tax payable if, after the Commissioner has requested the representative to make a return or while the tax remains unpaid, the representative disposes of funds or assets from which the payroll tax legally could be paid, without the written permission of the Commissioner.

The returns lodged by an executor of a deceased estate must be the same, as far as practicable, as the deceased person, if living, would have been liable to make. The Commissioner has the same powers to recover payroll tax from the trustee or executor or administrator of an estate, as he would have had against the employer if that person were alive.

Liquidators

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

Interest for late payment of tax

Under the TAA, an interest charge will apply in all cases of late payment of tax, and will comprise two components:

1. a market rate; and
2. a premium component.

The market rate, based upon the 90 day Bank Accepted Bill rate, is published by the relevant Minister, the Treasurer, by way of a notice in the South Australian Government Gazette and is subject to annual review. The market rate component is designed to reflect the opportunity cost to the Government of not having the use of the revenue for the period that it remains unpaid.

To ascertain the current rate, and previous rates please view: Information Circular No 15: TAA Interest Rates 2010-11

The premium component of the interest charge is 8% per annum, and is charged as a disincentive to taxpayers not meeting their tax obligations in a timely manner.

While a debt remains outstanding, interest will continue to accrue on a daily basis on any outstanding balance until such time that the full amount payable is received. Similarly, if a return remains outstanding, interest payable will be calculated at the time of assessment.

Penalty tax for late payment of tax

In addition to interest, the TAA imposes penalty tax in circumstances where the Commissioner believes that a tax default was deliberate or was a result of the taxpayer (or a person acting on behalf of the taxpayer) failing to take reasonable care to comply with the requirements of a taxation law. In instances of a deliberate default, the TAA imposes a penalty of 75% and in any other case a penalty of 25%.

Provision is made for reduction of these penalties, subject to the taxpayer making sufficient disclosure in relation to tax default, either before (80% reduction) or during (20% reduction) a tax audit. Provision is made for increasing the penalty if a taxpayer engages in obstructive behaviour while subject to a tax audit (20% increase).

The rates for both interest and penalty tax adopt a realistic approach to ensuring timely compliance with taxation laws and reflect a balance between cost recoupment, and encouraging taxpayers to meet their obligations.

The Commissioner has discretionary powers to remit both interest and/or penalty tax.

Record keeping

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

The Commissioner, or an Authorised Officer, shall at all reasonable times, have full and free access to all buildings, places and records for any of the purposes of the TAA and may make extracts from or copies of such records.

The Commissioner, or an Authorised Officer, may require an employer or any person to attend and give evidence for the purpose of inquiring into that person's liability or entitlement under the Act and may require production of all records.

'Records' are defined to include a documentary record or a record made by an electronic, electromagnetic, photographic or optical process or any other kind of record.

RevenueSA promotes voluntary disclosure by an employer of any tax defaults prior to commencing any investigation or audit activity. Such disclosures may result in a reduced rate of penalty tax. To be considered a voluntary disclosure, written information should be provided to the Commissioner detailing the employer, the nature of the tax default, and the amount of taxable wages for the relevant financial period(s).

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

RevenueSA conducts numerous compliance programs. Employers are targeted for audit on the basis of information obtained from a variety of sources.

In the majority of cases, audits commence with an employer being contacted by telephone or through the mail. An initial request for certain records and documents may be made, or a suitable time arranged for the Investigator to attend at the employer's premises to examine records. A Notice of Investigation of Tax Liability will be issued.

The types of records and documents requested (may include written or electronic records and documents), are those, which will enable the Investigator to determine whether the employer has been complying with the Act, and may include (but not be limited to):

- detailed Financial Statements/Annual Reports;
- copies of Trust Deeds or Share or Unit Trust Registers or Partnership agreements (for grouping purposes);
- details of wages paid, including group certificates, wage books and fringe benefit and superannuation working papers;
- details of contractors engaged and any associated records;
- cash payment journals;
- cheque stubs;
- general ledger and chart of accounts;
- Australian Taxation Office Fringe Benefits Tax Return (if applicable), and any Fringe Benefits Tax working papers;
- details of wages recorded in computerised or manual payroll system records;
- PAYG Payment Summary Statement; and
- Employer Superannuation Statements from Superannuation Funds.

The initial request will be for specified periods and depending upon the Investigator's findings, the scope of the audit may be extended to include additional records and documents, or include further periods.

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