

Employers Guide to Payroll Tax 2019-20

Payroll Tax Act 2008

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1. Preamble

This guide is not a Ruling by the Commissioner of State Revenue. Uncertainties about any issue in this guide should be raised with the State Revenue Office.

The information in this guide applies to the financial year in the Ruling name. For information relating to previous year guidelines please contact the State Revenue Office.

2. Introduction

Payroll tax is imposed and collected in Tasmania in accordance with the *Payroll Tax Act 2008* (the Act). The Act is administered by the Commissioner of State Revenue and the provisions of the *Taxation Administration Act 1997* (TAA) apply to the Act. The TAA contains administrative provisions and includes those relating to assessments, refunds¹, interest, penalty tax, objections, reviews, appeals and investigation powers. Tasmania's legislation is harmonised with all other states and territories except for the Australian Capital Territory and Western Australia. However, different rates and threshold amounts apply in each jurisdiction.

Legislation in the ACT and Western Australia is harmonised with other jurisdictions in the following key areas:

- Timing of payment;
- Employees working overseas;
- Shares and options;
- Motor vehicle allowances;
- Accommodation allowances;
- Fringe Benefits;
- Superannuation contributions; and
- Grouping provisions.

3. Registration

Any employer, whether in Tasmania or elsewhere, who pays wages to employees in Tasmania, and whose total wages paid in Australia are greater than \$1.25 million per annum (or \$24 038.00 per week during a month), is liable for payroll tax on wages paid in Tasmania.

Any employer paying wages in Tasmania who is a member of a group where the total Australian wages of the group exceed \$1.25 million per annum (or \$24 038 per week during a month), is also liable. Please read 'Grouping Provisions' (section 23 of this guide) for more information.

Register to lodge returns and pay payroll tax on Tasmanian Revenue Online, available at www.tro.tas.gov.au.

4. Reinstate Registration

To reinstate your registration using TRO you will need either your previous account number or the banking details you previously had registered on your account.

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¹ Note however, for refunds of payroll tax following lodgement of the Annual Adjustment Return and Reconciliation, such refunds are facilitated under section 83 of the Act.

5. Returns

Employers registered for payroll tax in Tasmania must:

- lodge a periodic return (usually monthly);
- lodge an annual reconciliation return; and
- make payments of tax in accordance with lodged returns.

Periodic Returns

Periodic returns are normally submitted monthly. Depending on the level of wages paid or payable, returns may be lodged annually.

Your return frequency is based on the details you provide either when you register to pay payroll tax or through your ongoing returns.

The deadline for lodging and paying payroll tax (except for the period ending 30 June) is the 7th day of the month immediately following the end of the period for which you are lodging. For example, if you submit monthly returns, the return for the September month must be lodged and paid by 7 October.

Annual Adjustment Return and Reconciliation

The return for the period ending 30 June is referred to as the Annual Adjustment Return and Reconciliation (AAR) and replaces the June return. The AAR can be accessed on TRO from June each year and is to be lodged by 21 July or the first working day after if the 21st is a weekend. The AAR is an extended version of the normal return and requires details of the wages for the entire financial year. Amendments from previous return periods in the financial year can be resolved with this return.

If you are unable to lodge your AAR by 21 July, it is recommended that you submit an 'Interim Payment' using TRO. This interim payment will ensure the amount of interest payable will be minimised. If you lodge the AAR with full payment by the due date, the interim payment is not required.

Adjustments for previous years

Adjustments for previous financial years can be made using TRO, which will automatically calculate any interest payable or refund required as a result of your adjustments.

6. Cancellation of Registration

If you are no longer required to pay payroll tax, you can cancel your registration using the Update/Cancel registration function in TRO.

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7. Calculation of Monthly Tax

Current rate of payroll tax and the monthly and annual thresholds:

Financial year	Tax rate	Threshold amount per annum	Threshold amount per month
2016/17	6.1%	\$1.25M	Number of days in the month divided by the number of days in the year multiplied by \$1.25M
2017/18	6.1%	\$1.25M	Number of days in the month divided by the number of days in the year multiplied by \$1.25M
2018/19 - 1 st threshold	4.0%	\$1.25M	Number of days in the month divided by the number of days in the year multiplied by \$1.25M
2018/19 - 2 nd threshold	6.1%	\$2M	Number of days in the month divided by the number of days in the year multiplied by \$2M
2019/20 - 1st threshold	4.0%	\$1.25M	Number of days in the month divided by the number of days in the year multiplied by \$1.25M
2019/20 - 2nd threshold	6.1%	\$2M	Number of days in the month divided by the number of days in the year multiplied by \$2M

Previous years' rates are available on the SRO website, www.sro.tas.gov.au.

This **monthly threshold amount** varies according to the number of days in the month and year and are rounded to the nearest whole dollar amount. Monthly threshold amounts can be found on the SRO website.

The monthly threshold amounts vary according to the number of days in the month and year and whether an employer is a member of a group for payroll tax purposes or not. They are rounded to the nearest whole dollar amount.

Examples of how to calculate the thresholds and you payroll tax for periods of less than one year are available in the [Payroll Tax Annual Adjustment Return Guideline](#).

Australian Group Wages

If the Australian Group Wages cannot be obtained on a monthly basis, an estimate based on one twelfth of the previous year's Australia wide wages can be used for the calculation of the threshold entitlement.

Employers not wishing to claim a threshold amount must pay tax of 6.1 per cent on all Tasmanian taxable wages for the month.

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8. Example calculations for the financial year

For examples about calculating threshold entitlements for a financial year, please see the [Payroll Tax Annual Adjustment Return 2019-20](#) at www.sro.tas.gov.au.

9. Payment of Payroll Tax

Payment methods:

- **EPA (Direct Debit)**

You can elect to use EPA when you register to pay payroll tax on TRO; alternatively, you can update your choice using the Banking details menu function after you have registered.

- **BPAY**

The BPay Reference Number appears in TRO when you lodge your return.

- **EFT**

The EFT details appear in TRO when you lodge your return. Please include the Reference Number available from TRO as the payment reference.

- **Cheque**

If you send a cheque to the SRO please ensure you provide your payment reference number or payroll tax account number.

If a refund is due, the SRO will deposit the funds into your nominated financial institution/bank account.

10. When are wages subject to payroll tax in Tasmania?

Employers with employees providing services solely in Tasmania

Where an employee provides services solely in Tasmania, payroll tax for that employee's wages is paid in Tasmania.

Employers with employees providing services in more than one jurisdiction

Employers with employees working in multiple states or territories within a given month must use the following tests to determine where wages were paid or payable for payroll tax.

Employers will be liable for Tasmanian payroll tax where:

1. the employee has a principal place of residence in Tasmania on the last day of the month;
2. an employee's principal place of residence is overseas and:
 - a. for employers that are ABN holders, the employer's registered business address is in Tasmania; or
 - b. in any other case, the employer's principal place of business is in Tasmania;
3. neither the employee nor the employer is located within Australia and the wages are paid or payable in Tasmania; or
4. neither the employee nor the employer is located within Australia and the wages are not paid or payable in an Australian state or territory, the wages are paid or payable for services performed mainly in Tasmania.

For information about the nexus provisions, please read [Revenue Ruling PTA039](#), also at www.sro.tas.gov.au.

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11. Waived Wages for 2019-20

Depending on eligibility, three waivers are available for payroll tax for the 2019-20 financial year:

- **JobKeeper**
Further information can be found in the [Guideline - Payroll Tax waiver for JobKeeper Payment](#).
- **Australian Wages of up to \$5.0 million annually**
Further information can be found in the [Guideline - Payroll Tax waiver - Australian Wages of up to \\$5.0 million annually](#).
- **Taxpayers in the Hospitality, Tourism and Seafood Industries**
Further information can be found in the [Guideline - Payroll Tax waiver - Taxpayers in the Hospitality, Tourism, and Seafood industries](#).

12. Exempt Wages

Wages paid by certain employers are exempt from payroll tax under Part 4 of the Act.

An exemption will generally apply to wages paid to employees of the following types of organisations:

- religious institutions;
- non-profit private hospitals;
- private schools or colleges that do not provide education higher than secondary level;
- defence forces;
- public benevolent institutions; and
- non-profit charitable organisations.

This list is not exhaustive. Please contact the SRO for more information.

Non-profit training organisations

Wages paid to employees administering or participating in group apprenticeship or group training schemes are exempt from payroll tax where the:

- wages are paid by non-profit group training organisations; and
- a non-profit group training organisation is registered with the [Tasmanian Traineeships and Apprenticeships Committee](#).

13. What are Taxable Wages?

The following types of payments are subject to payroll tax and, collectively, are called 'taxable wages':

- salaries and wages;
- commissions;
- annual leave, long service leave and sick leave;
- pay in lieu of notice;
- allowances and reimbursements;
- fringe benefits;
- employer superannuation contributions;
- non-monetary superannuation contributions;
- salary sacrifice;
- directors' remuneration;
- board members' remuneration;
- eligible termination payments;
- travel and accommodation allowances in excess of the prescribed rates;
- bonuses, prizes and incentive payments;

- make-up payments made by the employer for workers compensation; and
- the value of shares and options granted under employee share acquisition schemes.

Please read the comprehensive 'Checklist of Taxable Items' (section 34 of this Guideline).

Payments to on-hired employment agency workers or relevant contractors may also be taxable (please read 'Contractors' (section 25 of this Guide) and 'Employment Agency Provisions' (section 26). If uncertain whether a particular class of worker (or payments made to them) is subject to payroll tax email taxhelp@treasury.tas.gov.au or phone (03) 6166 4400.

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14. Allowances and Reimbursements

Generally allowances are taxable in full. However, there are four exceptions:

i) Accommodation allowances

An accommodation allowance applies where an employee is paid an allowance for being temporarily away from home. The allowance covers their meals, incidentals and accommodation.

Only amounts paid in excess of the prescribed rate are to be included in taxable wages. The prescribed rate is equal to the ATO's daily travel allowance rate for the lowest capital city for the lowest salary band. Please refer to the [ATO website](#).

Motor vehicle allowances

Motor vehicle allowances are paid to compensate employees who use their own vehicles for business purposes. These allowances are generally paid on a per-kilometre rate, or a flat-rate basis.

Note: As at 1 July 2016, section 29 of the Act was amended to ensure that the exempt component of motor vehicle allowance is available to Tasmanian employers by aligning the Act with changes to the [Income Tax Assessment Act 1997 \(Cwth\)](#).

Per kilometre rate

If the cent per kilometre rate is used – the rate is determined and adjusted each year by the ATO. Any amount paid in excess of this rate must be included in the taxable wages total.

Flat rate

Generally, the full amount of the motor vehicle allowance must be included in the total taxable wages if the allowance is paid as a flat rate. However, the exempt component may be calculated and deducted where the employer produces records to verify the number of business kilometres travelled.

Combination of per kilometre rate and flat rate

If a motor vehicle allowance is paid as a combination of a fixed amount plus a kilometre rate, the total amount of the allowance that exceeds the exempt component will be taxable.

ii) Meal and incidental allowances paid up to the ATO's daily substantiation limits

Where an employee is required to be away from his/her home for work purposes and the employer pays an allowance for meals and incidentals, the amount paid up to the ATO's daily limit for meals and incidentals is exempt from payroll tax. The ATO's daily limit for go to the [ATO website](#).

iii) Living Away From Home Allowance

A living away from home allowance is a fringe benefit. Therefore the value for payroll tax purposes is the value determined in accordance with the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). If the allowance does not qualify as a living away from home allowance benefit under the FBTAA, it will be treated similarly to an overnight accommodation allowance.

iv) Reimbursements of expenses

A reimbursement is not an allowance and therefore is not taxable. To be considered a reimbursement, a payment must be:

- incurred by an employee in the course of the employer's business;
- a precise amount whether as a pre-payment or reimbursement; and
- be supported by receipts that verify the full amount paid.

If a payment does not conform to these characteristics, it is not a reimbursement and will generally be taxable in full.

15. Fringe Benefits

The definition of wages includes a payment for services "whether paid or payable in cash or in kind" and includes the value of Fringe Benefits provided to employees.

For the purpose of the Payroll Tax Act, a fringe benefit means a fringe benefit under the FBTAA.

The Type 1 and Type 2 Benefits amounts and factors referred to below are defined in the FBTAA.

Definition of 'fringe benefit'

The definition of 'fringe benefit' for the purpose of the Act does not include:

- (a) a tax-exempt body entertainment fringe benefit within the meaning of the FBTAA; or
- (b) any payment or benefit, which may be prescribed by regulation under the Act not to be a fringe benefit.

Exempt fringe benefits or fringe benefits with a nil taxable value will not be subject to payroll tax, that is, they will have a nil value for payroll tax purposes.

Value of Fringe Benefits for payroll tax purposes

The taxable value of fringe benefit amounts should be calculated by adding the pre-grossed aggregate fringe benefits taxable amounts and then applying the lower, type 2 factor to determine the grossed-up taxable amount. Please refer to the ATO website for the current rates.

Example: (this example is using an earlier year's rate)

Type 1 aggregate fringe benefits amount	\$2 000
Type 2 aggregate fringe benefits amount	<u>\$3 000</u>
Total Type 1 & 2 aggregate fringe benefits amount (pre-grossed)	\$5 000
The payroll taxable fringe benefits amount is: $\$5\ 000 \times 1.9608 =$	\$9 804

The same records of calculation are acceptable for both Fringe Benefits Tax (FBT) and payroll tax purposes.

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Inclusion of the value of Fringe Benefits in monthly returns

Where it is not practical to calculate the actual taxable value of the fringe benefits for inclusion on the periodic return, the Commissioner has the discretion to accept an estimate of the value of those benefits.

For example, a reasonable monthly estimate would be 1/12th of the taxable value of the benefits declared in the employer's latest annual FBT return.

Employers must include the actual taxable value of fringe benefits declared in their annual FBT return on their AAR.

Example:

An employer declares \$1 000 of fringe benefits in each monthly return from July 2017 to May 2018 (based on the 2017 annual FBT Return $\$12\,000 \div 12$). The 2017 annual FBT Return includes taxable benefits of \$24 000 for that year. The employer should declare \$24 000 in their 2017-18 Annual Adjustment Return.

Fringe Benefits Tax returns:

FBT year ended 31 March 2017 –	
Taxable value:	\$12 000

FBT year ended 31 March 2018 –	
Taxable value:	\$24 000

Payroll tax returns for the year ended 30 June 2018:

July 2017 to May 2018 (\$1 000 / month)	\$11 000
June 2018 Annual Adjustment Return	<u>\$24 000</u>

Undeclared taxable value of fringe benefits for the 2017-18 financial year:

2018 taxable value	\$24 000
Less: already declared	<u>\$11 000</u>
Balance	\$13 000

Therefore, payroll tax will be payable on the balance of \$13 000 for the 2017-18 financial year in addition to the monthly payroll tax already paid between July 2017 and May 2018 inclusive.

Part-year employers

An employer who ceases to be an employer during a financial year must advise the SRO of their final FBT liability calculated at the end of the fringe benefits tax year. This may lead to an adjustment of the amount of fringe benefits previously declared for the period during which the business was an employer.

An employer who commences being an employer during a financial year, and who has not yet lodged an annual FBT return, may calculate the taxable value of fringe benefits declared in monthly payroll tax returns based on:

- the actual value of benefits provided for that month; or
- a reasonable estimate of the final FBT liability allocated over each month remaining of that financial year.

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Component of wages covered by two or more sections of wages definition

Where a component of wages is covered by two or more sections of the payroll tax wages definition, it should only be declared once in the calculation of total wages.

In particular, this situation may occur with fringe benefits where the benefit may fit the definition of wages, as a fringe benefit, or as wages paid in kind. In such cases the value for payroll tax purposes is the value determined in accordance with the [FBTAA](#).

Shares and options are treated differently to the above. Refer to section 15 below for further information.

Salary sacrifice arrangements used to acquire excluded or exempt benefits under the FBTAA

Salary that is sacrificed to obtain exempt or excluded benefit under the FBTAA is not to be included as taxable wages for payroll tax purposes.

For more information please contact the SRO on (03) 6166 4400 or email taxhelp@treasury.tas.gov.au.

ATO Taxation Rulings & Determinations

The Commissioner of State Revenue will adopt all Taxation Rulings and Determinations issued by the Commonwealth Commissioner of Taxation in relation to fringe benefits.

ATO Audits

If an ATO audit results in the issue of an amended FBT assessment, you must amend your AAR via Tasmanian Revenue Online.

16. Shares and Options

The value of an employer's contributions under a share acquisition scheme will be liable for payroll tax where shares or options are granted to:

- an employee;
- a director;
- a former director;
- a member of the governing body of the company; or
- a former member of the governing body.

The employer is able to choose the liability date. The liability date is either the:

- date on which the share or option is granted to the employee; or
- vesting date (the date when all conditions of the grant have been met and the legal or beneficial ownership is unable to be rescinded) of the share or option.

The granting of a share or option, which is classified as a fringe benefit under the FBTAA, will not be seen as a fringe benefit, but rather as wages for payroll tax.

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17. Employer Superannuation Contributions

Payroll tax is payable on employer superannuation contributions referred to as a 'superannuation benefit' in the Act.

Payments classed as taxable superannuation contributions include:

- employer contributions made to superannuation funds within the meaning of the Commonwealth *Superannuation Industry (Supervision) Act 1993*;
- employer contributions which are a superannuation guarantee charge within the meaning of the Commonwealth *Superannuation Guarantee (Administration) Act 1992*;
- employer contributions to the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth;
- employer contributions to a retirement savings account within the meaning of the Commonwealth *Retirement Savings Accounts Act 1997*; and
- employer contributions (including top-up contributions) to any other form of superannuation fund or scheme including contributions to, or in relation to, unfunded or partly funded superannuation schemes where the contributions are in respect of employees' service.

Taxable superannuation contributions will **also include**:

- superannuation contributions made on behalf of Directors or Board Members. Please read 'Directors' Remuneration' (section 18 of this Guide) and 'Board Members' Remuneration' (section 19 of this Guide);
- contributions made on behalf of both employees and deemed employees (for example, certain contractors). Please read 'Relevant Contractor Provisions' (within section 26 of this Guide);
- Super Guarantee Contributions (SGC) (+ amounts > 12 per cent);
- Salary Sacrifice contributions (read section 17 of this Guide); and
- non-monetary superannuation contributions eg works of art, property.

Please note that SGC penalties are not taxable (see [Revenue Ruling PTA030](#)).

The value of non-monetary contributions to a superannuation fund is to be included as taxable wages if made on behalf of:

- an employee;
- a contractor deemed to be an employer; or
- a director.

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Inclusion of superannuation contributions in returns

Employers may either pay payroll tax on superannuation contributions when the:

- liability arises (i.e. remitted on monthly returns regardless of when the actual contribution is paid to the fund); or
- superannuation contribution is made to the fund.

The Commissioner of State Revenue requires that whichever method is chosen, it must be consistently used from one year to another as the basis for the inclusion of superannuation contributions in returns.

For employer contributions to the Retirement Benefits Fund, a superannuation benefit must be included in monthly returns based on the following calculations:

- In the case of an employee to whom Part 4 of the Public Sector Superannuation Reform Regulations 2017 applies and who is employed by:
 - a) a prescribed authority that is not specified in column 1 of Schedule 1 to the State Service Act 2000; or
 - b) a controlling authority of any industry or undertaking, carried on by or on behalf of the State; or
 - c) the person, organisation or authority responsible for payment of contributions to the Fund, in respect of a contributor where the services of a prescribed authority are transferred to another person, organisation or another prescribed authority,by multiplying the wages of the employee by the average new entrant contribution rate;
- In the case of any other employee to whom Part 4 of the Public Sector Superannuation Reform Regulations applies and who is employed by a government department, statutory authority or other organisation specified in Column 1 of Schedule 1 to the State Service Act, by multiplying the wages of the employee by 11 per cent or such other rate that may be determined by the Treasurer from time to time.

Contribution Holidays

Where a fund is on a 'contribution holiday' (i.e. the fund's investments have performed well and the employer is not required to contribute funds for a period of time) and no employer contributions are being made to the fund, no payroll tax is payable.

18. Salary Sacrifice

Salary sacrifice is a key component of salary packaging. It refers to the situation whereby the employee's cash salary is reduced and the employee directs the employer to make payments or contributions towards other benefits on their behalf. Salary sacrifice arrangements typically involve, but are not limited to:

- superannuation;
- subscription fees;
- mortgage repayments;
- novated leases;
- school fees; and
- shares.

Any remuneration foregone by an employee falls within the definition of wages as being "paid or payable in cash or in kind" and remains taxable for payroll tax purposes.

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Some benefits such as subscription fees, mortgage repayments, novated leases and school fees are subject to FBT. Payroll tax liability on these benefits is satisfied with the inclusion of the value of fringe benefits in taxable wages.

Salary sacrificing for superannuation is a payment 'in kind' not subject to FBT, and payroll tax liability on the payment is satisfied by including employer superannuation contributions in taxable wages.

For more information please call (03) 6166 4400 or email taxhelp@treasury.tas.gov.au.

19. Directors' Remuneration

Directors' remuneration including directors' fees, board fees, allowances, superannuation contributions, the taxable value of fringe benefits and termination payments are subject to payroll tax. This is the case for both working and non-working directors.

Directors' remuneration must be declared as wages regardless of the method of payment including the payment of fees that are billed through a professional practice, such as an accounting or legal firm.

20. Board Members' Remuneration

Board members' remuneration including fees, allowances, superannuation contributions and the taxable value of fringe benefits are subject to payroll tax.

Board members' fees, where billed through a professional practice, must be declared as wages.

21. Non Taxable Payments

The Act **exempts** the following payments from payroll tax:

- motor vehicle and accommodation allowances paid at rates that do not exceed the statutory exemption limits;
- direct reimbursements;
- workers compensation;
- adoption/maternity leave;
- trust distributions paid in lieu of wages;
- wages paid to employees involved in voluntary work or emergency relief work; and
- wages paid to an indigenous person employed under the Community Development Employment project.

Adoption/maternity leave

Wages paid to an employee on adoption or maternity leave will be exempt from payroll tax. The exemption is limited to wages paid or payable in respect of a maximum of 14 weeks' maternity leave (including an equivalent period of leave at a reduced rate of pay), for any one pregnancy or adoption.

Paternity leave

Paternity leave payments **are** subject to payroll tax.

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Paid parental leave

The Paid Parental Leave scheme entitles eligible working parents who are primary carers of a child born or adopted on or after 1 January 2011 with a maximum of 18 weeks of government funded parental leave pay at the National Minimum Wage.

Even though these payments are paid by employers, the Commissioner of State Revenue is of the view that they do not constitute wages under the Act as they are not paid by the employer for services provided by the employee (or in anticipation of future services to be provided by the employee). They are Commonwealth Government payments that employers are asked to pay on its behalf.

Employees involved in voluntary work or emergency relief work

Wages paid to employees will be exempt where the employees are:

- taking part in bushfire fighting activities as volunteer members of the fire brigade; or
- engaged in emergency operations or rescue and retrieval operations as a volunteer member of an emergency services organisation.

Community Development Employment Scheme

Wages paid to an indigenous person employed under a Community Development Employment Project funded by the Commonwealth Government are exempt from payroll tax.

22. Termination Payments

Termination payments generally constitute wages for payroll tax purposes. Taxable termination payments include payments made in consequence of the retirement from, or termination of, any office or employment of an employee. This includes:

- unused annual leave and long service leave payments;
- employment termination payments, within the meaning of section 82-130 of the *Income Tax Assessment Act 1997* (ITAA) that would be included in the assessable income of an employee under Part 2-40 of the ITAA;
- transitional termination payments, within the meaning of section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* and any payment that would be an employment termination payment but for the fact that it was received more than 12 months after the termination;
- amounts paid or payable by a company as a consequence of terminating the services or office of a director;
- amounts paid or payable by a person taken to be an employer under the contractor provisions as a consequence of termination of the supply of services by a person taken to be an employee under those provisions.

Any component of an employment termination payment which would not be included in an employee's assessable income Part 2-40 of the ITAA does not constitute wages for payroll tax purposes.

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23. Workers Compensation

Workers compensation payments do not fall under the definition of wages and are therefore excluded from wages for payroll tax purposes.

This exclusion applies to the following payments:

- the excess met by the employer (usually the first 5 working days) on approved claims only; and
- wages reimbursed by the insurer.

Employers must keep documentation to support the amount of the excluded payments.

'Make-up' payments made by the employer that are in excess of what is covered by the insurer **are subject** to payroll tax.

24. Grouping Provisions

The grouping provisions are set out in Part 5 of the Act and provide for employers to be grouped where:

- companies are 'related'; or
- employees of one business are used in another business; or
- the business conducted by persons, corporations, partnerships or trusts are commonly controlled.

A business is defined to include:

- a trade or profession;
- any other activity carried on for fee, gain or reward;
- the activity of employing one or more persons who perform duties in connection with another business;
- the carrying on of a trust (including a dormant trust); and
- the activity of holding any money or property used for, or in connection with another business, whether carried on by one or more persons together.

Related corporations

Corporations are grouped for payroll tax purposes if they are deemed to be related to each other under Section 50 of the Commonwealth *Corporations Act 2001*.

Section 50 of the Corporations Act defines 'related corporations' and the definition includes the following:

- a holding company and its subsidiary;
- two or more subsidiaries of a common holding company; and
- a subsidiary and its subsidiary.

A holding company is a company having one or more subsidiaries.

A subsidiary is a company of which another company:

- controls the composition of its board; or
- is in a position to cause, or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the company; or
- holds more than one half of the issued share capital.

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This means that a group includes not only those corporations that are in a direct holding/subsidiary relationship but also corporations with:

- common holding corporations; or
- with a common ultimate holding corporation.

Use of employees in another business

An employer and the persons controlling another business form a group where:

- an employee of the employer performs duties solely or mainly for that other business; or
- the employer has an agreement, arrangement or undertaking with the persons who conduct the other business in respect of the employment or the performance of duties by an employee (section 71 of the Act).

Commonly controlled businesses

Where the same person or persons acting together have a controlling interest in each of two businesses, the persons who carry on those businesses constitute a group.

A person or persons are considered to have a controlling interest in each of two or more businesses if that person has (or those persons acting together have):

- a controlling interest in one business under any one of the following situations; and also
- have a controlling interest in another business under the same or another of the following situations.

Business carried on by a corporation

A person has a controlling interest where:

- any director of the corporation is entitled to exercise a majority in voting power at meetings of directors;
- a director is accustomed or under an obligation (formal or informal) to act in accordance with the instructions of that person or those persons acting together; or
- that person or those persons exercise, control or substantially influence the exercise of more than 50 per cent of the voting power of the voting shares issued by the corporation.

Business carried on by a partnership

A person/group of people has a controlling interest where that person or group of people:

- controls or substantially influences the exercise or more than 50 per cent of the capital of the partnership; or
- is entitled to more than 50 per cent of the profits of the partnership.

Business carried on by a trust

A person has a controlling interest where that person (whether or not as the trustee of another trust) or those persons (whether or not as the trustees of another trust) are beneficiaries entitled to more than 50 per cent of the interests in the trust. A **beneficiary under a discretionary trust** is deemed to be a beneficiary in respect of more than 50 per cent of the interests in a trust.

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Business carried on by a sole trader or trustees of a trust

A person has a controlling interest where:

- a person (whether or not as a trustee of a trust) is the sole owner of the business; or
- two or more trustees of a trust have a controlling interest in a business of which they are the owners.

Smaller groups to be incorporated into larger groups

Where a person(s) is a member of two or more groups, all the members of those groups together constitute one group (section 74 of the Act).

Group members jointly and severally liable

If a member of a group fails to pay any amount of payroll tax in respect to any period, every other member of that group is jointly and severally liable to pay any outstanding tax (section 81 of the Act).

Groups arising from tracing of interests in a corporation

An entity and a corporation form part of a group if the entity has a controlling interest in the corporation.

There are three types of controlling interest in a corporation:

- **direct interest**
an entity has a direct interest in a corporation if it can directly or indirectly exercise the voting power attached to the voting shares in the corporation. An entity has a controlling interest in a corporation where the value of that direct interest exceeds 50 per cent;
- **indirect interest**
an entity holds an indirect interest in a corporation if the entity has a direct interest in another corporation and that second corporation holds a direct interest in the first corporation. For example, corporation 'A' holds a direct interest in corporation 'B' and in turn 'B' holds a direct interest in corporation 'C'. Corporation 'A' therefore holds an indirect interest in corporation 'C'. An entity has a controlling interest in a corporation where the value of that indirect interest exceeds 50 per cent; and
- **aggregate interest**
an aggregate interest exists if an entity has a direct and an indirect interest, or two or more indirect interests. The aggregate interest is the sum of the entities direct and indirect interests in the corporation. An entity has a controlling interest in a corporation where the value of that indirect interest exceeds 50 per cent.

A set of associated persons may include direct family members and corporations in which that family has a major shareholding.

Example:

Mr Smith has a controlling interest in Able Pty Ltd of **80%**

Mr Smith has a direct interest in Charlie Pty Ltd of **50%**

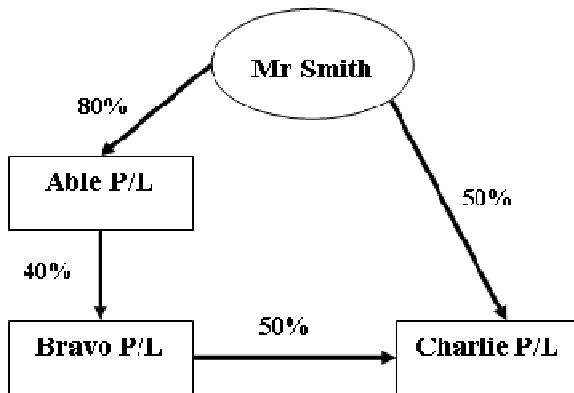
Mr Smith has an indirect interest in Charlie Pty Ltd of $80\% \times 40\% \times 50\% = 16\%$

Mr Smith has an aggregate interest in Charlie Pty Ltd of $50\% + 16\% = 66\%$

Mr Smith has a controlling interest in both Able Pty Ltd and Charlie Pty Ltd.

See diagram and explanation on the next page.

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Able Pty Ltd and Charlie Pty Ltd constitute a group because Mr Smith has an interest of greater than 50 per cent in both of them. Bravo Pty Ltd is not part of the group because the level of interest is 50 per cent or less.

Multiple shareholders

If two or more shareholders are involved they must be associated persons as defined in section 73(4) of the Act in order to use tracing interest provisions. If, in the example above, the shareholdings were held by two brothers, grouping would be established. If the shareholding was held by two persons who are not associated, such as a grandfather and granddaughter, the tracing interest provisions would not apply (the related person definition does not extend to grandparent/grandchild).

An entity and a corporation form part of a group if the entity has a controlling interest in the corporation.

25. De-Grouping Provisions

The Commissioner has the discretion to exclude an employer from a group provided the business carried on by the employer seeking exclusion is carried on independently of, and is not connected with, the business carried on by any other member of that group (section 79 of the Act).

In considering whether the businesses are operating independently of each other and are not connected, the Commissioner will have regard to a range of factors including:

- who makes the day-to-day management decisions for each business;
- the extent the persons who commonly control each business get involved in the day-to-day operations of the businesses;
- any common customers;
- whether the principal activities of the businesses are complementary or supplementary to each other, including group purchasing or supply arrangements;
- the extent that the business seeking an exclusion, trades with or provides services to any other group member;
- the extent that the businesses share resources;
- the extent of financial dependence between group members including provision of initial or on-going working capital;
- if a group member provides a loan to another member, whether this capital was provided on a strictly commercial basis; for example, the Commissioner would consider such things as formal agreements, commercial interest charged, if repayment schedules were adhered to and the extent of security provided for the loan where appropriate.

There is **no provision** to allow for the de-grouping of corporations that are related under the Corporations Act (see section 70 of the [Payroll Tax Act 2008](#)).

You can apply to De-group on Tasmanian Revenue Online under the Company Grouping section.

26. Contractors

Many businesses have replaced employees with contractors. Payments made to these contractors may also be subject to payroll tax.

In the first instance, it needs to be determined if the person performing the work is a common law employee or a contractor. If the person is a contractor, amounts paid to the contractor constitute taxable wages unless one of the relevant contract exclusions apply.

Employee or contractor?

The term 'employee' is not defined in the Act and therefore takes its ordinary or common law meaning. The courts have established a number of principles that assist in determining whether a worker is a common law employee.

Factors that have been considered by the courts in determining whether a worker is an employee include:

- control and direction;
- contract and practical relationship;
- contracts to achieve a 'given result';
- independent business;
- power to delegate;
- risk;
- provision of tools and equipment; and
- other indicators.

If a worker is not a common law employee, it does not necessarily mean that payments made to them are not subject to payroll tax. The definition of wages in the Act also includes amounts paid or payable to contractors under the contractor provisions detailed below.

For more information please read [Revenue Ruling PTA038](#).

Relevant contractor provisions

Where a contractor is engaged, payments for services under the contract are subject to payroll tax. They will remain so unless one of the relevant contractor exclusions applies. If none of the exclusions are satisfied, payroll tax is payable on the GST exclusive component of the contract's labour content only.

For more information please read [Revenue Ruling: PTA008](#).

Payments for the labour content of relevant contracts will be subject to payroll tax whether or not the person supplying the services, or labour, does so as a natural person or through a company, a trustee (incorporated or unincorporated) or a partnership.

Termination payments made to contractors deemed to be employees under the relevant contractor provisions are also included for payroll tax purposes.

What is a relevant contract?

The Act provides that, subject to the payroll tax threshold, tax will be levied on payments made for services provided under a 'relevant contract'.

Relevant contracts (subject to the exclusions set out in the following seven sub-sections), are those where a contractor, who in the course of carrying on their own business:

- (i) supplies to another person services for or in relation to the performance of work; or
- (ii) hires a worker to perform that work; or
- (iii) outsources that work to another contractor to complete.

What is an excluded contract?

If the requirements of any one of the following seven exclusions are satisfied the payments made under the contract are excluded for payroll tax purposes. However, the exclusions do not apply where:

- the Commissioner determines that the contract or arrangement under which the services were supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person; or
- a contract under which any additional services or work (of a kind not covered by the relevant exclusion) are supplied or performed under the contract.

(i) Contracts where the supply of a person's labour is ancillary to the supply of goods or the use of goods which are owned by the person (refer to section 32(2)(a) of the Act).

This exclusion recognises that there are circumstances in which a contractor may provide a considerable amount of labour in supplying goods or the use of goods, but the supply of goods is the fundamental object of the contract. The associated labour is ancillary to the contract itself.

For example, where a person contracts to **supply** and **install** an air-conditioning system – in such a case, the associated labour is ancillary to the contract itself.

(ii) Contracts for services not ordinarily required by the employer and provided by a person who performs such services of a similar kind to the public generally in the same financial year (refer to section 32(2)(b)(i) of the Act).

There are two parts to this exclusion. For the exclusion to apply both parts must be satisfied.

- the first looks at the business or 'taxpayer' and relies on answers to the following questions – "What is the principal activity of the business?" and "Is this service normally required?"
- the second examines the contractor hired by the taxpayer and relies on answers to the following questions – "Does the contractor render services to others?" and "Has this service been provided to other entities in the same financial year?"

This exclusion recognises that many transactions are contracts for service that are not part of the mainstream of a person's business (that is, they relate to services not normally required by the business in an ongoing sense). It applies where contractors perform work of this type for other businesses and the public generally.

For example, if a small retailer engages a shopfitter to refit the interior of their premises, it would not be a regular requirement of the retailer's business. The exclusion test would be satisfied if the shopfitter has provided services to shopkeepers generally during that year.

Conversely, where a large chain store engages a shopfitter permanently on contract in a series of contracts, because the scale of its operations requires ongoing shop fitting in various stores, payment for the shopfitter's services would be subject to payroll tax.

For more information please read [Revenue Ruling PTA022](#).

(iii) Contracts for services normally required by an employer for less than 180 days in the year (refer to section 32(2)(b)(ii) of the Act).

This provision recognises that businesses require various ad hoc services allied to the main stream of work, but so infrequently that permanent employees are not engaged. The requirements of the business are a crucial part of the exemption.

For example, a ski school operator in the Tasmanian snow fields engages a number of contract ski instructors each year for 120 days during the snow season. The business has no requirement for the services of ski instructors outside of the snow season. Section 32(2)(b)(ii) of the Act would ordinarily be satisfied in this situation as the services are required for less than 180 days in a financial year.

Consequently, the contracts that the ski instructors entered into with the ski school operator are not 'relevant contracts'. Accordingly, payments made to the contract ski instructors are not subject to payroll tax even if each ski instructor has worked more than 90 days in a particular financial year. If, on the other hand, the service is provided for more than 180 days, it is not ad hoc and payroll tax is applicable.

For more information please read [Revenue Ruling PTA020](#).

(iv) Contracts where services are performed by one contractor on no more than 90 days in total during a financial year (refer to section 32(2)(b)(iii) of the Act).

This provision excludes payments to contractors who are generally employed for a short term by the same employer in one financial year. However, if the contractor performs similar services for the same employer under a different contract arrangement, the total days worked by the contractor under one or more relevant contracts must be included in counting the total number of days worked.

For example:

- If a person contracts as a concreter in the first instance and as a cement mixer operator in the second, but is providing the same services, then both terms of services must be included; or
- If 'Alpha Pty Ltd' provides services in July and August and 'Beta Pty Ltd' provides similar services in November and December, and the persons actually performing the work are the same, then these periods must be aggregated.

Where a contractor has performed services for 80 days only, the contract is excluded at that point. However, if a further 11 days' work are performed by the same person later in the same financial year, the contract can no longer be excluded and payroll tax is payable on all payments relating to the full 91 days.

In these circumstances employers are only required to declare these payments on a monthly basis when **90 days is exceeded** and not amend previous monthly returns. However, the aggregate total of payments must be included in the Annual Adjustment Return as *contractors*.

The word 'days' refers to the number of days on which work is performed. The number of hours worked each day is not relevant. That is, if only two hours are worked on one day then this must still be counted as a 'day'.

For more information please read [Revenue Ruling PTA014](#).

v) Contracts where the Commissioner is satisfied that the services are provided by a person who has provided services to the public generally in the same financial year (refer to section 32(2)(b)(iv) of the Act).

This exclusion allows for anomalous (unusual or unconventional) cases not intended to be caught by the legislation but which do not satisfy the exclusions in section 32(2)(b)(i)-(iii).

To rely on this exclusion, the employer **must apply** to the Commissioner of State Revenue for a determination.

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An application for exclusion may be granted if it can be demonstrated to the Commissioner that the contractor:

- regularly conducts an independent trade or business; and
- has been consistently performing such services to a wide range of clients in the same financial year.

For more information please read [Revenue Ruling PTA021](#).

(vi) Contracts where the person, who contracts to provide services, engages labour to perform those services (refer to section 32(2)(c) of the Act)

Contracts **will not** be considered relevant contracts where the party who contracts to provide the services:

- (a) including a corporation and or partnership, engages two or more people to perform the actual work under the contract; or
- (b) is a partnership of natural persons and the work is performed by one or more partners plus one or more people engaged by the partnership to perform some of the actual work required under the contract; or
- (c) is a natural person and that person, together with at least one other person engaged by him or her, performs the actual work required by the contract.

In all cases, the person engaged by the contractor must perform the work that is the object of the contract. For example, if the contract relates to building work, the section 32(2)(c) exclusion provision would not be satisfied if a spouse of one of the partners in a partnership that was contracted to perform the building work performed purely clerical work, as he or she would not be engaged in **the work to which the contract relates**.

This exclusion will not apply if the Commissioner determines that any part of the arrangement was entered into with the intention of avoiding the payment of tax.

For further information see [Revenue Ruling PTA023](#).

(vii) Contracts for the provision of services by Owner Drivers (refer to section 32(2)(d) of the Act)

Contracts **will not** be considered relevant contracts where services are provided by an owner driver where the services are solely for or ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them.

For more information please read [Revenue Ruling PTA006](#) and [Revenue Ruling PTA007](#).

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Allowances for equipment and material costs

Payroll tax is only applied to the labour portion of any contracts for the performance of work. Where a contract does not distinguish between labour and other costs, the Commissioner will accept, without verification, the following percentage deductions as an allowance for materials:

Trade	Deduction allowable without verification
Architect	5%
Blind fitter	25%
Bricklayer	30%
Building supervisor (who provides their own vehicles and inspects more than six sites per week)	25%
Cabinet maker/Kitchen fitters	30%
Carpenter	25%
Carpet layer	25%
Computer programmer	5%
Draughtsperson	5%
Electrician	25%
Engineer	5%
Fencing contractor	25% *
Painter	30% (if the painter provides the paint)
Painter	15% (if the painter does not provide the paint)
Plumber	25%
Resilient floor layers/ vinyl layers	37%
Roof tiler	25%
Tree feller	25%
Wall and ceiling plasterers	20%
Wall and floor tilers	25%

These percentages have been arrived at after considerable consultation with industry sources, Revenue New South Wales and the State Revenue Office Victoria.

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Should an employer maintain that a lesser percentage applies to labour in a particular contract, details should be submitted for consideration on lodgement of the payroll tax return. Also, if an employer maintains that an allowance should be made for a trade not listed above, the relevant details should be submitted with the appropriate return to the Commissioner for consideration.

For more information please read [Revenue Ruling PTA019](#) and [Revenue Ruling PTA018](#).

27. Employment Agency Provisions

The employment agency provisions in 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 that engage persons to provide services to their clients under an employment agency contract are liable to payroll tax. The tax is calculated on any amount paid to the contract worker from any source for that contract and the value of any fringe benefits and superannuation contributions provided.

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.

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 apply the following amounts will not be taxable:

- any amount paid in fees to the employment agency;
- any amount paid for services provided to a client that was an **exempt employer** under the provisions of Part 4 of the Act (see Exempt Wages, section 11 of this guideline). In these situations, the exempt employer must provide the employment agent with a **statement** stating that they are exempt from payroll tax.

The relevant contractor provisions are **not** applicable where a contract worker is provided under an employment agency contract.

28. Interest and Penalty Tax

Under the TAA, interest and/or penalty tax may be charged for late payments of tax. It also constitutes an offence to fail to register for payroll tax, or to lodge returns, when required.

Interest

Interest, calculated on a daily basis, is automatically imposed when tax is not paid by the due date. There are two components to the interest rate - a 'market rate' ([current and previous market rates of interest](#) at www.sro.tas.gov.au) and a 'premium rate' of 8 per cent per annum.

The market rate of interest is based on the 90-Day Bank Accepted Bill Rate determined by the Reserve Bank of Australia for the month of May in the financial year prior to the identification of the tax default.

Market interest is imposed to reimburse the Government for revenue lost due to the late payment of tax.

Premium interest is imposed to deter employers from using the SRO as a financier. The Commissioner will only remit interest in exceptional circumstances.

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Penalty tax

Penalty tax is incurred on tax defaults in addition to interest (a 'tax default' can be either a late payment or a tax shortfall). The rate of penalty tax depends on the culpability or the extent to which the taxpayer or their professional representative's behaviour or actions contributed to the tax default and failed, in the Commissioner's opinion, to demonstrate reasonable care.

The rate of penalty tax may be reduced when 'reasonable care' has been taken, where the tax default is attributable to circumstances outside a taxpayer's control or when a voluntary disclosure is made to the Commissioner. Conversely, higher penalty tax may be applied when there has been hindrance during an investigation or concealment of an underpayment of tax.

An application for remission of interest or penalty tax must be made in writing to the Commissioner.

For more information please read the payroll tax specific [Revenue Ruling, PTA036 \(version 2\)](#) and the general Revenue Ruling, [PUB-GEN-2014-6 : 'Interest and Penalty Tax'](#).

29. Anti-avoidance Provisions

The Act contains a specific anti-avoidance provision (Section 47 of the Act) relating to payments made with the intention of avoiding or evading the payment of payroll tax. In addition, section 32(2A) provides that the relevant contract exclusion provisions do not apply if the Commissioner determines that the contract/arrangement was entered into with the intention, either directly or indirectly, to avoid or evade the payment of tax by any person.

A similar anti-avoidance provision applies to employment agency contracts which have the effect of reducing or avoiding payroll tax. In these cases the Commissioner may disregard the contract, determine who the employer is and determine that any payment made in respect of the contract is wages for payroll tax purposes (section 42 of the Act).

A General Anti-Avoidance Provision (GAAP) contained within the Taxation Administration Act also applies to the Act. The GAAP applies to schemes entered into with the sole or dominant purpose of obtaining a tax benefit.

The GAAP provides the Commissioner with the power to reassess the tax liability of a person or persons who entered into or carried out a scheme, in order to include the amount of the tax benefit that was obtained or that would have been obtained in any assessment of tax.

30. Record Keeping

Registered employers, or employers required to be registered, must keep the proper books or accounts and retain those records for a period of five years to enable payroll tax liability to be determined.

31. Investigations

The Commissioner conducts regular audits to ensure the correct amount of payroll tax is collected.

In most cases, investigations begin with the SRO contacting an employer. Certain records and documents may be requested, or an appointment arranged for an authorised officer to inspect relevant documentation. For further information see the brochure, [Investigations – what you should know](#). The authority to inspect records and documents is set out in Part 9 of the TAA.

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32. Revenue Rulings

The Commissioner provides a Revenue Ruling service for all revenue lines as part of the SRO's commitment to:

- provide timely and accurate advice about the correct treatment of transactions subject to state taxation legislation;
- achieve greater consistency in the administration of taxation laws; and
- reduce the costs of compliance for taxpayers.

What are Revenue Rulings?

Revenue rulings are written documents that identify the Commissioner's interpretation of a particular taxation law and any particular practice to be followed under a taxation law.

Revenue rulings are issued to identify the Commissioner's practices with respect to a general set of circumstances that could potentially affect a significant number of taxpayers.

All Revenue Rulings can be accessed at www.sro.tas.gov.au.

Legal status

Revenue rulings are the Commissioner's interpretation of the law but do not override the relevant legislation.

For more information please read [PUB-GEN-2014-5](#).

The information in any revenue ruling is correct at the time of printing but may be subject to change (eg. by virtue of a decision of a court).

33. More information

Email	taxhelp@treasury.tas.gov.au
Telephone	(03) 6166 4400 (weekdays, 9:00am to 5:00pm)
Facsimile	(03) 6173 0217
In person	Ground floor Salamanca Building Parliament Square 4 Salamanca Place HOBART TAS 7000 (weekdays, 9:00am to 5:00pm)
Post	GPO Box 1374, Hobart, Tas 7001
Website	www.sro.tas.gov.au

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33. Checklist of Taxable Items

The following checklist provides guidance on the payroll tax treatment of certain items based on the legislation in effect as at 1 July 2011. The list is current but may change in the future.

T = Taxable

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

C = Taxable under certain conditions

E = Exempt

Remuneration item	Taxable or exempt
Accommodation	F
Accommodation allowances	C
Adoption leave	E
Agency supplied staff	C
Allowances	C
Annual leave	T
Annual leave paid on termination	T
Back Pay	T
Benefits	F
Board and quarters	R
Bona fide redundancy payments (tax-free component)	E
Bonuses	T
Car allowances	C
Car parking	F
Clothing allowances	T
Commissions	T
Consultant's fees	C
Contractor payments	C
Credit cards	F
Debt waivers	F
Defence force payments	E
Directors' fees	T
Dirt allowances	T
Discounted staff purchases	F
Education expenses	F
Employer-funded (pre-income tax) superannuation contributions	T
Employment agency personnel	C

Entertainment allowances	T
Remuneration item	Taxable or exempt
Footwear allowances	T
Fringe benefits	F
Gifts	F
Gross wages	T
Health insurance	F
Holiday pay	T
Housing	F
Leave loading	T
Living away from home allowances	F
Loans (interest free/low interest)	F
Long service leave	T
Make up pay	T
Maternity leave	E
Meals	F
Meal allowances	C
Motor vehicles	F
Motor vehicle allowances	C
Options	T
Outworker payments	C
Overtime	T
Overtime meal allowances	T
Paid Parental Leave	E
Paternity leave	T
Pay in lieu of notice	T
Piece-work payments	T
Prizes	F
Professional advice	F
Redundancy payments	C
Reimbursements (business expenses)	F
Relocation payments	F
Rental subsidy allowances	T
Representation allowances	T
School fees	F
Shares or options granted or vested under an employee share acquisition scheme	T

Shift allowances	T
Remuneration item	Taxable or exempt
Sick pay	T
Site allowances	T
Staff discounts	F
Subcontractors	C
Subscriptions	F
Superannuation contributions (pre-income tax/employer)	T
Taxi fares	F
Telephone account payments	F
Termination payments	
- Accrued annual leave and long service leave	T
- Employment termination payments	T (to the extent assessable income of the employee under the ITAA)
- Bona-fide redundancy payments (income tax free component)	E
- Bona-fide redundancy payments in excess of tax free component	T
Tool allowances	T
Travel (free or subsidised)	F
Travel allowances	C
Uniform allowances	T
Vouchers	F
Worker's compensation payments	E

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