

# Employers' Guide to Payroll Tax in the Northern Territory

Territory Revenue Office



Northern  
Territory  
Government

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## Preface

This guide provides a brief explanation of an employer's Northern Territory payroll tax responsibilities but it does not constitute a ruling. If any uncertainty exists with a particular aspect of the information provided, please seek advice from the Territory Revenue Office. The information provided in this guide is based on legislation in force at 1 July 2009.

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

<b>ATO</b>	Australian Taxation Office
<b>Commissioner</b>	Commissioner of Territory Revenue
<b>FBT</b>	Fringe Benefits Tax
<b>States</b>	Includes the Australian Capital Territory and the Northern Territory
<b>Territory</b>	Northern Territory
<b>TRO</b>	Territory Revenue Office
<b>FBTAA</b>	<i>Fringe Benefits Tax Assessment Act 1986</i> (Commonwealth)
<b>ITAA</b>	<i>Income Tax Assessment Act 1997</i> (Commonwealth)
<b>PRT Act</b>	<i>Payroll Tax Act</i> (Territory)
<b>TAA</b>	<i>Taxation Administration Act</i> (Territory)
<b>The Old Act</b>	The <i>Pay-roll Tax Act</i> (Territory)

References are made throughout this guide to various Revenue Circulars, Payroll Tax Rulings, Commissioner's Guidelines and forms. These are available from TRO (ph 1300 305 353) or can be downloaded from the TRO website at [www.revenue.nt.gov.au](http://www.revenue.nt.gov.au). This guide will be updated periodically and will be available on the website.

## Introduction

Payroll tax is a state tax that is calculated on wages paid or payable by employers and applies in all Australian states. Employers are required to self-assess their liability on a monthly basis, with an annual adjustment reconciliation performed at the end of the financial year.

Each state has its own legislation with differing, rates and exemption levels. In the Territory, payroll tax is collected and administered in accordance with the PRT Act and is payable when the total Australian wages of an employer (or group of employers) exceed the Territory's general exemption level (currently \$1 250 000 per year).

**Note:** the PRT Act was introduced on 1 July 2009 to replace the old Act which continues to apply to liabilities up to that date. The PRT Act introduces laws that are generally consistent with most other states.

Australian wages comprise the total of Territory wages plus all interstate wages. Territory wages are the wages liable to tax under the Territory PRT Act. Interstate wages are the wages liable to tax in another state under that state's payroll tax legislation.

## Who Must Register for Payroll Tax

Employers who pay Territory wages must register for payroll tax if, during any month, their total Australian wages exceed the monthly exemption level (currently \$104 167). Monthly exemption levels for periods prior to 1 July 2009 are detailed in the [Appendix](#) to this guide. If an employer is a member of a group, the total Australian wages paid by all members of the group determines whether the employer should register for payroll tax. See page 36 for further details about [groups of employers](#).

Employers must register ([form F-PRT-001](#)) and pay tax by the 21<sup>st</sup> day of the month following the month in which their wages exceeded the exemption level. Employers who fail to register, where liable, may incur interest and penalty tax on any unpaid tax.

## Cancellation of Registration

Any employer seeking to cancel their payroll tax registration must complete a cancellation form ([F-PRT-002](#)).

An employer may seek cancellation of their registration if they (or as a member of a group, the group) cease paying wages in Australia or if they continue to pay Territory wages, their Australian wages do not exceed the monthly exemption threshold.

Employers that cease to pay Australian wages during a financial year are required to complete an Annual Adjustment return (see [Annual adjustment calculation](#) at page 33 for further details) within 21 days after the return period during which they ceased paying Australian wages following the cessation date.

In all other cases (i.e. the employer has ceased paying Territory wages but continues to pay wages elsewhere in Australia, or their Australian wages do not exceed the monthly exemption threshold), employers must lodge an Annual Adjustment return within 21 days after the end of the relevant financial year even if the cancellation event occurred during the financial year. In these circumstances, it is recommended that employers maintain their registration until this time. For convenience, TRO can place employers on annual frequency pending cancellation of their registration in these circumstances.

## Exempt Employers

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

- non-profit organisations having as their sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose for wages paid to persons engaged exclusively in that kind of work (this exemption applies from 1 July 2009);
- public benevolent institutions, for wages paid to persons engaged exclusively in work of a public benevolent nature;
- religious institutions, for wages paid to persons engaged exclusively in religious work of that institution;
- non-profit non-government schools or colleges (other than technical schools or colleges), for wages paid to persons providing education at or below secondary level;
- public hospitals, for wages paid to persons engaged exclusively in the work of the hospital;
- non-profit private hospitals, for wages paid to persons engaged exclusively in the work of the hospital; and
- local governing bodies, other than for wages paid or payable in connection with prescribed activities (no such prescriptions applied at the time of printing).

It is important to note that generally, only wages paid to persons performing services that relate directly to the objects of the body are exempt. Wages paid to persons engaged in commercial or business activities are not exempt even if the proceeds of those activities are used to further the objects of the body.

### Example

The ABC Charity operates a refuge for homeless people at a particular location. All employees at this location are engaged in work of a charitable nature and, given that ABC is a charitable body, the wages paid to them are exempt from payroll tax. If ABC also operates a retail health food store which is open to the general public, even though proceeds from the health food store are used by ABC to fund its charitable activities, wages paid to employees at this location are taxable if the total amount of taxable wages paid exceeds the exemption level.

For further information on the meaning of the term 'exclusively' in relation to charitable bodies, refer to [Payroll Tax Ruling PTA009 – Payroll Tax Charitable Exemption: Meaning of Exclusively](#).

This is not an exhaustive list of exempt employers and if any doubt exists as to whether wages paid by an organisation are exempt, contact TRO for clarification. Certain wages are also exempt from payroll tax. For further details, refer to ['Exempt Wages and Other Non-liable Payments'](#) on page 27.

Employers, who believe that they are exempt from payroll tax, should apply to TRO for a determination of their exempt status.

## Wages Subject to Payroll Tax

Given that payroll tax is a state (including the Territory and the Australian Capital Territory) tax, it is necessary to consider the respective payroll tax legislation of each state. This is particularly relevant for employers with employees in more than one state, offshore or in another country whether on a temporary or permanent basis.

To determine whether wages paid or payable to an employee are subject to tax in the Territory, two factors need to be considered:

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

**Note:** *New nexus rules were announced by state and territory Treasurers on 26 June 2009 for the imposition of payroll tax on wages paid to workers that provide services in more than one state or territory in a month.*

*Legislation to effect the change, which is to apply retrospectively from 1 July 2009, has not been made at the time of publication of this Guide. For further details on the announcement including the transitional arrangements, please refer to Revenue Circular [RC-PRT-003: New nexus rules for workers providing services in more than one state or territory](#).*

*This Guide will be updated when the amending legislation is passed.*

As a general rule, if an employee works solely in one state (this generally includes the coastal waters of a state) during a calendar month, the wages paid for that month are taxable in that state irrespective of where the wages are received. This includes where an employer sends an employee on a temporary assignment in another state. For example, John Brown works for Eddie's Electrical Contractors in Victoria. The business wins a contract to provide electrical services in the Territory. John is sent to the Territory for the duration of the project, which took three months to complete commencing 1 January 2009. Wages paid to John for this period are subject to payroll tax in the Territory.

Providing services solely in a particular state does not mean an employee must reside in the state where the services are performed. For example, if an employee resides in Western Australia but is flown by his employer to the workplace in the Territory on a 'two weeks on, one week off' basis and does not provide services in another state, the services are provided solely in the Territory. These are commonly referred to as fly-in, fly-out (FIFO) work arrangements.

However, if in any one month the employee works in more than one state, offshore (i.e. outside of the coastal waters of a state) or in another country, it is necessary to consider both where the work is performed and where the employee receives the wages.

The following table illustrates the scenarios under which wages are taxable in the Territory:

Where wages are received	Where work is performed during a month
1. In the Territory	Wholly or partly in the Territory
2. In the Territory	In two or more states other than the Territory
3. In the Territory	Wholly in another country (or countries) on assignment for less than six continuous months
4. In the Territory	Wholly or partly outside a state but not in another country (i.e. offshore outside of the coastal waters of the state)
5. In the Territory	Partly interstate and partly in another country (or countries)
6. In another State or another country	Wholly in the Territory
7. Outside of Australia	More than 50 percent performed in the Territory

In circumstances other than those shown above, wages are not taxable in the Territory, but may be taxable in another state. Where an employee is working outside any state, but not in another country, the wages are taxable under the PRT Act if they are paid in the Territory. Employees working on an oil rig would not be considered as working in another country unless the oil rig is physically located in another country.

### Where Wages are Paid

Wages are deemed to be paid at the place at which the employee, or the employee's agent, receives them. For example, if an electronic deposit is made to a New South Wales (NSW) bank account for employee Jenny Smith, then her wages are deemed to have been paid in NSW.

Wages that are a grant of a share or an option in a company are taken to have been paid in the state where the company is taken under the *Corporations Act 2001* (Cth) to be registered.

### Employees Outside Australia

Where services are performed in another country (or countries) by an employee whose wages are paid in the Territory, the following points need to be considered:

- Wages are exempt only if the employee has worked in another country (or countries) for a continuous period of more than six months (i.e. the exemption from payroll tax applies for the whole assignment, including the first six months).

*Note: Prior to 1 July 2008, only wages paid after a continuous period of six months of service were exempt from payroll tax.*

- The six-month period does not have to be within one financial year but must be a continuous period.
- An employee working in another country will be considered to have worked continuously 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.

## Definition of Wages

In either case, the employee must return immediately to that country to perform further work on the assignment.

Where it is anticipated an employee will be on an assignment in another country for a continuous period of more than six months, the exemption may be claimed from the commencement of the assignment. However, if the qualifying period is not met, employers are required to adjust their returns and pay any additional tax payable.

For further information on the liability of wages paid to expatriate employees, refer to [Payroll Tax Ruling PTA002 – Expatriate Employees](#).

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

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

The term wages includes:

- wages;
- remuneration;
- salaries;
- bonuses;
- commissions;
- allowances;
- employment termination payments and accrued leave paid on termination;
- fringe benefits;
- shares and options;
- employer-funded (pre-income tax) superannuation contributions;
- any remuneration paid to or in relation to company directors or members of the governing body (e.g. directors' fees);
- payments to contractors in certain circumstances; and
- payments made by employment agencies in relation to certain workers on-hired.

Further details are provided below. A [checklist](#) providing guidance on the payroll tax treatment of various payments and benefits is also provided at page 53 of the guide.

## Indirect Payments

Wages do not have to be paid directly by an employer to an employee in order to be taxable.

Payments to a person other than an employee, or payments by a person other than the employer, are subject to tax where the payments are made in relation to an employee's services. For example, an entertainment allowance paid to an employee's spouse is taxable as it is a payment to a third party in relation to the employee's services.

## Wages and Salaries

Taxable wages and salaries are the gross wages and salaries paid including any pay-as-you-go (PAYG) withholding amounts or other deductions made by an employer on behalf of an employee. Taxable wages include 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 GST component that may arise in payments to employees or deemed employees.

## Allowances and Reimbursements

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 (for example, uniform allowances). This is the case even if an allowance is paid under an award or employment agreement (e.g. overtime meal allowances).

The only exceptions to the general rule that allowances are taxable in full are motor vehicle allowances, accommodation allowances and living away from home allowances. From 1 July 2008, concessionary treatment applies to these allowances as detailed below. Prior to 1 July 2008, these allowances were taxable in full. For further information on these allowances refer to [Payroll Tax Ruling PTA005 – Exempt Allowances: Motor Vehicle and Accommodation](#).

### Reimbursements

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

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

- 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
- 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 as an allowance.

### Motor Vehicle Allowances

From 1 July 2008 wages do not include the exempt component of a motor vehicle allowance. Therefore, if the motor vehicle allowance does not exceed the exempt component, the allowance is not included as wages. However, any amount in excess of the exempt component is taxable.

The exempt component is calculated 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 ATO 12-week averaging method; or
- some other method the Commissioner may approve in writing.

The exempt rate for payroll tax purposes is the rate prescribed by the regulations under section 28-25 of the ITAA for calculating a deduction for car expenses for a large car using the 'cents per kilometre method' for the previous financial year. The rate is published on the [TRO website](#).

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

### **Accommodation Allowances**

From 1 July 2008 wages do not include an accommodation allowance that does not exceed the exempt rate. The exempt rate is based on the related ATO figure, and it is the total reasonable amount for daily travel allowances using the lowest capital city for the lowest salary band for the financial year. The rate is published on the [TRO website](#).

### **Living Away From Home Allowances**

A Living Away from Home Allowance (LAFHA) 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 LAFHA is a fringe benefit under section 30 of the FBTAA. If the allowance falls within the definition of a LAFHA under section 30 of the FBTAA, as from 1 July 2008, its taxable value for payroll tax purposes is the taxable value of the benefit under the FBTAA grossed-up by the Type 2 factor as shown on the FBTAA return. However, if the allowance is not a LAFHA under the FBTAA, the treatment of the

allowance for payroll tax purposes will be the same as the treatment of an accommodation allowance (see above).

The payroll tax rules for [fringe benefits](#) are more fully explained on [page 13](#).

## Termination Payments

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

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

### Accrued Leave

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

### Employment Termination Payments

Payroll tax applies to an employment termination payment (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; and
- genuine 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.)

For further information on termination payments, refer to [Payroll Tax Ruling PTA004 – Termination Payments](#).

## Fringe Benefits

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

Therefore, as a general rule, benefits that are taxable under the FBTA are also taxable under the PRT Act and must be declared as wages for payroll tax purposes. The only exception to this general rule is a tax-exempt body entertainment fringe benefit as defined in the FBTA. Although tax-exempt body fringe benefits are subject to FBT, they are specifically exempt for payroll tax purposes from 1 July 2009.

*Note: Prior to 1 July 2008, a LAFHA fringe benefit was excluded from being a fringe benefit for payroll tax purposes and was taxable on the full amount of the allowance. From 1 July 2008, a LAFHA is subject to payroll tax as a 'fringe benefit'.*

If a benefit is exempt under the FBTA it is also exempt from payroll tax except for:

- a deposit under the Small Superannuation Accounts Act 1995 (Cth). These deposits are an exempt benefit under section 58W of the FBTA but are subject to payroll tax as a Superannuation Contribution (refer to page 16 for further details); and
- the granting of a share or option in a company that is classified as a fringe benefit under the FBTA. These benefits are not treated as fringe benefits but are subject to payroll tax on the value of the share or option (refer to Shares and Options on page 15 for further details).

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

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

### Calculating Fringe Benefit Value

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

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.

## 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, the PRT Act allows employers to formally elect ([F-PRT-004](#)) 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 Adjustment return for each financial year will include the taxable value (for payroll tax purposes) of fringe benefits declared in the FBT return ending 31 March immediately before the Annual Adjustment return.

### Example

The payroll tax taxable value (i.e. FBT taxable value x Type 2 gross-up rate) of fringe benefits provided by ABC Pty Ltd to its Territory employees for the FBT year ended 31 March 2008 was \$120 000 and for the year ended 31 March 2009, \$125 000.

The amount to be included in the monthly returns for July 2008 to May 2009 is

1/12 of \$120 000	\$10 000 pm
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The amount to be included in the June 2009 return is \$125 000 less the amounts declared in the July 2008 to May 2009 returns

(11 x \$10 000)	\$125 000 - \$110 000	\$15 000
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Where an employer had elected 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 PRT Act.

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

An employer must not use a combination of methods.

## Adjustments

An employer that has elected the estimated method of returning fringe benefits is required to make an adjustment in their final return for the year if they cease to pay Territory wages or elect to return the actual value of fringe benefits in returns from the commencement of the next financial year.

Where the ATO has issued an assessment or an amended assessment in respect of fringe benefits, employers should also advise TRO immediately so that appropriate adjustments can be made to their payroll tax liability.

## Shares and Options

The value of shares and options granted to employees has been subject to payroll tax since 1 July 1999. On 1 July 2008, the provisions were amended to harmonise with the other states.

Under the harmonised provisions, 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 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.

### **Election – Date Share or Option is Granted or Vested**

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

The vesting date for a share is the date when any conditions applying to granting of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded. The vesting date for an option is the earlier of either one of two dates:

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

Where the value of a share or option is not included in the wages of an employer for the financial year in which they were granted, the employer will be taken to have elected to treat the value of the share or option at the vesting date. Where the share or option has no value at the date it was granted, and therefore would not be liable to payroll tax, the employer is taken to have made an election at that time.

### **Taxable Value**

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.

### **Reducing Taxable Wages Due to Rescission**

An employer may reduce the taxable wages declared by the value of any previously declared share or option if the grant of a share or option was rescinded because the vesting conditions have not been met. However, this reduction does not apply in circumstances where the employee decided not to exercise the option or the grant of the share or option occurred prior to 1 July 2008.

If the grant of a share or option is withdrawn, cancelled or exchanged before the vesting date for some valuable consideration other than a share or option, the date on which that occurs is deemed to be the vesting date and the taxable amount is taken to be the value of the consideration.

### Where the Grant is Deemed to Have Been Paid

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 of registration or incorporation of the company in which the share or option is granted.

### Not a Fringe Benefit

For payroll tax purposes, the grant of a share or option, which may otherwise be classified as a fringe benefit under the FBTA, is not treated as a fringe benefit but rather as wages subject to the employee share and option provisions. However, the granting of a unit or rights to acquire units in a unit trust scheme is subject to payroll tax as a fringe benefit.

### Superannuation Contributions

The definition of wages includes all employer-funded (before income tax) superannuation contributions to or in respect of an employee.

A superannuation contribution is a contribution paid or payable by an employer:

- to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth); or
- as a superannuation guarantee charge (but not any penalty component of the charge) within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth); or
- to or as any other form of superannuation, provident or retirement fund or scheme including:
  - (i) the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* (Cth); and
  - (ii) a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* (Cth); and
  - (iii) a wholly or partly unfunded fund or scheme.

**Note:** a superannuation, provident or retirement fund or scheme is unfunded to the extent that money paid or payable by an employer in respect of an employee covered by the fund or scheme is not paid or payable during the employee's period of service with the employer.

Setting aside any money or anything that is worth money as, or as part of, a superannuation fund, superannuation guarantee charge or any other form of superannuation, provident or retirement fund or scheme is taken to be paying a superannuation contribution for the purpose of the PRT Act.

Where the contribution is made in kind, the amount of the contribution is taken to be the greater of:

- the value agreed or attributed to the contribution in, or ascertainable for the contribution from, arrangements between the employer and the employee, whichever is the greater; and
- if the regulations prescribe how the value of the contribution is to be determined – the value determined in accordance with the regulations (no such prescription applied at the time of printing).

Taxable superannuation payments include payments paid in relation to both employees and to persons whom taxable wages are paid (e.g. directors, workers of an employment agent etc).

## Salary Sacrifice Arrangements

A salary sacrifice arrangement refers to an arrangement between an employer and employee whereby the employee agrees to forego part of his or her future salary or wage in return for another form of non-cash benefit of equivalent cost to the employer.

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

The ATO treats 'effective salary sacrificing arrangements' and 'ineffective salary sacrificing arrangements' differently. Please contact the ATO for further information about the income tax treatment of effective and ineffective salary sacrifice arrangements.

Under an effective salary sacrifice arrangement:

- the employee pays income tax on the reduced salary or wage;
- salary sacrificed (pre-tax) superannuation contributions are classified as employer contributions (not employee contributions); and
- 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:

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

If the benefit provided to the employee is exempt from fringe benefits tax 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.

**Example 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) that is to be used predominantly for work purposes 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.

**Example 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.

## Contractor Payments

From 1 July 2009, the imposition of payroll tax on payments made to contractors that predominantly provide labour services has been modified by the introduction of 'relevant contract' provisions. The relevant contract provisions deem such contractors to be 'employees' and the payments made to them, excluding goods and services tax (GST), to be wages. An example of when the provisions may apply is where a contractor provides essentially labour services and works exclusively or primarily for one principal.

Prior to 1 July 2009, with the exception of workers engaged through an interposed entity or by an employment agent (see page 25), payroll tax was generally only payable in relation to wages paid by employers to employees.

However, the term 'employee' is not defined in payroll tax legislation, so the common law employment tests apply to determine whether a worker is an employee. With changing work practices that blur the traditional distinctions between independent contractors and employees, in many cases, these tests can be difficult to apply to accurately assess a payroll tax liability in relation to contractors.

Often payments to persons that you may consider contractors, rather than employees, are liable to payroll tax as the contractors are common law employees or persons in relation to which anti-avoidance provisions would otherwise apply to deem the payments to be wages.

The following provides a general summary on determining whether a worker is an 'employee' or an 'independent contractor'; the application of the relevant contract provisions; and provisions relating workers engaged through an interposed entity.

### **Employee or Independent Contractor**

As the PRT Act does not define the term 'employee', common law principles must be applied in determining the relationship between a business and its workers. The fact that the parties may label their relationship as one of independent contractor and principal will have no effect where the relationship, in practice, is really one of employment.

Each case must be considered on its own facts using the various factors identified by the court as a guide. The more significant of these include:

- contract and practical relationship;
- contracts to achieve a 'given result';
- control and direction;
- independent business;
- power to delegate; and
- integration.

For further information on the interpretation and application of these principles are detailed in Commissioner's Guideline CG-PRT-002.

## Relevant Contract Provisions

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

An independent contractor is an entity that agrees to produce a designated result for an agreed price. In most cases, a contractor:

- is paid for results achieved;
- provides all or most of the necessary materials and equipment to complete the work;
- is free to delegate work to other entities;
- has freedom in the way the work is done;
- provides services to the general public and other businesses;
- is free to accept or refuse work; and
- is in a position to make a profit or loss.

The relevant contract provisions provide a set of legislative rules that enable you to determine whether payments to persons that you may consider contractors (or sub-contractors, consultants or outworkers), rather than employees, are liable to payroll tax. Where a contract is a relevant contract, the payments under that contract are liable to payroll tax.

Before considering whether you are paying amounts under a relevant contract, you should first determine whether the person providing the services is your employee or if they are being provided by you through an employment agent. If so, you as an employer, or the employment agent are liable for payroll tax as provided elsewhere in this guide.

If the person providing the services is neither your employee or is provided to you through an employment agent, it will then be necessary to determine whether the relevant contract provisions apply.

## What are Relevant Contracts?

A 'relevant contract' is a contract under which a person, in the course of a business carried on by a person, supplies to another person, or is supplied with persons to perform work, or gives out goods to individuals for work to be performed by those individuals and for the re-supply of those goods to the first-mentioned person.

Re-supply means supplying goods to someone else who performs a service in relation to those goods and gives them back in an altered form or as other goods that incorporate them.

In practical terms, the relevant contractor provisions initially capture all contracts for the performance of work. However, they contain several exclusions and if any one of the exclusions applies to a particular contract, the contract will not be a relevant contract.

## Exclusions

Arrangements involving services are almost always relevant contracts. Contracts are taxable unless the services provided are:

### 1. Services ancillary to the provision of goods

A contract is not a relevant contract if its basic purpose is to supply goods, and the labour or services provided by the contractor are only incidental to this.

#### Example

Black Ltd needs a crane. Orange Ltd supplies the crane under a contract. A condition of the contract is that Black Ltd must also hire the crane operator from Orange Ltd. Amounts paid to the contractor are exempt because the supply of the crane is the principal purpose and the operator's services are secondary.

For further information on this exemption, please refer to [Payroll Tax Ruling PTA033 – Contractors - Services Ancillary to the Supply of Goods](#).

### 2. Services not ordinarily required by your business

A contract is not a relevant contract where a business does not normally need those services and the contractor provides the same type of services to the general public in that financial year.

#### Example 1

A bank hires painters to paint its new office. As a bank does not usually require its offices to be painted, and the painters work for the public generally that year, this contract is exempt.

#### Example 2

A large bank hires painters to paint all of their offices in Queensland. As soon as one office is complete, the painters begin work on the next office. As the painters do not have time to work for any other businesses in that financial year, this contract is not exempt.

### 3. Services required by your business for less than 180 days in a financial year

If a business requires a type of service for less than 180 days in a financial year, the contract is not a relevant contract.

It doesn't matter whether a contractor or employee provides these services, how many people provide these services at a time or whether a business requires these services on consecutive days.

#### Example 1

Two librarians are given a fixed fee to work in a legal firm's library. They only work on weekends and are the only librarians of the firm. The 180-day exemption will apply because the legal firm requires librarian services for less than 180 days in that financial year.

**Example 2**

A tour operator requires tour guides for 160 days in each financial year. For the busiest times in that period, the resort hires extra contractors for 100 days. As the tour operator requires guides for less than 180 days (i.e. 160 days), the contracts are exempt.

This exclusion does not extend the 90-day exemption (see 4 below).

For more information on this exemption, please refer to [Payroll Tax Ruling PTA020 – Contractors – 180-day Exemption](#); and [Payroll Tax Ruling PTA014 – What Constitutes a Day's Work?](#)

**4. Services provided for less than 90 days in a financial year**

A contract is not a relevant contract if a person provides a business with the same or similar services for a total of not more than 90 days in a financial year. On the 91st day, the entire period becomes liable for payroll tax.

Unlike the 180-day exemption (see 3 above), this exemption focusses on the number of days an individual works for a business.

A day is one calendar day, from midnight to midnight. Any length of time worked in a day will count as a whole day (please refer to [Payroll Tax Ruling PTA014 – What Constitutes a Day's Work](#)).

**Example 1**

A contract security officer works for Night Ltd for 80 night shifts (on non-consecutive days) in total for a financial year. The security officer works from 10pm to 6am in each shift. This means one shift is considered to be two days. Therefore, the security officer has worked for 160 days. All Night Ltd's payments to him are liable for payroll tax.

**Example 2**

You contract Bob as a concreter for 30 days and to drive a cement mixer for another 75 days. Because Bob provides you with similar services for a total of 105 days, any amounts paid to him are taxable.

**5. Services are supplied by the contractor to the public generally**

If you have a contract with a contractor who provides similar services independently to the general public, you can apply to TRO for an exclusion, even if the arrangement does not fit the following:

- services not ordinarily requiring an exemption;
- 180-day exemption; or
- 90-day exemption.

TRO will review the nature of the contractor's business during that financial year and will consider various issues, including the following:

- other clients who received similar services from the contractor;
- time the contractor spent working for other businesses;
- extent and nature of the contractor's advertising;
- nature of the contractor's business; and
- type of services provided.

The contractor must have actually provided services to the public – simply being available to provide them is not enough. For a contract to be exempt, we require evidence that these services have been provided within the relevant financial year.

You can claim this exclusion without applying to TRO if the contractor's services are provided to two or more principals (or businesses) during a financial year and for an average of 10 days or less per month (excluding months in which no services are provided) provided you have records to substantiate this.

#### Example

A carpenter is hired by several builders throughout the year, but works for more than 90 days with one hiring business. The hiring business can apply for an exemption under the Commissioner's discretion.

To apply for this exclusion, write to the Territory Revenue Office at GPO Box 154, Darwin NT 0801 or by email to: [ntrevenue.ntt@nt.gov.au](mailto:ntrevenue.ntt@nt.gov.au)

## 6. Services performed by two or more people

A contract is not a relevant contract if the contractor engages other to provide the services they are contracted for and two or more people are needed to fulfil the purpose of the contract.

If the contractor is a partnership of two or more people, this exclusion only applies if one or more partners and one or more employees provide the services. The exemption will not apply if the work is only performed by the partners.

The services performed must be only for the purposes of the contract before this exclusion can apply. There are specific anti-avoidance provisions.

#### Example

Orange Ltd is a consultancy firm. Black Ltd contracts the services of Orange Ltd for its IT project. Orange Ltd employs a contractor to perform IT consultancy services. The contractor brings his wife to help with his book keeping and general administration. Black Ltd cannot gain an exemption as only one person is performing the actual work of the contract.

For further information on this exemption, please refer to [Payroll Tax Ruling PTA023 – Contractors Engaging Others](#).

### **7. Services provided by an owner-driver**

If a contractor carries goods in their own vehicle and only provides incidental services, the contract is not a relevant contract. The main purpose of the contract must be to deliver goods.

Among other things, the owner-driver:

- cannot be your employee; and
- must provide the vehicle.

Specific anti-avoidance provisions apply.

*Note:* Courier cyclists are not regarded as owner-drivers.

For further information on this exemption, please refer to [Payroll Tax Ruling PTA006 – Payroll Tax Exemption for Payments to Owner-drivers](#).

### **8. Services are for selling insurance**

If you are an insurance company and you contract a person to sell insurance for you, the contract is not a relevant contract.

This exclusion applies where insurance agents:

- are not your employees;
- are genuine independent contractors with an agency business; or
- hold an Australian Financial Services licence or are an authorised representative of an insurance business that holds an Australian Financial Services licence.

Specific anti-avoidance provisions apply.

### **9. Services are as a door-to-door salesperson**

If you are a business that contracts a person to sell goods door-to-door for domestic purposes, the contract will not be a relevant contract.

For this exclusion to apply, amongst other things, the salesperson:

- cannot be your employee;
- must sell directly to the public (for their use only, and not for resale); or
- must only sell goods at the buyer's home or work.

You only need to satisfy one of the above exclusions for a contract not to be a relevant contract. Specific anti-avoidance provisions apply.

For further information on this exemption, please refer to [Payroll Tax Ruling PTA007 – Contractor Provisions: Door-to-door Sale of Goods](#).

## Deductions

If your contract is a relevant contract, you are only liable for payroll tax on the labour component. This is the amount payable to a contractor purely for work they have done (not for goods or materials). The approved percentages contained in [Payroll Tax Ruling PTA007 Contractor Deductions](#) are to be used to work out the non-labour component deduction. Approval from the Commissioner is needed if you wish to claim a greater percentage as a non-labour component deduction.

You should also deduct GST before calculating payroll tax.

For more information on these deductions, please refer to [Payroll Tax Ruling PTA018 – Contractor Deductions](#); [Payroll Tax Ruling PTA019 – Contractors: Labour and Non-Labour Components](#); and [Payroll Tax Ruling PTA008 – GST Considerations for the Calculation of Payroll Tax Liability](#).

## Workers paid through interposed entities or other persons

Section 47 of the PRT Act also provides special rules where a worker performs services for a business operator and there is an agreement, transaction or arrangement where the payment for those services is made to a person that is related to or connected with the worker (e.g. a company, partnership or trust).

Where such an agreement has the effect (not necessarily the purpose) of reducing the liability of a person (such as the business operator to whom the services are provided) to pay payroll tax, the Commissioner may disregard the arrangement, determine that the business operator or the person connected to the arrangement is an employer and determine that the payments are wages for the purposes of the PRT Act.

## Employment Agency Contracts

Generally speaking, a payroll tax liability arises where wages are paid in respect of the traditional relationship between an employer and its employee. In order to clarify the relationship between an employment agent and its workers, the PRT Act provides that payments to or in relation to a worker engaged under an employment agency contract are wages for the purposes of payroll tax.

An employment agency contract is defined as:

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

Furthermore, for the purpose the PRT Act, the employment agent is taken to be an employer and the worker is taken to be an employee. Accordingly, amounts paid or payable by an employment agent directly or indirectly to or in respect of a worker performing services for a client of the employment agent (for which the employment agent receives payment) are wages for the purposes of the PRT Act. This includes the value of any benefit that would be a fringe benefit or payment that would

be a superannuation contribution if paid to a person in the capacity of an employee.

From 1 July 2009, an exemption applies for wages paid to a worker for services provided to a client of the employment agent where had the client engaged the worker directly; the wages would be exempt under Part 4 of the PRT Act (refer to [Exempt employers](#) at page 6 for details of these exemptions). However, to qualify for the exemption, the client must give a declaration to that effect in an approved form (F-PRT-006) to the employment agent.

### 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.

# Exempt Wages and Other Non-liable Payments

## Workers Compensation Payments

Payments of compensation made in accordance with any workers compensation legislation are not liable to payroll tax, whether made by the employer or the insurer. However, payments in excess of the amounts prescribed in the workers compensation legislation (generally referred to as 'make-up pay') are taxable.

## Apprentices and Graduates

An exemption applies to wages paid to:

- apprentices within the meaning of the *Northern Territory Employment and Training Authority Act*; and
- graduates of approved tertiary institutions employed under trainee arrangements approved by the Commissioner. The exemption is for the first six (6) months of wages paid but does not apply if the graduate was employed by the employer at any time before graduating.

See [Commissioner's Guideline CG-PRT-003](#) for more information.

**Note:** Wages include superannuation contributions, allowances, fringe benefits, etc.

## Defence Force Payments

Wages paid by an employer to an employee on leave to work in the defence forces are exempt from payroll tax.

## Redundancy Payments

A genuine redundancy 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 or early retirement payment, paid in excess of the income-tax-free limit, is subject to payroll tax.

## Maternity, Paternity and Adoption Leave

From 1 July 2009, wages paid to employees on maternity, paternity 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, male employees taking paternity 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 the pregnancy or the birth of their child 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.

Employers who claim the exemption for:

- a) maternity leave must obtain a medical certificate or statutory declaration from the employee in relation to the pregnancy or birth of the child;
- b) paternity leave must obtain a statutory declaration from the employee in relation to the pregnancy or birth of the child;
- c) 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 2009, wages paid to employees in respect of any period that they are engaged in:

- bushfire fighting activities as a voluntary member under the *Fire and Emergency Act*; or
- emergency activities as a voluntary member under the *Disasters Act* or the *Fire and Emergency Act*.

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

### Community Development Employment Project

Wages paid to an Aboriginal person, including a Torres Strait Islander, 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, is exempt from payroll tax.

# Payroll Tax Returns

## Monthly Returns

Every employer registered for payroll tax in the Territory must pay tax every month, unless the Commissioner has given approval to pay tax annually. The Commissioner will generally approve this only if the estimated tax payable in a full financial year is less than \$8400, in which case the employer will only lodge an Annual Adjustment return.

Monthly returns may be lodged via TRMeR, TRO's online return lodgement and payment system. TRMeR provides an easy, flexible and more efficient way for employers to satisfy their Territory payroll tax obligations. Alternatively, a paper-based return package can be downloaded from TRO's website before the first return is due.

Returns are required to be lodged by the 21<sup>st</sup> day of the following month to which they relate. If an employer does not have a liability in a particular month, a 'nil' return must still be lodged.

## Annual Adjustment Returns

Each financial year, all registered employers must lodge an Annual Adjustment return. The annual adjustment allows employers the opportunity to review their tax paid for the financial year and make any necessary adjustments to correct overpayments or underpayments made during the year.

The due date for completion and lodgement of the Annual Adjustment return is 21 July. The return must be lodged via TRMeR, TRO's online return lodgement and payment system. The only exception is where special circumstances apply, for example if employers do not have access to the internet or their system is incompatible. In such circumstances, a written request or email to [ntrevenue.ntt@nt.gov.au](mailto:ntrevenue.ntt@nt.gov.au) must be made to TRO seeking a paper-based return.

Over or under-declarations in previous years must not be included in the Annual Adjustment return for the current period, but should be disclosed separately. (See [Refunds](#) section on page 51 for over-declarations of tax and [Interest and Penalty Tax](#) section on page 50 for under-declarations of tax).

## Payment

Payment may be made by electronic funds transfer (EFT), B<sub>PAY</sub>, cheques or by cash paid over the counter. Payments made through TRMeR are by direct debit authority authorised by the employer.

## Single Return for Groups

The member of a group nominated to claim the general exemption deduction (the designated group employer (DGE)) may apply to lodge a single return (form [F-PRT-003](#)) and make a single payment of tax on behalf of the group. The application will generally be approved if it includes all Territory members. The approval does not affect the requirement of the other members to be registered for payroll tax or relieve them of the liability to pay tax.

## Calculation of Payroll Tax

Payroll tax is generally payable monthly. Non-group employers and the DGE (see [Nomination of Designated Group Employer \(DGE\)](#) on page 35) are entitled to claim a General Exemption Deduction (GED). The level of the GED is dependent on whether the employer or group pays wages in the Territory only or in the Territory and interstate as detailed on page 31.

The GED can be claimed in the first eleven returns of the financial year. In the June and Annual Adjustment return the employer or DGE must recalculate the GED for the year (see [Annual Adjustment Calculation](#) on page 33).

The current payroll tax rate is 5.9 per cent of Territory wages. See [Appendix](#) on page 56 for historical rates and exemption thresholds.

### Northern Territory Employers and Groups – Calculation of Monthly Tax

If an employer or group pays Territory wages only, the employer or DGE can claim the maximum monthly GED of \$104 167 in the first 11 returns for the year. All other members of the group are required to pay tax on their gross Territory wages.

#### Example: Non-group employer

M Ployer Pty Ltd pays wages in the Territory only. During July 2009 the company paid wages of \$195 000. Its payroll tax liability for the month is:  
 $(\$195\,000 - \$104\,167) \times 5.9\% = \$5\,359.10$

#### Example: Group of employers

Albet Pty Ltd and Depson Pty Ltd are members of a group that pay wages in the Territory only. Albet Pty Ltd has been nominated as the DGE by the group to claim the GED. During August 2009, Albet Pty Ltd paid wages of \$185 000 and Depson Pty Ltd \$45 000. The tax liability of each company is:

Albet Pty Ltd:

$(\$185\,000 - \$104\,167) \times 5.9\% = \$4\,769.10$

Depson Pty Ltd:

$\$45\,000 \times 5.9\% = \$2\,655.00$

## Employers and Groups that Pay Northern Territory and Interstate Wages – Calculation of Monthly Tax

If an employer or group of employers pays Territory wages and interstate wages, only a proportionate GED may be claimed by the employer or DGE in their first eleven returns based on the ratio of Territory wages to total Australian wages. For example, if Territory wages comprise 40 per cent of Australian wages, the GED is reduced from \$1 250 000 to \$500 000. The fixed monthly exemption (FME) is therefore \$41 667 rather than \$104 167.

All other members of the group are required to pay tax on their gross Territory wages.

The employer or DGE may elect to claim the GED based on the **actual** Territory and Australian wages paid by the employer or group in each return period, or on an estimated basis.

### Example: Non-group employer using actual method

M Ployer Pty Ltd pays Territory wages and interstate wages. For July 2009, its Territory and Australian wages were \$75 000 and \$110 000 respectively. The GED that the company may claim in its July return is:

$$\frac{\$75\,000}{\$110\,000} \times \$104\,167 = \$71\,023$$

Its payroll tax liability for the month is:  
 $(\$75\,000 - \$71\,023) \times 5.9\% = \$234.60$

### Example: Non-group employer using estimated method

M Ployer Pty Ltd has paid wages in the Territory and interstate since 1 July 2008. The company's Territory wages and Australian wages for 2008-09 were \$400 000 and \$2 000 000 respectively. The deduction (FME) that the company can claim in its first eleven returns for 2009-10 is:

$$\frac{\$400\,000}{\$2\,000\,000} \times \$104\,167 = \$20\,833\text{pm}$$

If during August 2009, the company paid Territory wages of \$35 000, its payroll tax liability for the month is:  
 $(\$35\,000 - \$20\,833) \times 5.9\% = \$838.50$

**Example: Group of employers using actual method**

Albet Pty Ltd and Depson Pty Ltd are members of a group that pay Territory wages and interstate wages. Albet Pty Ltd has been nominated as the DGE by the group to claim the GED and has elected to claim it based on the actual wages paid by the group for each return period. The wages paid for August 2009 were:

	Territory wages	Australian wages
Albet Pty Ltd	\$85 000	\$105 000
Depson Pty Ltd	\$45 000	\$ 60 000
Total	\$130 000	\$165 000

The deduction that Albet Pty Ltd may claim in its August 2009 return is:

$$\frac{\$130\,000}{\$165\,000} \times \$104\,167 = \$82\,071$$

The tax liability of each company for the month is:

Albet Pty Ltd:

$$(\$85\,000 - \$82\,071) \times 5.9\% = \$172.80$$

Depson Pty Ltd:

$$\$45\,000 \times 5.9\% = \$2\,655.00$$

**Example: Group of employers using estimated method**

Albet Pty Ltd and Depson Pty Ltd are members of a group that have paid Territory wages and interstate wages since 1 July 2008. Albet Pty Ltd has been nominated as the DGE by the group to claim the GED. The Territory wages and Australian wages paid by the group for 2008-09 were \$1 400 000 and \$1 680 000 respectively. The FME that Albet Pty Ltd may claim in its first eleven returns for 2009-10 is:

$$\frac{\$1\,400\,000}{\$1\,680\,000} \times \$104\,167 = \$86\,806\text{pm}$$

If during August 2009 the Territory wages paid by Albet Pty Ltd and Depson Pty Ltd were \$105 000 and \$45 000 respectively, their payroll tax liability for the month is:

Albet Pty Ltd:

$$(\$105\,000 - \$86\,806) \times 5.9\% = \$1\,073.40$$

Depson Pty Ltd:

$$\$45\,000 \times 5.9\% = \$2\,655.00$$

The election must be made before the first return for the financial year is lodged and once made, all returns for the year must be completed on that basis. In both cases the GED must be recalculated for the whole year in June and an Annual Adjustment return completed based on the actual wages paid by the employer or group for that year.

The estimated method, which is self-assessed by the employer or DGE, allows for a FME to be claimed in each return. The FME represents one twelfth of the ratio of Territory wages to Australian wages paid by the employer (or group) in the previous financial year multiplied by the maximum monthly GED for the current year.

Where the employer or group commenced to pay Territory wages during the previous financial year, the FME is to be calculated with reference to the number of months, including part months, that Territory wages were paid. Australian wages are those paid for the same period as Territory wages were paid.

Previous year's Territory wages	x	\$104 167	=	FME
Previous year's Australian wages				

Where there is no prior Territory wage history, the FME is to be determined based on the estimated wages for the current financial year.

## Annual Adjustment Calculation

At the end of the financial year, all registered employers must complete an Annual Adjustment return by reconciling their wages and recalculating their payroll tax liability for the year. For a group, the DGE is required to recalculate the payroll tax liability of the group as a whole.

The return is an extended version of the monthly form and details the wages for the entire financial year. By examining these figures, any over or under payment occurring throughout the financial year can be adjusted in the payment of June's payroll tax liability.

Any adjustments for the previous financial year must not be recorded in the Annual Adjustment return. If a refund is payable for a previous financial year, a separate application in writing should be made to TRO.

For non-group employers and DGEs, completion of the return involves recalculating the GED for the financial year based on the actual wages paid by the employer or group and the Australian employment period for that year.

Territory wages	x	\$1 250 000	x	Number of Australian employment days	=	General exemption deduction (GED)
Australian wages				365		

*Note: For groups, the group's Territory wages, Australian wages and Australian employment period should be substituted in the relevant section of the above formula.*

Having determined the amount of the GED, that amount should be subtracted from the Territory wages paid for the year, the tax rate applied and the amount of payroll tax already paid for the year subtracted from the result.

(Territory wages – deduction) x 5.9% = payroll tax payable
payroll tax payable – payroll tax already paid = further tax payable (or refund due)

*Note: For groups, the group's Territory wages and payroll tax already paid should be substituted in the relevant section of the above formula.*

**Example: Non-group employer**

M Ployer Pty Ltd paid Territory wages and interstate wages for the full 2009-10 financial year. The total Territory and Australian wages for the year were \$950 000 and \$1 600 000 respectively. The tax paid from July 2009 to May 2010 was \$10 171. The GED that the company may claim in its Annual Adjustment return is:

$$\frac{\$950\,000}{\$1\,600\,000} \times \$1\,250\,000 \times \frac{365}{365} = \$742\,187$$

Its payroll tax liability for June is:

$$(\$950\,000 - \$742\,187) \times 5.9\% = \$12\,260.90$$

$$\$12\,260.90 - \$10\,171.00 = \$2\,089.90$$

**Example: DGE of group**

Albet Pty Ltd and Depson Pty Ltd are members of a group that paid Territory and interstate wages for the full 2009-10 financial year. Albet Pty Ltd has been nominated as DGE by the group to claim the GED and has paid \$5 084 for the months of July 2009 to May 2010.

Depson Pty Ltd has completed its Annual Adjustment return and has paid \$22 325 in tax for the year. The total Territory and Australian wages for each company for 2009-10 is as follows:

	Territory wages	Australian wages
Albet Pty Ltd	\$825 000	\$1 200 000
Depson Pty Ltd	\$575 000	\$750 000
Total	\$1 400 000	\$1 950 000

The GED that Albet Pty Ltd may claim in its Annual Adjustment return is:

$$\frac{\$1\,400\,000}{\$1\,950\,000} \times \$1\,250\,000 \times \frac{365}{365} = \$897\,436$$

Its payroll tax liability for June is:

$$(\text{the group's total Territory wages} - \text{GED}) \times 5.9\% = \text{payroll tax payable}$$

payroll tax payable - total tax already paid by both companies = further tax payable

$$(\$1\,400\,000 - \$897\,436) \times 5.9\% = \$29\,651.20$$

$$\$29\,651.20 - \$27\,409.00 = \$2\,242.20$$

## Part-period Employers

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

$$\frac{\text{Number of days employer/group employed}}{365} \times \text{Maximum Deduction} = \text{Deduction}$$

### Example

A company began to employ on 1 October 2009. The deduction for the 2009-10 financial year is as follows:

$$\frac{274}{365} \times \$1\,250\,000 = \$938\,356$$

## Nomination of Member of a Group to Claim the General Exemption Deduction

Only one member, who is nominated by the group (the DGE), can claim the GED on behalf of the group. The approved nomination form ([F-PRT-003](#)) is to be used. All other members are required to pay tax on their gross Territory wages.

## Grouping

Part 5 of the PRT Act contains provisions to group persons for the purpose of payroll tax. The main effect of grouping is to ensure employers share only one tax-free threshold by:

- combining their Australian taxable wages to determine whether a member is required to register for payroll tax; and
- allowing only one member of the group, the Designated Group Employer (DGE), to claim the general exemption deduction on behalf of all members of the group (refer to [Calculation of Payroll Tax](#) on page 30).

The grouping provisions were amended with effect from 1 July 2008 to harmonise their operation with the corresponding provisions of other states. The following is general summary of the application of the provisions from that date. The previous grouping provisions, including the exclusion provisions, continue to apply in relation to matters prior to 1 July 2008. For further details of the transitional arrangements, refer to [Revenue Circular RC-PRT-001: 2008-09 Payroll Tax Changes](#).

## Meaning of a Business

A business is defined as any of the following, whether carried on by one person or two or more persons together:

- a profession or trade;
- any other activity carried on for fee, gain or reward;
- the activity of employing one or more persons to 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.

A person does not have to be an employer to be a member of a group for payroll tax purposes. While non-employer members of a group do not have to register for payroll tax, they are jointly and severally liable for the payroll tax liabilities of other group members (see [Joint and Several Liability of Group Members](#) on page 49).

## Same Person Owning Two or More Businesses

The grouping provisions do not apply where the same person owns two or more businesses. In these circumstances, there is only one employer and the wages for those businesses must be combined into a single return for that employer. The only exception to this rule is a trustee that operates businesses for different trusts, where the trustee is considered a different person in respect of each trust. In these circumstances, the grouping provisions must be considered.

## Geographical Location of Businesses

It does not matter where a person carries on a business for grouping purposes. If there are two or more persons that constitute a group and at least one of them pays Territory taxable wages, that member must register for payroll tax if the combined Australian taxable wages of all members of the group exceeds the registration threshold (see [Who Must Register for Payroll Tax](#) on page 5 for further details).

## Constitution of Groups

Persons can be grouped in one or more of the following ways:

- if they are 'related corporations' within the meaning of section 50 of the *Corporations Act 2001* (Cth);
- if there is an inter-use or sharing of employees between them; or
- if the same person, or persons together, have a controlling interest in the businesses carried on by those persons.

Grouping can also occur through indirect interests and tracing provisions. Smaller groups are subsumed into one larger group where there is a common member. Due to the broad application of the grouping provisions, the Commissioner has the ability exclude a member from a group in certain circumstances.

These are explained in more detail below.

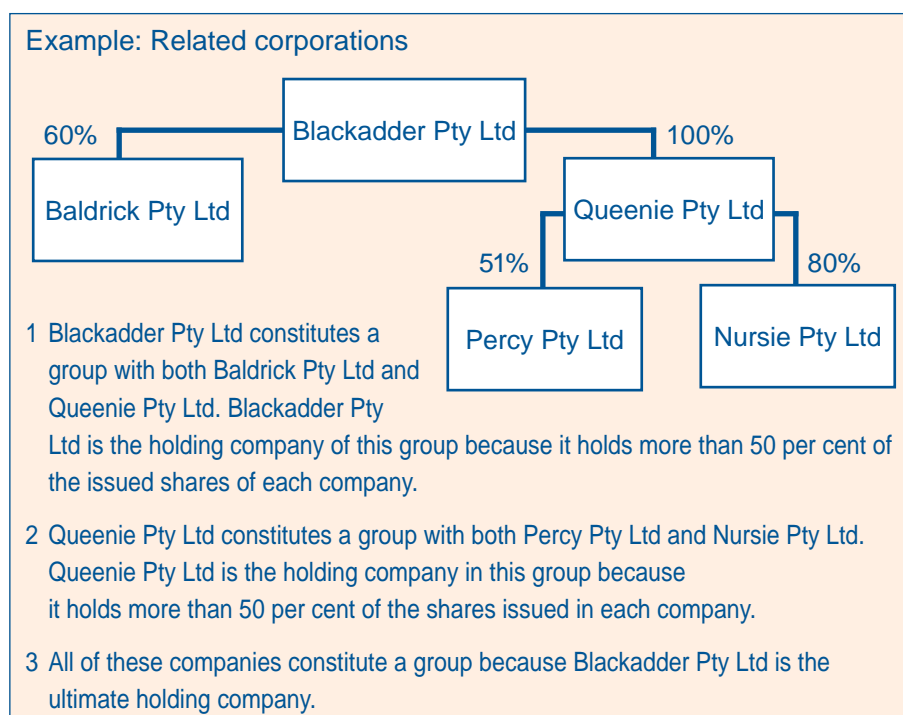
### Groups of Corporations

Corporations constitute a group if they are 'related bodies corporate' within the meaning of the *Corporations Act 2001* (Cth). This is more commonly described as a holding/subsidiary company relationship.

A holding/subsidiary company relationship occurs where one corporation:

- holds more than 50 per cent of the issued share capital of that other corporation;
- controls the composition of the board of directors of that other corporation; or
- can cast, or control the casting of, more than 50 per cent of the votes which can be cast at a general meeting of that other corporation.

Related corporations also include corporations with a common holding company or ultimate holding company.



Corporations are not 'related bodies corporate' if one holds shares in another in a fiduciary capacity such as a trustee company. The corporations may still be grouped for payroll tax purposes if there is inter-use of employees or under the common control or tracing provisions.

### Groups Arising From the Use of Common Employees

An employer that provides the services of one or more of its employees to one or more other businesses constitutes a group with the person or persons that carry on that other business or businesses in the following circumstances:

- one or more employees of the employer perform duties for or in connection with one or more businesses carried on by the employer and one or more other persons;
- one or more employees of the employer are employed solely or mainly to perform duties for or in connection with one or more businesses carried on by one or more other persons; or
- one or more employees of the employer perform duties for or in connection with one or more businesses carried on by one or more other persons, being duties performed in connection with or in fulfilment of the employer's obligation under an agreement, arrangement or undertaking (whether formal or informal, express or implied) for the provision of services to any of those persons.

#### Example 1

Alpha Pty Ltd employs Judy Jones as a receptionist and Judy provides those services to Alpha Pty Ltd, Bravo Pty Ltd and Charlie Pty Ltd. Alpha is grouped with each of Bravo and Charlie and each of these smaller groups is subsumed into a larger group of all three persons.

#### Example 2

Delta Pty Ltd employs David Brown and Jane Green. Both workers mainly provide stock ordering and restocking services to Echo Pty Ltd and Foxtrot Pty Ltd. Delta is grouped with each of Echo and Foxtrot and each of these smaller groups is subsumed into a larger group of all three persons.

#### Example 3

Golf Pty Ltd employs Andrew Roberts, Cheryl Hughes and Paul Woo. Golf Pty Ltd has an agreement to produce, provide and deliver retail stock from their factory to Hotel Pty Ltd, Indigo Pty Ltd and Juliet Pty Ltd. Under this agreement, Andrew and Cheryl determine Hotel, Indigo and Juliet's stocking needs and complete orders on their behalf. Paul delivers the stock to each of Hotel, Indigo and Juliet. Golf is grouped with each of Hotel, Indigo and Juliet and each of these smaller groups is subsumed into a larger group of all four persons.

'Ownership' or 'control' of the businesses is not a factor in determining whether grouping applies. Persons constitute a group through the inter-use of employees in circumstances described above. However, due to the broad application of these provisions, the Commissioner may exclude a person grouped under these provisions based on their independence and lack of connection with the business carried on by the other group members (see '[Exclusion from a Group](#)' on page 47 and [Payroll Tax Ruling PTA031 – Commissioner's Discretion to Exclude from a Group](#)).

## Groups Arising from Common Control

If a person or set of persons has a controlling interest in each of two businesses, the persons who carry on those businesses constitute a group. Controlling interests need not be direct control and can be traced through business structures where control can be exerted indirectly.

The following table details what constitutes a 'controlling interest' in various business entities and structures:

Person or set of persons with controlling interest in the business	Examples
<p><b>Sole Trader</b></p> <p>The person who is the sole owner, whether or not as the trustee of a trust.</p>	<p>(1) Bob is a sole trader, trading under the name Bob's Business. Bob has a controlling interest in Bob's Business.</p> <p>(2) Dave is the trustee of the Dave Trust and in that capacity runs the business Alpha Contracting. Dave has a controlling interest in Alpha Contracting.</p>
<p><b>Corporation</b></p> <p>(1) The person or set of directors who together can exercise more than 50 per cent of the voting power at directors' meetings.</p> <p>(2) The person or set of persons to whom the director(s) who can exercise more than 50 per cent of the voting power at directors' meetings are under an obligation (whether formal or informal) to act in accordance with the wishes of.</p>	<p>(1) Beta Pty Ltd carries on business under the name Beta Business. Fred, Joe and Bill are the directors of Beta Pty Ltd. The following sets of persons have a controlling interest in Beta Business:</p> <ul style="list-style-type: none"> <li>• Fred and Joe</li> <li>• Fred and Bill</li> <li>• Bill and Joe</li> <li>• Fred, Bill and Joe</li> </ul> <p>(2) Jill and her daughter Jane are the directors of JJ Pty Ltd, which carries on the business of Jill's Dresses. Jane was appointed as a director under the understanding that Jill was the real owner of the business and that Jane was to vote at directors' meetings in accordance with Jane's votes and has always done as her mother requests. Jill has a controlling interest in Jill's Dresses.</p>

Person or set of persons with controlling interest in the business	Examples
<p><b>Corporation with Share Capital</b></p> <p>As above, plus:</p> <p>The person or set of persons that directly or indirectly –</p> <ul style="list-style-type: none"> <li>• exercise more than 50 per cent of the voting power attached to the voting shares or any class of voting shares; or</li> <li>• control the exercise of more than 50 per cent of the voting power attached to the voting shares or any class of voting shares; or</li> <li>• substantially influence the exercise of more than 50 per cent of the voting power attached to the voting shares or any class of voting shares.</li> </ul>	<p>(1) Dan, Mary and Mick are ordinary shareholders of Gamma Pty Ltd, which carries on the business Gamma Consulting. Dan and Mary hold 30 per cent of the voting shares each and Mick owns 40 per cent. The following sets of persons have a controlling interest in Gamma Consulting:</p> <ul style="list-style-type: none"> <li>• Dan and Mary</li> <li>• Dan and Mick</li> <li>• Mick and Mary</li> <li>• Dan, Mick and Mary</li> </ul> <p>(2) If the shareholdings in Gamma Pty Ltd were that Dan and Mary held 20 per cent of the voting shares each and Mick held 60 per cent, then the following persons or sets of persons have a controlling interest in Gamma Consulting:</p> <ul style="list-style-type: none"> <li>• Mick</li> <li>• Mick and Dan</li> <li>• Mick and Mary</li> <li>• Mick, Dan and Mary</li> </ul> <p><i>(Note: when determining whether sets of persons have a controlling interest, it does not matter that Mick alone can exercise more than 50 per cent of the voting power and so has a controlling interest.)</i></p>
<p><b>Body Corporate or Unincorporated</b></p> <p>The person or set of persons that either –</p> <ul style="list-style-type: none"> <li>• constitute more than 50 per cent of the board of management of the body; or</li> <li>• control the composition of the board of management of that body.</li> </ul>	<p>Bill, Robert and Jill are the board members of a body corporate which carries on the business of the Buffalo Sporting Club. The following sets of persons have a controlling interest in Buffalo Sporting Club:</p> <ul style="list-style-type: none"> <li>• Bill and Robert</li> <li>• Bill and Jill</li> <li>• Robert and Jill</li> <li>• Bill, Robert and Jill</li> </ul>

Person or set of persons with controlling interest in the business	Examples
<p><b>Partnership</b></p> <p>The person or set of persons that –</p> <ul style="list-style-type: none"> <li>• own (beneficially or not) more than 50 per cent of the capital of the partnership; or</li> <li>• are entitled (beneficially or not) to more than 50 per cent of the profits of the partnership.</li> </ul>	<p>(1) A, B and C operate the ABC Business as equal partners and each have a one-third entitlement to capital and profits. The following sets of persons have a controlling interest in ABC Business because of their entitlement to both the capital and profit:</p> <ul style="list-style-type: none"> <li>• A and B</li> <li>• A and C</li> <li>• B and C</li> <li>• A, B and C</li> </ul> <p>(2) A, B and C operate the ABC Business as partners. A and B are entitled to 50 per cent of the capital each. A and B are each entitled to 20 per cent of the profits and C is entitled to 60 per cent of the profits. The following set of persons have a controlling interest in ABC Business on the basis of their entitlements to capital:</p> <ul style="list-style-type: none"> <li>• A and B</li> </ul> <p>The following person or sets of persons have a controlling interest in ABC Business on the basis of their entitlement to profits:</p> <ul style="list-style-type: none"> <li>• C</li> <li>• A and C</li> <li>• B and C</li> <li>• A, B and C</li> </ul> <p><i>(Note: when determining whether sets of persons have a controlling interest, it does not matter that C alone is entitled to more than 50 per cent of the profits and so has a controlling interest.)</i></p>

Person or set of persons with controlling interest in the business

Examples

### Trust

#### Trustee(s)

The person or set of persons that are the trustee of the trust and are the sole owners of the business.

#### Beneficiaries

The person or set of persons (whether or not as a trustee of, or beneficiary under, another trust) that is the beneficiary in respect of more than 50 per cent of the value of the interests in the first-mentioned trust.

*(Note: A person who may benefit from a discretionary trust as a result of the trustee or another person exercising or failing to exercise a power or discretion is taken to be a beneficiary in respect of more than 50 per cent of the value of the interests in the trust.)*

(1) Murray and Ed, in their capacity as trustees of the Galaxy Trust are the owners of the business Galaxy Furniture. Murray and Ed are a set of persons that has a controlling interest in Galaxy Furniture.

(2) Jim, Murray and Ed are unit holders in the EMJ Unit Trust, under which the business of EMJ Accountants is carried on. Each of Jim, Murray and Ed hold one-third of the issued units in the EMJ Unit Trust. The following sets of persons have a controlling interest in EMJ Accountants:

- Jim and Murray
- Jim and Ed
- Murray and Ed
- Jim, Murray and Ed

(3) Trustee Co in the trustee of the JME Discretionary Trust, a trust under which the business of JME Supplies is carried on. Jim, Murray and Ed are the named beneficiaries of the JME Discretionary Trust and in the absence of the exercise of a discretion by the trustee, each have a one-third interest in the trust property. However, the trustee has the discretion to distribute income or capital to any beneficiary. Accordingly, each of Jim, Murray and Ed are taken to be a beneficiary in respect of more than 50 per cent of the value of the interests in the trust. As such, each person and set of persons that can be formed by those three persons has a controlling interest in JME Supplies:

- Jim
- Murray
- Ed
- Jim and Murray
- Jim and Ed
- Murray and Ed
- Jim, Murray and Ed

Having established the basis for determining a controlling interest in a business, the grouping provisions operate to group the persons who carry on two businesses, where the same person or set of persons have a controlling interest in each business.

<b>Example</b>	
Company A Shareholders: John (75%), David (5%) and Jason (20%)	
Partnership B Entitlements to capital and profits: John (40%), David (20%) and Ian (40%)	Unit Trust C Interest in trust: John (45%) and David (55%)
<p>Together, John and David are a set of persons who have a controlling interest in each of the businesses carried on by Company A (80 per cent), Partnership B (60 per cent) and Unit Trust C (100 per cent). Accordingly, Company A and Partnership B constitute a group, Company A and Unit Trust C constitute a group and Partnership B and Unit Trust C constitute a group. Because of the common members, these smaller groups are subsumed into one group consisting of Company A, Partnership B and Unit Trust C.</p>	

The grouping provisions also provide for the cascading of controlling interests, so that where a person or set of persons has a controlling interest in a business and the person carrying on that business has a controlling interest in another business, then the first person or set of persons is taken to also have a controlling interest in the other business.

For example, Mary has a controlling interest in Duncan's Donuts, a business carried on by Duncan Pty Ltd. Duncan Pty Ltd has a controlling interest in the business Bob's Bakery. Mary is taken to have a controlling interest in Bob's Bakery because of her controlling interest in Duncan's Donuts.

In relation to specific controlling interests:

- If a person or set of persons is the beneficiary of a trust in respect of more than 50 per cent of the value of the interests in the trust and the trustee(s) of the trust has a controlling interest in the business of another trust, then the person or set of persons has a controlling interest in the second business.
- If a person or set of persons has a controlling interest in the business of a trust and the trustee(s) of the trust has a controlling interest in the business of a corporation, then the person or set of persons is taken to have a controlling interest in the business of the corporation.
- If a person or set of persons has a controlling interest in the business of a trust and the trustee(s) of the trust has a controlling interest in the business of a partnership, then the person or set of persons is taken to have a controlling interest in the business of the partnership.

### **Smaller groups subsumed into one group**

If any member of a group is also a member of another group, both groups are subsumed into one group for payroll tax purposes as detailed in the example above.

### Tracing and Aggregation of Interests In Corporations

Tracing provisions operate to group a person or set of associated persons, with a corporation if the person or set of associated persons has a controlling interest in the corporation.

'Associated person' is defined in the PRT Act and may include direct family members, partners in a partnership, private companies that have common majority interest shareholders and trustees where there are common beneficiaries.

A person or set of associated persons will have a controlling interest in a corporation if the person or set of associated persons has a direct interest, an indirect interest, or an aggregate of its direct and indirect interests in the corporation that exceeds 50 per cent.

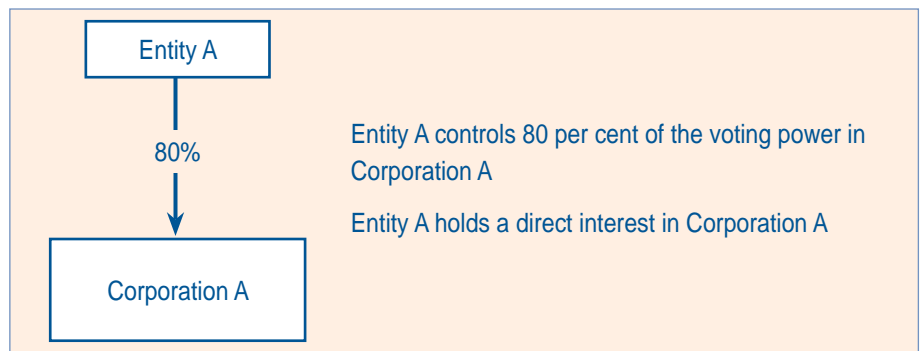
In the following examples, the term 'entity' is used to refer to the person or set of associated persons that have a direct or indirect interest in a corporation.

#### Direct Interests

A direct interest exists if the entity can directly or indirectly:

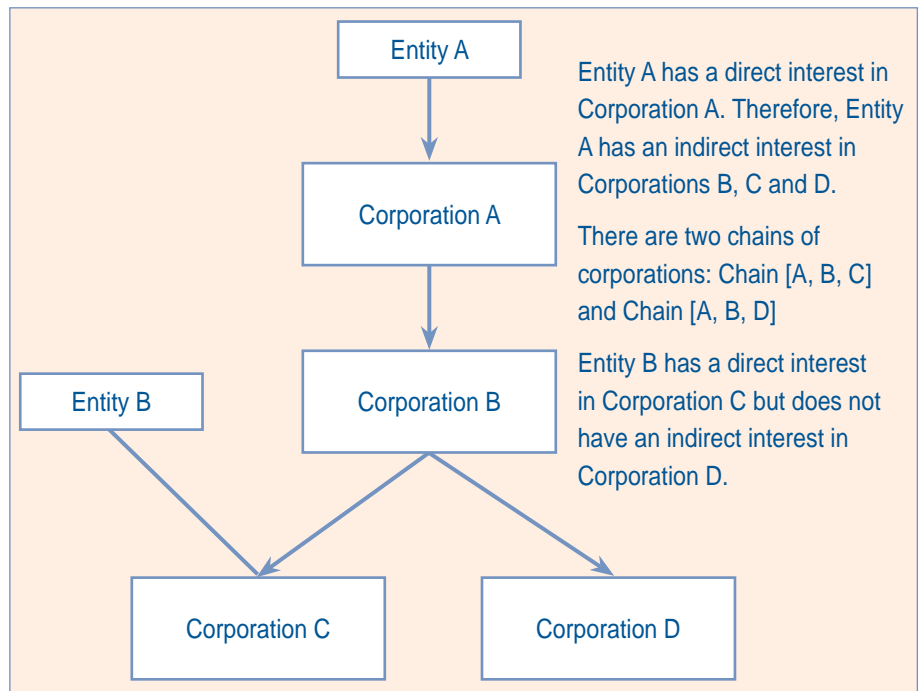
- exercise the voting power attached to the voting shares in the corporation;
- control the exercise of voting power attached to the voting shares in the corporation; or
- substantially influence the exercise of the voting power attached to the voting shares in the corporation.

The diagram below illustrates a direct interest:



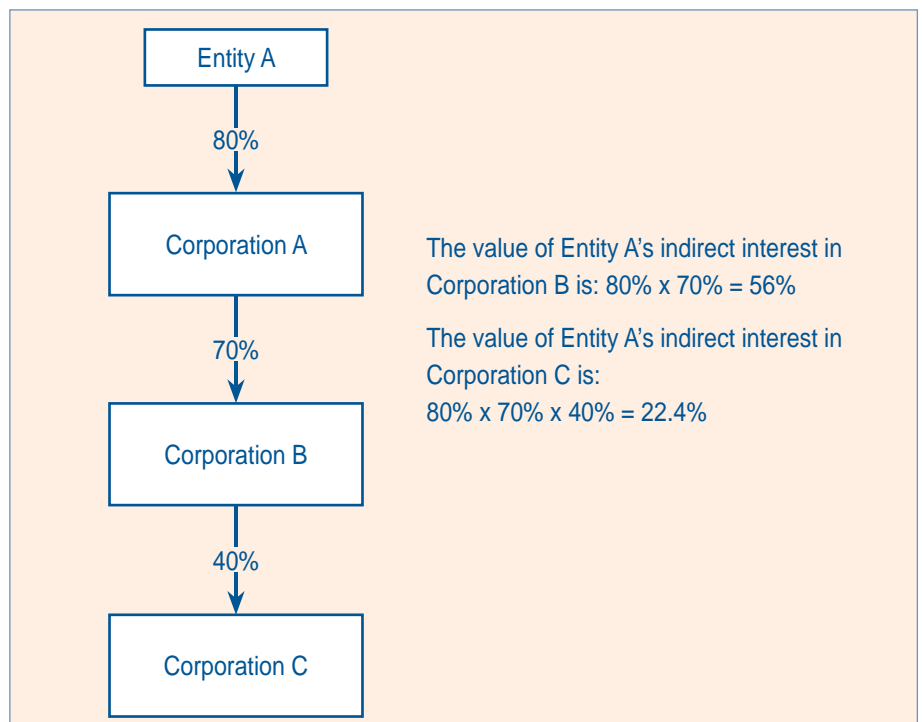
## Indirect Interests

An indirect interest in a corporation (the 'indirectly controlled corporation') exists if the entity is linked to that corporation by a direct interest in another corporation which has a direct or indirect interest in the indirectly controlled corporation. The diagram below illustrates indirect interests:



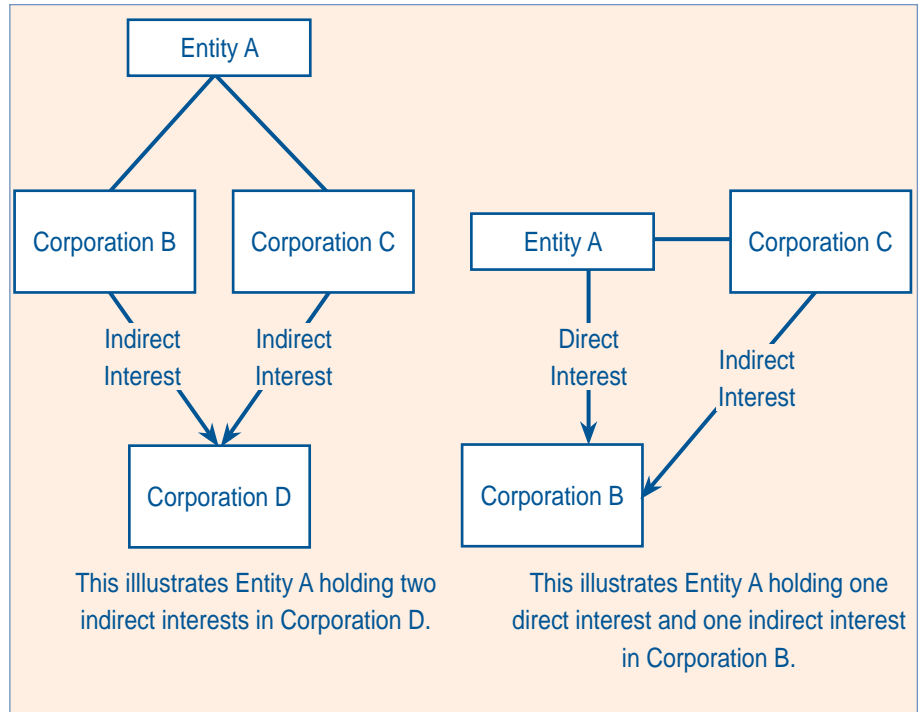
## Value of Indirect Interest

The value of an indirect interest in an indirectly controlled corporation is determined by multiplying the value of the entity's direct interest in the directly controlled corporation by the value of the directly controlled corporation's interest in the indirectly controlled corporation. The diagram below illustrates how the values of indirect interests are calculated:



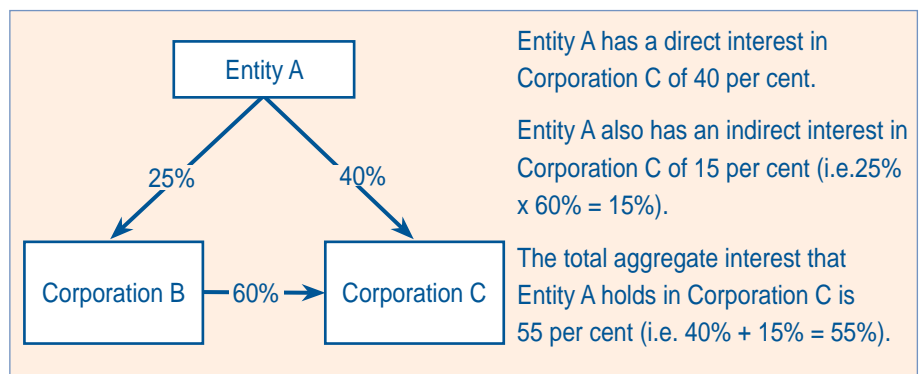
### Aggregate Interests

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 entity's direct and indirect interests in the corporation. The diagram below illustrates two indirect interests (left example) and one direct and one indirect interest (right example):

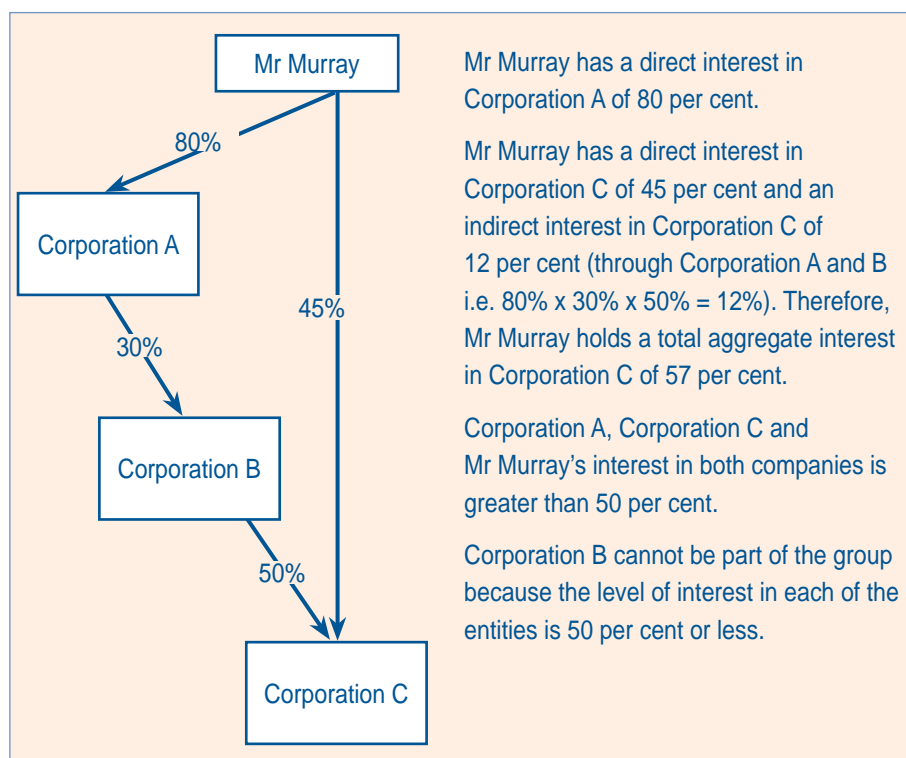


### Value of Aggregate Interest

The value of an entity's aggregate interest is the sum of the value of the entity's direct and indirect interests in that corporation. The diagram below illustrates how the values of aggregate interests are calculated.



A further example to illustrate grouping through tracing is set out below in the diagram below:



### Exclusion from a Group

Due to the broad application of the grouping provisions and to ensure that they do not have any unintended consequences, the Commissioner may, by order in writing, exclude a member from a group in all circumstances other than corporations that are grouped by reason of being related bodies corporate within the meaning of section 50 of the *Corporations Act 2001* (Cth). This includes groups that have been subsumed into a single group by reason of having a common member.

**Note:** For periods prior to 1 July 2008, only a member of a group that has been grouped by reason of an inter-use of employees between businesses or a beneficiary being deemed to have a controlling interest in the business carried on by a discretionary trust may be excluded from a group.

To exclude a member from a group, the Commissioner must be satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters considered relevant, that the business carried on by that member:

- is carried on independently of the businesses carried on by the other members of that group; and
- is not connected with the carrying on of the businesses carried on by the other members of that group.

## Independence and Connection

In considering whether or not there is independence or connection, it is necessary for a member of a group to demonstrate to the satisfaction of the Commissioner that there does not exist a continuous course of active and substantial relationship, in a business or commercial sense, with any other member of the group, and that the connections which exist are no more than casual, irregular or occasional occurrences.

In arriving at a decision the Commissioner will consider the nature and extent of all relevant contracts and dealings taken as a whole, between the member and all other members of the group, including:

- the nature and extent of any commercial transactions or dealings, including the value and percentage of the member's total business which is conducted with other members of the group;
- the extent to which members share resources, facilities or services, including premises, staff, management and accounting services;
- the extent to which the member controls or is involved in managerial decisions and day to day administration of the other members, and the extent to which other members control or are involved in managerial decisions and day to day administration of the member;
- the extent to which there are financial interdependencies, including intra-group loans or guarantees and common banking facilities;
- the extent to which there is a relationship between customers of the member and customers of other members of the group, including such matters as sharing of customers' total business, and receiving or providing complementary goods or services in respect of particular customers;
- the degree to which there is a connection between a member and other members of the group in the purchase or sales of goods and services;
- the extent to which there is a connection between the nature of the businesses of the member and other members of the group;
- the extent to which there is a connection between the ultimate owners of the member and other members of the group; and
- any other relevant information.

## Application for Exclusion

A person who is a member of a group may apply to TRO to be excluded from the group. The application must be in writing addressing the above matters and any other relevant matters. Where a new grouping is identified through audit or any other activity, TRO will generally consider the exclusion provisions, including inviting submissions from the relevant persons, prior to finalising any resulting assessment.

## Other Matters

### **Nomination of Designated Group Employer (DGE)**

To claim the general exemption deduction (GED), the group must nominate a member, the DGE, to claim the exemption. All other Territory members of the group are required to pay tax on their taxable wages without deduction. It is not necessary for a group to have the same DGE in each state that it employs. It can be any member that employs in the Territory. Furthermore, it is not mandatory for the group to claim the GED.

The DGE also has the obligation of reconciling the group's Territory payroll tax liability each financial year (see [Calculation of Payroll Tax](#) at page 30) by lodging a group annual return.

If the group does not nominate a DGE, the Commissioner may nominate one on its behalf.

### **Single Return**

A DGE of a group may nominate to lodge a single return and make a single payment for all Territory group members. Aside from this convenience, a single return allows the group to claim the full monthly general exemption deduction it is entitled to claim, even where the monthly taxable wages of the DGE is less than this amount (see [Payroll Tax Returns](#) on page 29 for further details).

### **Joint and Several Liability of Group Members**

If any payroll tax, including penalty tax and interest, is not paid by any member of group, each other member of the group becomes jointly and severally liable for the payment of the tax. This includes members of the group that do not employ in the Territory or at all.

## Administration

All provisions relating to the administration of payroll tax are contained in the *Taxation Administration Act* (TAA).

The TAA includes provisions on a broad range of administrative matters including:

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

## Interest and Penalty Tax

Under the TAA, interest and penalty tax is payable on a tax default. A tax default is a failure by a taxpayer to pay the whole or part of the tax that they are liable to pay under a taxation law, such as the PRT Act. This includes not paying tax on time.

Interest comprises two rates, a premium rate (8 per cent) and a prescribed market rate, which is reviewed annually. Current and historical rates (see also the [Appendix](#) on page 56) are published on the [TRO website](#).

Penalty tax is an administrative sanction that is intended to ensure compliance with the taxation laws by requiring taxpayers to pay an amount in addition to tax that is unpaid. It should be noted that penalty tax is payable in addition to interest, but is not payable on any interest or penalty tax that has not been paid.

The amount of penalty tax is set at a default rate of 25 per cent of the amount of tax unpaid. However, this rate will be reduced or increased in the circumstances outlined below.

Penalty tax will be reduced to 10 per cent of the amount of tax unpaid if the Commissioner is satisfied that the taxpayer took reasonable care to comply with the taxation law.

Penalty tax will be increased to 75 per cent of the amount of tax unpaid where the Commissioner is satisfied that:

- i) the tax default arose wholly or partly from the intentional disregard of a taxation law; or
- ii) information relevant to an assessment of tax was deliberately concealed or suppressed or the assessment of the tax liability was hindered in any other way. This includes taking these actions in relation to an investigation of the tax default.

The amount of penalty tax will increase to 95 per cent if the Commissioner is satisfied as to both (i) and (ii) above.

The amount of penalty tax may be reduced by up to 20 per cent of the amount of penalty tax otherwise to be imposed if, the taxpayer cooperates fully with the Commissioner in the conduct of an investigation.

The amount of penalty tax may be reduced by up to 80 per cent of the amount of penalty tax otherwise to be imposed if, before an investigation is commenced, the taxpayer discloses their tax default to the Commissioner such that the disclosure avoids the need for an investigation.

For more detailed information on TRO's penalty policy, refer to [Commissioner's Guideline CG-GEN-002](#).

### Record Keeping

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

### Refunds

If employers believe they have overpaid payroll tax, they are entitled to apply for a refund. Under the TAA the period for refunding overpaid tax is limited to five years from the date the tax was paid. Employers seeking a refund must complete an application form ([F-PRT-012](#)).

### Investigation Powers

TRO conducts a very active investigation program targeting employers that vary in size, location and industry. Generally the audit period will cover the current and previous four financial years.

In most cases, investigations begin with contacting the employer by telephone or through the mail. Certain records and documents are requested to enable the investigator to determine if the employer has been complying with the PRT Act. These records and documents may include financial statements, wage books and statements of earnings, contractor details such as invoices, cash payment journals and cheque butts, general ledger and chart of accounts, and fringe benefits tax returns.

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

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

### Objections and Appeals

A person who is dissatisfied with a decision, determination or assessment made by the Commissioner affecting their tax liability may, within a period of 60 days after the issue of the notice of the decision, determination or assessment, lodge an objection in writing with the Commissioner. The statement must be explicit, stating the full grounds of the objection and be accompanied by relevant supporting evidence. The 60 day period may be extended if the Commissioner is satisfied that the taxpayer can demonstrate reasonable cause for failing to lodge an objection by the due date.

## Revenue Circulars, Rulings and Forms

A person who is dissatisfied with the decision on an objection may, within 60 days after the date of issue of the notice of decision, appeal to the Taxation and Royalty Appeals Tribunal or Supreme Court against that decision. Decisions of the Tribunal may be appealed to the Supreme Court. See Commissioner's Guideline CG-GEN -003 for more information.

Lodgement of any objection or appeal does not affect the liability to pay any tax.

TRO provides Revenue Circulars and Payroll Tax Rulings and Commissioner's Guidelines to help employers meet their obligations under the PRT Act and provide TRO with an effective means of communicating decisions on the interpretation of legislation.

A range of forms have been issued to assist employers with various payroll tax administrative obligations.

Revenue publications and forms are available free on the [TRO website](#).

## Checklist of Taxable Items

The following checklist provides guidance on the payroll tax treatment of certain items based on the legislation in force as of 1 July 2009. It is not an exhaustive list and may be subject to future change.

T = Taxable

C = Taxable under certain circumstances

F = Taxability determined in accordance with the *FBTA Act*

E = Exempt

Remuneration item	Treatment
Accommodation	F
Accommodation allowances (from 1 July 2008)	C
Accommodation allowances (pre 1 July 2008)	T
Adoption leave (from 1 July 2009)	E
Adoption leave (pre 1 July 2008)	T
Agency supplied staff (in hands of labour hire agent) (from 1 July 2009)	C
Agency supplied staff (in hands of labour hire agent) (pre 1 July 2009)	T
Allowances	T
Annual leave	T
Annual leave paid on termination	T
Apprentices' wages	E
Back pay	T
Benefits	F
Board and quarters	F
Bona fide redundancy payments (tax-free component only)	E
Bonuses	T
Car allowances (from 1 July 2008)	C
Car allowances (pre 1 July 2008)	T
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 (from 1 July 2009)	C
Employment agency personnel (pre 1 July 2009)	T
Entertainment allowances	T
Footwear allowances	T
Fringe benefits	F

T = Taxable

C = Taxable under certain circumstances

F = Taxability determined in accordance with the *FBTA Act*

E = Exempt

Remuneration item	Treatment
Gifts	F
Gross wages	T
Health insurance	F
Holiday pay	T
Housing	F
Leave loading	T
Living away from home allowances (from 1 July 2008)	F
Living away from home allowances (pre 1 July 2008)	T
Loans (interest free/low interest)	F
Long service leave	T
Make-up pay	T
Maternity leave (from 1 July 2009)	E
Maternity leave (pre 1 July 2009)	T
Meals	F
Meal allowances	T
Motor vehicles	F
Motor vehicle allowances (from 1 July 2008)	C
Motor vehicle allowances (pre 1 July 2008)	T
Options	T
Overtime	T
Overtime meal allowances	T
Paternity leave (from 1 July 2009)	E
Paternity leave (pre to 1 July 2009)	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
Share schemes	T
Shift allowances	T
Sick pay	T
Site allowances	T
Staff discounts	F
Subcontractors	C

T = Taxable

C = Taxable under certain circumstances

F = Taxability determined in accordance with the *FBTA Act*

E = Exempt

<b>Remuneration item</b>	<b>Treatment</b>
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
• Bona fide redundancy payments (income-tax-free component)	E
• Bona fide redundancy payments (in excess of tax-free component)	T
Tool allowances	T
Trainees	C
Travel (free or subsidised)	F
Travel allowances	T
Uniform allowances	T
Vouchers	F
Workers compensation payments	E

## Appendix

### Deductions, Tax Rates and Interest Rates

Period	Maximum annual deduction*	Maximum monthly deduction*	Tax rate	Interest		Total
				Premium rate	Market rate	
	\$	\$	%	%	%	%
July 2009 to June 2010	1 250 000	104 167	5.9	8	3.13	11.13
July 2008 to June 2009	1 250 000	104 167	5.9	8	7.75	15.75
July 2007 to June 2008	1 250 000	104 167	6.2	7	6.37	13.37
July 2006 to June 2007	1 250 000	104 167	6.2	7	5.87	12.87
July 2005 to June 2006	1 000 000	83 333	6.2	7	5.68	12.68
July 2004 to June 2005	800 000	66 667	6.2	7	5.51	12.51
July 2003 to June 2004	600 000	50 000	6.2	7	4.77	11.77
July 2002 to June 2003	600 000	50 000	6.3	7	4.84	11.84
July 2001 to June 2002	600 000	50 000	6.5	7	4.28	11.28
July 2000 to June 2001	600 000	50 000	6.6	7	4.28	11.28
July 1999 to June 2000	600 000	50 000	6.75	7	4.28	11.28

\* Note: The maximum deduction is reduced on a proportionate basis where interstate wages are paid.

(See [Calculation of payroll tax](#) on page 30).

## Contact Details

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