

## Definition of Wages

Having established the circumstances in which wages are taxable in the NT, 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 (including salary sacrifice contributions);
- any remuneration paid to or in relation to company directors or members of the governing body (for example 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. For further guidance on the payroll tax treatment of various payments and benefits, refer to the [Checklist of Taxable Items](#).

### 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.

## Allowances and Reimbursements

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

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 (for example 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 available at [Appendix 3](#).

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 rate for the lowest salary band for the financial year. The rate is available at [Appendix 3](#).

### **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 in the [Fringe Benefits](#) section of this guide.

## **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 [Superannuation Contributions](#) for further details).

In addition, if a fringe benefit has a nil taxable value for FBT purposes (for example 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.

An employer may be providing fringe benefits to employees or directors without being aware of the fact, and as a consequence, be underpaying both fringe benefits tax and payroll tax.

An employer will be liable for payment of payroll tax on the taxable value of a fringe benefit, even if they have not lodged fringe benefits tax returns with the ATO and paid the relevant fringe benefits tax (this is because payroll tax is payable on taxable wages which have been paid or are payable).

A fringe benefit will be taxable whether provided to a future employee, current employee, or former employee. In this context, "employee" includes a director, or an associate of the employee or director, such as a family member or family owned company, trust or partnership.

### **Common Types of Fringe Benefits**

While not exhaustive, the following are some examples of the more common types of fringe benefits, the provision of which may result in a payroll tax liability. Of note, under the FBTAA some benefits may be subject to reduction (for example for part contribution by an employee) or exemption (for example certain remote area benefits).

- Motor vehicles (for private use).
- Motor vehicles (home garaging).
- Use of business property for private purposes (for example free or subsidised family member travel on company owned aircraft, use of a boat owned by the business for private recreational purposes).
- Free or subsidised employee or director accommodation (for example a director's family living rent free in a property owned or otherwise provided by the business).
- The employer meeting the cost of a spouse or partner accompanying an employee or director to a business conference.
- Payment of employee or director personal expenses from pre-tax income – for example, credit card debts, school fees, family holiday costs.
- Waiving of a personal debt to the employer which was incurred by a director or employee.
- Paying certain expenses which are not work related – for example, providing free music concert tickets to employees and/or their family members, or providing them with free or discounted golf club membership.
- Providing a loan to an employee or director either interest free or at a lower than market rate.

- Transferring property owned by the employer to an employee or director at less than a fair open market value (for example allowing an employee or director to acquire a company vehicle at retirement for free, or for written down book value, when a fair market value would be higher).
- Providing a fringe benefit to an associate of an employee or director (i.e. to a family member, family company, family trust, etc.) – for example, allowing the managing director’s son and daughter-in-law to purchase, at less than a fair and open market value, a home unit constructed by or owned by the business.

### **Calculating Fringe Benefit Value**

Under the FBTAA, 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 to adopt an alternative method, whereby the amounts declared are based on the FBT returns submitted to the ATO ([F-PRT-004](#)).

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 NT employees for the FBT year ended 31 March 2011 was \$120 000 and for the year ended 31 March 2012, \$125 000.

The amount to be included in the monthly returns for July 2011 to May 2012 is  
1/12 of \$120 000 (i.e. \$10 000 pm)

The amount to be included in the June 2012 return is \$125 000 less the amounts declared in the July 2011 to May 2012 returns

$$\$125\,000 - (11 \times \$10\,000) = \$15\,000$$

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 NT 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.

From 1 July 2011, the provisions were further amended to align the payroll tax laws (insofar as they determine the taxable status of a grant of a share or option) with the ITAA.

From 1 July 2011, the value of the grant of a share or option by an employer to an employee is taxable wages if the share or option is in respect of services performed by the employee and is an ESS interest within the meaning of section 83-10 of the ITAA and is granted to the employee under an employee share scheme within the meaning of that section.

Also with effect from 1 July 2011, where such a grant is not an ESS interest, it will be treated as a fringe benefit for payroll tax purposes.

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

A value of the share or option becomes liable as taxable wages 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 earlier of the following two dates:

- the date on which all conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded; or
- 7 years after the share is granted.

The vesting date for an option is the earlier of the following three 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; or
- 7 years after the option is granted.

Where the value of a share or option is not included in the wages of an employer for the financial year in which the shares or options were granted, the employer will be taken to have elected to treat the value of the share or option as taxable wages calculated 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 of a Share or Option**

With effect from 1 July 2011, if the grant of a share or option constitutes wages, the amount paid or payable as wages is taken to be its value on the relevant day, less any consideration by the employee for the share or option (but not consideration in the form of services provided by the employee to the employer).

## **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 made in the state of registration or incorporation of the company in which the share or option is granted.

### **When is a Grant Treated as a Fringe Benefit?**

With effect from 1 July 2011, where the grant of a share or option by an employer to an employee is not an ESS interest within the meaning of section 83-10 of the ITAA and is not granted to the employee under an employee share scheme, the value of the grant is to be treated as a fringe benefit. See also [Fringe Benefits](#).

### **Grants of Units in Unit Trust Schemes is a Fringe Benefit**

The granting by an employer to a director or employee (or to an associate of a director or employee) of units in a unit trust (or rights to acquire units) is, and continues to be, a fringe benefit, and is not taken to be wages in the same manner as a share or option.

### **Determining the Value of the Grant for Payroll Tax Purposes**

Provided that the taxable wages value of the grant is included as declared wages in the applicable payroll tax return, the employer may elect to set the value of the grant at either its market value or the value determined under section 83-15 of the ITAA. Notwithstanding any conditions to the contrary, the value of the grant is to be determined as if it were a right to acquire a beneficial interest in a share.

However, where the taxable wages value of the grant has not been included by the employer as declared wages in the applicable payroll tax return, the Commissioner may determine the method of valuation in any subsequent assessment.

### **Grants of Shares and Options to Directors**

The granting of shares and options to directors (regardless of whether or not the director is also an employee) constitutes wages.

The same general provisions also apply to persons who are granted shares and options before being appointed as a director, or after they have ceased to be a director.

In other respects, the provisions applying to employees, including method of valuation, apply to future, current and former directors.

### **Grants of Shares and Options through Interposed Entities and to Third Parties**

Where shares or options are not provided directly to the employee or director concerned, but to an entity or person associated with the employee or director (such as a family company, family partnership or family trust, or spouse, parent, child or other relative), the taxable wages

## Superannuation Contributions

value of the shares and options must be declared as if it were being provided directly to the employee or director.

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

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.

**Note:** The transfer of company property to a director's superannuation fund is an example of an "in kind" setting aside of an item worth money which would normally constitute a superannuation contribution subject to payroll tax. The taxable transaction could be created by simply transferring the title of the property from, for example, ABC Pty Ltd (in its own right) to ABC Pty Ltd as trustee for the (director's name) Superannuation Fund.

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 publication).

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

## Payroll Tax Liability on Unpaid Superannuation Contributions

The PRT Act provides that payroll tax is payable on taxable wages, both paid and payable.

As a consequence, if an employer fails to pay the full amount of superannuation contributions as required by law, the employer is liable to pay any additional payroll tax on the value of underpaid superannuation, at the then applicable payroll tax rate.

This could occur where, for example, a person engaged as a subcontractor is considered to be an employee for the purposes of Commonwealth superannuation laws, and where the employer has not calculated and paid superannuation contributions on payments to the subcontractor.

In these circumstances, the employer may be liable to pay payroll tax on both the payments to the subcontractor, and on the amounts of superannuation contributions to which the subcontractor is entitled but which the employer has not paid.

### 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 and 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, 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.

Further information on the interpretation and application of these principles is detailed in Payroll Tax Ruling [PTA038: \*Determining whether a worker is an employee.\*](#)

### **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**

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.

This exclusion does not extend the 90-day exemption (see following item number 4).

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 focuses 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 TRO 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 others 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 [PTA018](#): *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*.

## **GST and Non-Registered Contractors and Subcontractors**

The PRT Act provides that wages paid or payable to a person do not include the relevant proportion of the amount of GST (if any) payable by the person in relation to the supply to which the wages relate.

Only persons registered for GST can make a taxable supply, and consequently, only they must include GST in the value of the supply (unless the supply is input taxed or GST free).

Given this, where a person is not registered for GST it follows that they cannot charge GST on a supply. Accordingly, the full value of any payment made to a worker who is not registered for GST and is in an employment relationship or engaged under a relevant contract is taxable for payroll tax purposes. This includes any GST incorrectly included on the invoice.

In practical terms, this means that:

- if an employer makes payments to a consultant, contractor or subcontractor where the payment is considered to be taxable wages for payroll tax purposes, and the consultant, contractor or subcontractor is correctly registered for GST, the value of GST is excluded from the amount declared as taxable wages; however
- if the consultant, contractor or subcontractor is not registered for GST, the value of any GST incorrectly charged must be included in the amount declared as taxable wages.

### **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 (for example 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.

Employment agency contracts are sometimes referred to as 'labour hire' arrangements.

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](#) 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.