

Profit distributions and loan accounts

Payroll Tax Act 2007
Revenue Ruling PTA016

Preamble

The *Payroll Tax Act 2007* (the Act), which commenced on 1 July 2007, rewrites the *Pay-roll Tax Act 1971* and harmonises the payroll tax legislation in Victoria

The definition of wages in section 13 of the Act includes any wages, remuneration, salary, commission, employer superannuation contributions, bonuses or allowances paid or payable to or in relation to an employee. This definition is extended by section 14 of the Act to include fringe benefits as defined in the *Fringe Benefits Tax Assessment Act 1986* (Cth) (the FBT Act).

A question may arise as to whether payments and loans made to a proprietor of a business, who is also an employee of that business, are subject to payroll tax. The purpose of this Revenue Ruling is to provide clarification regarding the payroll tax treatment of these payments.

Ruling

For a payment to be subject to payroll tax, the payment must be made to an employee (or a person taken to be an employee) in his/her capacity as an employee, and not in any other capacity (e.g. a shareholder). Therefore, distributions of profit (i.e. amount of surplus after deducting all expenses) to persons who are both owners and employees of the business are not wages under the Act.

Similarly, trust distributions (whether income or capital) and company dividends are not subject to payroll tax when paid to beneficiaries or shareholders even if they are also employees. These payments must be clearly shown in the books of account as profit distributions and not expenses of the business.

Whether a loan made to a beneficiary or shareholder who is also an employee of the business is subject to payroll tax depends on how the loan is regarded under the income tax legislation and the FBT Act. If the loan is deemed to be income to the beneficiary or shareholder for income tax purposes, it is not subject to payroll tax. On the other hand, if it is regarded as a loan benefit under the FBT Act, the taxable value calculated using the formula for Type 2 Benefit (as specified in the FBT Act) is subject to payroll tax. Please contact the Australian Taxation Office for more information on income tax and fringe benefits tax.

If the loan repayment is offset against the beneficiary's or shareholder's remuneration, the amount of the remuneration offset will be subject to payroll tax. If the loan repayment is offset against trust distributions to the beneficiary or dividends to the shareholder, the amount offset is not subject to payroll tax.

A partnership is not a legal entity. Therefore, any payment to the partners (whether the payments are described as 'wages' or 'loans') are regarded as payments or drawings in respect of partnership profits and are not subject to payroll tax.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.