

# A harmonised payroll tax system for NSW and Victoria

From 1 July 2007, NSW and Victoria will introduce harmonised payroll tax legislation designed to simplify administration and reduce red tape. There are a number of key changes you need to be aware of.

## Changes at a glance

Payroll Tax Issue	Changed NSW?	Changed Victoria?
1. Exemption for charities	✓	✓
2. Fringe benefits	✓	✓
3. Grouping	✓	✓
4. Motor vehicle and accommodation allowances	✓	✓
5. Wages for work performed overseas	✓	✓
6. Adoption/maternity leave	✓	
7. Contractors	✓	
8. Designated Group Employer	✓	
9. Employment agents	✓	
10. Financial planners	✓	
11. Portable long service leave and redundancy schemes	✓	
12. Trust distributions	✓	
13. Annual Adjustment (Reconciliation)		✓
14. Anti-avoidance provisions		✓
15. Community Development Employment Scheme		✓
16. Employee Share Acquisition Scheme		✓
17. Employees in voluntary work/emergency relief		✓
18. Non-monetary superannuation contributions		✓
19. Refunds and reassessments		✓
20. Termination payments to non-employee directors and deemed employees		✓
21. Tracing provisions		✓



# Changes to both the NSW and Victorian legislation

From 1 July 2007, NSW and Victoria will align their respective payroll tax legislations in the following areas:

## 1. Exemption for charities

### Consistent charitable exemption provisions

Wages paid or payable by a non-profit organisation with **wholly** charitable, benevolent, philanthropic or patriotic objects will be exempt. This does not include a school, an educational institution, an education company or an instrumentality of the State.

**Note:** the exemption for non-profit non-government schools providing education at or below the secondary level will be maintained.

The wages must be paid or payable for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purposes of the institution or body **and** to a person engaged exclusively in that kind of work.

## 2. Fringe benefits

### Changes to fringe benefits and the gross-up rate

The taxable value of fringe benefits for payroll tax will be determined by grossing up the fringe benefits using the lower (Type 2) gross-up rate. Records maintained for fringe benefits tax are also acceptable for payroll tax.

## 3. Grouping

### Consistent grouping provisions

The following changes will be made to the grouping provisions:

- The test for determining controlling interest will be 'more than 50 per cent' (changes for Victoria but currently applies in NSW)
- In determining controlling interest, the tracing provisions will apply (changes for Victoria but currently applies in NSW)
- The test for inter-used employees will be common (changes for NSW but currently applies in Victoria)
- The Commissioner's<sup>1</sup> discretion to exclude a member will apply to members that have been grouped under any grouping provision, other than those that are related corporations within the meaning of the *Corporations Act 2001 of the Commonwealth*.

- A Designated Group Employer will claim the appropriate tax free threshold (deduction) and all other group members will not be able to claim a deduction.

## 4. Motor vehicle and accommodation allowances

### Changes to exempt rates for Motor Vehicle and Overnight Accommodation Allowances and for NSW the removal of award rates when calculating the exempt rate.

The exempt rate for motor vehicle and overnight accommodation allowances will no longer be based on award rates. They will now be based only on the rates used by the Australian Taxation Office (ATO).

From 1 July 2007 the exempt rate will be:

- 70 cents per business kilometre travelled for the use of an employee's own motor vehicle. The rate is pegged to the ATO's large car rate using the 'cents per kilometre' method or a rate specified by the regulations.

Only the amount paid in excess of 70 cents will be liable. The exempt allowance must relate to kilometres travelled for business purposes, which must be calculated using an approved method. Appropriate records must be maintained.

- \$201.25 per night for overnight accommodation allowances, where an employee is required to stay away from his or her usual place of residence. The exempt rate is pegged to the total reasonable amount for daily travel allowance expense as determined by the ATO for the lowest capital city in the lowest salary band. Amounts paid above the exempt rate will be subject to payroll tax.

## 5. Wages for work performed overseas

### Changes to liability for wages paid for services performed in another country

Wages paid in NSW or Victoria for services performed in another country for more than six months will be exempt (including the first six months) from payroll tax.

Wages paid for services performed in another country for less than six months will still be liable.

<sup>1</sup>For NSW read Chief Commissioner

# Changes to NSW's legislation

From 1 July 2007, NSW's payroll tax legislation will align with Victoria in the following areas:

## 6. Adoption/maternity leave

### Introduction of an exemption for adoption leave and maternity leave payments

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

- All wages (other than fringe benefits) paid to female employees taking maternity leave and male or female employees taking adoption leave will be exempt
- The exemption will not apply to paid sick leave, annual leave, recreation leave, long service leave or similar leave taken while the employee is absent due to a pregnancy or adoption
- The exemption will be 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
- The exemption applies irrespective of whether the leave is taken before or after the birth or adoption.

Employers who claim the exemption for maternity leave will need a medical certificate or statutory declaration from the employee verifying the pregnancy or birth of the child.

Employers who claim the exemption for adoption leave will need to 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.

## 7. Contractors

### Removal of the exemption for payments under a relevant contract exceeding \$800 000

The contractor provisions will no longer have an exemption for payments that equal or exceed \$800 000 per annum. Unless a payment is made under an exempt contract, all payments under the contract will be liable to payroll tax irrespective of the amount of the payment.

### Applying the exemption for contractors rendering services to the public generally to services provided 'on a financial year basis'

Contracts will only be exempt where the Chief Commissioner is satisfied that the contractor's

services are ordinarily provided to the public generally in each financial year.

In applying this exemption, the Chief Commissioner needs to be satisfied that the contractor provides the services in the course of conducting a genuine independent business, which stands in the market place and actually renders like services to a range of clients in each financial year.

## 8. Designated Group Employer

### Requirement for grouped employers to appoint a Designated Group Employer (DGE) to claim the benefit of the tax free threshold (deduction)

Only one member of the group will be entitled to claim the tax free threshold (deduction) and that member will be known as the DGE. All other group members cannot claim a deduction and may pay a flat rate of tax. If a group does not nominate a DGE, the Chief Commissioner may nominate one on behalf of the group.

Where the taxable wages of each of the members are less than the monthly tax free threshold (deduction) to which the group is entitled, the Chief Commissioner will provide an option for a DGE to lodge a monthly return on behalf of specified group members. This is known as a joint return and must be approved by the Chief Commissioner (**Note:** also known as a Single Lodger in NSW and a Scheduled Group in Victoria).

## 9. Employment agents

### Removal of the exemption provided to employment agents that on-hire staff to clients with wages below the \$600 000 tax free threshold

Wages paid by an employment agency to a person on-hired to a client of that employment agency, whose annual wages are below the tax free threshold under an employment agency contract, are now liable to payroll tax.

## 10. Financial planners

### Removal of exemption for wages paid to financial planners under the relevant contract provisions

The contractor provisions will no longer contain a specific exemption for payments made by an Australian Financial Services Licence Holder in respect of services provided by a financial planner.

Such payments will therefore be liable to payroll tax unless exempt under other general exemptions in the contractor provisions.

### 11. Portable long service leave and redundancy schemes

#### **Contributions to a portable long service leave scheme and a redundancy or severance scheme will no longer be liable**

Contributions paid into portable industry long service funds and redundancy schemes (including levies under the *Building and Construction Industry Long Service Leave Payments Act 1998*) will not be liable as long as the payments are not taxable under the *Fringe Benefits Tax Assessment Act 1986*.

Payments made out of a scheme or fund will also not be liable to payroll tax.

Although part of the harmonisation initiative, this provision has been backdated in NSW to 1 July 2006. Employers who have included such contributions may make the appropriate adjustments in their 2007 Annual Reconciliation.

### 12. Trust distributions

#### **Trust distributions will no longer be liable**

Trust distributions, made in lieu of wages, to a worker who is a beneficiary of a trust or related trust for services provided to a trustee of a business will not be liable to payroll tax.

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## Changes to Victoria's legislation

From 1 July 2007 Victoria's payroll tax and taxation administration legislation will align with NSW in the following areas:

### 13. Annual Adjustment (Reconciliation)

#### **Extension of the due date for the Annual Adjustment (Annual Reconciliation)**

The due date for the Annual Adjustment payment will be extended from 7 July to 21 July.

### 14. Anti-avoidance provisions

#### **Introduction of general anti-avoidance provisions**

An anti-avoidance provision will be introduced relating to agreements under which a natural person performs services for or on behalf of another person, where payment for those services is made to a person related or connected to the natural person. Where such an arrangement has been entered into to reduce or avoid liability for payroll tax, the Commissioner may disregard the arrangement, determine that any party to the arrangement is taken to be the employer and determine that payments made in respect of the arrangement are wages for payroll tax purposes.

### 15. Community Development Employment Scheme

#### **Introduction of an exemption for wages paid under a Community Development Employment Scheme**

Wages paid or payable to an aboriginal person employed under an employment project under a Community Development Employment Project

funded by the Department of Employment and Workplace Relations of the Commonwealth, or the Torres Strait Regional Authority, will be exempt from payroll tax.

### 16. Employee Share Acquisition Scheme

#### **Employee share acquisition schemes now liable to payroll tax**

The value of an employer's contribution to any grant of a share or option to an employee, a director, former director, member of the governing body of the company or a former member of the governing body or deemed employee will be liable to payroll tax.

A share or option will become liable on the relevant day, which is the date on which that share or option is granted to the employee or the date it vests to them.

The value of the share or option will be the market rate on the relevant day, as determined in accordance with the Commonwealth income tax provisions.

The granting of a share or option, which is classified as a fringe benefit under the *Fringe Benefits Act 1986* will not be seen as a fringe benefit, but rather as wages for payroll tax.

### 17. Employees in voluntary work/emergency relief

#### **Exemption for wages paid to employees participating in voluntary work for bush fires or emergency relief**

Wages paid or payable to an employee in respect of any period when he or she was taking part in

bushfire fighting activities as a volunteer within the meaning of the *Country Fire Authority Act 1958* are exempt from payroll tax. For NSW the relevant act is the *Rural Fires Act 1997*.

Wages are exempt if they are paid or payable to an employee in respect of any period when he or she was engaging in emergency activities within the meaning of the *Emergency Management Act 1986* as a volunteer emergency worker within the meaning of that Act. For NSW the relevant act is the *State Emergency and Rescue Management Act 1989*.

The exemption does not apply to wages paid or payable as recreation leave, annual leave, long service leave or sick leave.

Although part of the harmonisation initiative, this exemption was enacted in Victoria in March 2007 and backdated to 1 November 2006. Employers eligible for this exemption may make the appropriate adjustments in their 2007 Annual Adjustment.

## 18. Non-monetary superannuation contributions

### Non-monetary superannuation contributions now liable

Non-monetary superannuation contributions will be subject to payroll tax. The value of non-monetary contributions will be the agreed value or the value attributed to the contribution, whichever is the greater.

## 19. Refunds and reassessments

### Extension of period for refunds and reassessments

The period allowed for refund claims will be extended from three years to five years. Further, the period for making a reassessment of an initial assessment of a tax liability will be extended from three years to five years.

## 20. Termination payments to non-employee directors and deemed employees

### Liability for payroll tax on termination payments extended to non-employee directors and deemed employees

The definition of a termination payment has been extended to include amounts paid by a company following the termination of the services of directors, former directors, members of a governing body, former members of a governing body or deemed employees under a relevant contract.

## 21. Tracing provisions

### Introduction of tracing provisions of interests in corporations

These provisions will group an entity, being a person or set of associated persons, with a corporation if the entity has a controlling interest in the corporation. A controlling interest exists if the entity has a direct interest, an indirect interest, or an aggregate interest in the corporation, and the value of that interest exceeds 50 per cent.

A direct interest exists if the entity can directly or indirectly exercise the voting power attached to the voting shares in the corporation.

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.

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.

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

### More information

NSW	Phone	1300 139 815
	Phone hours	8.30 am – 5.00 pm, Mon – Fri
	Website	<a href="http://www.osr.nsw.gov.au">www.osr.nsw.gov.au</a>
	Email	<a href="mailto:payrolltax@osr.nsw.gov.au">payrolltax@osr.nsw.gov.au</a>
VIC	Phone	13 21 61
	Phone hours	8.30 am – 5.00 pm, Mon – Fri
	Website	<a href="http://www.sro.vic.gov.au">www.sro.vic.gov.au</a>
	Email	<a href="mailto:contact@sro.vic.gov.au">contact@sro.vic.gov.au</a>

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