



Government of **Western Australia**
Department of **Finance**
Office of State Revenue

Introduction

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information

Payroll Tax Employer Guide

Office of State Revenue WA
2019



(Last updated July 2019)

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1. Introduction

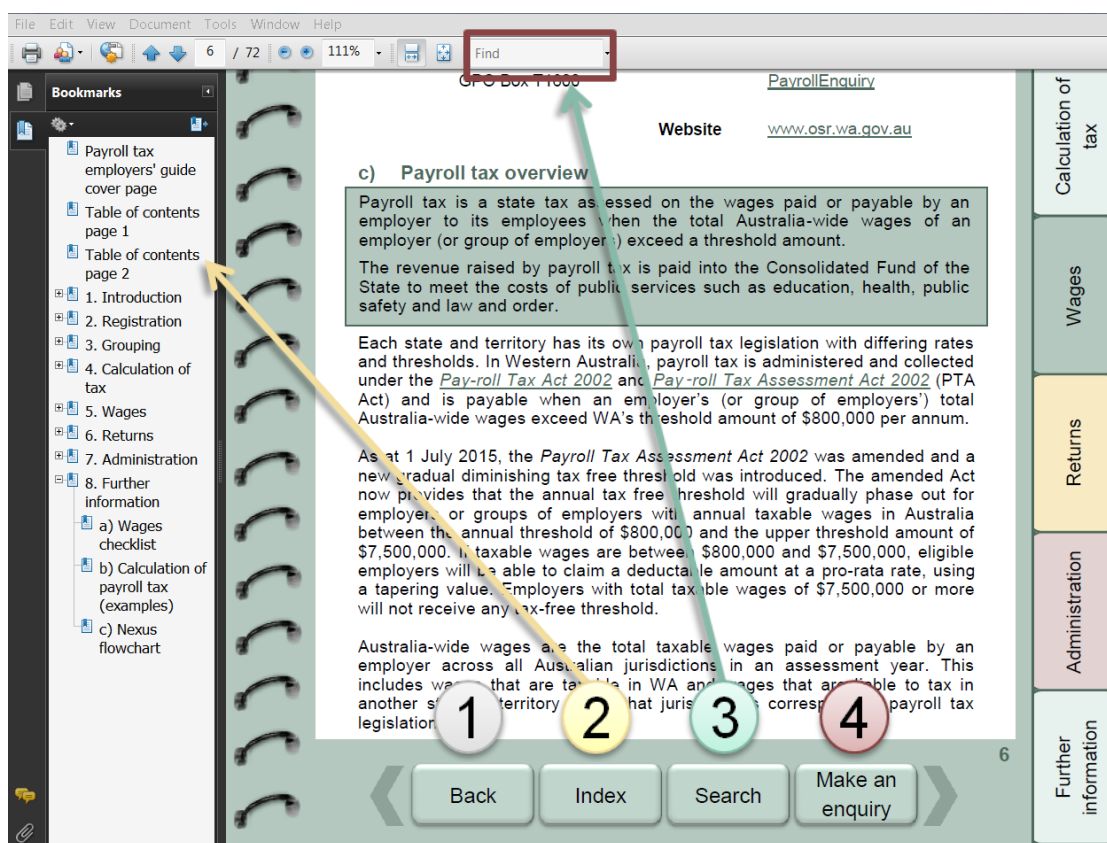
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a) How to use this document

- 1 **Navigating this document** – select a topic from the tabs down the right-hand side of this document or click on the arrows < > at the bottom of the page to move to the previous or next page. To return to the last page you viewed, click on the *Back* button.
- 2 **Search by topic** – click on the *Index* button at the bottom of any page to open a table of contents to the left of the publication.
- 3 **Search by keyword** – click on the *Search* button to open a search box on the toolbar where you can run a search for a keyword or phrase in this publication.
- 4 **Contact State Revenue** – click on the *Make an enquiry* button to open a web enquiry form (note: to use this function you must be connected to the Internet).



b) Preface

The information contained in this guide is provided as a general reference only. It is not an exhaustive explanation of the provisions of the [Pay-roll Tax Assessment Act 2002](#) and reference should be made to the Act for complete details.

If you have any questions regarding your liability or require more detailed information, please contact State Revenue using the details provided below.

Office	Office of State Revenue 200 St Georges Terrace PERTH WA 6000	Telephone	08 9262 1300 1300 368 364 (WA country callers only – local call charge)
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	Website	www.wa.gov.au/ organisation/departments-of-finance
Web enquiry	www.osr.wa.gov.au/PayrollEnquiry		

c) Payroll tax overview

Payroll tax is a state tax assessed on the wages paid or payable by an employer to its employees when the total Australian taxable wages of an employer (or group of employers) exceed a threshold amount.

The revenue raised by payroll tax is paid into the Consolidated Fund of the State to meet the costs of public services such as education, health, public safety and law and order.

Each state and territory has its own payroll tax legislation with differing rates and thresholds. In Western Australia (WA), payroll tax is administered and collected under the [Pay-roll Tax Act 2002](#) and the [Pay-roll Tax Assessment Act 2002](#) (PTA Act) and is payable when an employer's (or group of employers') total Australian taxable wages exceed WA's threshold amount of \$850,000 per annum.

From 1 July 2015, a gradual diminishing tax-free threshold was introduced. This annual tax-free threshold will gradually phase out for employers or groups of employers with annual taxable wages in Australia between the annual threshold amount of \$850,000 and the upper threshold amount of \$7,500,000. If annual taxable wages are between \$850,000 and \$7,500,000, eligible employers will be able to claim a deductible amount at a pro-rata rate, using a tapering value. Employers with total annual taxable wages of \$7,500,000 or more will not receive any tax-free threshold.

Australian taxable wages are the total taxable wages paid or payable by an employer or group of employers across all Australian jurisdictions in an assessment year. This includes wages that are taxable in WA and wages that are liable to tax in another state or territory under that jurisdiction's corresponding payroll tax legislation.

d) Harmonisation

In 2007 the Commissioners from all of the Australian states and territories committed to harmonisation of payroll tax administration.

Since then, all jurisdictions have made significant progress in achieving greater administrative consistency, by amending their respective payroll tax legislation to harmonise the following areas:

- timing of lodgment of returns
- motor vehicle allowances
- accommodation allowances
- taxable value of fringe benefits
- services performed outside a jurisdiction
- treatment of employee share acquisition schemes
- liability of superannuation contributions for non-employee directors; and
- grouping of businesses.

In addition to legislative harmony, all jurisdictions have adopted joint revenue rulings in the harmonised areas.

Further information about the harmonisation of payroll tax can be accessed from: <http://www.payrolltax.gov.au/>



Payroll Tax Australia

2. Registration

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a) Who must register for payroll tax

Employers who pay wages in Western Australia (WA) must register for payroll tax if, during any one month, their total Australian taxable wages exceed \$70,833. If the employer is a member of a group, the total Australian taxable wages paid or payable by all members of the group will determine whether the employer should register for payroll tax in WA.

An application for registration as an employer must be lodged with State Revenue within seven days after the end of the month in which the liability for payroll tax arose.

Applications for registration are completed online via the *Apply to Register* link on the [Revenue Online homepage](#).

b) Cancellation of registration of an employer

An employer may seek to cancel their payroll tax registration in the event that they cease to employ in WA or their total annual Australian taxable wages fall below the [annual threshold amount](#).

An employer seeking to cancel their payroll tax registration must advise State Revenue of the date they ceased to employ and/or the reason why they seek cancellation of their payroll tax registration (e.g. due to the sale of a business; the employer is no longer part of a group; or the wages paid by their business are below the annual threshold amount). An employer can notify State Revenue of any changes to their registration in their [Revenue Online](#) account (select *Maintain Clients*) or via the [web enquiry form](#).

c) Exempt employers

Wages paid by some employers are exempt from payroll tax. Exemptions from payroll tax liability are provided for religious organisations, certain public health service providers, schools below tertiary level, some government departments (including local governments), public benevolent institutions and certain charitable bodies and organisations.

Where an employer is exempt, they are not required to register as an employer for payroll tax, and all wages paid or payable by that employer to its employees are not assessable.

d) Exemption for a charitable body or organisation

With effect from 10 March 2015, the *Taxation Legislation Amendment Act (No. 2) 2015* introduced amendments to the charitable exemptions available under the *Duties Act 2008*, the *Land Tax Assessment Act 2002* and the [PTA Act](#) (the taxation Acts) to limit the availability of the exemptions for certain charitable bodies.

The taxation Acts have been amended to provide that a charitable body that is a *relevant body* is not eligible for an exemption unless a *beneficial body determination* is in force in respect of that relevant body.

Relevant body is defined in the Acts¹ to be any of the following:

- a) a political party
- b) an industrial association
- c) a professional association
- d) a body, other than a body referred to in (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the main purposes of the body are charitable purposes that fall within the first 3 categories (being relief of poverty, advancement of education and advancement of religion) identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 as developed by the common law of Australia from time to time
- e) a body that is a member of a class of bodies prescribed for the purposes of this paragraph
- f) a body that:
 - (i) is a member of a payroll tax group (as defined in the PTA Act Glossary) of which a body referred to in another paragraph is also a member
 - (ii) is a related body corporate as defined in section 9 of the *Corporations Act 2001* (Cth) of a body referred to in another paragraph
or
 - (iii) has as its sole or dominant purpose or object the conferral of a benefit on a body referred to in another paragraph.

Under section 41 of the PTA Act, a charitable body or organisation may apply to the Commissioner for exemption from liability to payroll tax. The Commissioner may, by giving notice to the charitable body or organisation, exempt it from liability to payroll tax. A [FPRT41 'Application: Charitable Exemption'](#) form must be submitted together with the information specified in the form.

For further information about the amendments, please refer to:

- [Revenue Ruling DA/PT/LT 18 'Charitable Exemptions'](#)
- [FPRT41 'Application: Charitable Exemption-Payroll Tax'](#)

These publications are available on the payroll tax forms and publications page on the Department of Finance website at www.finance.wa.gov.au.

¹ Duties Act s 96A(1); LTA Act s 38AA(1); PTA Act s 42A(1).

3. Grouping

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a) Grouping of employers

The grouping provisions were introduced in 1976 with the aim to minimise the potential erosion of the payroll tax base due to entities splitting their business into smaller businesses and, as a consequence, creating several entities which would all claim the tax-free threshold amount.

Businesses constitute a group where any one (or more) of the following criteria are met:

- corporations are related bodies corporate within the meaning of section 50 of the [Corporations Act 2001 \(Cth\)](#) (Corporations Act)
- common employees are used between businesses
- the same person has (or the same persons together have), a controlling interest in at least two businesses
- an entity has a direct, indirect or aggregate controlling interest in a corporation
or
- smaller groups are subsumed into one larger group.

b) Effect of grouping

The effect of grouping is that the taxable wages of all the businesses in a group are combined to determine whether a member is required to register for payroll tax. Only one member of the group, the designated group employer (DGE), is entitled to claim the [deductable amount](#) throughout the financial year.

Therefore, although each member of the group must register for payroll tax and lodge a separate return, the businesses which constitute the group are treated as one entity and the calculation of their payroll tax liability is based on the group's aggregate wages.

Further, all members of the group become jointly and severally liable for the debts of the group. This means that if one member defaults in the payment of tax, that amount may be recovered from any of the other group members.

The members of a group can nominate one member to be the DGE. If a group does not nominate a DGE, State Revenue may nominate a DGE on behalf of the group. In most cases, this is the member with the highest proportion of WA wages. If a business is the only member of its group that employs in this State, the business is automatically nominated as the DGE of the group in WA.

Further information on [the operation of the grouping provisions](#) can be found at the back of this section.

c) Grouping exclusions

The Commissioner has discretionary power to exclude a business from a group if satisfied that the business is carried on independently and is not connected with any other member(s) of the group.

Commissioner's Practice PTA 031 'Payroll Tax – Commissioner's Discretion to Exclude from a Group' sets out general guidance on the tests that must be satisfied and the matters taken into account by the Commissioner in exercising discretion. In considering the application of this discretion, the Commissioner must have regard to:

- nature and degree of ownership and control of the businesses
- the nature of the businesses
and
- any other matters the Commissioner considers relevant.

Note that there is no exclusion available for members that are related corporations within the meaning of section 50 of the Corporations Act.

Employers who wish to apply for an exclusion from grouping are required to complete and submit form FPRT2 'Application: Exclusion from Grouping', along with any supporting documentation to State Revenue.



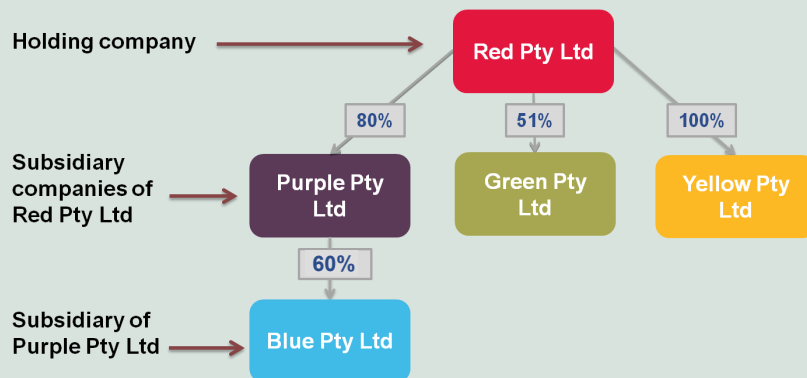
d) Grouping provisions

Related bodies corporate

Corporations constitute a group for payroll tax purposes if they are related to each other within the meaning of section 50 of the [Corporations Act](#).

This is commonly described as a holding/subsidiary relationship. Where this holding/subsidiary company structure exists, the holding company and all its subsidiary companies are grouped for payroll tax purposes.

Example 1: Related bodies corporate



In this example Red Pty Ltd is the holding company of Purple Pty Ltd, Green Pty Ltd and Yellow Pty Ltd. Blue Pty Ltd is the subsidiary of Purple Pty Ltd.

All the companies shown in this diagram constitute a group because Red Pty Ltd is the ultimate holding company.

The Commissioner must not exclude a corporation from such a group, even if the business carried on by that corporation is independent of, and not connected with, the business of other corporations in the group.

Employees used in another business

An employer will be grouped with another business if one or more of the employer's employees:

- performs duties solely or mainly for that other business
- works for other businesses due to an agreement.

Example 2: Common employees

Service Pty Ltd employs Maria to perform duties for three businesses operating out of the same premises. Maria receives and distributes goods, answers phone calls and responds to general requests from any of the three businesses. All three businesses and Service Pty Ltd are grouped.

Common control

A group exists where a person has, or a set of persons have together, a controlling interest in each of two businesses. An interest of more than 50 per cent is a controlling interest; with more than 50 per cent control a person (or set of persons) can effectively determine how each business is carried on.

What constitutes a controlling interest depends on the type of person/entity which operates the business:

Table 5: Establishing controlling interests
(References applicable to the *Payroll Tax Assessment Act 2002*)

Business type	Person(s) with control	Control established by
Company s. 33(1) & s. 33(2)	Director(s) Shareholder(s)	>50% voting power or >50% shareholder voting rights
Body Corporate or unincorporated body s. 33(2A)	Board of Management	>50% Board of Management
Partnership s. 33(3)	Partner(s)	>50% capital or profits
Trust s. 33(4)	Beneficiaries	>50% beneficial interest* *Under a discretionary trust, all beneficiaries are deemed to have a controlling interest.
Individual s. 33(5)	One person	Sole owner

Example 3: Common control

Below is an excerpt from two company share registers which show the names of shareholders and their shareholdings:

ABC Pty Ltd		XYZ Pty Ltd	
Shareholders	Shares issued	Shareholders	Shares issued
A. Allen	20	B. Brown	40
B. Brown	5	C. Jones	20
C. Jones	75	D. Young	40

B. Brown and C. Jones together hold 80 per cent of the shares in ABC Pty Ltd and 60 per cent of the shares in XYZ Pty; and so effectively control both companies. As there is common control of both companies, ABC Pty Ltd and XYZ Pty Ltd constitute a group for payroll tax (s. 33(2)).

Tracing of interests in corporations

Under the tracing provisions an *entity* and a corporation will be grouped if the entity has a *controlling interest* in the corporation.

A controlling interest will exist if the entity has:

- a *direct interest* in the corporation
- an *indirect interest* in the corporation
- an *aggregate interest* in the corporation.

In each case, the value of the interest must be greater than 50 per cent.

Entity means a person, or two or more persons who are *associated persons* 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. For a complete definition of the terms *entity*, *associated persons* and *related person*, please see section 35A of the [PTA Act](#).

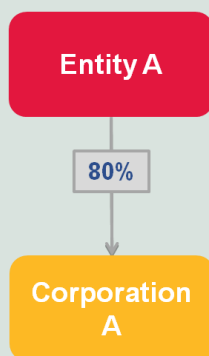
Direct interests

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

Example 4: Direct interests

The diagram below illustrates a direct interest:



Entity A controls 80 per cent of the voting power in Corporation A.

Therefore, Entity A holds a direct interest in Corporation A and will form a group.

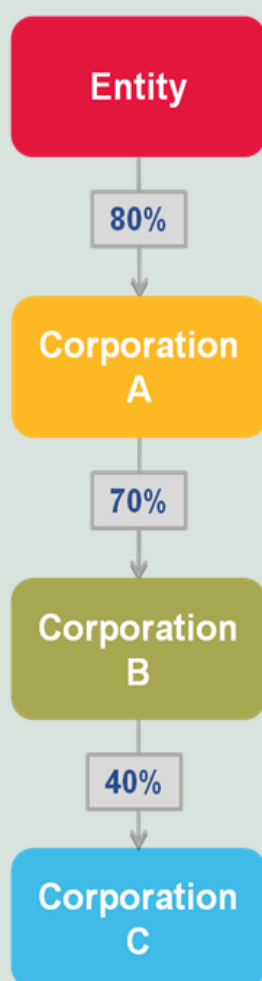
Indirect interests

An indirect interest in a corporation exists where an entity has a direct interest in a corporation (i.e. the directly-controlled corporation) that is linked to another corporation.

The value of the indirect interest is calculated by multiplying the value of the entity's direct interest in the directly-controlled corporation with the value of that corporation's direct interest in the next corporation in the chain, and so on as necessary.

Example 5: Indirect interests

The diagram below illustrates an indirect interest:



- The Entity has a direct interest in Corporation A
- Corporation A has a direct interest in Corporation B
- Corporation B has a direct interest in Corporation C (although it is not a controlling interest)

Therefore, the Entity has an indirect interest in both Corporations B and C:

The value of Entity's indirect interest in Corporation B is:

$$80\% \times 70\% = 56\%$$

The value of Entity's indirect interest in Corporation C is:

$$80\% \times 70\% \times 40\% = 22.4\%$$

Therefore, as the value of the Entity's indirect interest in Corporation B is greater than 50 per cent, the Entity, Corporation A and Corporation B will form a group.

Corporation C does not form part of the group as the entity's indirect interest is less than 50 per cent.

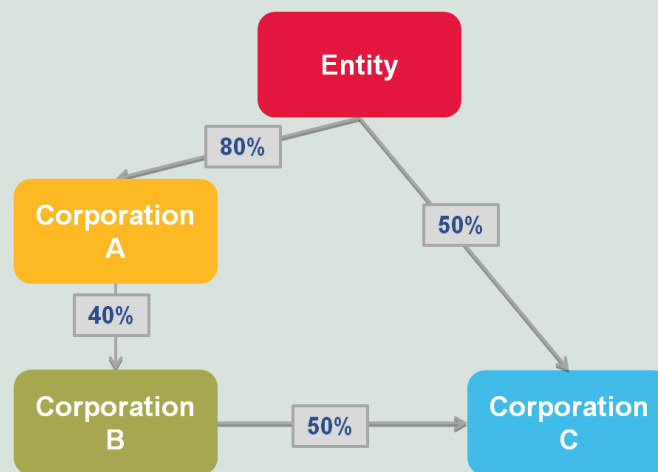
Aggregate interests

An aggregate interest is the sum of an entity's direct and indirect interests in a corporation and occurs when an entity has:

- a direct and indirect interest in a corporation
- more than one indirect interest in a corporation.

The value of the aggregate interest is the sum of the value of the entity's direct interest in the corporation and the value of each indirect interest.

Example 6: Aggregate interests



- The Entity has a *direct interest* in Corporation A (80%) and Corporation C (50%)
- The Entity has *indirect interests* in Corporation B (through Corporation A) and Corporation C (through Corporation A & B)
- The value of Entity's indirect interest in Corporation B is:
 $80\% \times 40\% = 32\%$
- The value of Entity's indirect interest in Corporation C is:
 $80\% \times 40\% \times 50\% = 16\%$
- The value of the Entity's *aggregate interest* in Corporation C is:
 $16\% + 50\% = 66\%$

Therefore, the Entity, Corporation A and Corporation C form a group. Corporation B cannot be part of the group because the interest is less than 50%.

Subsuming

Smaller groups will be subsumed into one large group in the following circumstances:

- where a business is a member of two or more groups, the members of all of the groups together are considered to be one large group
- where two or more members of a group together have a controlling interest in a business, the business and all the members of the group form one large group.

Example 7: Subsuming

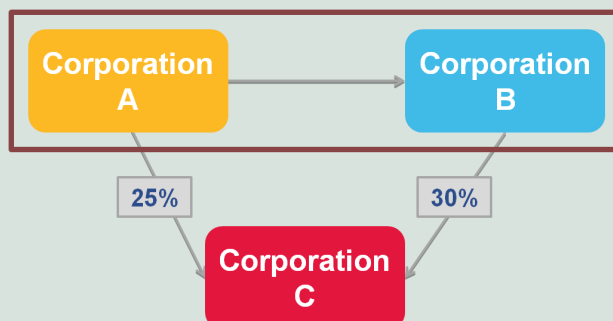
Section 36(1) – Groups with common members

Group 1	Group 2
Company A	Company A
Company B	Partnership C

- Company A is common to each group.

Therefore, Group 1 and Group 2 will be amalgamated and Companies A and B, and Partnership C will form one group.

Section 36(2) – Common members with controlling interests



- Corporation A and Corporation B form a group for payroll tax purposes
- Corporation A has a 25% interest in Corporation C
- Corporation B has a 30% interest in Corporation C

Corporation A and Corporation B together have a controlling interest (**55%**) in Corporation C, and so the three corporations form a group for payroll tax purposes.

4. Calculation of tax

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a) Rate of tax

From 1 July 2018 to 30 June 2023, payroll tax is calculated on a tiered rate scale in which the payroll tax rate gradually increases to a maximum of 6.5% for employers, or groups of employers, with annual Australian taxable wages (ATW) exceeding \$100 million.

Tier	Annual Australian Taxable Wages (ATW)	Threshold Entitlement	Tax Rate (%)	Calculation of Tax Payable
1	Not more than \$850,000	\$850,000	NIL	N/A
2	More than \$850,000 but less than \$7.5 million	Diminishing threshold	5.5	WATW* – Deductible Amount x Tax Rate
3	\$7.5 million or more but not exceeding \$100 million	NIL	5.5	WATW* x Tax Rate
4	More than \$100 million but not exceeding \$1.5 billion	NIL	Tier 4 Rate Calculation	WATW* x Tax Rate
5	More than \$1.5 billion	NIL	Tier 5 Rate Calculation	WATW* x Tax Rate
* WATW = Annual WA Taxable Wages				

b) Threshold amounts, deductible amount, and tapering value

Annual and monthly threshold amounts

Annual and monthly thresholds are amounts at which, if exceeded, payroll tax becomes payable.

The tax-free annual threshold amount is \$850,000 which equates to a monthly threshold amount of \$70,833, or apportioned (pro-rata) for part periods if applicable.

Note: Apportioned thresholds are applicable in, but not limited to, circumstances where the employer does not pay wages for a whole financial year, becomes a member of a group, or where a business is sold or acquired during the year.

Upper threshold amount

Annual and monthly upper thresholds are the amounts at which the tax-free threshold phases out. The upper threshold amount is \$7,500,000 which equates to a monthly threshold amount of \$625,000, or apportioned for part periods if applicable.

Once the total Australian taxable wages paid by an employer, or group of employers, are equal to or exceed the upper threshold amount, payroll tax is payable on the employer's total taxable wages without any deduction.

Deductable amount

The deductible amount is the amount employers may be entitled to deduct from their WA taxable wages and is calculated by using a tapering value formula.

Tapering value

A tapering value formula is used to calculate the gradual reduction in the deductible amount which employers may claim against their WA taxable wages between the annual threshold amount of \$850,000 and the upper threshold amount of \$7,500,000.

$$TV = \frac{AT}{UT - AT}$$

Where:

TV is the tapering value

AT is the annual threshold amount for the year

UT is the upper threshold amount

The tapering value can be simplified to 17/133.

$$\frac{\$850,000}{\$7,500,000 - \$850,000}$$

This means the threshold amount will reduce by \$17 for every \$133 of wages over the threshold.

c) Employer registration status

An employer means any person who pays or is liable to pay, any wages. This includes the Crown in right of the State of Western Australia (WA) and an employment agent ([PTA Act](#), glossary).

An employer or group of employers who pay wages in WA must register for payroll tax if, during any one month, their total Australian taxable wages (ATW) exceed the monthly threshold amount of \$70,833.

An employer will be registered as one of the following:

- a **local non-group employer** – wages are paid only in WA and the employer is not a member of a group
- an **interstate non-group employer** – wages are paid both in WA and at least one other Australian jurisdiction and the employer is not a member of a group
- a **local group employer** – the employer is grouped with at least one other wage-paying entity and all members of the group pay wages only in WA or
- an **interstate group employer** – the employer is grouped with at least one other wage-paying entity and pays wages in WA. At least one member of the group pays wages in another Australian state or territory.²

The registration status of an employer will affect their eligibility for the gradual diminishing tax-free threshold and rate of tax (where applicable), the method of calculating payroll tax payable in WA and their reporting and lodgment requirements at annual reconciliation.

² Whether or not that other group member also pays wages in WA.

d) Calculating your payroll tax liability

Payroll tax is calculated on the difference between the taxable wages paid by an employer in WA and the deductible amount to which the employer is entitled.

See the Payroll Tax Calculation Table in the fact sheet relevant to your registration status.

Local Non-group	Local Group
An employer who pays wages only in Western Australia and is not related to, or grouped for payroll tax purposes with, any other wage-paying entity. <ul style="list-style-type: none"> Local Non-group fact sheet 	An employer who is grouped with at least one other wage-paying entity and all members of the group pay wages only in Western Australia. <ul style="list-style-type: none"> Local Group fact sheet

Interstate Non-group	Interstate Group
An employer who pays wages both in Western Australia and at least one other Australian State or Territory and is not related to, or grouped for payroll tax purposes with, any other wage-paying entity. <ul style="list-style-type: none"> Interstate Non-group fact sheet 	An employer who is grouped with at least one other wage-paying entity and pays wages in Western Australia. At least one member of the group pays wages in another Australian State or Territory. <ul style="list-style-type: none"> Interstate group fact sheet

Your payroll tax liability is calculated by State Revenue after you have declared your taxable wages through [Revenue Online \(ROL - Online Payroll Tax\)](#).

If you would like an estimate of your payroll tax liability, you can use the [payroll tax calculator](#) available on the Department of Finance website.



5. Wages

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a) When wages are subject to payroll tax in WA

The *Pay-roll Tax Assessment Amendment Act 2010* introduced new nexus arrangements that determine in which Australian jurisdiction wages are taxable in the event that an employee provides services in more than one state or territory and/or partly overseas, in a calendar month.

The new nexus arrangements apply retrospectively from 1 July 2009 and are consistent across all states and territories to ensure that employers do not become liable for payroll tax on the same wages in more than one jurisdiction.

Employees providing services solely in Western Australia

Where an employee works wholly in one state or territory during a calendar month, as is the case for the majority of employees, payroll tax is to be paid in the jurisdiction where those services are performed.

In other words, if an employee works solely in WA during the calendar month, payroll tax on that employee's wages is payable in WA.

Employees providing services in more than one jurisdiction and/or overseas

To assist taxpayers, a harmonised revenue ruling, *Revenue Ruling PTA 039 'Nexus Provisions'*, has been published that explains the nexus provisions and clarifies the circumstances when wages must be declared in WA for payroll tax purposes.

The ruling also includes a flowchart which provides a step by step diagram to assist employers to determine if payroll tax is payable in WA.

To determine whether the wages paid or payable in a calendar month are subject to Western Australian payroll tax, the following four tiered test is to be applied.

Wages are taxable in the jurisdiction where:	
Test 1	the employee's principal place of residence is located.
Test 2	the employer's registered ABN address or principal place of business is located.
Test 3	the wages are paid.
Test 4	the services were mainly performed.

The above tests are to be applied sequentially; the employer applies each of the tests in succession until it can be determined in which jurisdiction payroll tax should be paid.

Services performed wholly in another country

Wages received in WA by an expatriate employee who is working in another country, or countries, are exempt from payroll tax where the assignment is for a continuous period of more than six months. The exemption from payroll tax applies for the whole assignment, including the first six months.

Where the assignment is less than six continuous months, wages are taxable in the Australian jurisdiction where the wages are paid or payable. For the purposes of this exemption, wages are taken to be *paid* in WA if they are credited to a bank account or sent to an address in WA.

Services performed offshore

Any wages that relate to services performed offshore and beyond the limits of any Australian jurisdiction, but not in another country, are taxable in the jurisdiction in which they are *paid*, irrespective of the duration of the assignment. This would typically apply to oil rig workers; 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.

b) Taxable wages

For payroll tax purposes, wages are defined as any wages, remuneration, salary, commission, bonuses or allowances paid or payable to or in relation to an employee, whether in cash or in kind.

The term *wages* is broadly defined in the PTA Act to encompass any payment provided to an employee in return for services provided to their employer.

Taxable wages include:

- gross salaries and wages
- commissions
- bonuses
- allowances
- directors' remuneration
- superannuation contributions
- fringe benefits
- specified taxable benefits
- employment termination payments and accrued leave paid on termination
- employee share acquisitions
- and
- wages paid in kind (e.g. salary sacrificed superannuation contributions).

Please refer to the [wages checklist](#) for further guidance on the types of payments that are subject to payroll tax.

Salaries and wages

The gross salary or wage of an employee is liable to payroll tax. This includes entitlements and deductions made to, or in relation to, an employee, such as:

- income tax
- hospital benefit fund contributions
- union fees
- superannuation
- holiday pay
- and
- termination payments, such as accrued leave entitlements or deferred wages.

Payments can be paid or payable, in cash or in kind, at piece rates or otherwise. They can be either to, or in relation to, an employee. These payments are also liable if paid or payable to the employee by someone acting on behalf of the employer.

Payments to trainees

Wages paid or payable by an employer to a trainee under a training contract registered from 1 July 2019 under the *Vocational Education and Training Act 1996* are liable to payroll tax.

Salary sacrifice

❖ What is a salary sacrifice arrangement?

A salary sacrifice arrangement is an arrangement between an employer and an employee, where the employee agrees to receive a reduced salary or wage in return for some other form of non-cash benefits of equal cost to the employer.

The non-cash benefits provided may include pre-tax superannuation contributions, the provision of a motor vehicle, a laptop or similar portable computer, car parking fees, payment of school fees or the payment of membership fees and subscriptions. *Effective salary sacrifice* arrangement is defined by the [Australian Tax Office](#).

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.

❖ How are salary sacrifice arrangements treated for payroll tax purposes?

For payroll tax purposes, under an effective salary sacrifice arrangement:

- 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 a benefit under the *Fringe Benefits Tax Assessment Act 1986 (Cth)* is grossed-up by the Type 2 factor as shown on the fringe benefits tax (FBT) return.

If the benefit provided to the employee is exempt from FBT, payroll tax is payable only on the reduced salary on which the employee pays income tax, not the amount sacrificed for that benefit.

Some employees agree to make regular donations to charitable organisations of their choice under a 'Workplace Giving' program. This arrangement is not considered a salary sacrifice arrangement.

The following examples outline the payroll tax treatment of various salary sacrifice arrangements:

- An employee with a current salary of \$70,000 per year negotiates with their employer for the provision of a car under a salary sacrifice arrangement. As a result, their salary will be reduced to \$58,000 per year. The taxable value of the car for FBT purposes, grossed-up by the Type 2 factor, is \$6,350. Payroll tax will be payable on the \$58,000 salary and the FBT taxable value of \$6,350.
- An employee's current salary is \$65,000 per year. The employee negotiates with the employer for the purchase of a laptop computer under a salary sacrifice arrangement, reducing their salary to \$62,000. As the laptop is exempt from FBT, payroll tax is payable on the \$62,000 salary.
- As well as their current annual salary of \$60,000, an employee makes after-tax (personal) superannuation contributions of \$5,400 per year. The employee negotiates with the employer to replace the after-tax superannuation contributions with salary sacrifice (pre-tax) contributions. For the next financial year, the employee's salary will be reduced to \$54,600 with the employer making a pre-tax superannuation contribution of \$5,400. Payroll tax is payable on both the salary and the pre-tax superannuation contribution.

Commissions, bonuses and allowances

Commissions, bonuses and allowances paid to employees are liable to payroll tax. These payments are also liable if paid or payable by someone acting on behalf of the employer.

Generally the full amount of an allowance is taxable. However, exemptions are provided for [reasonable motor vehicle and overnight accommodation allowances](#). For more detailed information, please refer to [Revenue Ruling PTA 005 'Exempt Allowances - Motor Vehicle and Accommodation'](#).

Reimbursements

Reimbursements of expenses incurred by an employer, but paid up front by the employee, are not taxable unless they have a taxable value under the [Fringe Benefits Tax Assessment Act 1986 \(Cth\)](#).

A reimbursement of an expense is not subject to payroll tax if the reimbursement has all the following characteristics:

- at the time of payment, the expense has already been incurred by the employee
- the expenditure by the employee was incurred in the course of the employer's business
and
- the precise amount is reimbursed.

[Revenue Ruling PTA 011 'Allowances and Reimbursements'](#) explains the difference between an allowance and a reimbursement for payroll tax purposes.

Directors' remuneration

Remuneration paid or payable to a director, whether as a working or non-working director, is liable to payroll tax. The definition of a *director* under the payroll tax legislation includes a member of the governing body of the company.

Distributions of profit (i.e. paid from after-tax profits) to directors in their capacity as shareholders are not wages under the PTA Act. For more information on profit distribution see [Revenue Ruling PTA 016 'Profit Distributions and Loan Accounts'](#).

Superannuation

All pre-tax contributions paid or payable to a superannuation fund are liable to payroll tax. This includes superannuation contributions under a salary sacrifice arrangement and non-monetary contributions to an employee's fund, such as the transfer of real property and marketable securities.

❖ What is a superannuation contribution?

Under sections 9CA–9CD of the [PTA Act](#), a superannuation contribution is taken to be:

- a contribution paid or payable by an employer to, or as, a superannuation fund in respect of an employee in a return period
- or
- any amount, although not paid or payable, that is or is required to be credited under a superannuation fund as an employer's contribution in respect of an employee. This refers only to an Australian superannuation fund that does not provide any defined benefits.

The amount to be included as a superannuation contribution is:

- the contribution made by the employer in the return period
- a [notional contribution](#) taken to have been made by the employer in the return period
- and
- if an employer has an [individual superannuation guarantee shortfall](#) for the return period, the amount of the shortfall.

The setting aside of any money or anything that is worth money as, or as part of, a superannuation fund is taken to be the payment of a contribution.

❖ Definitions

Employee includes any person:

- to whom (or in relation to whom) wages are payable
- and
- to whom remuneration is paid or payable by a company in that person's capacity as a director of that company.

Superannuation fund means:

- a superannuation fund within the meaning of the [Superannuation Industry \(Supervision\) Act 1993 \(Cth\)](#)
- and
- any other form of superannuation, provident or retirement fund or scheme including –
 - the Superannuation Holding Accounts Special Account within the meaning of the [Small Superannuation Accounts Act 1995 \(Cth\)](#)
 - a retirement savings account within the meaning of the [Retirement Savings Accounts Act 1997 \(Cth\)](#).

An *Australian superannuation fund* is a superannuation fund that:

- was established in Australia or has any asset in Australia and
- has its central management in Australia.

❖ **Notional contributions**

A *notional contribution* is taken to have been made if the employee is a member of an Australian superannuation fund and the fund is a defined benefit fund. For each return period in which an entitlement accrues, an employer is taken to have made a notional contribution to the fund in that return period. The amount of the notional contribution is the amount that an actuary determines would be sufficient to meet the expected long-term cost of that benefit to the employer.

If an employer makes a notional contribution to the fund for the employee as described above, no *actual* contribution for that employee is to be included in the payroll tax return as wages. This ensures that the amount payable and the amount paid are not accounted for twice.

❖ **Superannuation guarantee shortfall**

An *individual superannuation guarantee shortfall* (shortfall) is defined in section 19 of the *Superannuation Guarantee (Administration) Act 1992 (Cth)*. For the purposes of inclusion as wages, it does not include any superannuation guarantee shortfall penalty imposed on the employer because of non-compliance with choice of fund requirements.

If an employer's contribution to a fund is payable, but not paid, it is treated as a superannuation contribution for payroll tax purposes, and the amount should be declared on the payroll tax return at the time the contribution arises. As a superannuation contribution for payroll tax purposes also includes a shortfall paid to the Australian Taxation Office, any amount that is treated as a shortfall because the employer failed to pay the contribution is reduced by the amount the employer has declared as a superannuation contribution in a payroll tax return for that period. Without this provision, an employer would be liable for payroll tax on both contributions. Any penalty included in a superannuation guarantee shortfall is not included for payroll tax purposes.

If an employer has an individual superannuation guarantee shortfall for an employee, that shortfall is taken to be paid for the *last* month of the relevant quarter.

Fringe benefits

Fringe benefits, as defined and valued for the purposes of the *Fringe Benefits Tax Assessment Act 1986 (Cth)* (FBTA Act), are generally subject to payroll tax.

The value of a fringe benefit is to be calculated in accordance with the FBTA Act; exempt benefits or benefits with a nil taxable value under the FBTA Act are also exempt from payroll tax.

The only exception to this rule is the treatment of remote area fringe benefits. There are a number of fringe benefit tax exemptions and concessions available to employers who provide benefits to employees who work in remote areas under a *fly-in fly-out* arrangement.

For payroll tax purposes, certain benefits provided to an employee for services performed at a remote location are fully exempt:

- residential fuel (i.e. electricity and gas)
- housing assistance
- domestic water
- holiday transport⁵
- education costs⁶.

❖ Calculating the value of fringe benefits

The taxable value of fringe benefits to be declared for payroll tax purposes is the grossed-up value, which is determined by adding Type 1 and Type 2 aggregate amounts and multiplying by the Type 2 rate.

$$(\text{Type 1 aggregate amount} + \text{Type 2 aggregate amount}) \times \text{Type 2 gross-up rate}$$

Return calculation details
 ➤ Refer to NAT 2376 for more information

14 Calculated fringe benefits taxable amounts (whole dollars only)

A	Type 1 aggregate amount	\$				8	,	0	0	0	×	2.0647	=	\$				1	6	,	5	1	8	×	A	
B	Type 2 aggregate amount	\$				1	2	,	0	0	0	×	1.9608	=	\$				2	3	,	5	3	0	×	B
C	Aggregate non-exempt amount (hospitals, ambulances, public benevolent institutions and health promotion charities only)												or	\$								×	C			

15 Fringe benefits taxable amount (A + B) or C \$ **40,048** ×

⁵ Limited to the cost of the return economy airfare to the capital city of their work place, when the employee does not travel back to their hometown or that capital city.

⁶ Limited to the educational costs of an employee's dependent that is required to live away from home in order to attend on a full-time basis, a primary, secondary or tertiary institution that is not within a reasonable distance of the remote place at which the employee performs services.

Example 8: Calculating the taxable value of fringe benefits for payroll tax purposes

Below is an extract from an employer's annual FBT return for the year ending 31 March 2016.

Return calculation details	
➤ Refer to NAT 2376 for more information.	
14 Calculated fringe benefits taxable amounts (whole dollars only)	
A Type 1 aggregate amount \$	8,000 × 2.1463 = \$17,170 A
B Type 2 aggregate amount \$	12,000 × 1.9608 = \$23,530 B
C Aggregate non-exempt amount (hospitals, ambulances, public benevolent institutions and health promotion charities only)	or \$ C
15 Fringe benefits taxable amount	(A + B) or C \$40,700

Step 1: Add together the Type 1 & Type 2 aggregate amounts

$$\$8,000 + \$12,000 = \$20,000$$

Step 2: Multiply the total by the Type 2 gross-up rate

$$\$20,000 \times 1.9608^7 = \$39,216$$

The payroll tax payable on fringe benefits would be:

$$\$39,216 \times 5.5\% = \$2,156.88$$

❖ Declaring fringe benefits

Employers are required to declare in their payroll tax returns the taxable value of fringe benefits provided in each return period. However, for administrative ease, the PTA Act allows employers to formally elect to declare fringe benefits using the estimated method, whereby the amounts declared are based on the FBT returns submitted to the Australian Tax Office (ATO) (refer to the example on following page).

Customers wishing to use the estimated method must lodge a [FPRT4 'Election Form: Fringe Benefits Estimated Method'](#) form with the Commissioner no later than the due date of the first payroll tax return of the first financial year in which the estimated basis is to be used.

Where such an election is made, employers must declare in each monthly return from July to May, one-twelfth of the grossed-up value of fringe benefits using the FBT return for the year ending 31 March immediately preceding the start of each assessment year.

A fringe benefits reconciliation is required in the June payroll tax return of each assessment year. The June payroll tax return should include the difference between the total amount of fringe benefits declared in the July to May returns, and the actual value of fringe benefits declared in the FBT return for the year ending 31 March immediately before the annual reconciliation.

Employers can use the [FPRT3 'Worksheet: Fringe Benefits Reconciliation'](#) form available on the Department of Finance website for assistance calculating the amount of the adjustment to be included in the June return.

⁷ The Type 2 gross-up rate for the year ending 31 March 2016 and 31 March 2017 is 1.9608.

The Type 2 gross-up rate for the year ending 31 March 2018 is 1.8868.

Example 9: Using the estimated method

The example below illustrates the use of the estimated method by an employer for the 2016-17 assessment year.

July – May ⇒ refer to 2016 FBT return

Return calculation details
 Refer to NAT 2376 for more information.
 14 Calculated fringe benefits taxable amounts (whole dollars only)
 A Type 1 aggregated amount: 8,000 × 2.1463 = 17,170
 B Type 2 aggregated amount: 12,000 × 1.9608 = 23,530
 C Exempt amount (hospitals, ambulances, public benevolent institutions and health promotion charities only): 0
 15 Fringe benefits taxable amount (A + B) or C: 40,700

$$(8,000 + 12,000) \times 1.9608^8 = \$39,216$$

$$\text{One-twelfth of } 39,216 = \$3,268$$

From July - May the employer will declare \$3,268 on each payroll tax return, totaling **\$35,948** over 11 months

Return calculation details
 Refer to NAT 2376 for more information.
 14 Calculated fringe benefits taxable amounts (whole dollars only)
 A Type 1 aggregated amount: 9,000 × 2.0647 = 18,582
 B Type 2 aggregated amount: 15,000 × 1.9608 = 29,412
 C Exempt amount (hospitals, ambulances, public benevolent institutions and health promotion charities only): 0
 15 Fringe benefits taxable amount (A + B) or C: 47,994

June reconciliation ⇒ refer to 2017 FBT return

$$(9,000 + 15,000) \times 1.9608 = \$47,059$$

For the June return, the employer will declare the difference between the amount declared from July – May and the grossed-up value of the 2017 FBT return⁹.

$$\$47,059 - \$35,948 = \$11,111$$

The amount of **\$11,111** is to be declared in the June 2017 return.

An election to use the estimated method on returns can only be made where the employer has been paying FBT on fringe benefits to the ATO for at least fifteen months prior to the commencement of the assessment year.

Specified taxable benefits

A number of benefits that are not fringe benefits under the FBTA Act are subject to payroll tax.

These benefits are contributions by an employer to:

- an industry redundancy
- a portable paid long service leave scheme.

Liability for payroll tax occurs at the time the contributions are paid or payable by the employer to the fund.

⁸ The Type 2 gross-up rate for the year ending 31 March 2016 and 31 March 2017 is 1.9608. The Type 2 gross-up rate for the year ending 31 March 2018 is 1.8868.

⁹ Employers using the estimated method use the FBT gross-up rate from the FBT year ending 31 March of the same year they are completing the annual reconciliation for the full year; e.g. for the 2015-16 annual reconciliation, use the gross-up rate from the FBT year ending 31 March 2016.

❖ Industry redundancy fund

Employer contributions to a fund that operates to provide redundancy benefits for employees on their retrenchment, on leaving the industry or on retirement, are liable for payroll tax.

❖ Portable long service leave

Employer contributions to a portable long service leave fund are liable for payroll tax.

In the circumstances where an employer pays the employee's long service leave wages directly, those wages are exempt from payroll tax to the extent of the amount that the employer is entitled to recover from the fund.

Termination payments

Certain payments paid or payable to an employee as a result of their retirement from, or termination of, employment are subject to payroll tax.

Specifically, payments made relating to services rendered to the date of retirement or termination include:

- payouts of accrued annual and long service leave
- employment termination payments (ETPs)
- a payment that would be an ETP but for the fact it may be paid later than 12 months after termination occurred.

Typical payments that fall within the definition of an ETP include:

- payments in lieu of notice
- a gratuity or *golden handshake*
- compensation for the loss of a job/wrongful dismissal
- unused rostered days off
- unused sick leave
- invalidity payments for a permanent disability (other than compensation for personal injury)
- bona fide redundancy and approved early retirement scheme payments in excess of a tax free amount (the tax free amount is indexed annually)
- certain payments following the death of an employee.

The amount of an ETP that is liable to payroll tax is the amount that would be assessable income for income tax purposes of the employee.

In some cases a termination payment is not directly paid to the employee, for example, paid into a superannuation fund. However, it still remains liable for payroll tax as a termination payment.

Payments relating to the termination of services or office of a director are also liable.

Revenue Ruling PTA 004 'Termination Payments' clarifies those termination payments that are exempt from payroll tax. Payroll tax exemptions apply to invalidity payments and Genuine Redundancy Payments (previously known as Bona Fide Redundancy) and Early Retirement Scheme Payments (previously known as Approved Early Retirement Scheme Payments), but only to the extent that they are exempt from income tax.



Employee share acquisitions

The grant of a share or option to an employee by an employer, under an Employee Share Scheme (ESS), is subject to payroll tax. This includes any shares or options granted by someone acting on behalf of the employer, because the employer is deemed to have made such grants.

If an employer grants a share or option to an employee that is *not* an ESS interest (e.g. shares in an unrelated corporation), it will be taxable as a fringe benefit under section 9BA of the [PTA Act](#).

❖ Definitions and scope of legislation

A *share* includes a stapled security, which will be valued in the same way as a share.

WA payroll tax legislation no longer applies to units in a trust, or options to acquire units in a unit trust, unless:

- the unit is part of a stapled security
or
- the acquisition, or option to acquire, the units is a property fringe benefit for the purposes of fringe benefits tax (the fringe benefit provisions relating to payroll tax apply to this acquisition).

❖ Liability date

The grant of a share or option becomes liable for payroll tax on the *relevant day*. In most circumstances, employers may choose the relevant day as either:

- the date that the share or option is *granted* to the employee
or
- the *vesting date* of the share or option.

When is a share or option granted?

A share or option is granted to an employee if:

- a) another person transfers the share or option to that employee (in the case of a share, other than by issuing the share to that employee)
- b) another person allots the share to that employee
- c) another person confers the option on, or otherwise creates the option in, that employee
- d) the employee otherwise acquires a legal interest in the share or option from another person
or
- e) the employee acquires a beneficial interest in the share or option from another person.

To avoid doubt, if an employer:

- a) provides an employee the right to be granted a share, option or some other material benefit
and
- b) has the discretion to choose when to grant them,

these are deemed not to be granted until the employer makes that choice.

When is the vesting date of a share or option?

The vesting date depends on whether the contribution is a share or an option.

For a *share*, the vesting date occurs at the earlier of two events:

- when any conditions (e.g. performance criteria) attached to the grant of the share have been met AND the employee's legal or beneficial right in the share cannot be rescinded
or
- seven years after the day the share is granted to the employee.

For an *option*, the vesting date occurs at the earliest of three events:

- the day the share that the option relates to is granted to the employee
- the day the employee exercises his/her right under the option to have the relevant share transferred, allotted or vested
or
- seven years after the day the option is granted to the employee.

❖ Liability date – default position

Failure to declare

If an employer has not included the grant of shares or options in their payroll tax return during the assessment year in which they were granted, the grant will be taken to have been paid or payable on the *vesting date* of the share or option (section 9DC(1) [PTA Act](#)).

Nil taxable value at grant date

If the employer grants a share or option to an employee, and:

- a) the share or option has nil value
or
- b) the share or option would not have been liable for payroll tax if the employer had chosen to treat the grant date as the relevant day,

the grant is deemed to have been paid or payable on the *grant day* of the share or option (section 9DC(2) [PTA Act](#)).

❖ Effect of rescission of a share or option

If an employer has chosen the grant date as the relevant day and paid payroll tax on the taxable value of the share or option, they may seek a credit against the tax paid if the grant is subsequently rescinded because a condition attached to the grant (e.g. performance criteria) has not been met. However, this does not apply in situations where the employee simply decides not to exercise the option.

❖ What is the taxable value of a share or option?

The taxable value of a share or option is the market value on the relevant day (Australian currency), minus any consideration that the employee has paid for the share or option (except any consideration made in the form of services provided), i.e.:

$$\text{Taxable value} = \text{Market value of shares on relevant day} - \text{consideration paid by employee}$$

The market value of the share or option is determined by the Commonwealth income tax provisions. Please refer to Division 83A–315 of the [Income Tax Assessment Act 1997 \(Cth\)](#) and its associated regulations for more information.

❖ Are directors included within the ESS provisions?

Under section 9DG of the [PTA Act](#), wages include the grant of shares or options to a director of a company as remuneration for his/her appointment or services to the company. Consequently, these are subject to payroll tax. This provision also refers to former directors of the company and prospective directors of the company.

Where the director is appointed, but no services have been carried out, the grant of the share or option is taken to be granted as though such services have been carried out, and at the place where the services could reasonably be expected to be carried out.



❖ In which jurisdiction does the liability occur?

Section 5(1) of the [PTA Act](#) states that payroll tax is payable on WA taxable wages. WA taxable wages are detailed in sections 6A–6D, and mean:

- a) wages for services carried out wholly in WA in a month, irrespective of where they are paid or payable.

Where a) does not apply, WA taxable wages means:

- b) wages that are paid or payable to a person who is based in WA
- c) paid by an employer that is based in WA
or
- d) wages that are paid or payable in WA.

For more detailed information, please refer to [Revenue Ruling PTA 039 'Nexus Provisions'](#).

When it is necessary to consider whether wages are paid or payable in WA (see d) above), then where the share, or the underlying share where there is an option, is in a *local company*, the wages payable for the grant of the share or option are taken to be paid in WA.

Local company means a company that is registered in WA and is incorporated under the Corporations Act.

For example, if an employee performs all services in WA but the share or option made available by his employer (and therefore taken to have been paid) is not in a local company (i.e. the company is not registered in WA), the grant of the share or option will still be liable in WA. This is because all of the services are performed in WA, so all wages will be taxable in WA, irrespective of where the share or option is paid.

See further examples in [Shares and options – place where wages paid](#).



Wages paid by or to third parties

Wages do not have to be paid directly by an employee's employer in order to be taxable. Third party payments are subject to payroll tax when they 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.

GST on wages

Payroll tax is not payable on any component of wages that is directly attributed to the Goods and Services Tax (GST), other than wages comprising of fringe benefits.

Where a taxable wage includes a GST component, payroll tax is not payable on that GST component.

For example, where a payment is to a contractor for \$2,200 (inclusive of GST), only \$2,000 will be included as wages for payroll tax purposes.

Wages paid in kind

Wages include payments made to an employee in the form of goods, services or other benefits.

Remuneration foregone by an employee in return for some form of non-cash benefit falls within the definition of wages *paid or payable in cash or in kind*.

For example, an employee may enter into a salary sacrifice arrangement with their employer in which they reduce their gross wages in return for the employer agreeing to pay a higher superannuation contribution for them. This arrangement will attract payroll tax.

❖ Tax-reducing arrangements

A tax-reducing arrangement means any arrangement, transaction or agreement which has the effect of reducing or avoiding a payroll tax liability.

Section 21 of the PTA Act was introduced in 1982 as an anti-avoidance measure aimed at preventing parties from artificially severing an employment relationship by paying wages through an interposed entity, such as a company, partnership or trust, with the aim that the worker would be considered to be a contractor operating an independent business.

This section provides the Commissioner with the power to disregard such an arrangement and deem the wages paid by the person for whom the services are provided to be wages liable to payroll tax.

Contractor payments

It is important to note that WA is not harmonised with the other jurisdictions regarding the treatment of contractors.

For further information on the payroll tax treatment of contractors in other jurisdictions, please contact the relevant state or territory [revenue office](#).

In certain circumstances, payments to contractors will be liable for payroll tax. Where the relationship between a principal and a worker is determined to be akin to an employee/employer relationship, all payments to the contractor will be taxable (excluding any GST component).

The key to determining whether such payments are taxable is in examining the totality of the relationship that exists between the contractor and the party they are providing services to.

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

Some of the more significant factors that have been considered by the courts in determining whether a worker is an employee include:

- contract and practical relationship
- working to achieve a *given result*
- control and direction by the principal over the worker and the work performed
- the extent to which the contractor operates an independent business
- the contractors ability to delegate and subcontract work
- the degree of integration of the worker, and the services they perform, with the principal.

❖ Totality of the relationship

The issue of determining whether a worker is a common law employee or a contractor is a complex matter. It is important to bear in mind that no single test will be a conclusive indicator in isolation.

In considering the above factors, it should be noted that numerous court decisions have held that the totality of the relationship between the parties must be taken into account before deciding whether a worker is an employee or a contractor.

❖ Contractor determinations

[Revenue Ruling PT 6 'Guidelines on Subcontracting Arrangements and Employment Agents'](#) and its addendum provide further clarification of the case law and guidelines as to how the Commissioner will consider certain contracting arrangements for payroll tax purposes.

Employers who are still uncertain as to the liability of contractor payments after reading this ruling are encouraged to seek professional advice or contact State Revenue by completing a [web enquiry form](#) to obtain a determination.

The form [FPRT6 'Questionnaire: Contractor Payments'](#) has been developed by State Revenue for the purpose of gathering information on all aspects of the relationship between the business operator and the worker.

In reaching a determination as to whether a worker is a common law employee, the Commissioner may obtain further documentation and/or interview both the principal and contractor to draw out sufficient information on which to base a decision.

This approach, which is based on the legal principle of examining the totality of the relationship, requires that each case be considered on its own particular facts.

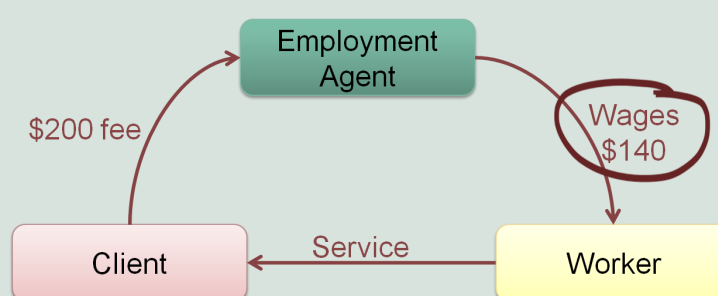
Employment agents

An employment agent is a person who provides the services of another person (the worker) to a third party (the client) on a contractual basis.

Under the employment agency provisions in the PTA Act, the agent is deemed to be the employer, and as such is liable for payroll tax on the payments made.

Under an employment agency arrangement, the employment agent provides the services of a worker to a client for a fee relating to the period of service of the worker. The amounts that the employment agent subsequently pays to the worker are liable to payroll tax.

Example 10: Employment agency arrangement



A *temping service* supplies temporary workers to their clients for a daily fee of \$200. The employment agent then pays the worker a daily wage of \$140. In this case, payroll tax is payable on the amount paid to the worker, being \$140.

A recruitment agency needs to be distinguished from an employment agency. Recruitment agencies tend to perform a one-off service by finding a suitable employee for their client.

Harmonised [Revenue Ruling PTA 029 'Recruitment Agencies/Placement Agencies/Job Placement Agencies'](#) clarifies who bears the payroll tax liability in circumstances where a recruitment agency places a worker with an employer who is a client of the agency.

There may be instances where an employment agency arrangement includes multiple employment agents ('chain of hire'), for further details on chain of hire, please refer to [Revenue Ruling PT 7 'Employment Agency Arrangements – Chain of On-hire'](#).

c) Exempt payments

There are a number of payments to employees which may be exempt from payroll tax.

Workers' compensation

Payments of compensation made in accordance with the Workers' Compensation and Injury Management Act 1981 are not subject to payroll tax. This is the case whether or not the payment to the employee is made by the employer or the insurer.

However, amounts paid to incapacitated workers in excess of the amount prescribed by the legislation (i.e. make-up pay) are subject to payroll tax.

Revenue Ruling PTA 015 'Workers' Compensation Payments' clarifies how workers' compensation payments are treated for payroll tax purposes.



Disability wages

Section 41C of the PTA Act provides a payroll tax exemption for new employees with a disability. The exemption applies to wages paid in the first two years of employment.

To be eligible for the exemption, the following criteria must be satisfied:

- the employee is a new employee hired on or after 1 July 2012
- the employer is in receipt of a disability wages subsidy or form of Disability Services Commission support for the applicable employee
- the employee is employed and remunerated in accordance with the minimum standards established under industrial law.



Apprentices

❖ Apprentices under training contracts

Wages paid by an employer to an apprentice are exempt if the wages are for a period during which the employee is an apprentice under a registered training contract that:

- is for a class A or class B qualification under the *Vocational Education and Training Act 1996* (VET Act)
- is in accordance with a requirement imposed under section 60C(5) of the VET Act, and refers to the apprentice under the training contract as an “apprentice”.

If the arrangement meets all the above criteria, the wages paid to that apprentice will be exempt from payroll tax for the duration of the contract.

Where a contract is suspended, an exemption is not available. All wages paid or payable to an apprentice during a period in which an apprenticeship contract is suspended must be declared as taxable wages.

❖ Pre 1 July 2019 — Trainees under training contracts

Prior to 1 July 2019 wages paid to an eligible trainee under a training contract registered prior to 1 July 2019 under the VET Act are exempt from payroll tax.

The *Pay-roll Tax Assessment Amendment Act 2019* amended the PTA Act to remove this exemption from payroll tax from 1 July 2019.

Transitional arrangements apply to continue the exemption for the remaining nominal term of the training contract.



Defence force leave

Wages paid or payable to an employee, who is absent from their regular employment to serve in the Defence Force, are exempt from payroll tax.

Emergency services leave

From 1 July 2009, employers can claim an exemption from payroll tax for wages paid to emergency services workers while performing volunteer activities.

Specifically, this exemption covers volunteer fire fighters, State Emergency Service volunteers and Volunteer Marine Rescue Services volunteers.

Parental leave

Paid maternity leave, parental leave and adoption leave, up to a maximum of 14 weeks full pay, is exempt from payroll tax.

For example, the exemption may apply to wages paid or payable for a 28 week period of maternity leave if the wages are paid at half the rate at which the wages would normally be paid or payable to the employee.

For more information on the payroll tax treatment of parental, maternity and adoption leave payments, see [Revenue Rulings PTA 012 'Exemption For Maternity, Parental and Adoption Leave Pay'](#) and [PTA 037 'Paid Parental Leave'](#).

Specified exempt allowances

Overnight accommodation and motor vehicle allowances are exempt from payroll tax up to certain limits.

From 1 July 2009, the exempt rates for motor vehicle allowances and overnight accommodation allowances are determined by the Australian Taxation Office (ATO).

Table 2: Exempt allowance rates for 2019-20

Allowance	2019-20 Financial year
Accommodation	\$280.75 per night
Motor vehicle	\$0.68 per km



❖ Overnight accommodation allowance

An overnight accommodation allowance is paid to cover temporary accommodation costs for a night's absence from the employee's usual place of residence as a consequence of employment.

Any amounts above the prescribed level are considered wages and therefore payroll tax is payable on that portion that exceeds the exempt amount.

An overnight accommodation allowance is distinguished from a living away from home allowance. An overnight accommodation allowance is generally paid where there is no change of employment location whereas a living away from home allowance is paid where the employee has moved and taken up temporary residence away from his or her usual place of residence. These allowances are subject to different Commonwealth taxation treatments. An overnight accommodation allowance is treated as assessable income in the hands of the employee whereas a living away from home allowance is a fringe benefit.

❖ Motor vehicle allowance

A motor vehicle allowance is paid or payable to an employee to compensate them for any business use of their own private vehicle.

The exempt component of a motor vehicle allowance is calculated using the formula –

$$E = K \times R$$

where –

E is the exempt component

K is the number of business kilometres travelled during the period

R is the exempt rate

Example 11: Calculating the exempt component

In July 2016, Bob travels 600km (K) in total for work and is paid an allowance of \$500 by his employer.

If the exempt rate is 66c/km (R), Bob's employer would receive an exemption on the allowance of \$396.

$$E = 600\text{km} \times 66\text{c}$$

Where an allowance exceeds the exempt component, only the amount in excess of the exempt component is taxable.

$$\text{\$500} - \text{\$396}$$

Therefore, the employer only needs to include \$104 as taxable wages.

Business kilometres must be recorded using either the continuous recording method or averaging method in order to qualify for the exemption. In the absence of records confirming the business kilometres travelled, the total payment is subject to payroll tax.

Example 12: Using the averaging method

Dave keeps a logbook from 1 July to 23 September. Over these 12 weeks, Dave travels a total distance of 50,000 km, and works out from the odometer reading that he travelled 40,000 km for business.

$$\begin{array}{rcl} & 40,000 \text{ km} \div 50,000 \text{ km} & \\ \text{Dave's business-use percentage is} & & \times 100 \\ & \underline{\hspace{1cm}} & \\ & = 80\% & \end{array}$$

In October, Dave travels 20,000 km in total and receives an allowance of \$18,000.

$$\begin{array}{rcl} \text{The average number of business} & 20,000 \times 80\% & \\ \text{kilometres travelled in October is} & & \\ & \underline{\hspace{1cm}} & \\ & = 16,000 \text{ km} & \end{array}$$

$$\begin{array}{rcl} \text{Dave's employer will receive an} & 16,000 \text{ km} \times 0.66 \text{ c} & \\ \text{exemption on the allowance of} & & \\ & \underline{\hspace{1cm}} & \\ & = \$10,560 & \end{array}$$

$$\begin{array}{rcl} \text{Therefore Dave's employer only} & \$18,000 - \$10,560 & \\ \text{needs to include as taxable wages} & & \\ & \underline{\hspace{1cm}} & \\ & = \$7,440 & \end{array}$$

[Revenue Ruling PTA 005 'Exempt Allowances – Motor Vehicle and Accommodation'](#) provides further information on the payroll tax treatment of motor vehicle and accommodation allowances.

d) Indigenous wages rebate

The indigenous wages rebate is paid to employers, with annual Australian taxable wages of up to \$15 million, for Western Australian wages paid in the first two years of employment to new indigenous employees for whom they also receive a Commonwealth Indigenous Wages Subsidy.

Employers should continue to lodge and pay their payroll tax returns as required. Full records of wages paid to new indigenous workers, including source documents verifying eligibility, must be maintained so employers can provide details of wages paid to new indigenous employees during the payroll tax annual reconciliation process. The rebate will be paid after the reconciliation process is completed, which is expected to be in September each year.

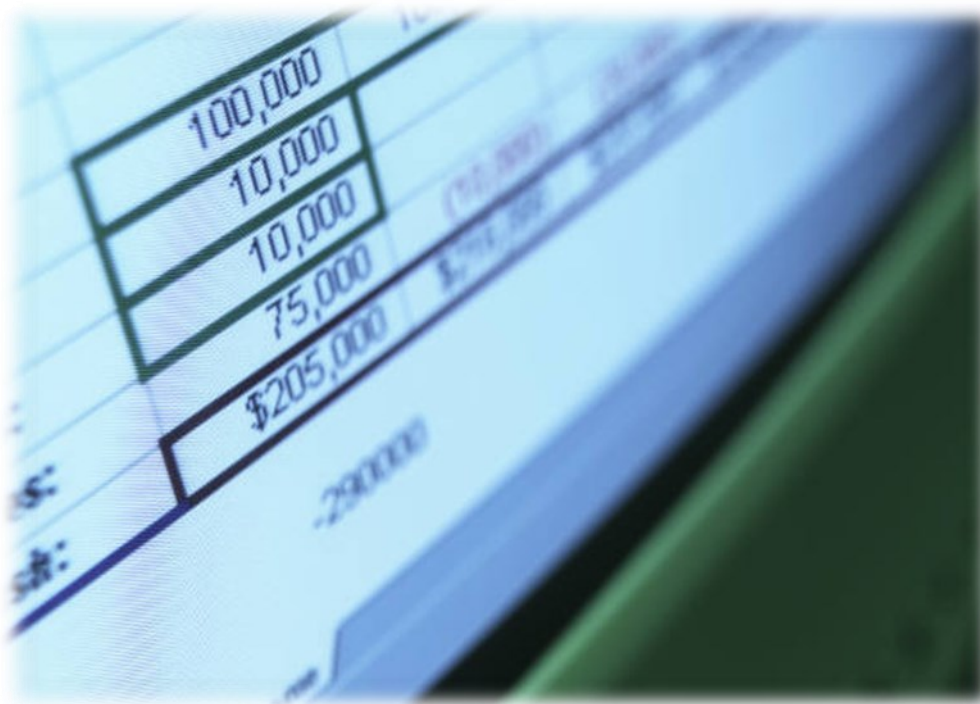
Please note that form [FPRT5 'Declaration: Indigenous Wages'](#) along with all other supporting documentation can be submitted up to 31 December for the previous assessment year.

For more information about the indigenous wages rebate, refer to the *payroll tax (indigenous wages) rebate* on the [Department of Finance website](#).

6. Returns

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Payroll tax is a self-assessed tax. This means that an employer is responsible for calculating their payroll tax liability and paying the tax in the form of a return.

If you would like an estimate of your payroll tax liability, you can use the [payroll tax calculator](#) available on the Department of Finance website.

Revenue Online (ROL) is the approved method to lodge a return and pay any tax due.

a) Revenue Online

[Revenue Online](#) is an Internet application developed by State Revenue that offers online services for registered payroll tax clients to better manage their Western Australian payroll tax obligations.

Some of the services ROL facilitates are:

- the lodgment and payment of returns
- wage adjustments
- the modification of registration details
- the ability to view, save and print Assessment Advice and financial transactions
- the receipt of instant updates and alerts from State Revenue through the broadcast messaging facility.

The Department of Finance has produced a series of short videos covering the major features of ROL to help users better understand and utilise the system effectively.



Instructional videos are available on our YouTube channel at the following address:

www.youtube.com/user/DeptFinanceWA

It is important to maintain accurate contact details in Revenue Online, particularly when there is a change in staff, to ensure all communications and reminders are received.

b) Return frequency

Every employer, or group of employers, registered for payroll tax is required to lodge a payroll tax return and pay tax on a monthly basis unless the Commissioner of State Revenue has given an employer approval to lodge on a quarterly or annual basis.

Generally, an exemption from lodging monthly returns will be allowed and an employer, or group of employers, permitted to lodge an annual return if their expected payroll tax liability is less than \$20,000, or a quarterly return if their expected liability is less than \$100,000.

c) Lodgment

The due date for lodging a return is the 7th day of the month immediately following the end of the period to which the return relates. For example, the monthly return for April must be lodged by 7 May. A monthly return must be lodged each month whether or not tax is payable.

Annual reconciliation returns, together with the June return, are due on or before 21 July.

Table 3: Return frequency by registration type

Return frequency	Monthly	Quarterly	Annually
Annual estimated liability	≥\$100,000	<\$100,000	<\$20,000
Due date ¹⁰	7 days after the end of the return period	7 days after the end of the return period	21 days after the end of the assessment year
Annual reconciliation (inc. June return)	21 days after the end of the assessment year		

d) Payment

Payment of a payroll tax return is due on or before the due date for lodgment. In most cases this will be the 7th of the following month, with the exception of the June return which is due for lodgment and payment by 21 July.

ROL allows for payment to be made via Customer Initiated Payment Account (CIPA), BPAY and Electronic Funds Transfer (EFT). An *Assessment Advice* issued within ROL provides a record of the taxable wages declared and the tax paid for the previous period. Any under or over payment of payroll tax will appear on the *Assessment Advice* to enable the adjustment to be taken into account for the next period.

Lodgment and payment must be made through [ROL](#).

❖ Customer Initiated Payment Account

This method of payment requires taxpayers to nominate a bank account from which payments will be made. The payment must be initiated by the user from within ROL. State Revenue does not independently access the taxpayer's bank account.

Before a user can make payments through ROL using a CIPA, they must register their financial institution account details with State Revenue. As part of this process, a user must read, understand, and accept the [Customer Initiated Payment Service Terms and Conditions](#).

¹⁰ When the due date falls on a weekend or a Gazetted Western Australian public holiday, lodgment and payment will be accepted on the next working day without penalty.

❖ BPAY®



Using BPAY taxpayers can transfer money from a cheque or savings account held with their financial institution to pay your payroll tax liability.

To make a payment via BPAY, a taxpayer should contact their financial institution with the BPAY code and reference number provided in ROL.

❖ Electronic Funds Transfer (EFT)

To pay with EFT, State Revenue's account details and a payment reference number for that particular transaction will be provided to use when making the payment through your financial institution.

e) Modifying a return

Employers can modify wage details in ROL for a previously lodged return, provided that the financial year that the return belongs to has not been reconciled.

For more information, refer to the video *How to Modify a Payroll Tax Return Using Revenue Online* available on the [Department of Finance YouTube channel](#).

To modify a return for a reconciled period, employers must submit a written request containing the relevant details to State Revenue via the [web enquiry form](#).

f) Annual reconciliation

At the end of a financial year, employers must lodge their final return and submit any wage adjustments as part of the annual reconciliation process.

State Revenue allocates an estimated deductible amount to the DGE for use in their monthly or quarterly returns throughout the financial year. An actual deductible amount is then calculated at annual reconciliation using the total group WA wages submitted. The credit or debit amount resulting from the annual reconciliation is due to the difference between the estimated and actual deductible amounts. At annual reconciliation any unused deductible amount is allocated to other group members on a pro-rata basis.

Annual reconciliation is an opportunity for employers to compare declared wages with the actual wages paid during the assessment year. If there are any discrepancies, an employer must submit wage adjustments using ROL by 21 July.

Details of any interstate taxable wages that were paid during the assessment year are also required to be declared as part of the annual reconciliation to determine the actual deductible amount. In the case of a group, the DGE is responsible for lodging the group's Australian taxable wage details.

State Revenue will then complete the reconciliation process and issue an Assessment Advice. Full details of the annual reconciliation process are sent to registered employers leading up to annual reconciliation each year.

Where Australian taxable wages are not declared, the DGE will not have any deductible amount allocated to them and will end up paying additional tax.

Important note: All clients are advised to regularly check their Assessment Advice for any payroll tax liabilities that might be due for payment.

For more information, refer to the [annual reconciliation webpage](#) on the Department of Finance website.

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7. Administration

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Payroll tax assessments, reassessments, interest, penalties, objections and other administrative requirements and procedures are determined under the [Taxation Administration Act 2003](#) (TAA).

a) Record keeping

Employers are required to maintain proper books and records for a minimum of five years. Records must be kept in English or in a form that can be readily converted or translated into English.

The Commissioner, or any authorised officer, has full and free access to all places, books, documents and other papers, for the purpose of verifying returns or liability, and may make extracts or copies of such books, documents or papers. It is an offence to obstruct authorised officers in the performance of their duties.

b) Audits and investigations

State Revenue conducts audits and investigations of taxpayer businesses to ensure compliance with the relevant legislation and to identify any risks that may impact on compliance.

The need to investigate employers is determined in a variety of ways, including:

- follow-up of information received from external sources
- projects designed to target specific problems or issues in legislation
- industry trend analysis
- information from members of the public
- routine verification and coverage of the tax base.

In most cases, an employer will be contacted by telephone to advise them of the investigation and schedule a suitable date and time for the investigation to take place. A confirmation letter is then sent to the contact person confirming the investigation and specifying the records to be produced.

These records may include: financial statements, group certificates, wage books and statements of earnings, contractor details such as invoices, cash payment journals and cheque stubs, general ledger and chart of accounts, fringe benefits tax returns, income tax returns, trust deeds, apprentice and trainees details and the company constitution.

At the conclusion of the investigation, the findings of the investigation are discussed with the employer or their representative and an assessment issued where applicable.

Further information about audits and investigations can be found on the [Compliance webpage](#).

c) Penalty tax

Taxpayers subject to an investigation can expect to have penalties imposed where underpayments of payroll tax are identified as a result of the investigation.

Penalties are imposed if any taxpayer:

- fails to register as and when required
- fails to lodge returns and payments on time
- underpays tax due
- understates wages in returns
- or
- provides false or misleading information.

Penalty tax is imposed to ensure equity between those who fulfill their obligations and those who do not. The following publications outline the circumstances in which penalty tax will be remitted:

- [Commissioner's Practice TAA 18 'Remission of Penalty Tax – Late Lodgment and Non-Lodgment of Returns, Transaction Records, Acquisition Statements, Instruments and Dutiable Statements'](#)
- [Commissioner's Practice TAA 19 'Remission of Penalty Tax – Reassessments'](#)
- [Commissioner's Practice TAA 20 'Remission of Penalty Tax – For Late Payment'](#).

The Commissioner has the power to remit some, or all, of the penalty tax if an employer can demonstrate that they have taken all reasonable steps to honour their tax obligations, or that they were unable to comply due to circumstances beyond their control.

d) Objections and appeals

A taxpayer may, within a period of 60 days after the date of issue of an assessment notice, forward to the Commissioner an objection in writing stating the grounds on which the objection is made. It is not a valid objection to merely disagree with the policy of the legislation. The fact that an objection has been lodged does not defer or suspend a taxpayer's obligation to pay the tax by the due date shown on an assessment notice.

A person who is dissatisfied with the outcome of an objection may appeal the decision to the State Administrative Tribunal within 60 days after the notice of the objection decision is issued.

Further information about the objection and review process can be found on the [Department of Finance website](#).

8. Further information

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a) Wages checklist

The following checklist provides guidance on the payroll tax treatment of certain items. It is not an exhaustive list and should be read in conjunction with the applicable legislation. If you are uncertain as to whether a particular class of worker, or payment or benefit is subject to payroll tax, please contact State Revenue.

Legend:

Fringe benefit Taxability to be determined in accordance with the *Fringe Benefits Tax Assessment Act 1986 (Cth)*

RR Revenue Ruling exists which clarifies the liability of payment type.

Table 4: Wages checklist

Type	Liability
Accommodation	Fringe benefit
<u>Accommodation allowances</u> RR	Exempt component applies
<u>Adoption leave</u> RR	Exempt
Agency-supplied staff RR	Taxable
Allowances RR	Taxable
Annual leave	Taxable
Annual leave paid on termination RR	Taxable
<u>Apprentices' wages</u>	Exempt
Back Pay	Taxable
Board and quarters	Fringe benefit
Board member fees	Taxable
Bona fide redundancy payments (tax-free component) RR	Exempt
Bonuses	Taxable
Car parking	Fringe benefit
Commissions	Taxable
Company cars	Fringe benefit
Consultant's fees RR	Taxable where an employment relationship exists
Contractor payments RR	Taxable where an employment relationship exists
Credit cards	Fringe benefit
Debt waivers	Fringe benefit
<u>Defence force leave</u>	Exempt
<u>Directors' fees</u>	Taxable
Discounted staff and director purchases	Fringe benefit

Type	Liability
Education expenses	Fringe benefit
Employer-funded (pre-income tax) superannuation contributions	Taxable
Employment agency personnel RR	Taxable as wages paid or payable by the employment agent
Entertainment allowances	Fringe benefit
<u>Fringe benefits</u>	Fringe benefit Exempt fringe benefits and fringe benefits with a nil taxable value are not taxable
Gifts	Fringe benefit
<u>Gross wages</u>	Taxable
GST component of wages RR	Not taxable
Health insurance	Fringe benefit
Holiday pay	Taxable
Home garaging	Fringe benefit
Housing	Fringe benefit
Jury duty	Taxable where the payment is made by the employer (even where reimbursed by the court)
Leave loading	Taxable
Leave paid out	Taxable
Living away from home allowances	Fringe benefit
Loans (interest free/low interest)	Fringe benefit
Long service leave	Taxable
<u>Maternity leave</u> RR	Exempt
Motor vehicles	Fringe benefit
<u>Motor vehicle allowances</u> RR	Exempt component applies
<u>Options</u>	Taxable
Overtime	Taxable
Paid Parental Leave (Commonwealth Scheme) RR	Not taxable
<u>Parental leave</u> RR	Exempt
Payments in lieu of notice	Taxable
Piece-work payments	Taxable

Type	Liability
<u>Portable long service leave fund payments</u>	Taxable
<u>Redundancy benefits scheme payments</u>	Taxable
Reimbursements (business expenses) RR	Not taxable under certain conditions
Relocation payments	Fringe benefit
School fees	Fringe benefit
Share Schemes	Taxable
Sick leave	Taxable
Staff discounts	Fringe benefit
Study leave	Taxable
Subcontractors RR	Taxable where an employment relationship exists
Subscriptions	Fringe benefit
Subsidised wages RR	Taxable regardless of source of wages
Superannuation contributions (pre-income tax/employer)	Taxable
Taxi fares	Fringe benefit
Telephone account payments	Fringe benefit
Termination payments RR - Accrued annual leave and long service leave	Taxable
- Employment termination payments	Taxable (income-tax assessable component)
- Bona-fide redundancy payments	Exempt (income tax-free component) Amounts in excess of tax free component are taxable
Trainee wages	Taxable
Travel (free or subsidised)	Fringe benefit
Volunteer fire-fighters (and volunteers providing other emergency services)	Exempt
Vouchers	Fringe benefit
Worker's compensation payments RR	Exempt however make up pay is taxable

b) Shares and options – place where wages paid

The following list of examples is not exhaustive, and if in doubt, you should consult State Revenue accordingly. In each example, it is taken that the employer has chosen to treat the grant date as the relevant day.

These examples should be considered with reference to the nexus provisions for WA payroll tax purposes. These nexus provisions are found in section 6A–6D of the [PTA Act](#), and in [Revenue Ruling PTA 039 ‘Nexus Provisions’](#).

Example 1: An employee carries out all of his services in WA but is granted an option for a company registered in NSW. His employer is based in NSW, and pays his wages from there to a WA bank account.

Although the company is not *local*, the employee carries out his services wholly in WA. As such, all of his wages are taxable wages and liable in WA, including the provision of the option.

Example 2: An employee carries out all of his services in SA but is awarded an option for a WA registered company. The company is based in WA and pays his wages to a WA bank account.

Although the company is *local*, the employee carries out his services wholly in another State. As such, his wages, including the granting of the option, are not taxable wages for WA purposes. (However, they are taxable in SA).

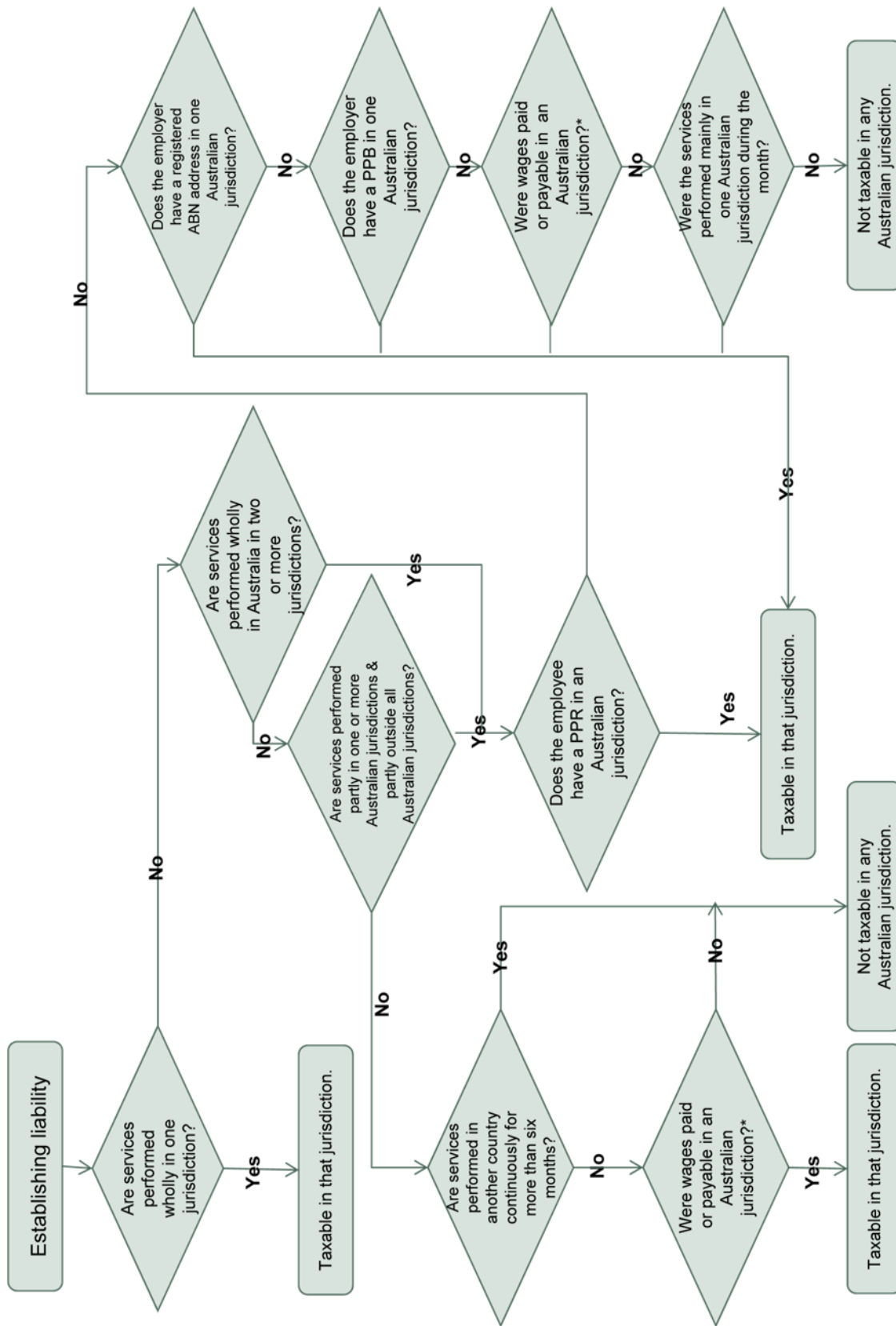
Example 3: An employee carries out all of his services in SA but is awarded an option for a NSW registered company. The company has a base in WA and pays his wages from that base to a WA bank account.

As the employee works wholly in another State, his taxable wages are liable in that other state (SA). There may be liability on the grant of the share or option in the jurisdiction in which the company is registered, and that jurisdiction should be contacted accordingly.

Example 4: An employee carries out half his services in WA, and half in Queensland, but is awarded an option for a WA registered company. The company is based in WA and pays his wages to a WA bank account. The employee is resident in WA.

As the wages do not relate to services performed wholly in another State, the taxable wages, including the grant of the share or option, are liable in WA, as the employee is based in WA.

c) Nexus flowchart



*Where wages are paid in two or more Australian jurisdictions, payroll tax is payable where the largest proportion of the wages is paid

d) Department of Finance YouTube channel

The [Department of Finance YouTube channel](#) has a number of short videos to assist you the taxpayer better understand your obligations regarding payroll tax.

Topics include the diminishing threshold, an overview of payroll tax, contractors and payroll tax and the declaration and reconciliation of fringe benefits.

There are also recorded payroll tax overview and payroll tax wages webinars available on-demand.

