



## **PAYROLL TAX**

## **Exemption for Maternity, Parental and Adoption Leave Pay**

1. The *Pay-roll Tax Assessment Amendment Act 2010* amended the *Pay-roll Tax Assessment Act 2002* (the Act) with effect from 1 July 2009 to harmonise the legislation of Western Australia's payroll tax system with the legislation of other jurisdictions.

### **Introduction**

2. Section 41A of the Act exempts from payroll tax, wages paid or payable to employees on maternity leave, parental leave or adoption leave. The exemption:
  - (a) applies to wages paid or payable to employees taking maternity or parental leave and employees taking adoption leave
  - (b) applies to all wages other than fringe benefits
  - (c) is limited to a maximum of 14 weeks pay
  - (d) applies irrespective of whether the leave is taken during or after pregnancy or before or after adoption and
  - (e) must be supported by keeping relevant records.
3. The purpose of this revenue ruling is to explain the application of the exemption for maternity and adoption leave pay and clarify the elements of the exemption.

### **Ruling**

#### ***Definition of maternity leave***

4. Maternity leave is defined in the Act as leave given to a female employee in connection with her pregnancy or the birth of her child. The female employee may take maternity leave during or after pregnancy (section 41A(3) of the Act). Sick leave, recreation leave, annual leave or any similar leave taken in connection with a pregnancy or the birth of a child is not considered as maternity leave for payroll tax purposes.

#### ***Example 1***

In relation to the birth of her child, Mary took long service leave of ten weeks, annual leave of four weeks and unpaid leave of 38 weeks. The wages paid for all the leave taken by Mary are taxable.

#### ***Example 2***

In relation to the birth of her child, Mary took long service leave of ten weeks, annual leave of four weeks, paid maternity leave of 12 weeks and unpaid leave of 26 weeks. Only the wages paid for the 12 weeks maternity leave are exempt. Wages paid for the long service leave and annual leave are taxable.

### **Definition of parental leave**

5. Parental leave is defined in the Act as leave given to an employee in connection with the pregnancy of a female carrying the employee's unborn child or birth of the employee's child. Sick leave, recreation leave, annual leave or any similar leave taken in connection with a pregnancy or the birth of a child is not considered as parental leave for payroll tax purposes.
6. In Western Australia, the provisions of section 6A of the *Artificial Conception Act 1985* have been taken into account, resulting in the parental leave exemption being available in respect of wages paid or payable to a male or a female employee.

### **Definition of adoption leave**

7. Adoption leave refers to leave given to an employee in connection with the adoption of a child by the employee. The employee may take the adoption leave before or after the adoption of a child (section 41A(3) of the Act). Sick leave, recreation leave, annual leave or any similar leave taken in relation to the adoption is not exempt.

#### *Example 3*

John has taken paid adoption leave in three distinct parts:

- (a) one week to familiarise himself with the adoption process
- (b) two weeks to go interstate/overseas to meet the child and
- (c) a further three weeks after the child arrived in Perth.

All six weeks are considered to be adoption leave. Consequently, wages paid for the six weeks leave are exempt.

### **Types of wages that are exempt**

8. Exempt wages include wages/salaries, employer superannuation contributions, allowances, bonuses and commissions. Fringe benefits provided to an employee on maternity or adoption leave are not exempt (section 41A(5) of the Act).

### **Maximum entitlement**

9. For any one pregnancy or adoption, the exemption is limited to wages for a maximum of 14 weeks full time leave for a full time employee or the equivalent amount if taken over a longer period e.g. 28 weeks leave being paid at half pay. In the case of a part-time employee, the exemption is limited to a maximum of 14 weeks leave paid at the applicable part-time rates of pay.

#### *Example 4*

Cathy is a part-time employee. She works three days a week at a rate (including employer superannuation contributions) of \$100 per day. The maximum amount of exempt wages that can be paid to Cathy is \$4,200 (\$100 x three days x 14 weeks).

#### *Example 5*

ABC Pty Ltd has a policy of providing 12 weeks paid parental leave. Robert, a full time employee elects to take parental leave over 24 weeks at half pay. Wages relating to this period are fully exempt.

### **Record keeping (Regulation 46(3A) of The Pay-roll Tax Assessment Regulations 2003)**

10. To claim the maternity leave exemption, an employer must keep a medical certificate from the employee. This must specify that the employee was or is pregnant or that the employee has given birth and the date of birth.
11. To claim the parental leave exemption the employer must keep a statutory declaration by the employee stating that a female was or is pregnant with the employee's unborn child, or that the employee's child has been born and the date of the birth.
12. To claim the adoption leave exemption, an employer must keep a statutory declaration from the employee stating that a child has been placed in the employee's custody pending the making of an adoption order or that an adoption order has been made or recognised in the employee's favour and stating the date of the order or recognition.
13. The records substantiating a claim for the maternity, parental or adoption leave exemption must be kept for at least five years (section 44 of the Act).
14. Please note that rulings do not have the force of law. Each decision made by the Commissioner of State Revenue is made on the merits of each individual case having regard to any relevant ruling.

### **Ruling history**

Revenue Ruling	Issued	Effective dates	
		From	To
PTA 012.1	24 June 2010	24 June 2010	Current