

NSW Payroll Tax 2010-11

Presented by
Andrew Fricot

18 August 2010



Office of
State Revenue

Agenda

- **Harmonisation**
- **Overview liable wages**
- **Contractors**
- **Employment agency contracts**
- **Grouping of businesses**
- **Online services**

Payroll tax returns

- State tax based on annual wages paid by employers (not to be confused with PAYG)
- Self assessing tax – obligation is on the employer to register and lodge returns as required
- Monthly lodger - employers are required to lodge monthly returns (payments):
 - ▶ monthly payments due **7th of following month** (July to May)
 - ▶ June payment due **21 July** (Annual Reconciliation)
- Annual Lodger - Chief Commissioner may allow an employer to lodge a single annual return (discretionary)

Harmonisation

- While each state has their own payroll tax legislation, 5 jurisdictions now have 'template legislation'
 - NSW and Victoria (Jul 07)
 - Tasmania (July 08)
 - South Australia and Northern Territory (July 09)
- Joint Revenue Rulings
- Different rates and thresholds in each state
- **Uniform Provisions from 1 July 2008 for:**
 - Lodgement dates
 - Where wages are liable
 - Employee share schemes
 - Accommodation allowances
 - Fringe Benefits
 - Superannuation
 - Grouping provisions
 - MV allowances

Where wages are taxable



1. Where services are performed:

- ▶ If the services are performed wholly in one State a calendar month the wages are taxable in that State where the work was performed

2. Where wages are paid (prior 1 July 2009):

- ▶ If the services are performed in 2 or more States during a calendar month the wages are taxable in the State where the worker is paid

Situation 2 above creates compliance difficulties when an employee has an account in another State or has multiple accounts

Where wages are taxable (From 1 July 2009)

2. Services performed in 2 or more States/Territories or partly in Australia and partly outside Australia are taxable in the State/Territory where:
 - a. **Employee RESIDES**
↓
 - b. Employer has their registered business address
↓
 - c. Wages are paid
↓
 - d. Services are mainly performed

Example: For the month of January Sam provides services in NSW and Vic but resides in Albury. The wages are taxable in NSW because Sam resides in NSW.

Where wages are taxable



3. Services performed **wholly outside Australia** for up to 6 consecutive months are taxable in the State/Territory where the wages are paid.

NB: Services performed wholly outside Australia for more than 6 consecutive months are exempt.

Multi-month wages

- Wages paid that relate to services provided over many months are taxable in the month they are paid.

EXAMPLE: bonus, termination payment

- To determine where these wages are taxable you look only at the services provided during the month the wages were paid.

Threshold for 2009/10

- NSW threshold \$638,000 in 2009/10
 - ▶ *\$658,000 in 2010/11*
- Indexed to Sydney CPI each year
- Registration \$12,619 a week in 2010/11
- The threshold is reduced by:
 - ▶ Part-year employment
 - ▶ Interstate wages

Taxing Rate

2009/10

5.75% from July - Dec

5.65% from Jan – Jun

2010/11

5.50% from Jul - Dec

5.45% from Jan – Jun

▪ **Split year threshold**

▶ 1/7/09 – 31/12/09 184 days

Threshold \$321,622, rate is 5.75%

▶ 1/1/10 – 30/6/10 181 days

Threshold \$316,378, rate is 5.65%

▪ **Any unused threshold from one half of the year is allocated to the other half during the Annual Reconciliation**

Calculating monthly payroll tax

Month = January 2010 (non-grouped client)

NSW Wages = \$90,000

Interstate Wages = \$30,000

Step 1: Threshold

31 x \$638,000

365

= \$54,186

90,000 x \$ 54,186

120,000

= \$40,640

Step 2: Tax payable

\$90,000 —

\$40,640

= \$49,360

\$49,360 x 5.65%

= \$2,788.84

Group threshold

- From 1 July 2007 no proportional thresholds
- Claiming the threshold:
 - ▶ **Designated Group Employer (DGE)** – one group member receives the full threshold, remaining group members receive no threshold, all members lodge returns
 - ▶ **Single Lodger Group** – one group member receives threshold and declares total group wages as their own, remaining group members do not lodge returns
 - ▶ **No threshold** – all group members pay at a flat rate

What are wages?

Amounts paid or payable at piecework rates or otherwise for services provided by employees or deemed employees.

- **Wages and salaries**
- **Commissions**
- **Bonuses**
- **Fringe benefits**
- **Allowances**
- **Remuneration**
- **Superannuation**
- **Shares and options**
- **Relevant contractors**
- **Termination payments**
- **3rd party payments**
- **Directors remuneration**

Wages – Fringe benefits

(Revenue Ruling PTA003)

- Fringe Benefits (FB) are included as wages
- Exempt and nil value fringe benefits are not liable for payroll tax, except share schemes
- Taxable value is :
 $(\text{Type 1 benefits} + \text{Type 2 benefits}) \times \text{Type 2 gross up factor}$
- **Declaring your fringe benefits – actual or estimate?**
 - ▶ Actual – Calculate fringe benefits each month
 - ▶ Estimate – Divide last year's FB taxable amount by 12 and declare 1/12 each month

FBT return figures – Estimating method

12 Do you expect to lodge an FBT return for 2007–08 or future years?

No

Yes

Return calculation details

Refer to *How to complete your 2007 fringe benefits tax return* (NAT 2376) for more information.

13 Calculated fringe benefits taxable amounts (whole dollars only)

+	A Type 1 aggregate amount	\$ <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/>	·X x 2.0647 =	\$ <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/>	·X A
	B Type 2 aggregate amount	\$ <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/>	·X x 1.8692 =	\$ <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/>	·X B
	C Aggregate non-exempt amount (hospitals, ambulances, public benevolent institutions and health promotion charities only)		or	\$ <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/>	·X C
14 Fringe benefits taxable amount			(A + B) or C	\$ <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/>	·X
15 Amount of tax payable (46.5% of item 14 amount)				\$ <input type="text"/> <input type="text"/> <input type="text"/> , <input type="text"/> <input type="text"/> <input type="text"/>	·X

If you are not a rebatable employer, go to question 18 Sub-total.

Taxable value for payroll tax is = (Type 1 + Type 2 amount) x Type 2 gross up factor



Declaring FBT by Estimate

- For the Annual Reconciliation the March FBT taxable value is used to determine the payroll tax value (DO NOT use reportable FB)

Example

- * 2008/09 grossed up FB = \$120,000
- * 2009/10 is declared on an estimated basis \$10,000/month (120,000 ÷ 12)
- * 2009/10 FBT return shows grossed up FB to be \$150,000
- * Client must declare \$150,000 as taxable FB in the Annual Reconciliation. They have already declared \$110,000 in monthly returns, the shortfall of \$40,000 is adjusted in the AR
- * 2010/11 FB is \$12,500/month (150,000 ÷ 12)

- **Note: Proportion FB between States**

Exempt wages – employee based

- **Maternity and adoption leave (plus Paternity leave from 1/7/10)** (Revenue Ruling PTA012)
 - ▶ up to 14 weeks full-time equivalent
 - ▶ does not include regular leave
 - ▶ proof required

Exempt wages – employee based

- **Apprentices and Trainees**
 - ▶ Exempt until 30/6/08
 - ▶ Rebate scheme from 1/7/08
- **Only for workers under the *Apprenticeship and Traineeship Act 2001***
- **The rebate can be claimed monthly or annually**

Exempt wages – employer based

- Religious bodies
- Non-profit organisations having solely or dominantly charitable, benevolent, philanthropic or patriotic purposes

Payments not liable

- Workers compensation up to limit (Revenue Ruling PTA015)
- Dividends, partnership drawings (Revenue Ruling PTA016)
- Trust distributions
- GST payments (Revenue Ruling PTA008)
- Gifts and prizes unrelated to service
- Most exempt and nil value fringe benefits
- Allowances for non-working directors
- Redundancy payments up to ATO limits
- Direct reimbursements (Revenue Ruling PTA011)

Employee or contractor?

- A worker can be an employee even if they have an ABN
- Many 'contractors' have been found by courts to be employees (common law)
- Courts and OSR auditors use the 'totality of the relationship' approach:
 - ▶ level of control
 - ▶ level of integration
 - ▶ independent business identity

Payments to contractors

- **All contractor payments are potentially liable!**
- **Labour component only so use approved deduction**
(Revenue Ruling PTA018 & PTA019)
- **GST excluded**
- **Exemptions**
 - ▶ 3 specific & 6 general exemptions
 - ▶ Exemptions are only available for contractors. If a worker is an employee their payments are fully taxable

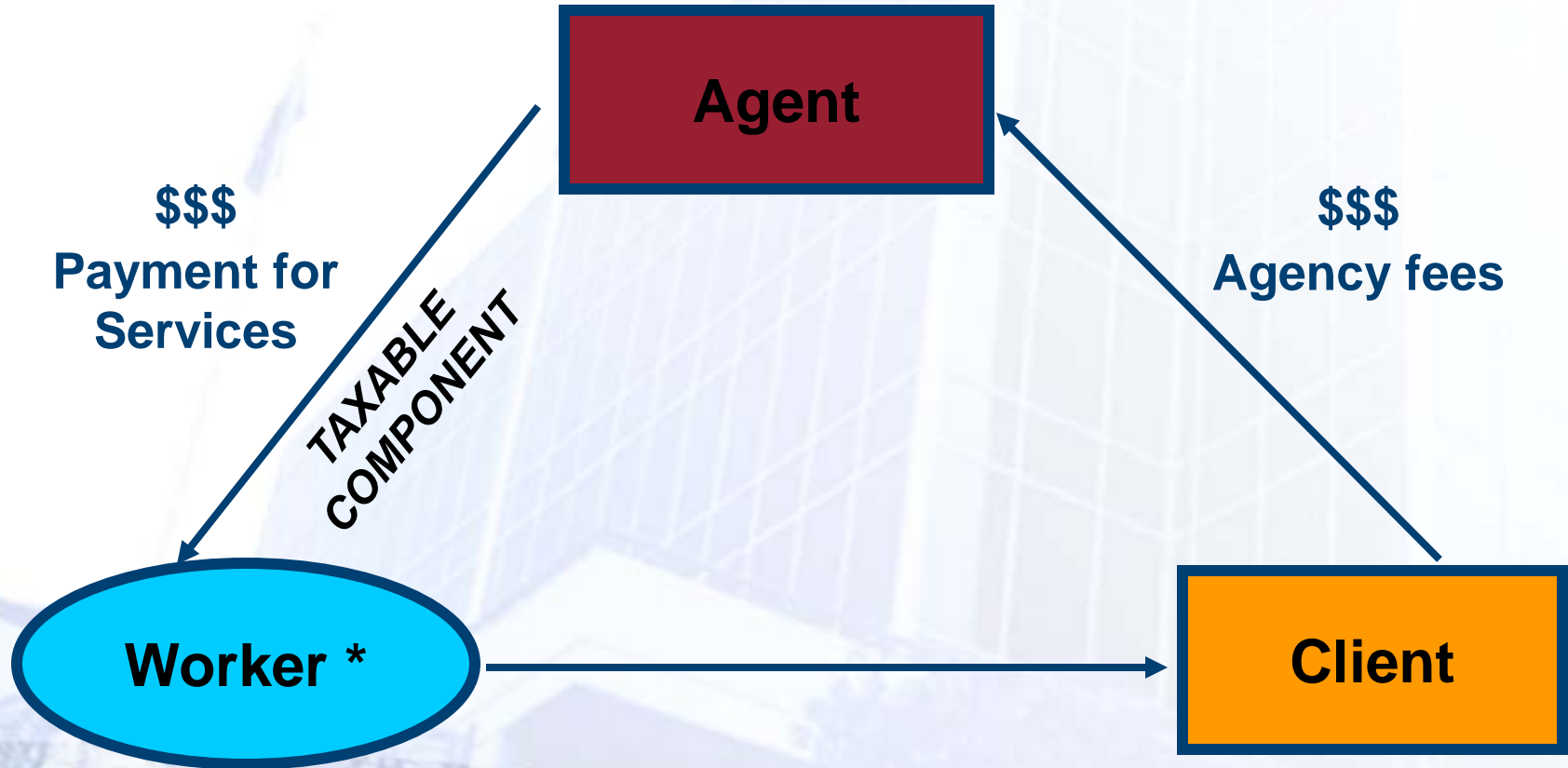
Three specific exemptions:

1. Owner – drivers (Revenue Ruling PTA006)
2. Independent insurance agents
3. Door to door selling agents (Revenue Ruling PTA007)

Six general exemptions

- **Labour ancillary to goods provided**
(Revenue Ruling PTA033)
- **Services not ordinarily required**
(Revenue Ruling PTA022)
- **Services required <180 days**
(Revenue Ruling PTA020)
- **Services provided ≤90 days**
(Revenue Ruling PTA014 and PTA035)
- **Chief Commissioner satisfied**
(Revenue Ruling PTA021)
- **Contractor engages labour**
(Revenue Ruling PTA023)

Employment agency contracts



* Can be a company

Grouping of businesses

- **Anti-avoidance provisions**
- **Grouping has 2 primary effects:**
 1. only 1 threshold for the group
 2. each is liable for the tax of the others
- **A group member may declare the wages of any other member's employee**

Grouping

- **There are 3 major group types:**
 - ▶ Related corporations
 - ▶ Common employees
 - ▶ Common control
- **Provisions operate independently**

Grouping – exclusions

(Revenue Ruling PTA031)

- **Exclusion can be considered for members of all groups other than groups of related corporations**
- **Chief Commissioner must be satisfied that:
‘a business carried on by the person, is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of that group’**

Grouping – exclusions

- **When determining whether to exclude a member from the group, the Chief Commissioner considers:**

- ▶ the nature and degree of ownership, and
- ▶ the nature and degree of control, and
- ▶ the nature of each of those businesses, and
- ▶ any other matters considered relevant
 - financial interdependencies
 - sharing of resources
 - trade between businesses

General administration

- Reassessments up to 5 years
- Refunds or offset
- Interest and penalty tax
 - Interest 12.80%, Penalty tax 0-90% (Revenue Ruling PTA036)
- Recovery powers
- Objections and reviews
 - ▶ lodge within 60 days of any decision
 - ▶ 90 days review
 - ▶ ADT/Supreme court

Free Online Services

- Email updates
- Factsheets
- Seminar notes
- Monthly calculator
- Online payment
- Nil returns
- Online training

■ OSR contact details

General Enquiries: 1300 139 815

Email: payrolltax@osr.nsw.gov.au

Web: www.osr.nsw.gov.au

Post: GPO Box 4042 Sydney 2001



Questions?



Office of
State Revenue