

TAX BULLETIN

An update publication for our clients

7 July 2011

2011 EMPLOYMENT TAXES UPDATE

Background

The end of the financial year is upon us and employers are turning their thoughts to finalising year-end obligations for a number of employment related taxes and obligations such as PAYG withholding, Payroll Tax, WorkCover and Superannuation Guarantee.

This bulletin provides some tips on completing year-end returns and also highlights recent developments that relate to the above obligations. We have included a reference table of the relevant payroll tax rates/threshold levels for the 2011 and 2012 financial years at the end of this Bulletin.

This Bulletin focuses on Victorian obligations for Payroll Tax and WorkCover. If you have employees or workers in other States and Territories (hereafter referred to as 'States') it is essential that you seek advice regarding the obligations that relate to those other States. Whilst there is broad consistency between Payroll Tax obligations in the various States, there are considerable differences between what constitutes remuneration for WorkCover or workers' compensation obligations.

Payroll Tax ('PRT') and WorkCover ('WC')

Recent Developments

Payroll Tax

As part of the PRT harmonisation process, consistent nexus provisions now apply across most States. These provisions set out the circumstances where wages must be declared in a particular State and the tax treatment applicable to wages paid to overseas workers.

In summary, wages are liable for PRT in a State if during the relevant month, wages relate to work performed solely in that State. Where an employee has not performed services wholly one State during the month, the nexus provisions provide four tests, which require the following factors to be considered (in order) to determine where the PRT liability arises:

1. The employee's principal place of residence; or
2. The employer's registered ABN address/principal place of business; or
3. The place where the wages are paid to the employee; or
4. The place where the services are mainly performed.

Where the work is performed overseas for less than 6 months, the wages paid to the worker are taxable in the State where the wages are received. If the worker provides services overseas for greater than 6 continuous months, the wages are exempt from PRT from the beginning of the assignment.

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Victorian WorkCover

The following changes are applicable to **2010/2011**:

Allowances

Motor vehicle allowances and overnight travel allowances are excluded from rateable remuneration if the amount paid does not exceed the rates prescribed annually under the Income Tax provisions for large car deductible car expenses/overnight business travel. Any amounts paid above the exempt component are rateable. This treatment is consistent with the Victorian PRT provisions.

Fringe Benefits

Unlike prior years, for the 2010/2011 financial year onwards, fringe benefits are declared as rateable remuneration by applying a gross up rate to the FBT taxable value. The introduction of a gross up rate will be progressively phased in over 5 years as follows:

Year	Gross Up Rate
2010/2011	1.17384
2011/2012	1.34768
2012/2013	1.52152
2013/2014	1.69536
2014/2015	1.8692

Furthermore, any employers which are exempt from FBT under sections 57, 57A or 58 of the Fringe Benefits Tax Assessment Act 1986 (eg public benevolent institutions, public and non profit hospitals and religious institutions) who provide taxable benefits in excess of individual employee caps (ie the \$17,000 or \$30,000 employee thresholds provided under the FBT legislation), will now be required to declare that excess as rateable remuneration for WorkCover purposes. This excess is reflected as the Aggregate Non Exempt Amount on the FBT return of these organisations. To minimise the impact of this change it will also be phased in over a 5 year period as follows:

Year	Taxable Benefits
2010/2011	20%
2011/2012	40%
2012/2013	60%
2013/2014	80%
2014/2015	100%

For example, an employer with an Aggregate Non Exempt Amount of \$100,000 would be required to declare \$20,000 as remuneration in their 2011 Declaration of Rateable Remuneration.

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The following changes are applicable to **2011/2012**:

Contractors

The existing contractor provisions are being repealed and replaced with new provisions which apply from **1 July 2011**.

A new section now covers all contract workers (including individuals, companies, partnerships, trusts, etc) and deems a contractor to be a worker for a given financial year if the following criteria are met;

- The contract is mainly for labour; and
- At least 80% of the work under the contract is performed by the same individual; and
- At least 80% of the contractor's gross income for the period (from the provision of similar services) is earned from the principal in question (or the principal and other group members).

Where all of the above criteria are satisfied payments made to these workers, less any available reduction under the WorkCover provisions (eg for materials/equipment) is deemed to be rateable remuneration of the principal. A discretion is available for WorkCover to exclude payments made to a contractor where it is determined that the services provided relate to the contractor's independent trade or business. It is considered that the new provisions will, in the majority of cases, not materially change which contractors an employer must include for WorkCover purposes. However, it is important that employers review their contractors in light of the new provisions to determine whether or not an obligation exists.

Additional deeming provisions apply to specific classes of contractor, such as owner drivers, taxi drivers and tree fellers.

Workplace Industry Classifications

A new Workplace Industry Classification System will apply to all workplaces from 1 July 2011. This system is based on the 2006 ANZSIC Classification Standards. It is claimed that these better reflect the type of businesses currently operating in Victoria today. WorkCover will determine the new classification to apply to all registered work places and these will be used in the calculation of the estimated 2011/2012 premium. Employers should review new classification that it assigned to their workplace and ensure that it is appropriate for the predominant activities being undertaken at that workplace.

Annual Declarations – PRT & WC

Whilst there are many similarities between PRT and WC, it is critical is to understand the differences between the definitions of wages and remuneration that exist when completing your annual returns.

The following is a comparison of the main differences between taxable wages for PRT in Victoria and rateable remuneration for Victorian WC purposes for the 2010/2011 financial year.

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Fringe Benefits	PRT	Grossed up taxable value (Type 2 rate)
	WC	Taxable value grossed up at the rate of 1.17384 (see note in Recent Developments)
Termination Payments	PRT	Taxable except tax free portion of a genuine redundancy payment
	WC	Exempt
Maternity Leave	PRT	Exempt for first 14 weeks
	WC	Rateable
Apprentices' Wages	PRT	Generally taxable
	WC	Generally exempt up to a specified maximum wage
Contractors' Payments	PRT	Contains some specific industry based exemptions
	WC	Has a potentially broader application to contractors than PRT
Employee Share Schemes	PRT	Taxable
	WC	Exempt

Common Issues

The following are some of the more common issues and problem areas encountered by employers with regards to PRT and WC.

Do you need to register for PRT and in what States?

The liability to register for PRT in any State is based on the aggregate Australia-wide wages. As such, if your total Australian wages exceed the threshold in a particular State, and any wages are paid in that State, you are required to register in that State.

The thresholds vary considerably from State to State (see the attached table) so be careful to ensure that you have considered each State correctly.

WorkCover Industry Classifications (Victoria)

The WorkCover Industry Classification ('WIC') is a major variable in determining how much WorkCover premium you must pay. Generally, the WIC is based on the predominant activity at a workplace, taking into account such matters as the cost of labour, cost of sales and profits. As a rule, predominant activities with a higher risk profile will be assigned a higher industry premium rate.

Have you reviewed the WIC assigned to each of your workplaces? If there has been any change in the activities undertaken at a particular workplace, you should review the WIC to ensure it is still appropriate. We have encountered many situations where employers' failure to regularly review their WICs has meant a sizeable premium adjustment.

Contractors

Have you reviewed your contractors for PRT and WC? Don't be misled in assuming that because they are contractors you have no PRT and WC obligations.

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Both WC and PRT have very broad provisions which can deem payments to contractors as if they are wages. Generally, this will be the case where a contractor works a significant proportion of the year for the one principal. WC and PRT can even apply where the contractor quotes an ABN on an invoice or works through their own company structure.

Grouping

In certain circumstances, provisions in WC and PRT can group two or more employers (i.e. treat them as if they are one employer). For PRT this can mean effectively losing a tax free threshold and for WC, employers at the same location will be assigned the same WIC.

Grouping can occur where there is common ownership or control, or where employees of one business perform services for the other business (e.g. service companies). Businesses which together have a high degree of dependence and connection are particularly at risk of grouping.

Other Obligations

Reportable Employer Superannuation Contributions

Employers are required to report certain employer funded superannuation contributions on the Payment Summaries of employees, as is currently the case with the reporting of fringe benefits. As with the value of reportable fringe benefits, reportable employer superannuation contributions are to be included in determining an employee's 'notional income' for a range of government obligations and concessions.

Broadly, reportable employer superannuation contributions are contributions that an employer makes on behalf of an employee where the employee has influenced the rate or amount of the contribution and the contributions are additional to the compulsory contributions which must be made under the superannuation guarantee law, an industrial agreement, the governing rules of the super fund or a federal, state or territory law.

Reporting of Employee Share Scheme ('ESS') Interests

The ESS legislation imposes income tax on an employee where they are provided with shares or rights to acquire shares, and these are provided as a result of the employee's employment. A major change in these provisions is the introduction of an obligation on an employer to provide a report to the ATO and to each employee who received ESS interests during the year. The report to employees must be provided by 14 July and the report to the ATO by 14 August.

In summary, an employer is required to report to each employee who received ESS interests in the year, amongst other things, the number of interests they received, the discount at which the interests were issued, the number of ESS interests that had a taxing point in the year and the discount applicable to those interests. The report to the ATO provides broadly the same information as reported to employees and is provided on a per employee basis.

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Further Information

Please ask either your regular Pitcher Partners tax contact or any of the contacts in the Pitcher Partners firms below for further details on the issues raised in this Tax Bulletin:

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Appendix 1 - Payroll Tax Rates/Thresholds

2010/2011

State	Threshold*	Tax Rate
VIC	\$ 550,000	4.90%
NSW	\$ 658,000	5.50% (Jul – Dec 2010), 5.45% (Jan – Jul 2011)
QLD	\$ 1,000,000**	4.75%
ACT	\$ 1,500,000	6.85%
SA	\$ 600,000	4.95%
NT	\$ 1,250,000	5.90%
WA	\$ 750,000	5.50%
TAS	\$ 1,010,000	6.10%

2011/2012

State	Threshold*	Tax Rate
VIC	\$ 550,000	4.90% (Unchanged from prior year)
NSW	\$ 678,000	5.45% (Increase in threshold)
QLD	\$ 1,000,000**	4.75% (Unchanged from prior year)
ACT	\$ 1,500,000	6.85% (Unchanged from prior year)
SA	\$ 600,000	4.95% (Unchanged from prior year)
NT	\$ 1,500,000**	5.50% (Increase in threshold and decrease in rate)
WA	\$ 750,000	5.50% (Unchanged from prior year)
TAS	\$ 1,010,000	6.10% (Unchanged from prior year)

*Australia wide wages used to determine liability.

**The deduction reduces by \$1 for every \$4 of taxable wages over the exemption threshold.