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Overview of payroll tax in NSW

Payroll tax is a state tax paid by employers, on wages over the payroll tax threshold. An employer must register when during a month they pay wages greater than the weekly threshold amount.

Wages

For the purposes of the *Payroll Tax Act 2007 (NSW)*, wages are taxable if they are paid or payable by an employer for, or in relation to, services performed by an employee in NSW.

Threshold

The threshold rate for 2018-19 is $850,000. Payroll tax is payable on the balance of wages over this rate using a tax rate of 5.45 per cent. A NSW employer is entitled to claim only one threshold per group. The threshold will be applied on a pro rata basis for businesses that didn’t trade for the whole financial year.

In the 2018 State Budget it was announced that the payroll tax threshold will increase up until the 2021-22 financial year.

Monthly v annual lodger

All employers must lodge an annual reconciliation, which must be lodged and paid on or before the 28th July. If an employers’ annual tax payable exceeds $20,000, they must also lodge and pay a monthly payroll tax return on the seventh day of every month. If this date for either a monthly lodgement or the annual reconciliation falls on a weekend or public holiday, lodgement and payment must be made the next business day.
Administration

A calculator is available on the Revenue NSW website to assist clients in determining their tax liability.

It is important to note that Revenue NSW considers the lodgement of a return to be when the payment of your monthly liability is received by our office. If there is no liability calculated, you will still need to lodge a ‘Nil return’, otherwise estimate assessments will be raised by our office.

Annual reconciliation

Employers must complete an annual reconciliation each year. The annual reconciliation includes wages for the month of June as well as any adjustments for the 2018-19 financial year. The annual reconciliation provides customers the opportunity to correct any anomalies (over or under payments) in previous monthly lodgements for that year.

Employers must include all wages paid or payable from 1 July 2018 to 30 June 2019 in their annual reconciliation.

Wages paid after 1 July 2018 that relate to services performed prior to 1 July are not required to be returned in the annual reconciliation. However, if the employer wishes to align their wages declared for payroll tax with their accrued wage liability for the financial year, they can elect to include this amount in their 2019 annual reconciliation. The important factor is that employers must use a consistent approach for each financial year.

An annual reconciliation needs to be lodged by a business even if it didn’t trade for the entire year. These businesses are classified as “part year employers”. The threshold entitlement for a part year employer is proportioned to the number of days in which the employer pays or is obliged to pay wages to employees.

Example to calculate the 2018-19 threshold entitlement

Whalan Pty Ltd has been trading in NSW for some years but ceased to employ on 31 January 2019. The business employs for 215 days in 2018–19.
Payment options

Register your bank details with us and then authorise each payment by selecting the online payment button. This payment option is linked to the monthly calculator on www.revenue.nsw.gov.au.

Helping you calculate your liability

Monthly lodger

An employer is considered a monthly lodger if their annual tax payable exceeds $20,000. All monthly lodgements must be lodged by the seventh following month. If the seventh falls on a weekend or public holiday, the lodgement date will be taken to be the next business day.

For businesses who are required to lodge a monthly return, they will need to be aware of the varying threshold rates for different months of the year. For 2018-19 the annual threshold rate of $850,000 becomes:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$65,205</td>
<td>for February with 28 days</td>
</tr>
<tr>
<td>$69,863</td>
<td>for months with 30 days</td>
</tr>
<tr>
<td>$72,191</td>
<td>for months with 31 days</td>
</tr>
</tbody>
</table>
Steps to calculate payroll tax payable:

**STEP1**
Determine liable wages

**STEP2**
Deduct threshold from liable wages

**STEP3**
Multiply balance by 5.45% to Calculate liability.

Example for a business that solely trades in NSW

For the month of August 2018, ABC Pty Ltd had liable wages to calculate payroll tax payable:

**STEP1**
Determine liable wages

**STEP2**
Deduct threshold from liable wages (August has 31 days)

**STEP3**
Multiply balance by 5.45% to Calculate liability.

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>$437,450</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>- $72,161</td>
<td>$365,289</td>
</tr>
<tr>
<td>3.</td>
<td>$365,289 x 5.45%</td>
<td>$19,908</td>
</tr>
</tbody>
</table>
**Interstate wages**

If an employer engages employees in multiple Australian jurisdictions, the threshold entitlement in NSW is reduced. The following formula is used to calculate the threshold entitlement for these businesses:

\[
\frac{\text{NSW wages}}{\text{Total Australian wages}} \times \text{Threshold} = \text{Threshold entitlement}
\]

This formula is harmonised across all Australian jurisdictions ensuring that all employers, whether they employ in one or multiple jurisdictions, pay the same proportion of payroll tax.

**Example for a business that trades in NSW and Victoria**

For the 2018-19 financial year DEF Pty Ltd had NSW wages of $800,000 and $400,000 liable wages in Victoria. Total Australian wages paid is $1,200,000.

To calculate threshold entitlement for the 2018-19 financial year:

\[
\frac{800,000}{1,200,000} \times 850,000 = 566,667
\]

Determining where wages are taxable

The jurisdiction where payroll tax is paid depends on whether the employee has worked ‘wholly in NSW’ or ‘partly in NSW’. A liable wage paid to an employee will only be taxed in one jurisdiction in a month to prevent double taxation.

Work wholly in NSW

If in any month an employee works wholly in NSW, then the wages for that month’s work are taxable in NSW.

Work partly in NSW

If in any month an employee does not work wholly in NSW, then a four-tiered test is applied. This is referred to as the nexus provisions.

Examples of when an employee would be classified as working partly in NSW includes:

1. Worked partly in NSW and another Australian jurisdiction
2. Worked partly in NSW and another jurisdiction outside Australia

Where an employee has not wholly performed services in NSW in the month, the nexus provisions provide a four-tiered test to determine the jurisdiction where payroll tax should be paid.

The test is applied in the following sequence:

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

‘Mainly performed’ is applied if an employee performs more than 50 per cent of their working time for that month in a single Australian jurisdiction.
Working overseas and paid in Australia

An employer who pays wages to a person working in another country has an exemption on those wages if the period overseas is six consecutive months or more. The six-month period is not broken by returning to Australia for non-work-related breaks. However, this six-month period is broken if they return to an Australian jurisdiction and undertakes work e.g. attends meetings.

If the overseas work period is less than six months, the wages are taxable in the state or territory in which the employee is paid their wage.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working overseas for less than six consecutive months?</td>
<td>No</td>
</tr>
<tr>
<td>Working overseas for more than six consecutive months?</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Example of a business who has workers where nexus provisions need to be applied

Atom Transport Pty Ltd commenced trading 10 years ago. The business has 12 employees who work over multiple jurisdictions:

- Melissa and Mark, Mitch and Michael work solely in the NSW head office
- Josh, Jason, John and Julie work solely in the Queensland branch
- David and Amber work between the two offices
- Oliver is primarily based in Queensland however spends five months in Singapore in the year
- Ryan works in NSW for four months, however spent the last eight months of the year in Singapore.
<table>
<thead>
<tr>
<th>Employee</th>
<th>Location</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melissa</td>
<td>NSW</td>
<td>Wholly in rule applies: Wages are liable in NSW</td>
</tr>
<tr>
<td>Mark</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mitch</td>
<td>QLD</td>
<td>Wholly in rule applies: Wages are liable in QLD</td>
</tr>
<tr>
<td>Michael</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Josh</td>
<td>QLD</td>
<td>Wholly in rule applies: Wages are liable in QLD</td>
</tr>
<tr>
<td>Jason</td>
<td></td>
<td></td>
</tr>
<tr>
<td>John</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Julie</td>
<td>NT</td>
<td></td>
</tr>
</tbody>
</table>
| David    | NSW      | Partly in rule applies:  
  - David’s wages are liable in NSW  
  - Amber’s wages are liable in QLD |
|          |          |         |
| Amber    | QLD      | All wages are liable in QLD |
|          |          |         |
| Oliver   |          |         |
|          |          |         |
| Ryan     |          | Singapore wages are exempt. NSW wages are liable in NSW |
|          |          |         |

Solely work in NSW each month: Melissa and Mark.
Solely work in QLD each month: Mitch and Michael.
Works half the month in NSW and half the month in QLD: David and Amber.
Works 5 months in Singapore and 7 months in QLD: Oliver.
Works 8 months in Singapore and 4 months in NSW: Ryan.

Singapore wages are exempt.
**Wages paid for services performed in prior months**

When an employee performs services in a month but the wage for that service is not paid in that month there is no taxable wage until it is paid. Once paid the wages become taxable based solely on the jurisdiction of where services were performed in the month of payment. A wage that is not payable is a wage where some value or entitlement may be accruing but the employer is not obliged to pay the employee for the work in that month. Common examples are paid out leave and annual bonuses.

A detailed explanation can be found in Revenue Ruling: [Payroll Tax Nexus Provisions PTA039](#).
Wages

Employers are required to pay payroll tax on all their liable wages that exceed the nominated threshold. The term ‘wages’ is widely defined in the Payroll Tax Act 2007 (NSW) and includes all forms of direct and indirect reward for work.

The general concept of wages

Commonly referred to as “remuneration”, the general concept of wages encapsulates all payments for services performed by an employee in NSW.

Wages include:

- Salaries and Wages
- Fringe Benefits
- Directors Fees
- Liable Contractor Payments
- Termination Payments
- Bonuses and Commission
- Superannuation
- Shares and Options

Workers can be classified as either an independent contractor or an employee. An employee engaged under a contract of service is commonly referred to as an Employer/Employee relationship. The person is, or can be, subject to ongoing control and direction and the work performed will be ordinarily required by and for the benefit of the employer’s business. Employees can be full time, part time, casual or employed for a fixed term.

On occasion the engagement of a sole trader can also be under a contract of service even if the sole trader has their own ABN. In these cases, a review of the totality of the relationship between the business and the worker must be conducted. A large body of case law exists to deal with employers who attempt to have work performed by contractors while retaining the control and benefits found in an employment relationship. The distinction is important because wages of employees are taxable, but contractors may be exempt.

For further information, please see Revenue Ruling: Determining whether a worker is an employee PTA038.
Some important things to consider:

- **Payments to directors** are a taxable wage. Corporations should be aware that any payment relating to any service performed by a director is a wage. This includes directors’ fees and any other form of remuneration including superannuation contributions, consultancy fees, on call allowances, marketing fees and any other form of value. Third party provisions ensure payments relating to the services performed by the director that are paid to other persons such as trustees and corporations are also a wage for the corporation in receipt of the service of the director and should be included in liable wages.

- **Workers compensation** payments made to an employee from their employee or an insurance company are not considered a taxable wage, however ‘make up’ pay being paid above the agreed level is and should be included in liable wages. The Revenue Ruling [Workers Compensation Payments PTA015](#) clarifies this.

- **Profit distribution and loan amounts** Owners of a business that take a share of profits are not in receipt of wages. The situation is clarified in the Revenue Ruling [Profit Distributions and Loan Accounts PTA016](#).
Fringe benefits

The definition of wages includes a fringe benefit under the Fringe Benefits Tax Assessment Act 1986 (Cth). Exempt fringe benefits are not liable for payroll tax. Fringe benefits that have a 'nil' value also have 'nil' value for payroll tax.

Calculating fringe benefit value

For payroll tax purposes, the fringe benefit component that is included in liable wages is calculated as follows:

1. Add together the NSW portion of the total type 1 and type 2 aggregate amounts.
2. Multiply figure by the type 2 gross up rate (1.8868) to calculate liable amount.

Fringe benefits can either be calculated via the actual or estimate method. The estimate method is the most popular choice for payroll tax customers.

Declaring fringe benefit value – alternate or estimate method

The value of an employer’s total taxable fringe benefits is returned on a monthly basis as one twelfth (1/12) of the most recent FBT Return. The following method should be used when lodging monthly returns for June 2018 to May 2019 using the 2018 FBT Return:

1. Add together the NSW portion of the total type 1 and type 2 aggregate amounts.
2. Multiply figure by the type 2 gross up rate (1.8868) to calculate liable amount.
3. Divide this amount by 12.
4. Include this figure as liable fringe benefits in each month.

When lodging the 2019 annual reconciliation,
- Use the recent 2019 FBT return that was just lodged.
- Follow steps 1 and 2, then include the whole figure in the annual reconciliation.
If an employer pays wages in multiple states or territories and cannot isolate the fringe benefits value for each jurisdiction, they can pro-rata their fringe benefits in the same ratio as their wages. If an employer ceases to employ, they must reconcile their fringe benefits up to the final day they paid wages.

Further information can be found in Revenue Ruling: Fringe benefits PTA003.

Reportable fringe benefits

Reportable fringe benefits are fringe benefits whose value must be displayed on group certificates. Using this amount often leads to under-declaration of fringe benefits liability for payroll tax as it does not include the full value of benefits received by the worker.

Superannuation contributions

All pre-tax employer superannuation contributions to an employee, deemed employee or company director are liable for payroll tax. This includes if an employee elects to salary sacrifice. Top-up payments to defined benefit schemes in respect of post 1 July 1996 service are a wage even if the scheme is now closed to new entrants.

Employers’ failure to pay the required superannuation contributions

If an employer fails to pay the full amount of superannuation contributions as required by law, the employer is liable to pay any additional payroll tax on the value of underpaid superannuation. This includes nominal interest and administration fee components less any penalty charges.

Refer to the Revenue Ruling for more information: Penalty charges under Superannuation Guarantee Charge PTA030.

Shares or options

Wages also include the value of shares and options acquired by or granted to employees and directors less the value of any payment the employee or director made to have that share or option. As the value of a share or option will change over time, employers have a choice to declare the value of the share or option on the day of granting or on the day the share or option vests in the employee. It is on the relevant day that the share or option will be taxable for payroll purposes.

If the employer does not choose to declare on granting, it will be assumed to be declared on vesting. If an employer declares on granting and the shares or options are later rescinded, the value of the wage declared is to be deducted from the liable wages in the year of rescission.
The value of the share or option is the market value or the value as determined under the *Income Tax Assessment Act 1997* (Cth) (ITAA). As taxable wages must be disclosed in Australian dollars, a business may need to convert the taxable value to Australian currency. Businesses can use either the Reserve Bank of Australia’s exchange rate as at the relevant day or the Australian Taxation Office’s yearly average exchange rate for the financial year in which the relevant date falls.

**Changes due to amendments in the ITAA from 1 July 2011**

The changes to the ITAA mean only shares or options that are an Employee Share Scheme (ESS) interest are a wage. If the share or option scheme is not an ESS interest, it will be treated as a fringe benefit for payroll tax purposes.

**Employment Termination Payments**

Wages also include termination payments and include the following:

- Payment in lieu
- ‘Golden’ handshakes
- Annual leave, long service leave
- Director Termination
- Contractor Termination

**Please Note:**
Genuine superannuation lump sum payments on retirement are exempt termination payments, so should not be included in the calculation of liable wages.
Allowances

All allowances granted to an employee are liable wages, however there can be exempt components to certain amounts relating to motor vehicle and accommodation allowances. Any amounts over the exempt components paid in relation to motor vehicles and accommodation allowance need to be included in liable wages.

Motor vehicle allowances

Motor vehicle allowances paid at a kilometer rate are not liable even on amounts paid over the ATO reasonable rate (66 cents per kilometer). Motor vehicle allowances paid at a lump sum or fixed amount are liable for payroll tax unless substantiation of business kilometers has been maintained. If substantiation has been kept, up to 66 cents per kilometer is exempt, with any additional component of the motor vehicle allowance being included in liable wages.

For further information, please see Revenue Ruling: Exempt allowances; Motor Vehicle and Accommodation PTA005-v2.

This ruling also covers employers who pay lump sums and fixed amounts as a motor vehicle allowance and requires their employees to keep records of business kilometers. The distance can be multiplied by 66 cents and subtracted from the lump sum paid. If distance records are not kept, the allowances will be classified as a wage.

There are two methods of substantiating business kilometers:

1. the continuous recording of business kilometers and
2. use of the averaging method. The averaging method requires the employee to maintain a log of all their business kilometers for a 12-week period and then applying the average on a monthly basis.

Real estate agents

Revenue Ruling PTA025 allows real estate salespersons to consider 250 kilometers a ‘reasonable amount’ of business travel on a weekly basis and provides an exemption for this, whether or not records are maintained.

For real estate salespersons the exempt component for this allowance is calculated as 250km multiplied by the exempt rate of 66 cents. For the 2018-19 financial year this equates to $165 per week per salesperson.

Accommodation allowances

Accommodation allowances are only liable on amounts that exceed a daily limit of $278.05 during 2018–19. Amounts paid above this limit to be included in liable wages.
Truck driver allowance

The overnight allowance paid to truck drivers is an accommodation allowance. The exemption limit is $268.15.

For further information, please see Revenue Ruling: **Overnight accommodation allowance paid to truck drivers PTA024**.

Living Away from Home Allowances

A Living Away from Home Allowance (LAFHA) is a fringe benefit and must be declared as such. Changes in the treatment of a LAFHA occurred in October 2012. The reform does not change the way a LAFHA is treated for payroll tax as it is still considered a fringe benefit.

**Please Note:**

Reimbursements of business expenses incurred by employees on behalf of their employers are not liable wages. There must be evidence of documentation.

Revenue Ruling: **Allowances and Reimbursements PTA011**.
Deemed wages

Contractor provisions

Payments to contractors for services provided are liable for payroll tax, as deemed wages, unless one of seven contractor exemptions can be met. If a contractor exemption is not met, the contract is deemed a ‘relevant contract’. Remuneration paid for services under a relevant contract are liable for payroll tax, excluding any GST component.

Important

A sole trader with an ABN doesn’t automatically qualify them as a contractor engaged by a business. The totality of the relationship between the sole trader and employing business must be reviewed to determine if the sole trader should be classified as a common law employee of the employing business or a genuine independent contractor.

If it is determined the sole trader is an employee remuneration paid to them is classified as liable wages. If it is established the sole trader is an independent contractor, contractor exemptions can be applied if criteria met.

For more information on determining whether a worker is an employee please see Revenue Ruling PTA 038 on our website.
There are seven contractor exemptions:

<table>
<thead>
<tr>
<th>Exemption</th>
<th>Examples where exemptions apply</th>
<th>Records you should keep</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services ancillary to the supply of goods</td>
<td>A bobcat is supplied under a contract for $150,000. An additional $25,000 is paid for the operator. The total contract value is $175,000. The primary purpose of the contract is the use of the bobcat, with the labour costs incidental.</td>
<td>• Copy of the contract&lt;br&gt;• Invoices, Purchase Order or quote that disclosed value of goods and/or equipment.</td>
</tr>
<tr>
<td>Revenue Ruling PTA 033</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services not ordinarily required by your business</td>
<td>A dentist office has a water leak and engages a plumber to fix the piping. The engagement of the plumber is on an ad hoc basis and not a service ordinarily required by the dentist office. The plumber provides plumbing services all year round to other businesses.</td>
<td>• Evidence to support you don’t normally engage employees or contractors to perform the particular type of service.&lt;br&gt;• Evidence that your contractor conducts a business of providing the same/similar service to others:&lt;br&gt;  o Advertising material&lt;br&gt;  o Website&lt;br&gt;  o Declaration attesting to the fact that the contractor provides similar services to other businesses</td>
</tr>
<tr>
<td>Revenue Ruling PTA 022</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services required for 180 days or less in a financial year</td>
<td>A law firm engages an independent gardening contractor to maintain the lawn and gardens of the business premises. The gardener works two days a week (e.g. 104 days per year). The law firm engages no other gardeners.</td>
<td>• Documentation that demonstrates the services provided by the contractor are used by your business for less than 180 days</td>
</tr>
<tr>
<td>Revenue Ruling PTA 020&lt;br&gt;Revenue Ruling PTA 014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services provided for 90 days or less in a financial year</td>
<td>An IT company engages an independent contractor for a web design project. The contractor is engaged by the business for 74 days in the financial year and solely works on this project.</td>
<td>• A copy of the contract&lt;br&gt;• Invoices prepared by your contractor showing the period they worked for your business&lt;br&gt;• Accounts payable ledger specific to that contractor&lt;br&gt;• An attendance record showing the days the contractor was onsite</td>
</tr>
</tbody>
</table>
| Services approved by the Commissioner as exempt
Revenue Ruling PTA 021 | A building company engages an independent plumbing contractor to carry out regular work during the financial year. The plumbing contractor is free to accept other work, advertises its business in the yellow pages and on social media, and performs plumbing work for other unrelated businesses. | • A copy of the contract
• Copies of advertising material published by the contractor
• Information copied from your contractor's website
• Evidence which demonstrates the contractor derived substantial income from providing similar services to other customers/businesses |
|---|---|---|
| Services performed by two or more people
Revenue Ruling PTA 023 | For corporations there must be two or more persons employed by, or who provide services for, a corporation in the course of a business carried on by the contractor. For partnerships there must be a person employed by, or who provides services for, a partnership in the course of a business carried on by the partnership. For natural persons there must be at least one more person employed by, or who provide services for, the contractor in the course of a business carried on by the contractor. | • Contractor’s ABN
• Written contract
• Invoices provided by the contractor specifying dates and services performed
• Details of workers who performed the work under the contract
• Records showing worker attended work site
• Declaration signed by the contractor which notes who they engaged including relevant ABNs |
| Services provided by an owner driver
Revenue Ruling PTA 006 | A retail business engages an independent contractor to move stock from the warehouse and deliver to the retail stores. The contractor owns the truck used for transportation. | • Copy of the contract
• Invoices
• Agreement or consignment notes
• Record details of the vehicle used by the contractor |
**Employer substantiation**

In the absence of evidence that a contract for services is not relevant, the contractor provisions will apply. The payment will be considered a wage with the person paying that wage taken to be an employer and the person who performs the work taken to be an employee.

The onus of proving that any of the seven exclusions apply rests with the employer. Employers must ensure that the work completed by the contractor for the exemption required in the actual contract. Any other work performed outside the contract will not receive an exemption. Documentation that substantiates that a contract is not relevant must be kept for each contract for service.

Revenue NSW recently released the **Commissioner's Practice note: Payroll tax contractors** [https://www.revenue.nsw.gov.au/help-centre/resources-library/cpn007](https://www.revenue.nsw.gov.au/help-centre/resources-library/cpn007), to provide greater guidance relating to contractors.

**Deductions**

If your contract is a relevant contract the cost of materials is not a liable wage component. If the contract does not itemise the cost of materials, deductions from the total cost of the contract are available and outlined in:

- Revenue Ruling: [Contractor Deductions PTA018](https://www.revenue.nsw.gov.au/help-centre/resources-library/cpn007)

No deductions are available for other business expenses such as vehicles, fuel and the cost of maintaining business premises.

**GST and non-labour costs**

The GST component of any relevant contract is not taken as wages, and should be excluded from your calculation of liable wages.

Further information can be found in Revenue Ruling: [GST Considerations for the Calculation of Payroll Tax Liability PTA008](https://www.revenue.nsw.gov.au/help-centre/resources-library/cpn007).

Employment Agents

Employers use agencies to provide them with persons to perform labour services. An agency can enter into different forms of contract but in essence there are only two types:

1. the employer (client) directly hires the worker as an employee or a contractor using the agency to find the worker. The client usually pays the worker directly and the agency receives a fee or an ongoing percentage. These contracts are not employment agency contracts. Revenue Ruling PTA029 recruitment/placement agencies clarifies this type of direct hire contract.

2. the client does not offer a direct hire relationship to the worker but the agency offers the work to the worker on behalf of their client as an on-hire arrangement.

Under an employment agency on-hire contract arrangement, a service provider can never be the employee of the end user client. Businesses that procure or facilitate the services of a service provider for an end user client are taken to be an employment agent.
Employment agency contracts

An employment agency contract has three effects under the Payroll Tax Act 2007 (NSW):

1. All amounts paid by the agency to, or in connection with, the work of the worker are taken to be a wage. This also picks up payments to corporations connected to the worker.

2. The natural person performing the work is taken to be an employee.

3. The agency is taken to be the employer to the exclusion of the client or any other person.

Employment agencies have only one concession available. If the client makes a declaration that the wages would be exempt from payroll tax if paid by the client, the agency does not have to pay payroll tax on all contracts covered by that declaration. The declaration is available online and requires confirmation from Revenue NSW that the client is exempt. Employers can apply to be classified as exempt even if they have insufficient wages to register for payroll tax.

Chain of hire

If two or more agencies are involved in an agency agreement, they need to make a declaration to ensure that only one of them pays the payroll tax. Which agency should pay and fill out the declaration is covered in Revenue Ruling Employment Agency Contracts Chain of on-hire PTA027. The liable agency is usually the agency closest to the client.

Direct hire using agencies

Employers that use an agency to facilitate the direct hire of a worker may use the agency to pay the worker, creating an arrangement that looks like it meets the definition of an employment agency contract. As the core contract is one of direct hire it is not an agency contract, as explained in Revenue Ruling PTA029 Recruitment Agencies/Placement agencies/Job Placement Agencies.

Government as agency clients

Commonwealth and state government departments or organisations affiliated with them cannot make declarations that they are exempt from payroll tax. Local government can make declarations but only on work that is listed as a prescribed activity.

For further information, refer to Revenue Ruling: Employment Agency Contracts-workers on-hired to Government PTA028.
Other

GST excluded from wages

The GST component of any payment is never a wage.

For further information, refer to Revenue Ruling: GST Considerations for the calculation of payroll tax liability PTA008.

Wages paid by or to third parties

Employees

If any money would have been a wage if it had been paid by an employer to an employee, it is still a wage for that employer if:

- paid by a person other than the employer for whom the work was performed. For example, where the employer uses the services of an outsourced payroll company
- paid to a person other than the employee who performed that work. For example, where an employee may request that their wages be paid to their spouse or their own private company
- paid by a person other than the employer to persons other than the employee who performed that work. For example, where an employer uses the services of an outsourced payroll company to process wage payments of its employees and the employee nominates for the wages to be paid to a third party such as a super fund.

Directors

If any money would have been a wage if it had been paid by a corporation to, or in relation to, or for the appointment of a director, it is still a wage for that corporation if:

- paid by a person other than the corporation for whom the services were performed
- paid to a person other than the director who performed those services for the corporation
- paid by a person other than the corporation to some person other than the director who performed the services for the corporation.
Common payments subject to these provisions are management fees, consulting fees, on call payments and other payments directed to a corporation associated with the director. If there is evidence that the payments are for specific tasks performed under a contract for services, the Chief Commissioner may apply the provisions of contractor payments to the contract.

**Agreement to reduce or avoid payroll tax**

Anti-avoidance provisions apply when an arrangement, agreement or transaction has been created to reduce or avoid the liability of the person being assessed for payroll tax. The Chief Commissioner may:

- disregard the agreement
- determine that any party to the agreement is the employer
- determine that any payment made in respect of the agreement is a wage.

The Chief Commissioner must give reason in writing for such a decision setting out the facts relied upon.
Exemptions

Employer-based exemptions

Wages paid to employees engaged to perform work connected with the objectives of public benevolent institutions, religious institutions and nonprofit organisations with sole or dominant charitable, benevolent, philanthropic or patriotic purposes may be exempt from payroll tax. Such organisations usually have all or the majority of their wages exempt and are referred to as exempt employer.

Other organisations in this category include:

- nonprofit, non-government schools or colleges (other than technical schools or colleges), for wages paid to persons providing education at or below secondary level
- public hospitals, for wages paid to persons engaged exclusively in the work of the hospital
- nonprofit private hospitals, for wages paid to persons engaged exclusively in the work of the hospital.

Local government

Cities, shires and municipalities have an exemption on their wages or on the wages of wholly owned subsidiaries. The exemption does not apply to wages paid or payable for or in connection with:

- the supply of electricity or gas
- water supply
- sewerage
- the conduct of
  - abattoirs
  - public markets
  - parking stations
  - cemeteries or crematoria
  - hostels
  - a transport service
  - the supplying of building materials
  - a coal mine and the distribution of coal.

In cases where an employment agency is engaged to procure workers for an exempt employer the exempt employer can sign a declaration for the agency so they too can exempt the wages paid to their service providers. The work provided by the service providers must relate to the core business of the exempt employer.

Further information can be found within Revenue ruling: Employment Agency Contracts Declaration by exempt clients PTA026-v2.
Employee-based exemptions

Maternity, paternity and adoption leave

Employers that provide paid maternity leave, paternity leave and adoption leave have an exemption for such wages up to and including 14 weeks' pay for the employees' normal duties. This amount is proportioned for part-time workers based on the number of days they work.

Further information can be found within Revenue Ruling: Exemption from maternity leave and adoption leave pay PTA012 and PTA037.

Please Note:
PTA012 is a harmonised revenue ruling that explains the exemption of maternity and adoption leave but does not include paternity leave. For NSW purposes, paternity leave is also exempt to the same effect as maternity and adoption leave exemptions.

Volunteer fire-fighters and emergency service volunteers

Employers who continue to pay wages to staff taking part in bushfire fighting activities as a voluntary member of a rural fire brigade or in emergency operations as volunteer members of an emergency services organisation have an exemption on those wages. The exemption does not apply to wages paid as recreation leave, long service leave or sick leave for the time of their absence.

Defence personnel

Employers who provide paid military leave to employees who are members of the defence forces, including the reserves, have an exemption on these payments.
Rebates

Rebate for apprentice and trainee wages

From 1 July 2008 a rebate on payroll tax applies to all wages paid to apprentices and new entrant trainees recognised by the NSW Department of Industry. The rebate does not apply to wages paid to a trainee who has been continuously employed by the employer for more than three months’ full time or 12 months’ casual or part time immediately before commencing work as a trainee.

For more information, please read the factsheet Payroll Tax (NSW) - Apprentice and Trainee Wages.

Payroll Tax Rebate Scheme – Jobs Action Plan

The Jobs Action Plan rebate gives eligible employers a payroll tax rebate of up to $6,000 for each new employee in NSW hired on or after 1 July 2011 and before 1 July 2019. The rebate is paid in two parts, once on the first and then on the second anniversary of the employment commencement date.

Employers should register each new position within 30 days after the employment of a person in that position commences. However, the Chief Commissioner will give consideration depending on the circumstances up to 90 days for late applications. Applications for registration are available at www.revenue.nsw.gov.au

From 31 July 2016, only businesses with a NSW FTE of 50 or less may register their new employees for the Jobs Action Plan Rebate. The employment of the new person must increase the business’s number of full time equivalent employees (FTE) for a period of at least one year for the employer to receive the first year rebate which is up to $2,000. As long as the FTE is maintained or exceeded, the employer will be able to claim the second year rebate which is up to $4,000 on the second anniversary.

To calculate the number of FTE employees, use the following formula:

\[
FTE = \frac{F + A}{B}
\]

Where:
- \(F\) = number of NSW full time employees on the relevant date
- \(A\) = total number of hours worked in the preceding pay period by all NSW part time and casual employees employed on the relevant date
- \(B\) = average number of hours worked in the preceding pay period by all NSW full time employees employed on the relevant date.

To calculate the number of FTE employees:
- for registration – on the date of commencement of the new employee, exclude that employee from the FTE calculation
- for anniversaries – on the first and second anniversaries of the new employee commencing the job, include the employee in the FTE calculation.
Grouping of businesses

Grouping provisions within the Payroll Tax Act 2007 (NSW), state four ways in which a group can be formed:

1. Related corporations
2. Common employees
3. Commonly controlled businesses
4. Tracing of interests in a corporation

Smaller groups can also be subsumed to make a larger group.

When businesses are grouped, the group is entitled to only one threshold entitlement. In addition, each group member is jointly and severally liable for the liability of each member. This provision exists to prevent a person, or set of persons, from carrying on a number of businesses to obtain multiple thresholds.

Groups can be registered one of two ways with Revenue NSW:

- One group member is the Designated Group Employer (DGE) who receives the threshold entitlement while the other group members lodge as non threshold clients (NTC).
- One group member lodges on behalf of the group, and receives the threshold entitlement.

As the members of a group are entitled to only one threshold deduction all members that pay wages must register for payroll tax if the group as a whole pays total Australian wages that exceed $16,301 a week during 2018–19.

Groups of corporations

Two or more corporations are a group if they are ‘related bodies corporate’ within the meaning of the Corporations Act 2001 (CA). Australian subsidiaries of overseas holding companies are still related to each other under the Act. Related corporations grouping does not apply to trustee or nominee corporations.
Common employee groups

A group formed under this provision will contain at least one business whose employees perform duties to satisfy an obligation to provide services for, or in connection with, another business. The provision does apply to all contracts for services between businesses. There must be evidence that duties are being performed.

A common example is a legal firm and its affiliated service trust. The corporate trustee of the service trust will employ administrative staff to perform legal work such as typing writs and record keeping and this work is duties performed in connection with the business of the legal firm.

Common control groups

A business is grouped with another business if the person or set of persons who control the first business are the same person or set of persons who control a second business. If a person or set of persons has a controlling interest in each of the two businesses, the persons who carry on those businesses constitute a group.

What defines a controlling interest is determined under a number of control provisions and it is common to find that more than one can apply.

<table>
<thead>
<tr>
<th>A business can be carried on by</th>
<th>Control by</th>
</tr>
</thead>
<tbody>
<tr>
<td>A sole person even as trustee</td>
<td>The owner</td>
</tr>
<tr>
<td>Two or more persons exclusively</td>
<td>All owners</td>
</tr>
</tbody>
</table>
| A corporation                 | Directors > 50%  
|                              | Board > 50%  
|                              | Shareholders > 50% |
| A partnership                 | Equity/income > 50% |
| A trustee                     | Beneficiaries > 50% |

Sole person even as trustee

A business carried on by a sole owner, as trustee or otherwise, is controlled by that person.

Exclusive owners

A business carried on by two or more owners, or as trustees, is controlled by all of those persons together. This requires all of the owners, not just a majority.

Corporations that carry on businesses:

**Director voting power**

- The director(s) who can exercise more than 50 per cent of the voting power either individually or jointly at directors’ meetings are persons who control the business carried on by the corporation.
- Any person who can require director(s) with more than 50 per cent voting power to act in accordance with their wishes are persons that control the business carried on by the corporation.
Composition of the board
- The persons who comprise more than 50 per cent of the board of management of a corporation are persons who control a business carried on by that corporation. This includes the directors.

Shareholders
- Shareholders who directly or indirectly exercise, control the exercise of, or substantially influence the exercise of more than 50 per cent of the voting power attached to the voting shares of the corporation are persons that control the business carried on by the corporation.

Partnerships that carry on businesses
The partners in a partnership are the persons that control the business carried on by the partnership. One or more of the partners are persons who control the business carried on under the partnership if they:
- own (beneficially or not) more than 50 per cent of the capital of the partnership
- are entitled (beneficially or not) to more than 50 per cent of the profits of the partnership. The partnership deed is used to establish the interest of the partners.

Trusts with a business carried on under the trust
The beneficiaries of a trust are the persons that control the business carried on under a trust when they are entitled to more than 50 per cent of the value of the trust. Their entitlement to value is determined under the trust deed.

Discretionary trusts
Beneficiaries of such trusts are all taken to have an interest in the value of the trust that exceeds 50 per cent. This means any single or combination of beneficiaries control the business carried on under the trust.

Composition of common control groups
Corporations that carry on businesses are the most common employers grouped but trustees and partnerships are now commonly members of groups. When the same person or persons control two or more businesses the types of businesses grouped can be any combination of owners, corporations, trustees and partnerships.

Common control also applies to trusts, corporations and partnerships controlled through trusts
In many business structures it is common to find the main trading business is controlled through a trust as a major beneficiary, shareholder or partner. In these structures it is then common to find a discretionary trust is in receipt of the income from the trading businesses. When the trustee of a trust has a controlling interest in the business of another trust, or a corporation or a partnership, any person with a controlling interest in the trust has a controlling interest in any of the businesses controlled by that trustee.
Smaller groups subsumed into one group

If any member of a group is also a member of another group, both groups are subsumed into one group for payroll tax purposes. Subsuming also applies when two or more members of a group have a controlling interest in another business.

Tracing of interests in corporations

Tracing of interests in corporations is used when a person has a combination of corporate and shareholder control in two or more corporations. In such cases, a person will own shares in the first corporation and both the same person, and the first corporation will own shares in the second corporation.

The provision uses direct interests in corporations, indirect interests in corporations and aggregate interests in corporations. When an entity has either:

- a direct interest of more than 50 per cent, or
- an indirect interest of more than 50 per cent, or
- an aggregate interest of more than 50 per cent in a corporation where the entity and the corporation form a group.

If the same entity has such a level of control in a second corporation then the two corporations are grouped.

Exclusion determinations

When two businesses are grouped, they remain grouped unless the Chief Commissioner makes an exclusion determination to 'de-group' them. The Chief Commissioner cannot de-group related corporations.

The Chief Commissioner may, by order in writing, exclude a member from a group if ‘satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the Chief Commissioner considers relevant, that the 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’.
Some points to consider include:

- a business does not have to employ to be member of a group
- you must clearly identify the business/es which you seek to de-group
- the level of interaction and interrelation of the activities of the businesses may impact the decision for de-grouping
- the ability of a principal of one business to influence the management of another may impact the decision for de-grouping.

An application form for de-grouping is available at [www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au)

Further information relating to exclusions can be found at Revenue Ruling: Commissioner’s Discretion to exclude from a group PTA031.

**Nomination of a designated group employer**

All groups of businesses must nominate a single NSW member, as the DGE to claim the annual threshold deduction on behalf of the group in NSW. All of the other NSW members of the group do not claim any deduction from their wages.

**Nomination of a single lodger**

All members of a group must register for payroll tax. A group of businesses may choose to make joint returns where one group member lodges returns and pays the payroll tax on behalf of all NSW group members. If no individual group member can absorb the group’s NSW threshold entitlement, the group must nominate a Group Single Lodger to be responsible for lodging and paying payroll tax on behalf of all members of the group. Businesses need to return a nomination form to advise what method of lodgement they will use.

**Joint and several liability of group members**

Any payroll tax payable by a group member can be recovered from any other group member.

**Agents and trustees**

Any person under a legal or other obligation to act on behalf of an employer or any person who is a trustee is required to lodge returns and pay payroll tax as if they were the employer or owner. The returns and payment are in a fiduciary capacity and are separate and distinct from any returns the person may make in their own capacity or in a fiduciary capacity for other persons.
Compliance expectations

The *Taxation Administration Act 1996* (TAA) provides standardised administrative and enforcement provisions for NSW taxation/revenue laws. Importantly, it grants Revenue NSW officers the power to carry out their duties when administering the processes and collection of payroll tax against our customers.

We regularly conduct audits to ensure that customers are paying the correct payroll tax and will conduct an audit if you fail to register with us or have incorrectly stated your wages with third parties. We select audits based on varying methods which include data mining, data matching, random selection and tip-offs.

If you are selected for an audit, we will:

- phone to inform you will be audited
- explain the process and scope
- tell you the records you must produce
- allow you reasonable time to prepare those records
- arrange a convenient time and place to interview you, or your representative
- confirm these arrangements in writing.

Our auditors will investigate all necessary business records and issue an assessment. An assessment is a written notice issued on behalf of the Chief Commissioner outlining any discrepancy between what the business has claimed to what is recorded by Revenue NSW. Original assessments can be made for any number of years but typically the period includes the current year and the prior four financial years.

Employers must keep the necessary records to determine their payroll tax liability for five years from the date of a transaction or the date the record was first prepared or obtained. In addition, they must maintain records in English and ensure that the records enable a sufficient review of one’s payroll tax obligations.

**Please Note:**
An assessment can be amended up to five years after it has been assessed. This will be the current year and four prior years. All overpayments are refunded but any extra tax may be subject to interest and penalties.
Penalties and interest

Penalties and or interest are generally applied if there has been an underpayment of payroll tax (tax shortfall). The penalty depends on the level of fault and is outlined in the TAA.

- **Interest** comprises two rates, a premium rate (8 per cent) and a prescribed market rate, which is reviewed quarterly. The current rate is 9.96 per cent up to 30 Dec 2019.
- **Penalty tax** is intended to encourage compliance with the taxation laws and the rate applied may depend on the behavior of the client. It will vary between 0-75%.

For further information, please see Revenue Ruling: Payroll tax–Interest and Penalty tax PTA036 v2.

Once an assessment has been made, there are two further recourses for customers, to object or appeal.

Objections & Appeals

Objection

A person who is dissatisfied with a decision, determination or assessment made by the Chief Commissioner affecting their tax liability may, within a period of **60 days** after the issue of the notice of the decision, determination or assessment, lodge an objection in writing with the Chief Commissioner. The statement must be explicit, stating the full grounds of the objection and be accompanied by relevant supporting evidence.

Appeal

A person who is dissatisfied with the decision on an objection may, within **60 days** after the date of issue of the notice of determination, appeal to the NSW Civil and Administrative Tribunal or to the NSW Supreme Court against that decision.

Lodgement of an objection or appeal does not affect the obligation to pay any tax in the timeframe specified in the assessment.

A range of forms to assist employers with various payroll tax administrative obligations can be found at www.revenue.nsw.gov.au
Recent court cases

Southern Cross Group Services Pty Ltd v Chief Commissioner of State Revenue [2019] NSWSC 666

Background
This appeal relates to the imposition of payroll tax for the 2010-11 and 2013-14 financial years against Southern Cross Group Services Pty Ltd (the first plaintiff) and Southern Cross Group NSW Pty Ltd (the second plaintiff). During these financial years, the plaintiffs operated a business as private security contractors. The first plaintiff entered into security contracts with clients for the provision of security services and personnel, and used employees and additional staff supplied by subcontractors to provide those services. The first plaintiff’s clients were property managers or operators of shopping centres and other facilities, as well as other security companies. From July 2012, the first plaintiff contracted with the second plaintiff for the second plaintiff to supply the additional staff, which it also did through subcontractors.

The issue in the appeal was whether the security contracts, and the contracts between the first and second plaintiffs, were “employment agency contracts” (within the meaning of section 37 of the Payroll Tax Act 2007 (NSW)). The plaintiffs submitted that they were not because the relevant contracts were not with the “end users” of the services provided (the plaintiffs argued that the “end user” was, for example, the owners and not the operators of Westfield shopping centres). The plaintiffs submitted that, where there is a chain of intermediaries between the service providers and the end user, there can only be one employment agent in the chain and that employment agent must be the closest entity to the end user.

Decision
After considering the plaintiff’s submissions, the Court rejected their arguments. The Court also held that the service providers could be working in and for the conduct of more than one business at the same time i.e. where security staff were procured by the second plaintiff for the first plaintiff (and then provided to the first plaintiff’s clients), the security staff would be considered working in and for the conduct of the first plaintiff’s business and the client’s businesses.

The outcome of this decision ultimately means that where there is a “chain of on-hire” in relation to the employment agent’s provisions (Division 8 of Part 3 of the Payroll Tax Act 2007 (NSW)), all employment agents in the chain are liable for payroll tax unless that liability is excused under section 41 of the PTA Act.

Link to Decision
https://www.caselaw.nsw.gov.au/decision/5cf74d5ee4b02a5a800c14e4
Bayton Cleaning Company Pty Ltd v Chief Commissioner of State Revenue;  
International Hotel Services Pty Ltd v Chief Commissioner of State Revenue [2019] NSWSC 65

Background:

In this matter, the plaintiffs provided cleaning services to the following categories of clients: hotels, aged care and retirement villages, commercial clients, a hospital, and a school. The plaintiffs submitted that where the services provided are ancillary to the client’s core business, the service providers are not working in and for the conduct of the client’s business.

Decision:

After considering the plaintiff’s submission, the Court rejected their argument. The Court held that, when looking at whether services providers are working in and for the conduct of client businesses, the more meaningful factors are: whether services are provided on-site, whether services are provided with a degree of continuity or regularity (as opposed to ad-hoc), and the extent of interaction and supervision with or by the client’s staff.

Link to Decision
https://www.caselaw.nsw.gov.au/decision/5cf6fd80e4b02a5a800c1464
What’s new for the 2019-20 financial year

Amendment of payroll tax threshold

A result of the 2018 State Budget was a yearly increase in the payroll tax threshold.

- For the financial year commencing on 1 July 2020 the threshold will increase to $950,000.
- For the financial year commencing on 1 July 2021 and subsequent financial years the threshold will be to $1,000,000

Motor vehicle allowance exempt component

The exempt component of the allowance is 68c/km.

Overnight accommodation allowance exempt component

The prescribed rate for 2019-20 is yet to be published. When it is available, the rate will be posted on our website; please check www.revenue.nsw.gov.au

Amendment to annual reconciliation date

As of the 2018-19 annual reconciliation, the payroll tax annual reconciliation lodgement date has changed from 21 July to 28 July. If this date falls on a weekend or public holiday, lodgement is required next business day.

Estimate monthly assessments

Where a business previously had an annual liability of less than $150,000 they can estimate a monthly liability based on their previous year’s liability with a 3 per cent uplift. In circumstances where businesses do not have a previous year’s liability, they must make three monthly returns based on actual wages paid before they can use the estimate method. The estimate method will not apply to annual reconciliations – actual figures must be used.
Common payroll tax errors

To help you meet your payroll tax obligations, below is a list of some common errors that are made when lodging payroll tax returns:

**Calculating your liability on net wages**
- remember that payroll tax is a tax on gross wages

**Missing the lodgment deadline.**
- failing to lodge returns on time may result in penalties and interest, so to avoid additional payment, ensure you lodge by the due dates

**Incorrectly exempting wages**
- be familiar with exempt wage components and entitlements including maternity/paternity/adoption leave, Commonwealth Paid Parental Leave and non-income taxable redundancy components of termination payments

**Claiming Motor Vehicle and Accommodation Allowances without adequate records**
- ensure you maintain records to support the exempt components

**Incorrectly including the value of Fringe benefits:**
- ensure you gross up the sum of the type 1 and type 2 aggregate amounts by the type 2 gross up figure (1.8868)
- remember to proportion fringe benefits to Australian wages, if the benefits relate to multiple jurisdictions

**Failure to include employee salary sacrifice amounts**
- ensure salary sacrifice amounts are included in liable wages or the applicable wage category

**Excluding director payments**
- third-party payments to directors that relate to services provided are considered liable wages irrespective of whether the payments are made to another company, a superannuation fund or a relative

**Claiming contractors’ exemptions incorrectly**
- Ensure that your contractors are genuine contractors and not employees for payroll tax purposes. If a genuine contractor relationship exists, be aware of the various exemptions that apply and whether you can reduce your liability
Claiming Rebates for apprentices and trainees who are not approved by the Department of Industry (DOI)

Ensure you have documentation that supports the employee is registered with DOI

Claiming multiple thresholds

➢ Be aware of the grouping provisions to ensure that if you are considered a member of a group only one member receives the threshold.