



## Issue #16 September 2017

### News from Revenue NSW

This month, we check your understanding of different road rules for bus lanes and bus only lanes so you can avoid committing an offence. There are also updates on landholder duty and court proceedings on land tax, payroll tax and duties matters.

For those operating a business or assisting with accounting, be sure to explore payroll tax when it comes to employee allowances in our article below. Business owners owe payroll tax if their business wages go beyond the threshold of \$750,000. It is also worth boosting your payroll tax know-how by taking part in an upcoming seminar or webinar.

We welcome your feedback on *Revenews* - please [email](#) us.

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### Don't make fuss if you're not a bus!

Can you tell the difference between a bus lane and bus only lane? Whereas only public buses can use bus only lanes, bus lanes can be used by bicycles, licensed taxis, motor bikes and emergency service vehicles. Ride sharing vehicles must not use bus lanes. Entering a bus lane to make a turn is permitted, as long as you travel less than 100m in the bus lane.



[Roads and Maritime Services](#) (RMS) has more information on bus lanes. If you misuse a bus lane, you may be penalised for the offence. We receive and process fines for road-related offences issued by RMS. Make sure that you don't have to hear from us by travelling safely in line with NSW road rules.

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### Payroll tax allowances

For business owners liable for payroll tax, it helps to know how the tax applies to allowances you pay to your employees. Most allowances must be taken into account for

payroll tax purposes. The only allowances where payroll tax **does not** apply include:

- paying back an employee the exact amount spent on business expenses against a receipt
- the exempt component of [overnight accommodation and motor vehicle allowances](#).

For 2017-18, the amount of overnight accommodation exempted from payroll tax is \$266.70 per night. For motor vehicle allowances, the exempt component that can be deducted is 66 cents per business kilometre. Remember to keep evidence, such as receipts or diaries, for any exempt components you claim.

If Fringe Benefits Tax requirements apply to an allowance, such as the Living Away From Home Allowance, it is only ever treated as a fringe benefit for payroll tax purposes.

For more information about the liability of allowances and their exempt components, see [Revenue ruling PTA 011 – Allowance and Reimbursements](#).

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## Updated landholder duty forms

Landholder duty applies when ownership of land changes through acquisition of shares or units in a company or trust that owns the land. The requirements concern trusts and companies that have land holdings in NSW of at least \$2 million. For more information, see [landholder duty](#).

When you become liable for landholder duty, or claim an exemption, you need to complete a form. All landholder duty forms have been updated following changes from the 2017 State Budget. They fulfil Commonwealth Reporting Requirements and identify foreign persons for surcharge purchaser duty.

Access the [landholder duty forms](#).

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## No double duty

NSW laws set out that duty is charged on:

- an agreement for the sale or transfer of property to which duty applies, and
- the resulting transfer of that property.

Instead of charging the duty twice, if duty has been paid on the agreement, the transfer is charged a concessional duty amount of \$10.

For more information, see [Revenue Ruling DUT 010 v2](#).

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## Case summaries

### Payroll tax

*Sydney Flooring Pty Ltd and Sydney Flooring 1959 Pty Ltd v Chief Commissioner of State Revenue* [2017] NSWCATAD 96 (3 April 2017)

The question was whether five floor installers in all were each engaged by the taxpayers under the 'relevant contract' provisions in the *Payroll Tax Act 2007* for the 2010 to 2013 tax years.

The evidence did not sufficiently demonstrate that each of the five contractors engaged in providing services to others. Furthermore, the contractors did not engage any others to provide the services, seek/secure their own customers, set or negotiate their own prices, or conduct their own activities in a way which demonstrated that they run an independent business.

The assessment under review was remitted to the Chief Commissioner for re-determination in accordance with the Tribunal's decision.

[Read more about this case.](#)

### Land tax

*Brown Cavallo Pty Ltd v Chief Commissioner of State Revenue* [2017] NSWCATAD 18 (11 January 2017)

This case looked at whether the taxpayer's claim of the primary production exemption was valid. The exemption was sought for non-rural land at Woolgoolga of 2.987 hectares, used for beef cattle by the company, Tallawudjah.

The Tribunal determined that the taxpayer had satisfactorily proved that:

- the main use of the land during the relevant period was to maintain beef cattle for sale, and
- the land was used commercially in order to generate profit, on an ongoing basis.

As a result, the Tribunal held that the use of the Woolgoolga Land satisfied the requirements of section 10AA(2) of the *Land Tax Management Act 1956*, qualifying for the primary production exemption for the relevant period.

This decision was appealed by the Chief Commissioner and was heard on 25 June 2017. The decision is awaited.

[Read more about this case.](#)

*Theophilus v Chief Commissioner of State Revenue* [2017] NSWCATAD 89 (24 May 2017)



The taxpayer sought a review of his land tax assessment for the 2015 tax year for a Randwick property. The property was acquired in 1992 and used as his principal place of residence (PPR) until 2011. Right before the Randwick property was demolished in September 2011, the taxpayer moved to a property he had inherited at Panania.

The Tribunal found that the taxpayer using and occupying the Panania property entitled them to the PPR exemption (Clause 2 of Schedule 1A of the *Land Tax Management Act 1956*) for *that* property. The PPR concessions were found not to be valid for the Randwick property because:

- it was unoccupied land
- of the owner's absence from his former residence
- the home had been demolished and the land did not have a building on it for residential purposes, so the land could not be classified as residential land.

Finally, the taxpayer could not elect the Randwick property as the PPR for his family, as a family is made up of at least two people.

For these reasons, the PPR exemption did not apply.

[Read more about this case.](#)

## Duties

*Esplanade Wollongong Unit Trust v Chief Commissioner of State Revenue* [2017] NSWCATAD 157 (19 May 2017)

A transfer was signed transferring the whole of a real estate property from Belmore to the taxpayer where nominal duty was sought on the basis that the transfer merely reflected a change in trustee.

The taxpayer asserted there was a mistake, and that one half interest in the property should be held by Belmore in its own right.

The Tribunal found that there was no mistake and that on the evidence it was not possible to conclude that a half interest was initially purchased by Belmore as trustee. As a result, the change of trustee concessional duty provision did not apply. This is currently under

appeal.

[Read more about this case.](#)

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## Customer education activities

### Webinars

Payroll Tax: Webinar 5 - The Grouping Provisions: 29 September

Payroll Tax: Lodgement and Overview for New Clients: 4 October

Payroll Tax: Jobs Action Plan Rebate: 6 October

Book in for an upcoming [seminar or webinar](#).

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