

Detail of QLD's harmonisation arrangements

1. Exemption for charities

Consistent charitable exemption provisions

No change is proposed as QLD's exemptions for charities are already substantially consistent with the NSW-VIC pay-roll tax exemptions.

2. Fringe benefits

Changes to fringe benefits and the gross-up factor

The taxable value of fringe benefits for pay-roll tax will be determined by grossing up the fringe benefits using the lower (Type 2) gross-up rate. Records maintained for fringe benefits tax are also acceptable for pay-roll tax.

3. Grouping

Consistent grouping provisions

The following changes will be made to the grouping provisions:

- The test for determining controlling interest will be 'more than 50 per cent'
- In determining controlling interest, tracing provisions will apply
- The test for inter-used employees will be common
- The Commissioner's discretion to exclude a member will apply to members who have been grouped under any grouping provision, other than those that are related corporations within the meaning of the *Corporations Act 2001 (Cth)*
- Grouping of head and branch businesses will be discontinued
- Group members will be jointly and severally liable for any unpaid pay-roll tax, unpaid tax interest, penalty tax and other costs.

Designated Group Employer (DGE)

QLD pay-roll tax legislation already provides that only one member of the group is entitled to claim the tax free threshold (deduction) and that member is known as the DGE. All other group members cannot claim a deduction and will pay a flat rate of tax. If a group does not nominate a DGE, the Commissioner may nominate one on behalf of the group.

QLD will not be adopting the NSW-VIC provision for joint returns by group members.

Introduction of tracing provisions of interests in corporations

These provisions will group an entity, being a person or set of associated persons, with a corporation if the entity has a controlling interest in the corporation. A controlling interest exists if the entity has a direct interest, an indirect interest or an aggregate interest in the corporation, and the value of that interest exceeds 50 per cent.

A direct interest exists if the entity can directly or indirectly exercise the voting power attached to the voting shares in the corporation.

An indirect interest in a corporation (the 'indirectly controlled corporation') exists if the entity is linked to that corporation by a direct interest in another corporation which has a direct or indirect interest in the indirectly controlled corporation.

An aggregate interest exists if an entity has a direct and an indirect interest, or two or more indirect interests. The aggregate interest is the sum of the entity's direct and indirect interests in the corporation.

A set of associated persons may include direct family members and corporations in which that family has a majority shareholding.

Removal of QLD provision for grouping of head or parent businesses with branch, agency or subsidiary businesses

The grouping of businesses which are a branch, agency or subsidiary of a head or parent business, where the head or parent business exercises managerial control, will be discontinued.

4. Motor vehicle and accommodation allowances

Changes to exempt rates for Motor Vehicle and Overnight Accommodation Allowances

The exempt rate for motor vehicles and overnight accommodation allowances will be based on the rates used by the Australian Taxation Office (ATO). From 1 July 2008, the exempt rate will be:

- The ATO's rate per business kilometre travelled for the use of an employee's own motor vehicle for large cars using the 'cents per kilometre' method or a rate specified by the regulations. Only the amount paid in excess of the specified rate will be liable. The exempt allowance must relate to kilometres travelled for business purposes, which must be calculated using an approved method. Appropriate records must be maintained. The ATO rate for 2006-07 was 70 cents compared with the QLD rate of 50 cents.
- The ATO rate per night for overnight accommodation allowances, where an employee is required to stay away from his or her usual place of residence. The rate is the total reasonable amount for daily travel allowance expense as determined by the ATO for the lowest capital city in the lowest salary band. The ATO rate for 2007-08 is \$201.25 per night compared with the QLD rate of \$90.00 per night. Amounts paid above the exempt rate will be subject to pay-roll tax.

5. Wages for work performed overseas

Changes to liability for wages paid for services performed in another country

No change is proposed as wages paid in QLD for services performed in another country for more than six months are already exempt (including the first six months) from pay-roll tax.

Wages paid for services performed in another country for less than six months will still be liable.

QLD will also adopt the position which applies in all other states and territories of exempting from payroll tax wages paid or payable for services rendered entirely in another country, as opposed to entirely outside Australia.

6. Adoption/parental leave

Introduction of exemptions for adoption leave and parental leave payments

All wages (other than fringe benefits) paid to employees taking parental leave, i.e. maternity and paternity leave, or adoption leave will be exempt for a maximum period of 14 weeks pay.

- The exemption is limited to a maximum equivalent of 14 weeks full time pay for full-time employees and 14 weeks part-time pay for part-time employees.
- The exemption applies irrespective of whether the leave is taken before, or after the birth or adoption, or whether the leave is taken in broken periods.
- Exemptions will not apply to paid sick leave, annual leave, long service leave or similar leave taken while the employee is absent due to parental or adoption leave.
- Employers wanting to claim the exemption must keep a record of either a medical certificate or statutory declaration, provided by the employee.

0. Contractors

Imposing pay-roll tax on amounts paid under relevant contracts

Many Australian businesses use contractors instead of common law employees. NSW and VIC have 'relevant contract' provisions which impose pay-roll tax on those contracts where the worker is hired as an independent contractor, but works and operates like an employee.

QLD will adopt the NSW-VIC provisions relating to relevant contracts.

1. Designated group employer

See point 3 - Grouping - on page two.

9. Employment agents

QLD will align its employment agent provisions with NSW and VIC by:

- Extending liability to payments by employment agents which are fringe benefits or superannuation
- Allowing an employment agent to claim a pay-roll tax exemption if their client could claim that exemption, with some exceptions. (This does not extend to cases where the client would not be liable to tax because their taxable wages were below the threshold)
- Including a general anti-avoidance provision to apply where the effect of an employment agency contract is to reduce or avoid the liability of any party to the contract to pay-roll tax.

10. Financial Planners

See point 7 — Contractors — on this page.

11. Portable long service leave and redundancy schemes

Contributions to a **portable long service** leave scheme and a **redundancy or severance scheme will not be liable**

No change is proposed as QLD is already aligned with NSW-VIC in not imposing pay-roll tax on contributions paid into portable industry long service leave funds and redundancy schemes.

Payments made out of a scheme or fund are also not liable to pay-roll tax.

12. Trust distributions

Trust distributions **not liable**

No change is proposed as QLD is already aligned with NSW-VIC in not imposing pay-roll tax on trust distributions, made in lieu of wages, to a worker who is a beneficiary of a trust or related trust for services provided to a trustee.

13. Annual Adjustment (Reconciliation)

No change is proposed as QLD is already aligned with NSW and VIC by specifying the due date for the annual liability payment as 21 July.

14. Anti-avoidance provisions

Introduction of general **anti-avoidance provisions**

No change is proposed as QLD legislation already contains relevant anti-avoidance provisions.

15. Community Development Employment Scheme

Introduction of an exemption for **wages paid** under a Community **Development Employment Scheme**

Wages paid or payable to an aboriginal person employed under an employment project under a Community Development Employment Project funded by the Department of Employment and Workplace Relations of the Commonwealth, or the Torres Strait Regional Authority, will be exempt from pay-roll tax.

16. Employee Share Acquisition Scheme

Employee share acquisition schemes now liable to pay-roll tax

The value of an employer's contribution to any grant of a share or option to an employee, a director, former director, member of the governing body of the company or a former member of the governing body or deemed employee will be liable to pay-roll tax.

A share or option will become liable on the relevant day, which is the date on which that share or option is granted to the employee or the date it vests to them.

The value of the share or option will be the market rate on the relevant day, as determined in accordance with the Commonwealth income tax provisions.

The granting of a share or option, which is classified as a fringe benefit under the *Fringe Benefits Act 1986* will not be seen as a fringe benefit, but rather as wages for pay-roll tax.

17. Employees in voluntary work/emergency relief/honorary ambulance officers

Exemptions for wages paid to employees participating in voluntary work for bushfires, emergency relief or for performing functions as an honorary ambulance officer.

Wages will be exempt from pay-roll tax if they are paid or payable to an employee in respect of any period when he or she was taking part in any of:

- Bushfire fighting activities as a volunteer
- Emergency activities as a volunteer emergency worker
- Performing functions of an honorary ambulance officer.

The exemptions do not apply to wages paid or payable as recreation leave, annual leave, long service leave or sick leave.

0. Non-monetary superannuation contributions

No change is proposed as non-monetary superannuation contributions are already liable to QLD pay-roll tax.

1. Refunds and reassessments

No change is proposed as QLD is already substantially aligned with NSW and VIC. Under QLD legislation, a refund of pay-roll tax may be made on a reassessment of the taxpayer's liability. The Commissioner of State Revenue has a discretion to reassess a taxpayer's liability up to five years from the initial assessment.

2. Termination payments to non-employee directors and deemed employees

Liability for pay-roll tax on termination payments **extended** to non-employee directors and deemed employees

Termination payments will include amounts paid by a company following the termination of the services of directors, former directors, members of a governing body, former members of a governing body or deemed employees under a relevant contract.

3. Tracing provisions

See point 3 — Grouping.

4. Changes to the general definition of 'wages'

Changes to confirm alignment of the **QLD definition of 'wages'** with NSW and VIC

QLD's pay-roll tax legislation will be changed to include 'remuneration' in the general definition of 'wages' to confirm that definition aligns with the NSW and VIC definitions.

Also, wages liable to pay-roll tax will include wages paid to or by third parties, including those relating to directors.

5. Superannuation contributions for non-employee directors

Liability for **pay-roll tax on superannuation contributions for non-employee directors**

Superannuation contributions for non-employee directors will be liable to pay-roll tax.

6. Changes to taxable termination payments

Liability for pay-roll tax on unused annual leave, long service leave etc.

QLD will adopt the NSW-VIC provisions to confirm the current QLD practice of imposing pay-roll tax on payments for unused annual leave payment or unused long service leave payment.

Liability for **pay-roll tax on death benefit termination payments**

QLD will also align with the NSW-VIC pay-roll tax treatment of termination payments received after another person's death by removing the QLD exemption for these payments.

Need further information?

More information and feedback opportunities are available from the 'Pay-roll tax' section of the OSR website www.osr.qld.gov.au

Alternatively, you can phone the Client Contact Centre directly on 1300 300 734.

To keep up-to-date with the latest developments, including our program of seminars, sign up to the email alert subscription service, available from 'Services Online' on the homepage.

The *Pay-roll Tax (Harmonisation) Amendment Act 2008* is available on the Parliamentary Counsel website:

www.legislation.qld.gov.au/Acts_Passed/Acts_Passed_NUM_2008.htm