



# Business Taxation Manual

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# Summary of Changes

## Amending Issue No. 34

### Chapter 2 - Pay As You Go Withholding

- The General Interest Charge for the quarter ending 31 December 2011 is 11.86 per cent per annum.

### Chapter 4 - Indirect Taxes

- Parts 1, 2 and 3 of this Chapter address Payroll Tax in South Australia. These Parts have been significantly updated, reviewed and restructured.
- Part 1 provides an outline of payroll tax and includes:
  - Introduction
  - General Concepts
  - Registration of Employers
  - Grouping of Employers
  - Deduction or Threshold Entitlement for Non-Grouped Employers
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  - Payroll Tax Calculations, Returns and Payments
    - Monthly Returns
    - Annual Reconciliation
  - Interest Charge on Late Payment of Tax
- Part 2 provides additional information on what remuneration is subject to payroll tax, including:
  - Introduction
  - Leave, Termination, Reimbursements and Other Contributions
  - Allowances
    - Motor Vehicle Allowances
    - Accommodation Allowances
    - Living-Away-From-Home Allowances
  - Fringe Benefits
  - Shares and Options
  - Contractors
  - Exempt Wages
    - Workers Compensation

## 2.1 Introduction

Prior to assessing the concessions mentioned in Part 1 of this Chapter, it is necessary to establish a base knowledge of capital gains tax (CGT) from which it can then be determined whether the concessions will apply to a particular business venture scenario.

The CGT regime was introduced into the Australian tax system with effect from 20 September 1985. The basic aim of the CGT provisions is to include in a taxpayer's taxable income any net capital gains which the taxpayer makes on the disposal of assets acquired after 19 September 1985.

In certain circumstances, assets originally acquired prior to 20 September 1985 will also be subject to CGT upon disposal or sale.

The CGT provisions within the Income Tax Act categorise traditional CGT transactions as 'CGT Events'. The most common CGT Event is the basic disposal of an asset. The more complex events may comprise the creation of intellectual property rights or trademarks, a CGT asset becoming trading stock of a business and the cancellation or surrender of legal rights.

In the context of buying and/or selling a business venture, the CGT Event may comprise the purchase or sale of a group of assets required to operate the business, for example, buildings, goodwill of the business and licences, or it may be the shares in a company that operates the business or the units in a unit trust that operates the business.

CGT does not apply to the disposal of trading stock, plant and equipment or motor vehicles utilised in a business. These items are specifically excluded from the CGT provisions and are covered by other provisions in the Income Tax Act.

## 2.2 Calculation of a Capital Gain

The basic steps for determining a taxpayer's taxable capital gain in any one financial year are outlined below. The relevant capital gains may be determined after the cost base of the asset has been adjusted for an indexation factor recognising inflation throughout the period of ownership, or alternatively, the general 50 per cent discount may apply. [Refer to Point 2.5.2 of this Part]

To determine whether a capital gain has been made or a capital loss derived as a result of a CGT Event (usually an asset disposal), it is necessary to calculate the cost base or reduced cost base of the asset being sold.

## 2.3 Elements of an Asset's Cost Base

Elements of an asset's cost base include:

- > the money a taxpayer paid in respect of the original purchase of the asset;

The money does not have to be paid or property given to the entity from which the asset was acquired. However, the money or property still needs to have been paid in respect of the acquisition of the asset (Tax Determination 2003/1 issued 19 February 2003).

## 6.1 The Small Business Concessions

Since September 1999, as mentioned in Part 1 of this Chapter, small business taxpayers have had potential access to tax concessions which significantly reduce any capital gains tax that may have otherwise been payable when a business is sold. The concessions have scope to apply, whether the taxpayer is selling the assets of the business directly or, alternatively, the interests (shares or units) in the entity (company or trust) that operates the business.

The concept of what is a “small business” is answered in the basic conditions outlined in Point 6.2 of this Part. In terms of the size of the business, the key condition is that the net asset value of the taxpayer’s interests is less than \$6 million at the time of the sale of the business or the taxpayer satisfies \$2 million aggregated turnover test. Refer to the full list of the conditions to determine whether the taxpayer selling the business is eligible for the CGT concessions.

The critical point to note with regard to these concessions is that the small business taxpayer needs to consider their access to the concessions right from the time their relevant business commences. This is due to the fact that the type of legal structure through which a business is conducted will determine how accessible the concessions will be to the taxpayer when the business is ultimately disposed of in the future.

Recently passed legislation has now enhanced these existing concessions through an increased accessibility for many taxpayers, particularly those taxpayers who are operating via an interposed company or trust structure.

The following information on the small business CGT concessions has been revised significantly to recognise the impact of these changes, which have effect on CGT events that occur after 1 July 2006.

There are four (4) CGT concessions specifically for small business which apply to CGT events happening after 11:45am EST on 21 September 1999. These concessions are:

- > the fifteen (15) year asset exemption on active business assets held for fifteen (15) years by relevant taxpayers;
- > the 50 per cent reduction in capital gains made in relation to active business assets;
- > the retirement exemption where monies attributable to a capital gain are applied to fund the retirement of the relevant taxpayers; and
- > the roll-over of a gain to be taxed at a later date.

More than one (1) concession may apply to the same capital gain if the conditions for each are satisfied and they apply in addition to the general 50 per cent discount, if it also applies.

## 1.1 What is Pay As You Go (PAYG) Withholding

Pay As You Go (PAYG) Withholding is the process by which you deduct amounts from certain payments made to others and remit these amounts to the Australian Taxation Office (ATO). The legislation places the burden for withholding these amounts on the payer. Therefore, anybody who operates a business will be affected by PAYG Withholding to some extent.

Some of the payments which require tax instalments to be withheld will be obvious, for example, employee wages, whereas other payments made by your business may appear to be outside the withholding regime when, in fact, a deduction of an amount may be required, eg. to some non-cash benefits or payments of personal service income.

The PAYG Withholding system has been in operation since 1 July 2000 and replaced the former Pay As You Earn (PAYE) system. Many of the withholding events are the same as under the former system. The primary withholding event of paying employee wages has retained a similar format to the previous group tax arrangements in many cases.

This Chapter details which payments are subject to PAYG Withholding, how much must be withheld, when the amounts are to be remitted to the ATO and what reports must be produced by the payer for both the ATO and the payee.

The “payer” refers to the person making the payment (usually an employer or user of goods and services being acquired) and the “payee” is the person receiving the payment (usually an employee or some other individual providing goods or services).

## 1.2 What Payments are Subject to PAYG Withholding

Following is a list of the payments that are subject to PAYG Withholding.

### 1.2.1 Summary of PAYG Withholding Events

Event	Withholding Payment Event
1	A payment of salary to an employee
2	A payment of remuneration to a director
3	A payment of salary to an office-holder
4	A return to work payment to an individual
5	A payment covered by a voluntary agreement
6	A payment under a labour hire arrangement
7	A payment of an annuity or pension
8	<b>An Employment Termination Payment (ETP)</b>
9	<b>A payment for unused leave on termination</b>
10	A social security or similar payment
11	A Commonwealth education or training payment
12	A compensation, sickness or accident payment
13	A payment from an investment where no Australian Business Number (ABN) quoted or Tax File Number (TFN) quoted

## 5.1 Introduction

Special provisions apply in determining the amount an employer is required to withhold from lump sum payments on the termination of an employee's employment. These payments are called Employment Termination Payments (ETP).

You must withhold from a lump sum amount that you pay to an individual as an ETP. The following table will assist in determining whether you are paying an ETP or not.

**Table 1 : Payment Types**

<b>Payment Type</b>	<b>ETP</b>	<b>Non-ETP</b>
A payment in lieu of notice	✓	
A payment for unused sick leave	✓	
A payment for unused rostered days off	✓	
A golden handshake	✓	
Compensation for loss of job	✓	
Compensation for wrongful dismissal	✓	
The part of a bona-fide redundancy in excess of tax-free limit	✓	
The part of an approved early retirement scheme payment in excess of tax-free limit	✓	
Lump sum payments paid on death of an employee if paid to a non-dependant	✓	
A payment made by a superannuation fund	✓	
A payment of the residual capital value of an annuity reduced by the undeducted purchase price.	✓	
A payment in lieu of accrued annual leave		✓
A payment in lieu of accrued long service leave		✓
A payment in lieu of leave loading		✓
Periodic superannuation pension payments		✓
Salary, wages or allowances owing to an employee for work already done		✓
A single lump sum payment for personal injury compensation		✓
Payments not exceeding the tax-free limit for bona-fide redundancy payments or early retirement schemes and invalidity payments		✓
Exempt non-resident foreign termination payment		✓

## 2.1 Overview

The Uniform Capital Allowances (UCA) provisions provide the basis for working out the income tax deduction available for the decline in value of most depreciating assets. These provisions do not apply to deductions associated with water facilities, horticultural plants, grapevines or assets used in landcare operations. Each of these areas has retained their own separate provisions under which deductions may be claimed. The UCA system has maintained the concessional treatment that applies to primary production depreciating assets and has also introduced new deductions for certain types of capital expenditure that did not attract a deduction under the former system.

Under transitional measures assets held by a taxpayer before the introduction of UCA on 1 July 2001 are able to continue to be depreciated at the same depreciation rate and over the same effective life period as they were under the old system.

Under the UCA, the taxpayer is entitled to a deduction for a decline in value of a depreciating asset that they hold in an income year. This decline is a statutory decline in that it does not depend on a measure of actual decline in market value of the asset in the relevant year.

The deduction allowable is reduced for the amount of a depreciating asset's decline in value that is attributable to private or domestic use or to produce exempt income. The adjustment ensures that the depreciation deduction permitted only reflects the extent to which the depreciating asset is used for income-producing purposes.

The deduction may be further reduced if the depreciating asset is a boat or leisure facility. Broadly, the deduction for the decline in value of a boat or leisure facility will be further reduced to the extent that the asset is not integral to the taxpayer's income producing activities, although it is used or ready for use for a taxable or income-producing purpose.

The key features of the UCA are as follows:

- > it applies to all taxpayers (except those taxpayers who are small business entities - aggregated turnover of less than \$2 million, and those taxpayers who are currently STS participants);
- > it consolidates previous capital allowance and depreciation provisions into one (1) division of the Act;
- > taxpayers are able to continue to self-assess the effective lives of the relevant assets or they may use the Commissioner's effective life schedules;
- > since 1 July 2001, taxpayers (except STS taxpayers) have been able to 'pool' assets with an individual value of less than \$1,000 (either original cost or current written down value) together and depreciate them in a combined fashion;
- > specific pooling options are available for software development expenditure and some mining and transport expenditure;

the immediate deduction for assets costing the taxpayer no more than \$300 is only available to taxpayers who incur such costs in deriving non-business income, e.g. investment income. The immediate deduction is no longer available for business operators, unless they are a small business entity. (In this case, the immediate deduction can be for assets acquired for up to \$1,000). From 1 July 2007, small business entities (entities carrying on a business and have an aggregated turnover of less than \$2 million - refer definition in Chapter 1, Point 6.3.8) will have access to this \$1,000 immediate deduction opportunity;

## 5.1 Effective Life Concept

The concept of effective life is central to the calculation of the deduction available to a taxpayer for the decline in value of a depreciating asset. The effective life of the asset must relate to the total estimated period that the asset can be used by any entity for the purposes of producing assessable or exempt income. Therefore, the estimated effective life to be used by a taxpayer in determining the depreciation deduction will not only include the anticipated term of ownership by the said taxpayer, but also the anticipated life term of the asset in the hands of another taxpayer if the asset is able to be sold.

The effective life term is able to be expressed in fractions of years, i.e. it is not rounded up to the next whole year value.

For the income year in which the depreciating asset's start time occurs, a taxpayer will need to decide whether the asset's effective life will be worked out by:

- > adopting the Federal Commissioner of Taxation's determination of effective life applicable to that depreciating asset (if such a determination exists); and
- > the taxpayer's self-assessment of the effective life of the depreciating asset.

Generally, this choice must be made by the time the taxpayer lodges their income tax return for the year in which the depreciating asset was first held.

The Commissioner's effective life estimates are detailed in Taxation Ruling, TR 2011/2. Such a Taxation Ruling is released end financial year, with effect from 1 July of that year. Therefore, the effective life of the depreciable asset should be determined from the applicable Taxation Ruling at the asset's purchase date.

The accelerated rates of depreciation available under IT 2685 are as follows.

**Table 1 : Depreciation Rates Under IT 2685**

Effective Life in Years	Prime Cost Method Rates	Diminishing Value Method Rates
	%	%
Fewer than 3	100	100
3 to fewer than 5	40	60
5 to fewer than 6.66	27	40
6.66 to fewer than 10	20	30
10 to fewer than 13	17	25
13 to fewer than 30	13	20
30 or more	7	10

If a taxpayer uses the Commissioner's determinations, they need to be aware of which determination they should be applying to various assets acquired or constructed.

## 1.1 Introduction

Payroll tax is a State and Territory tax imposed separately in each State and Territory of Australia. Consequently, the treatment of varying items of employee remuneration and in some cases, contractors, may be different in respective States and Territories. This may be relevant if your business operates in more than one State or Territory within Australia.

The legislation intends to create a tax on wages paid by an employer to their employees. This basic premise is expanded upon in certain circumstances to include remuneration paid to persons who are not considered employees in the standard sense of the term. Recently the States and Territories undertook a 'harmonisation' project, the legislation has been updated to provide some uniformity to the payroll tax rules across Australia. The new rules are, in most instances, effective from 1 July 2008.

## 1.2 General Concepts

Payroll tax is a self-assessing tax, that is, the employer or payer of the wages or remuneration must calculate and remit the appropriate amount of payroll tax for each return period. The employer must determine the following.

### Employer Issues

- > Does the employer actually have to register for and pay payroll tax?
- > If registration is required, in which State/s is the employer required to register?
- > What is the amount of taxable wages that the employer pays in each return period?
- > Does the employer pay any amounts to contractors that may be classified as taxable wages?
- > Is any of the remuneration paid by the employer specifically exempt from payroll tax?
- > Is the employer part of a group of related businesses for payroll tax purposes?
- > How is the payroll tax liability calculated and remitted each return period?

This payroll tax summary concentrates primarily on the payroll tax issues and liabilities relevant to employers based in South Australia. Employers with interstate operations as well as operations, in South Australia will need to be aware of the grouping provisions and the relevant States particular definition of taxable wages to ensure that the correct amount of payroll tax is being remitted nationwide.

In assessing whether wages are subject to South Australian payroll tax, two (2) factors need to be considered:

- > where the wages are paid; and
- > where the work is performed.

For payroll tax to be payable in South Australia, the wages are:

- > paid or payable in South Australia unless the services are rendered or performed wholly in another State;
- > paid outside South Australia in respect of services rendered or performed wholly in South Australia; and

paid outside Australia in respect of services rendered or performed mainly in South Australia.

## 2.1 Introduction

This part contains information and commentary regarding the treatment of remuneration items for payroll tax expenses.

A checklist, which provides guidance in relation to these items, is included in Part 3 of this Chapter. Further, Part 1, Point 1.7 of this Chapter details the Taxable Wages for the purpose of payroll tax.

## 2.2 Leave, Termination, Reimbursements and Other Contributions

### 2.2.1 Annual, Sick and Long Service Leave Payments

Annual leave, sick leave and long service leave payments made to an employee, including those made in lieu of such accrued leave at termination of employment, are liable to payroll tax where any such payment represents a reward for service to which the employee has a pre-existing enforceable right.

Payments relating to accrued leave entitlements are liable to payroll tax irrespective of whether they are paid on, before, or after termination of the employee's employment.

### 2.2.2 Termination Payments

The following payments made to an employee on termination of employment are subject to payroll tax:

- > payments for services rendered up to the date of termination;
- > accrued annual and long service leave; and
- > employment termination payments.

### 2.2.3 Directors' Remuneration

Directors' remuneration, such as director fees, superannuation, allowances, fringe benefits and shares and options, is subject to payroll tax. This is the case for both working and non-working directors.

### 2.2.4 Central Fund Scheme Contributions

Contributions made to a central fund (such as the Building Industry Redundancy Scheme Trust) by an employer on behalf of an employee to cover leave or other entitlements are subject to payroll tax.

### 2.2.5 Superannuation Contributions

The definition of taxable wages includes all employer-funded superannuation contributions. This also includes any superannuation contributions made by an employer as part of a salary sacrifice arrangement.

## I.1 Outline of Fringe Benefits Tax (FBT)

This Chapter provides an outline of the Fringe Benefits Tax (FBT) legislation and indicates the situations where taxable fringe benefits may arise. In identifying specific types of benefits, only a summary of the benefit has been provided. This Chapter also includes an overview of how FBT affects the packaging of an employee's salary or remuneration. This area is complex and can only be summarised in a format such as this Manual. Detailed professional advice should be sought when dealing with any FBT matter.

The FBT legislation was introduced to apply from 1 July 1986 to ensure that tax is paid on a range of benefits, which are provided by employers (or on their behalf) to their employees (or to people associated with those employees, e.g. family members). Prior to its introduction, non-salary and wage benefits provided to employees were effectively tax-free.

The tax year, for the purposes of the FBT, begins 1 April and concludes 31 March.

The *Fringe Benefits Tax Assessment Act 1986* establishes the rules for assessment and collection of the tax. Tax on the taxable value of fringe benefits, as determined under that *Fringe Benefits Tax Assessment Act 1986*, is imposed by the *Fringe Benefits Tax Act 1986*. The current FBT rate is 46.5 per cent (the equivalent of the top personal marginal tax rate once taxable income exceeds \$180,000 per annum).

This means that, from a salary packaging perspective, if an employee earns less than \$180,000 per annum, including benefits that are fully subject to FBT at 46.5 per cent would not be a tax effective arrangement for the employee. This is because they would effectively be paying 46.5 per cent tax on the taxable value of their benefits whereas, if they received the relevant amount as cash salary, their marginal tax rate would be lower than the FBT rate. Of course, if 100 per cent of the benefit value is not subject to FBT (e.g. an exempt benefit or the employee is an employee of a non-profit employer), then it may still be worthwhile including some benefits in the employee's package, even though the employee earns less than \$180,000 per annum. [Refer to Part 4 of this Chapter]

The personal marginal tax rates that an individual will pay on his or her cash salary or wages in 2011-2012 is detailed in Table 1.

**Table 1 : Tax Rates Table 2011-2012 (Excluding Medicare and Flood Levy)**

Taxable Income \$	Tax Payable \$	Marginal Tax Rate %
0 - 6,000	Nil	Nil
6,001 - 37,000	Nil plus	15
37,001 - 80,000	4,650 plus	30
80,001 - 180,000	17,550 plus	37
180,000 +	54,550 plus	45

In order for a fringe benefit to be subject to FBT, the benefit must have been provided to the employee in respect of their employment. For example, a birthday present given to a child is not subject to FBT merely because the child happens to be employed in the family business. Similarly, FBT would not apply to benefits granted to directors of a family company, where they are provided a benefit by virtue of their shareholding rather than their status as employees. This distinction of capacity is one of continuing debate in various cases brought before the courts.

### 5.3.2 Exempt Reportable Benefits

Some benefits which are exempt from FBT may still need to be reported on the employee's payment summary. These are benefits that are exempt only because they are provided to:

- > certain live-in residential care workers where the employer is a government body, religious institution or a non-profit company; or
- > employees of public benevolent institutions, including government employees who work in public hospitals.

## 5.4 How is the Amount Shown on the Employee's Payment Summary Worked Out?

If the total **taxable value** of the fringe benefits the employee receives in a FBT year (1 April to 31 March) exceeds \$2,000, the grossed-up taxable value of those benefits will be recorded on the employee's payment summary for the corresponding income year (1 July to 30 June).

### Example 1

Between 1 April 2006 and 31 March 2007 (the 2006-2007 FBT year), you are provided with a work car, with the taxable value of your car fringe benefits totalling \$2,500. You and your partner also stay in company coastal accommodation several times a year, with a taxable value of \$800. So the taxable value of your fringe benefits totals \$3,300. The grossed-up taxable value of these benefits would appear on your payment summary issued for the income year ending 30 June 2007.

The taxable value of fringe benefits is grossed-up to ensure the value of fringe benefits is consistent with other forms of income on the payment summary. As income tax is not paid on fringe benefits, the grossed-up taxable value of a benefit includes the amount of income tax that you would have paid, had you received cash salary rather than the fringe benefit. For grossing-up purposes, the rate of FBT used is equal to the highest marginal rate of income tax plus medicare levy.

Therefore, your fringe benefits total \$3,300 GST-inclusive. Using the required gross-up rate applicable to reportable benefits of 1.8692, the grossed-up amount that would appear on your Payment Summary would be  $\$3,300 \times 1.8692 = \$6,168$ .

Benefits provided to any of an employee's associates - for example, spouse or children - in respect of the employee's employment will be included as fringe benefits provided to the employee.

If the employee shares a fringe benefit with other employees, the employer will need to work out the portion of the taxable value that reasonably reflects the amount of the benefit provided to each employee. To do this, the employer should take into account all relevant information such as each employee's usage of the benefit.

An agreement between the employees and the employer relating to a reasonable method of apportionment may be used to allocate the taxable value of a benefit between each employee.