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Public Ruling Pay-roll Tax Act—Harmonised: TERMINATION PAYMENTS

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Pay-roll Tax (Harmonisation) Amendment Act 2008* amended the *Pay-roll Tax Act 1971* (the Pay-roll Tax Act) with effect from 1 July 2008 to harmonise certain aspects of Queensland's pay-roll tax system with the systems of other jurisdictions. One of the areas which has been harmonised is the treatment of termination payments for pay-roll tax purposes.
2. This Public Ruling clarifies which termination payments are subject to pay-roll tax.

Ruling and explanation

3. Termination payments generally constitute wages for pay-roll tax purposes under s.3A of the Pay-roll Tax Act. These include:
 - (a) a payment made in consequence of the retirement from, or termination of, any office or employment of an employee, including:
 - (i) unused annual leave and long service leave payments
 - (ii) employment termination payments, within the meaning of s.82-130 of the *Income Tax Assessment Act 1997* (Cwlth) (the ITAA), that would be included in the assessable income of an employee under Part 2-40 of the ITAA and
 - (iii) transitional termination payments, within the meaning of s.82-10 of the *Income Tax (Transitional Provisions) Act 1997* (Cwlth) and any payment that would be an employment termination payment but for the fact that it was received more than 12 months after termination
 - (b) amounts paid or payable by a company as a consequence of terminating the services or office of a director and

- (c) amounts paid or payable by a person taken to be an employer under the contractor provisions as a consequence of termination of the supply of services by a person taken to be an employee under those provisions.

Employment termination payments

- 4. Employment termination payments may include:
 - (a) payments for unused sick leave or rostered days off
 - (b) payments in lieu of notice
 - (c) ex gratia payments or 'golden handshakes'
 - (d) an employee's invalidity payment (a permanent disability, other than compensation for personal injury) and
 - (e) certain payments after the death of an employee.
- 5. Employment termination payments do not include:
 - (a) a payment for unused annual leave or unused long service leave (however, such payments are subject to pay-roll tax – see paragraphs 9 and 10 below) or
 - (b) the tax free part of a genuine redundancy payment or an early retirement scheme payment.
- 6. The amount subject to pay-roll tax is the amount of an employment termination payment paid by the employer that would be income tax assessable income of the employee.

Genuine redundancy payments and early retirement scheme payments

- 7. A payment arising from the termination of employment may constitute either a genuine redundancy payment under s.83-175 of the ITAA or an early retirement scheme payment under s.83-180 of the ITAA. Such payments are exempt from pay-roll tax to the extent that they are exempt from income tax.

Invalidity payments

- 8. The invalidity segment of an employment termination payment within the meaning of s.82-150 of the ITAA is income tax free and is not subject to pay-roll tax.

Unused annual leave and long service leave

- 9. All unused (accrued) annual leave and long service leave paid to an employee upon termination of the employee's services (including a bonus, loading or other additional payment relating to that leave) is subject to pay-roll tax.
- 10. Unused sick leave paid upon termination of employment forms part of an employment termination payment and is considered in paragraph 4.

Death benefit employment termination payments

11. A death benefit employment termination payment is an employment termination payment made as consequence of an employee's death. Part of such payments may be income tax free in the hands of the recipient and this income tax exempt part is exempt from pay-roll tax.

Date of effect

12. This Public Ruling takes effect from 1 July 2008.

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA004.1	24 February 2009	1 July 2008	2 July 2009