



EMPLOYMENT TAXATION



As a result of Federal and State Budget Changes and Government Economic Stimulus packages announced in recent months, there have been a number of tax changes affecting Western Australian Employers. The changes affect PAYG withholding in relation to employee's foreign earnings, payroll tax obligations and superannuation contribution obligations as outlined.

Foreign Earnings – No Longer Exempt

Until recent Federal Budget changes, foreign employment income derived by an Australian resident from foreign service undertaken over a continuous period of 91 days was exempt from Australian income tax.

Tax Laws Amendment (2009 Budget Measures No 1) Act 2009 was given Royal Assent on 29 June 2009. It limits the exemption for foreign employment income earned from 1 July 2009 to income earned:

- as an aid or charitable worker employed by a recognised non-government organisation;
- as a government aid worker; or
- as a specified government employee (e.g. defence and police force personnel deployed overseas).

Under the previous rules, where an employee was earning exempt foreign income, employers were relieved from Pay As You Go ("PAYG") withholding requirements and Fringe Benefits Tax ("FBT") for benefits provided to those employees in relation to the exempt foreign income.

In the first instance, the changes result in employers now being required to withhold PAYG withholding from salary and wages payments to such employees in relation to their foreign employment service. This withholding is in addition to any foreign tax withholding in the foreign country. The individual will generally be eligible to claim a non-refundable foreign tax offset for any foreign income tax paid on the earnings. As a result, the employee is, in effect 'overpaying' tax throughout the year in the form of PAYG withholding (as the PAYG withholding rates required to be used by employers do not account for the foreign tax credit).

In order to rectify this, the Taxation Administration Act 1953 PAYG Withholding - Individuals Engaged in Foreign Service was registered on the Federal Register of Legislative Instruments on 14 July 2009. This instrument ensures the PAYG withholding required from payments made to employees employed in a foreign country closely approximates the Australian income tax that will be payable on the foreign income. Accordingly, while employers will now have PAYG withholding requirements in relation to foreign income earned by employers, employers should adjust the PAYG withholding in accordance with the new rates which are effective from 15 July 2009.

The interaction of the above income tax changes with the FBT rules has yet to be rectified although it is likely that the issue will soon be clarified by Government. It is industry consensus that this anomaly should be rectified to emulate the FBT exemption available prior to the foreign income amendment. However, at the current time, benefits provided to resident employees earning foreign income will be subject to FBT, even in the case where the employee is subject to income tax on the benefit in the foreign jurisdiction.

Payroll Tax

There have been a number of changes to the Western Australian payroll tax rules from 1 July 2009 including a one-off rebate for 2010 payroll tax paid by small employees.

Payroll Tax Rebate

As part of the State Government's jobs protection package, employers (including grouped employers) who pay Australia-wide wages of up to \$1.6 million will be eligible for a one-off rebate to fully offset their 2009/10 payroll tax liabilities. For businesses that have a \$1.6 million payroll, this equates to a rebate of \$46,700. In addition, a partial rebate will be paid to employers and grouped employers who pay Australia-wide wages between \$1.6 million and \$3.2 million.

The rebate will be paid after the 2009/10 reconciliation process is completed by the Office of State Revenue, which is expected to be around September 2010. In the meantime, employers should continue to lodge and pay payroll tax returns as usual.

Parental Leave and Volunteer Emergency Services Work

From 1 July 2009, two new payroll tax exemptions will apply to wages paid to employees on:

- Parental leave including maternity, adoption and paternal leave;
- Leave to perform volunteer emergency services work which will include volunteers covered by the Fire and Emergency Services Authority of Western Australia Act.

Payroll tax will no longer be payable on these types of payments. Employers should review employee's salary and wages to ensure these exceptions are accounted for.

Trainees and Apprentices

From 10 June 2009 there has been a change to the exemption on wages paid to apprentices.

The exemption is now for payments made to an apprentice under a registered training contract. In order to qualify for exemption three criteria must now be met:

- the employee must be an apprentice, and
- there must be a training contract in place, and
- the contract must be registered.

Significantly, under the new provisions there is no mention made of trainee or probationer. However, as a trainee falls within the definition of apprentice, the exemption for trainees still applies. Payments made to a probationer are no longer exempt.

A training contract is a contract taken out between the employee and the employer and must be registered with the Department of Education and Training.

The changes only apply to contracts entered into from 10 July 2009 and in practice, are likely only to impact employers with probationer employees.

Superannuation - are you complying? Ordinary time earnings redefined.

On 13 May 2009 the ATO released *SGR 2009/2 Superannuation guarantee, meaning of the terms ordinary time earnings and salary or wages*. The ruling applies from 1 July 2009 and outlines the ATO's views on the meaning of ordinary time earnings which is used by employers to calculate minimum level of superannuation contributions required for employees. The ruling also explains the meaning of salary or wages.

A significant change outlined in the ruling concerns the meaning of 'ordinary hours of work' ("OHOW") which is relevant as ordinary time earnings is defined as all earnings resulting from OHOW. An employee's OHOW are the ordinary hours specified in the employee's employment contract (or award or agreement). Any hours worked in excess of, or outside the span of, those specified hours do not form part of the employee's OHOW. The ruling states that this is the case even where the hours that the employee normally works are in excess of, or outside the span of, the specified OHOW. For example, where an employee regularly works overtime. Previous to this Ruling, it was the ATO's view that an employee's OHOW would include, for example, overtime if regularly worked.

The new OHOW need to be carefully considered by employers in regard to:

- calculating the minimum superannuation guarantee contributions they must make to their employees; and
- negotiating employment agreements as the terms of the employment agreement become critical.

If you have any queries, or would like advice in relation to any matters relating to any of the above, please contact either Michelle Saunders or Marissa Bechta on (08) 6311 6900.

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