CREDIT ISSUES

WOODGATE & CO.

Chartered Accountant

NOVEMBER 2014

DON'T GET CAUGHT OUT BY AN UNEXPECTED PAYROLL TAX BILL

Introduction

Payroll tax is levied by all States and Territories and is a major source for revenue for those governments. An analysis of the State and Territory budget papers for the year ended 30 June 2014 showed that payroll tax was forecast to raise $22.3 billion. This compares to $50.4 billion forecast to be raised from the G.S.T. and $163.2 billion forecast to be raised from PAYG withholdings, according to the Commonwealth budget papers for the year ended 30 June 2014.

In economic terms, payroll tax is seen as a relatively efficient tax. However, its efficiency is reduced because all jurisdictions provide three main types of exemptions:

(a) threshold exemptions, which excludes businesses whose total Australian payroll is less than the threshold amount;

(b) activity exemptions, which exclude businesses according to their dominant activity such as charities, local councils and the Commonwealth Government; and,

(c) payment exemptions, which exclude certain payments, such as for maternity leave and apprentices.

The effect of the exemptions is that a significant proportion of wages are not subject to payroll tax. Commonwealth Treasury statistics estimate that 43% of employee compensation is exempt from the theoretical payroll tax basis. This figure varies significantly between the jurisdictions.

A Productivity Commission report in 2012 noted that of the 2 million Australian businesses, less than 100,000 were liable for payroll tax. Hence, approximately 95% of businesses were exempt from paying payroll tax. However, of the businesses that were liable for payroll tax, nearly half operated in multiple jurisdictions.

Complexity

Each State and Territory has its own Payroll Tax Act, Taxation Administration Act and taxation authority. Each taxation authority also issues its own payroll tax rulings. Notwithstanding efforts to harmonise the legislation, there are differences in the ways that payroll tax is collected by each of the States and Territories. Since 2007, six jurisdictions have enacted harmonised payroll tax legislation. In particular, there has been an alignment of provisions for the timing for lodgement of payroll returns, definitions of certain allowances and fringe tax benefits, along with the grouping of businesses.

The Australian Revenue Offices for the States and Territories have established a website at www.payrolltax.gov.au which enables access to each jurisdiction's legislation and payroll tax rulings.

Thresholds and rates

The following table sets out the payroll tax thresholds and rates as at 1 July 2014:

Jurisdiction	Tax-free threshold ($)	Current Tax rate (%)
ACT	1,850,000	6.85
NSW	750,000	5.45
NT	1,500,000	5.50
QLD	1,100,000	4.75
SA	600,000	4.95
TAS	1,250,000	6.10
VIC	550,000	4.85
WA	800,000	5.50

Victoria is notable for having last increased its tax-free threshold on 1 July 2002, whilst Queensland has a relatively high free threshold, combined with the lowest payroll tax rate at 4.75%.

Payroll tax affects not just those businesses which are liable for the tax, but also businesses that are close to the exemption threshold(s).

Grouping

All of the States' and Territories' Payroll Tax Acts provide that businesses may be grouped for payroll tax purposes. The objective of the grouping provisions is to prevent employers obtaining the benefit of more than one payroll tax threshold, by splitting their businesses into multiple employment entities. Further, each member of a payroll tax group is jointly and severally liable for payroll tax of the other group members.

In the *Payroll Tax Act* 2007 (NSW), a payroll tax group can be defined in one of five ways:

1) related companies. For example, a holding company and its subsidiary, or if two companies are subsidiaries of the same holding company;

2) use of common employees. Businesses may be grouped when an agreement for services between two or more businesses results in the employees of one business performing duties for another business, such as by a services company for a legal practice;

3) common control. Two or more businesses controlled by the same person or persons may be grouped. A person includes a natural person, trustee or a corporate entity. A controlling interest under the grouping provisions is generally greater than 50% across different entities and includes:

   (a) a sole owner;

   (b) joint owners;

   (c) a company;

   (d) a body corporate or an unincorporated entity;

   (e) a partnership; and,

   (f) a trust.

4) by way of tracing of interests in corporations. If an entity has a direct, indirect or aggregate interest of more than 50% in any corporation, then that corporation is grouped; and,

5) subsuming. Under the subsuming provisions of the *Payroll Tax Act* 2007 (NSW), groups can be formed out of multiple smaller groups. For example, if a business is a member of two or more groups at the same time or if the members of a group together have a controlling interest in another business.

Interstate wages

In New South Wales payroll tax is payable when the employer's Australian wages exceeds $750,000. Australian wages comprise both NSW wages and interstate wages. The provisions that define wages are complex. If the employer operates outside NSW, then the NSW payroll tax threshold is prorated, based on the NSW wages as a percentage of Australian wages. Only the NSW wages are subject to payroll tax.

To determine whether wages are subject to payroll tax in NSW, an employer must consider if the employee has performed their services in NSW in a given calendar month. If an employee did not solely perform services in NSW in a calendar month, then the following factors need to be considered in determining the jurisdiction to which the wages should be allocated:

1) the employee's principal place of residence; or,

2) the employer's registered address or principal place of business; or,

3) the place where the wages are paid to the employee; or,

4) the place where the services are mainly performed.

Enforcement activities

Co-operation between the Australian Taxation Office ("ATO") and the State and Territory revenue offices has increased, particularly via the Inter-Agency Phoenix Forum.

We are aware of non-compliant employers being subject to multiple investigations by different State and Territory revenue offices, as well as the ATO. Therefore, it is increasingly difficult for non-compliant employers to avoid their payroll tax obligations.

Director Compliance Notices

Pursuant to Section 47B of the *Taxation Administration Act* 1996 (NSW), if a corporation fails to pay a corporate tax liability, the Chief Commissioner of State Revenue may serve a Director Compliance Notice ("Notice") on a director or former director of the company. The compliance period is not less than 21 days from the date that the Notice is served on the director or former director.

The director or former director will become personally liable for the company's payroll tax, 21 days after service of the Notice, unless one of the following occurs:

(a) the tax debt is paid; or,

(b) a special arrangement is made with the company for the payment of the debt; or,

(c) the Board of Review waives or

defers payment of some or all of the tax debt; or,

(d) a Voluntary Administrator is appointed to the company pursuant to Part 5.3A of the *Corporations Act* 2001 (Cth) ("Corporations Act"); or

(e) the company begins to be wound up within the meaning of the Corporations Act.

There are similar provisions in the Taxation Administration Acts of the Australian Capital Territory, the Northern Territory and Western Australia.

We are aware of a number of Notices being issued by the NSW Office of State Revenue to company directors. Given the pressure on State and Territory budgets, we can expect this activity to continue and possibly increase.

Solutions

Stay on top of payroll tax liabilities, including any liabilities arising from corporate groups or interstate wages. If the solvency of a company or group of companies is threatened, then contact Woodgate & Co. for advice.

WOODGATE & CO.

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