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Public Ruling
Payroll Tax Act—Harmonised:
PROFIT DISTRIBUTIONS AND LOAN
ACCOUNTS

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (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 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 *Payroll Tax Act 1971* (the Payroll Tax Act) with effect from 1 July 2008 to harmonise certain aspects of Queensland's payroll tax system with the systems of other jurisdictions.
2. The definition of wages in the Schedule to the Payroll Tax Act includes any wages, remuneration, salary, commission, employer superannuation contributions, bonuses or allowances paid or payable to an employee, as an employee. The definition also includes fringe benefits¹ as defined in the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) (the FBT Act).
3. A question may arise as to whether payments and loans made to a proprietor of a business, who is also an employee of that business, are subject to payroll tax.
4. The purpose of this Public Ruling is to provide clarification regarding the payroll tax treatment of these payments.

Ruling and explanation

5. For a payment to be subject to payroll tax, the payment must be made to an employee (or a person taken to be an employee) in his/her capacity as an employee, and not in any other capacity (e.g. a shareholder). Therefore, distributions of profit (i.e. amount of surplus after deducting all expenses) to persons who are both owners and employees of the business are not wages under the Payroll Tax Act.

¹ See the definition of 'fringe benefits' in the *Duties Act 2001* Schedule.

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6. Similarly, trust distributions (whether income or capital) and company dividends are not subject to payroll tax when paid to beneficiaries or shareholders even if they are also employees. These payments must be clearly shown in the books of account as profit distributions and not expenses of the business.
7. Whether a loan made to a beneficiary or shareholder who is also an employee of the business is subject to payroll tax depends on how the loan is regarded under the income tax legislation and the FBT Act. If the loan is deemed to be income to the beneficiary or shareholder for income tax purposes, it is not subject to payroll tax. On the other hand, if it is regarded as a loan benefit under the FBT Act, the taxable value calculated using the formula for Type 2 Benefit (as specified in the FBT Act) is subject to payroll tax. Please contact the Australian Taxation Office for more information on income tax and fringe benefits tax.
8. If the loan repayment is offset against the beneficiary's or shareholder's remuneration, the amount of the remuneration offset will be subject to payroll tax. If the loan repayment is offset against trust distributions to the beneficiary or dividends to the shareholder, the amount offset is not subject to payroll tax.
9. A partnership is not a legal entity. Therefore, any payment to the partners (whether the payments are described as 'wages' or 'loans') are regarded as payments or drawings in respect of partnership profits and are not subject to payroll tax.

Date of effect

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

David Smith
 Commissioner of State Revenue
 Date of issue: 28 May 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA016.1	28 May 2013	1 July 2008	Current