

TAX ADMINISTRATION AMENDMENT (COMBATING WAGE THEFT) BILL 2021

Answers to supplementary questions - Revenue NSW - Hearing 24 May 2021

Question 1

Given your evidence that you do not have any personnel with expertise in awards or amounts payable to employees, how do you determine that the correct amount of payroll tax is paid by a business?

Question 1 Response:

Payroll tax is calculated on total “*taxable wages*” that are “*paid or payable*” – whichever comes first. It is a self-assessment tax that requires registration and the lodgement of returns by liable entities in accordance with the provisions of the *Payroll Tax Act 2007*.

Like other taxation authorities, Revenue NSW conducts audits to determine whether the correct amount of tax has been paid. This requires an examination of the amounts that have been paid or are to be paid by the employer under the arrangements the employer has put in place. Audits generally involve a review of the accounting records of the employer, including general ledger and annual financial statements (such as balance sheets and profit and loss statements) Fringe Benefits Tax returns and other returns lodged with the Australian Tax Office. Depending on the focus area of a particular audit, a review may cover all components of “*taxable wages*” (as that term is used in the *Payroll Tax Act 2007*) or may be limited to particular components such as fringe benefits, allowances, or superannuation contributions.

Although the term “payable” is broad and may embrace an amount that is due to be paid to a worker under an award (but is not paid or paid at the right amount), it does not follow that a taxation authority thereby becomes responsible for directly investigating whether a worker is in fact receiving the correct wages. Taxation authorities have no legislated role or expertise in this regard and rely on long standing existing regulatory arrangements to ensure that the correct wages are paid (including identifying instances of underpayment).

As noted in the response to Question 12, therefore, Revenue NSW does not have any positions that require, or are involved in, an analysis of what awards workers are being paid under, or whether this is the correct award in any given situation. However, when Revenue NSW becomes aware that an employer has been underpaying wages – which will often be the result of the relevant regulator making a determination to this effect – then we will take the necessary steps to tax the unpaid amount.

Question 2

Given your evidence, if you do not determine whether the correct amounts are being paid to employees under contract and industrial laws, how can we have confidence your organisation is ensuring the correct payment of payroll tax?

Question 2 Response:

As noted previously, the payroll tax legislation is designed on a self-assessment model and requires registration and the lodgement of returns by entities that fall within the nexus provisions.

In order to ensure that the correct amount of payroll tax is being paid, Revenue NSW engages in a robust audit program, which involves liaising with other State, Territory and Federal revenue authorities, the use of data analytics, monitoring the media and proactive communication with employers to assist them understand their payroll tax obligations, and the consequences of trying to avoid these obligations.

Payroll Tax Investigations	2016/17	2017/18	2018/19	2019/20
Number of investigations	7,957	7,602	7,091	4,215
Additional revenue identified	\$232.2 million	\$243.9 million	\$238.3 million	\$168.9 million

Question 3

Given your evidence suggests a possible disjunction between what is payable for payroll tax and what business are required to pay in wages, how can we be confident that the bill will combat wage theft (as the title claims it will)?

Question 3 Response:

As noted in the response to Question 1, payroll tax is calculated on total “*taxable wages*” that are “*paid or payable*” – whichever comes first. Whilst there are a plethora of cases dealing with particular areas of the *Payroll Tax Act 2007* and its precursors, the term “*payable*” is somewhat broad, especially given that “*taxable wages*” as used in the legislation extends beyond what might ordinarily be considered wages to include superannuation contributions, certain directors fees and other amounts connected to the engagement of certain persons by a taxpayer.

The *Taxation Administration Amendment (Combatting Wage Theft) Bill 2021* approaches the problem of underpaid wages through a threefold approach that can operate within a revenue specific context. The Bill is specifically designed to complement the powers and skill sets of other government bodies, including Fair Work Australia, rather than attempting to address issues that go beyond the core functions or competency of Revenue NSW.

Specifically, the Bill combats wage underpayments by:

1. removing the current five-year reassessment limitation (referred to by committee members as the “statute of limitations”) in cases of wage underpayments. This ensures that taxpayers who have done the wrong thing are not able to avoid their payroll tax obligations and may attract penalty tax and interest on these outstanding amounts
2. instituting a “name and shame” regime for certain wage underpayment matters to ensure the public is aware of particular instances and to provide incentive for perpetrators not to repeat such activities, and
3. strengthening the specific penalty provisions available under the *Taxation Administration Act 1996* to address unacceptable conduct. Whilst these penalty enhancements are not limited to wage underpayments, many of them are particularly appropriate in such a context, including the failure to keep accurate records (section 50) and knowingly providing false or misleading information (section 55).