

Via email: payrolltax.review@treasury.nsw.gov.au

NSW Treasury
Payroll Tax Review
GPO Box 5469
Sydney NSW 2001

6 July 2018

Dear Sir/Madam

REVIEW OF PAYROLL TAX ADMINISTRATION

BDO welcomes the opportunity to provide feedback in response to the Review of Payroll Tax Administration currently being undertaken by NSW Treasury.

At the outset we note that our comments and suggestions below are designed to assist taxpayers in complying with the payroll tax regime effectively and efficiently. Ultimately, our suggestions are primarily focused on efficient compliance and certainty with a view to enhancing the overall employer experience and effective collection of NSW State revenue.

As part of this submission we have addressed the following areas:

1. Guidance material
2. Investigations
3. Contractor exemptions
4. IT solutions
5. Legislative interpretation

We expand on each of these areas below.

Guidance Material

Given the current uncertainty and complexity of certain areas of the payroll tax legislative regime, it is often difficult for employers to gain any comfort on complex issues without submitting a private ruling request. This increases the costs of compliance and often results in time delays.

There are a number of possible solutions that would greatly assist in providing guidance on payroll tax legislative issues. These include:

Public Register of Private Rulings - A public register of private ruling decisions could provide a more effective approach for employers to obtain an understanding of how Revenue NSW will

interpret a particular legislative provision or scenario. While we accept that these decisions are not binding on the Chief Commissioner, they will provide a useful tool to assist employers in further navigating uncertainties in the interpretation of complex payroll tax provisions.

Commissioner's Practice Notes - Currently the Chief Commissioner has issued a number of Commissioner's Practice Notes in respect of Duties and Land Tax but not Payroll Tax. If Commissioner's Practice Notes could also be issued for payroll tax they could be a useful path of providing guidance to employers in respect of payroll tax issues (particularly around grouping, exclusions, contractor exemptions and the employment agency provisions). The Commissioner's Practice Notes can provide a range of examples that will assist employers in determining the payroll tax implications in various scenarios.

Investigations

We find that Revenue NSW is increasingly asking for more and more information and supporting documentation as part of the review and investigation process thereby causing strains on employer resources and extending the time and costs involved for employers in responding and complying with an investigation. In many cases, and particularly in the SME market, employers may not have a dedicated finance/tax team or may be operating with minimal administration staff. In addition, some employers feel intimidated by the volume of information requested.

There are a number of possible solutions available in reducing the administrative burden on employers when dealing with Revenue NSW in respect of these investigations. These include:

Extensions - Extensions can be granted on a more regular basis particularly in circumstances where the investigation covers a number of entities and a number of complex issues. Further, there are often situations where employers feel that they should engage an advisor to assist with responding to the investigation. Where this occurs additional extensions should be granted to allow the advisor to carefully review the affairs and assist the employer in preparing a submission to Revenue NSW.

Simplified Investigations - A simplified approach to investigations could be implemented whereby Revenue NSW undertake a high level review without the need to sight all source documentation. Subject to the findings of the initial simplified investigation a decision can then be made on whether a more thorough investigation is warranted.

Alternatively, the initial investigation could focus on the last financial year. Subject to the findings the investigation could then be expanded to cover the remaining periods if it is warranted.

Collaborative Investigations - Revenue NSW should be encouraged to resolve any issues during the course of the investigation (as opposed to encouraging employers to lodge objections). A more collaborative approach should be encouraged in order to ensure that issues are resolved during the investigation so as to reduce the costs and time burden on employers having to lodge unnecessary objections.

Post investigation Assistance - Following an investigation Revenue NSW should provide specific guidance to the employer to ensure that the employer is in the best position to comply going forward. In relation to contractors, guidance could be provided having regard to the specific circumstances and evidence identified as part of the investigation with a view to ensuring that employers retain the appropriate evidentiary documentation to support future exemptions. A collaborative approach whereby Revenue NSW partners with employers to minimise the burden of ongoing compliance post the investigation will greatly assist both employers and the collection of the appropriate amount of revenue for the State.

Annual Reconciliations and Advisors

Advisors with a significant number of clients often find it increasingly difficult to meet the annual deadline 21 days after the end of the financial year. Often the delay can be caused by the employers being focused on other year end compliance matters (including finalisation of payment summaries etc).

There are a number of possible solutions available in easing the pressure on employers in lodging the annual reconciliations. These include:

Extensions for Advisors - An advisor lodgement program could be implemented whereby employers that lodge with the assistance of an advisor become eligible for an extension.

Contractor Exemptions

One of the greatest areas of concern for many employers is the application of the contractor provisions. The frustration for many employers is that often an entitlement to exemption is based on whether the contractor has correctly complied with its tax and other obligations. In many cases an exemption is denied based solely on the lack of evidence retained by the employer or the inconsistencies that may exist between the evidence retained by the employer and the position that Revenue NSW may have already adopted based on its own research. This places a tremendous burden on employers and can often lead to tension between the employer and its contractors which can potentially jeopardise commercial dealings.

There are a number of possible solutions available in easing the pressure on employers in these circumstances. These include:

Guidelines - Revenue NSW could release guidelines to assist employers in gathering appropriate evidence throughout the period. These guidelines could include commentary on the minimum evidentiary requirements necessary to support an exemption having regard to the practical nature of the commercial dealings between employers and contractors.

Automatic Acceptance Levels - A system could be implemented where a relaxed evidentiary burden is placed on payments below a certain threshold amount. Alternatively, amounts less than a certain level could be automatically accepted as qualifying for an exemption (particularly in circumstances where it is obvious that the services have been provided for less than 90 days).

Practical Approach - Often an employer may not have retained the supporting evidence to satisfy Revenue NSW that the 2 or more person exemption should apply. In some cases, and subject to the nature of the industry and the contract in question, it is not possible for one person to provide the services. We welcome a practical assessment of the application of the exemption by Revenue NSW that places a greater emphasis on the nature of the contract, industry and nature of the services provided as opposed to a heavy reliance on specific evidentiary documentation currently required by Revenue NSW.

IT Solutions

The current online portal is not straightforward to use for multiple users often leading to sharing of login details which is not secure. Further information and capabilities could also be available on the online portal to reduce the volume of calls to Revenue NSW for simple queries.

There are a number of possible solutions available in easing the pressure on employers in these circumstances. These include:

Redesigned Portal - Changes to the portal to allow multi-user support with administrator functions to allow usage options to be set for each user would greatly improve the security of the online portal. An excellent example of this approach can be found in Tasmania's online portal. Part of this design could also include access to multiple client ID's through a single login to allow the staff of groups (or their advisers) to access the online portal of all employers they are responsible for through a single login.

Self-Service Capabilities - Revenue NSW should consider additional self-service functionality for the online portal. For example, a taxpayers running account balance could be provided via the online portal. Clients will often receive statements from Revenue NSW outlining amounts outstanding and need to call Revenue NSW to determine what the outstanding payment relates to. Furthermore, greater history of lodged returns could be made available on the portal rather than just the last 12 months data to allow employers to quickly access past lodgements.

Legislative Interpretation

The current complexity surrounding the legislative interpretations of various payroll tax provisions contributes to the current uncertainty experienced by employers. An area of current concern is the interpretation of the employment agency provisions. While we accept that the scope of the current review of the payroll tax administration may not extend to the legislative framework, in our view there is a clear nexus between the current uncertainty surrounding legislative interpretation and the administration of such provisions by Revenue NSW.

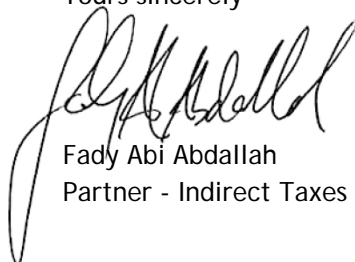
In some cases, we have witnessed situations where Revenue NSW have adopted inconsistent legislative interpretations to certain provisions in different investigations undertaken on the same employer. In circumstances where an alternative interpretation is adopted in a subsequent review by Revenue NSW of the employers payroll tax affairs, it is reasonable to expect that the alternative interpretation should not apply on a retrospective basis in circumstances where employer has followed the findings of Revenue NSW in previous investigation. This inconsistency heightens the uncertainty which can have a major impact on the viability of an employers business, particularly where a retrospective assessment is issued (with penalty and interest imposed).

In this regard, where there is a change in policy or a change in Revenue NSW's interpretation of certain provisions then clear guidance should be issued notifying employers of the change. Further such a change should only apply prospectively so as to minimise any retrospective impact and provide employers with an opportunity to implement any necessary changes to systems or agreements that may be required.

We would be pleased to expand on any of the above areas and welcome the opportunity to either discuss or provide further submissions if required.

Should you wish to discuss any of our comments, please feel free to contact me on +61 2 9240 9790, or via email: fady.abdallah@bdo.com.au.

Yours sincerely



Fady Abi Abdallah
Partner - Indirect Taxes