



**Australian Government**

**The Board of Taxation**

# Board of Taxation study: Differences in core definitions and concepts between state, territory and federal tax laws

the **board** of taxation  
[www.taxboard.gov.au](http://www.taxboard.gov.au)

**The Board of Taxation**  
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## Background

1. A key objective of the Board of Taxation (the Board) is to assist the Government in reducing the regulatory burden associated with taxation. This objective has arisen both from the Board's role as the Ministerial Advisory Council (MAC) for tax matters and from its general mandate to contribute to the improvement to the general integrity and functioning of the taxation system.
2. The Government's regulation reform agenda includes the establishment of stakeholder consultation mechanisms, or MACs. MACs are comprised of business, not for profit and other industry stakeholders. They provide advice to Ministers and their respective departments on opportunities to reduce red and green tape as well as provide a broader consultation mechanism on policy matters.
3. In fulfilling the MAC role the Board has been tasked to:
  - identify potential targets for regulatory reform (for example, areas of inefficient regulation, excessive red tape or unnecessarily high regulatory burden);
  - provide a sounding board for regulatory reform or repeal proposals;
  - provide feedback on the progress of regulatory reform within the Treasury portfolio; and
  - advise on broader policy issues relevant to the portfolio.
4. In particular, the Board is to provide appropriate input on:
  - immediate deregulatory tasks, including the stocktake and audit of tax regulation; and
  - future regulatory reforms, that is, ideas on deregulatory opportunities and priorities that can be included in the regulatory budgeting process. This includes identifying items for future repeal days.
5. Within this context, the Board meets regularly with stakeholders to discuss the Board's work and to seek feedback from stakeholders on issues of concern within the tax system; including regulatory burdens. Inconsistency in core definitions and concepts between state, territory and federal tax laws has been a common theme raised with the Board by stakeholders in the previous twelve months.
6. Stakeholders claim that the inconsistency in core definitions and concepts in the tax laws at various levels of government is impeding business activity. The inconsistency has led to increased compliance costs and uncertainty of treatment. In particular, differences in payroll tax concepts and the definition of employee and contractor were viewed as important issues to resolve.

7. In response to these concerns the Board established a Working Group to investigate inconsistency in core definitions and concepts between state, territory and federal tax laws. The Working Group was chaired by Board member Peter Quiggin, with assistance from Board members John Emerson and Neville Mitchell. The Group was assisted by Geoff Mann (partner of Ashurst) and the Board's secretariat.

## Purpose of the Working Group

8. The purpose of the Working Group was to identify legislative inconsistencies between core definitions and concepts within state, territory and federal tax laws, and to document the concerns in more detail.
9. It was envisaged that identifying and documenting the differences would provide a reference point for further debate around the need for greater harmonisation of core definitions and concepts across tax laws at all levels.
10. It is generally understood that, in principle, harmonisation brings many economic benefits for both business and regulators. For example, reduced costs for businesses operating across state boundaries. Similarly the cost of administration is reduced by having a single meaning for core concepts.
11. On the other hand potential costs associated with harmonisation are not always obvious. Achieving a common standard across different levels of government is an inherently political process, involving a negotiated outcome and trade-offs. Jurisdictions are likely to seek compensation before agreeing to harmonise to the 'best-practice' set of standards. Harmonisation may also lead to sub-optimal outcomes where regulatory competition and innovation is lessened.

## Project scope

12. While this paper presents information on rates of payroll tax and stamp duty this is not intended to suggest, imply or advocate for harmonisation of rates of tax or duties. To do so would be outside the scope of this project's mandate. Moreover, the majority of stakeholders have stated that the primary concern is with the increased cost of conducting business associated with a lack of harmonisation of core definitions and concepts across all levels of tax laws in Australia.

## Acknowledgement

13. The Board would like to acknowledge the assistance provided by Steve Batrouney and Nicholas Clifton of Deloitte Tax Services Pty Ltd (Deloitte) in compiling the information to detail the inconsistencies in payroll tax and land tax and stamp duty presented at Attachments B and C respectively. The Board would also like to thank the Commissioners of the various Offices of Revenue for their assistance in verifying the information presented at Attachments A and B.

## Findings

### *Areas of difference raised by stakeholders*

14. The Working Group carried out a number of targeted consultations and surveyed around [60] organisations (covering tax managers of various companies and sectors and tax advisers from professional service firms) to identify areas of concern and their significance. In addition, the Board regularly meets with stakeholders around the country to discuss the Board's work and to provide a forum for the tax community to discuss issues they are encountering with the tax system.
15. Broadly, the common areas of concern in regards to 'inconsistencies in core definitions and concepts' emerging from consultations were (in order of priority):
  - differences in payroll tax concepts;
  - differences in the definition of employee;
  - differences between state and federal tax rules for 'indirect interests in land' (commonly referred to as 'land rich rules'); and
  - differences between the meaning of employee for the purposes of the pay-as-you-go withholding and superannuation guarantee rules.
16. One stakeholder brought to the Board's attention an emerging area of concern relating to differences between state stamp duty surcharges on foreign persons purchasing residential real estate.

### *Survey results*

17. The Board surveyed around 60 organisations to identify the business community's views on which core concepts are subject to inconsistencies in either drafting or interpretation, which are hindering business practices. The survey also asked respondents to prioritise the top three core concepts they would like to see harmonised across all levels of tax legislation. A copy of the survey is at Attachment A.
18. The Board received 12 responses to the survey. As a result the Board is mindful of the limitations of the veracity of any conclusions which may be drawn from the survey data. Nevertheless, the survey does provide indicative insights into potential priorities for harmonisation across taxes, albeit with caution due to the small sample size.
19. The survey asked respondents to list the top three core concepts that they would like to see legislatively harmonised across taxes and in order of priority. While the response rate was low the key priorities receiving the most support to this question were:
  - **Payroll Tax**<sup>1</sup> with the following issues specified:
    - Consistent payroll tax payment dates across the states;

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<sup>1</sup> Payroll tax was mentioned in four survey responses to this question

- Alignment of payroll tax rates between states;
  - Align disclosure requirements; and
  - Treatment of fringe benefits, dividends, trust distributions, loans and attributed personal services income across different areas such as payroll tax and workers compensation rules.
  - Exemptions (thresholds for business, type of business activity, type of payment in particular maternity leave).
- Issues related to state/territory **land tax and duties**<sup>2</sup> (what constitutes “land”, an interest in land, what is ‘fixed’ and what constitutes a “fixture” (several states depart from the common law definition of fixture). And what constitutes ‘taxable Australian property’ for capital gains tax purposes.
20. The survey result and consultation meetings have both identified differences in payroll tax as the key area of concern. While respondents identified payroll tax as an area of concern there were mixed views on the level of significance of inconsistencies (in particular employee and contractor concepts).
21. The survey asked respondents to estimate the proportion of payroll tax compliance costs attributed to complying with differences (in legislative and/or administrative practice) concerning the ‘employee/employer/contractor’ concepts. Six out of the twelve respondents estimated the proportion of payroll tax compliance costs to be small (0-10 per cent), with four respondents estimating the proportion to be higher at approximately 31-40 per cent and the other two responses estimating the proportion to fall within 11-20 per cent and 21-30 per cent range respectively.
22. A majority of respondents to the survey indicated that the inconsistency in employee and contractor concepts under payroll taxes is caused by the difference in guidance materials and interpretations rather than differing legislation. However, Western Australia’s policy setting to exclude contractors from its payroll tax base was identified by respondents as a remaining legislative difference.<sup>3</sup> The Board notes that the decision by Western Australia to exclude contractors is unlikely to be of concern to business.

## **The Board’s observations on the areas of concern raised by stakeholders**

### ***Payroll tax***

23. On 29 March 2007, State and Territory Treasurers announced a decision to overhaul payroll tax arrangements to achieve greater legislative and administrative harmonisation.

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<sup>2</sup> State and territory land tax and duties were mentioned in two survey responses to this question

<sup>3</sup> Under the Western Australian payroll tax system a liability generally only arises where there is an employee employer relationship.

24. Payroll tax harmonisation was endorsed and continued by the Council of Australian Governments as one of 27 projects pursued under the National Partnership Agreement to Deliver a National Seamless Economy. Under this initiative, the States and Territories were tasked to work together to produce a nationally coordinated approach in relation to payroll tax, and complete the reforms by 1 July 2012.
25. The Board understands that this resulted in all Australian state and territory governments enacted legislation aligning payroll tax provisions in the following key areas:
- timing of lodgement of returns;
  - motor vehicle allowances;
  - accommodation allowances;
  - a range of fringe benefits;
  - work performed outside a jurisdiction;
  - employee share acquisition schemes;
  - superannuation contributions for non-working directors; and
  - grouping of businesses.
26. In addition to legislative harmony, the states and territories also committed to greater administrative consistency. As a result:
- Payroll Tax Revenue Rulings/Public Rulings/Circulars have been harmonised and published. Access to these publications is provided on the Revenue Rulings page.
  - Where an employer operates in more than one harmonised Australian state and territory, the relevant revenue offices will consult one another and share relevant taxpayer information in determining private rulings and objections matters.
27. Further information on state and territory payroll tax harmonisation is available at [www.payrolltax.gov.au/harmonisation](http://www.payrolltax.gov.au/harmonisation)
28. While the Board acknowledges the significant gains made by the states and territories in harmonising the payroll tax laws and administrative practices, stakeholders continue to raise concerns about differences in the payroll tax laws and the administration between the states and territories. Furthermore, the Board is concerned that the remaining differences in the payroll tax laws and administrative practices is likely to result in increased cost of compliance for businesses operating nationally.

## Finding 1

**The Board has identified and documented differences in core definitions and concepts between state and territory payroll tax laws and aspects of the federal tax laws with the assistance of Deloitte. The relevant state/territory Office of Revenue has verified the differences as at 30 March 2017. The document detailing the differences in the payroll tax laws is at Attachment B.**

## *Stamp duty and land tax*

29. While only a small number of respondents raised land tax and stamp duty as a priority area for legislative harmonisation, the definition of land and what constitutes a taxable interest in land (i.e. commonly referred to as landholder rules) were specifically identified.
30. The Board understands that the inconsistency in what constitutes 'land' is due to laws in a number of states that have altered the common law concept of 'fixture' which feeds into the meaning of 'land'. As such the difference in the statutory rules is a result of discreet policy choices by that state.
31. In addition, some stakeholders have raised concerns regarding the differences in administrative practices between states.
32. The Board also considered the concept of 'taxable Australian property' and 'indirect Australian real property interest' under the capital gains and foreign residents' rules within the *Income Tax Assessment Act 1997*. The Board noted that these rules are broadly aligned to Australia's international obligations under various bilateral tax treaties. The group concluded that it is appropriate to maintain the alignment of these rules with Australia's tax treaty obligations.

## **Finding 2**

**The Board has identified and documented differences in core definitions and concepts between state and territory stamp duty and land tax laws with the assistance of a major accounting firm. The relevant state/territory Office of Revenue has verified the differences as at 30 March 2017. The document detailing the differences in the stamp duty and land tax laws is at Attachment C.**

## *Concept of an employee*

33. Concerns were raised by stakeholders in relation to the definition and concept of an 'employee' for the purposes of both tax and non-tax laws. The Board has found that the concerns articulated by stakeholders generally fell into two categories:
  - Category 1: Uncertainty regarding the interpretation of the common law meaning of 'employee', combined with specific policy settings expressed in the legislation that either expand or narrow the common law meaning of employee.
    - There is a general concern regarding the uncertainty that an employer encounters in determining whether a worker is an employee. This uncertainty stems from the fact that the definition of 'employee' is based on the common law, both within a tax and non-tax context. As such the determination relies on the assessment of a number of factors (with no factor being determinative) and is driven by the particular facts at hand.
    - This general concern is heightened by altering the common law definition under various tax rules. For example, the common law meaning of employee is altered for the purposes of the superannuation guarantee rules<sup>4</sup> when compared to the

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<sup>4</sup> See section 12 of the *Superannuation Guarantee (Administration) Act 1992*

pay-as-you-go withholding rules<sup>5</sup>. The difference between the superannuation rules and the PAYG rules are a result of a specific policy choice; namely to provide broader superannuation coverage for Australian workers to reduce the reliance on the Age pension system.

- Category 2: The misclassification of workers as either ‘employees’ or ‘contractors’.
    - Stakeholders indicated that the misclassification of workers, either intentionally or through error, may lead to significant legal risk, unexpected liabilities for employers and potential adverse outcomes for workers (e.g. the reclassification of a worker may lead to superannuation contributions no longer being deductible or result in a breach of the contributions cap leading to a liability for excess contributions tax).
34. While not mentioned by survey participants, the Board notes the impact of structural change within the Australian workforce characterised by a move away from the traditional employer/employee arrangement to a business/independent contractor arrangement. This change is being driven by a number of factors and is expected to present ongoing challenges for the tax system; particularly regarding the potential for the states’ payroll tax base to be impacted negatively.

#### *Inspector General of Taxation Report*

35. Similar stakeholder concerns in relation to the concept of an employee within the context of the employee/contractor distinction were recently considered as part of the Inspector General of Taxation’s report on the Review into the Australian taxation office’s employer obligations compliance activities (the IGT Report)<sup>6</sup>.
36. The IGT Report states “...the *employee/contractor distinction is the basis for determining a number of tax and non-tax employer obligations at state and federal level. Whilst, in all cases, the distinction is based on the common law definition of employee, it is altered by the governing legislation in most instances such that businesses have the burden and associated costs of determining worker status multiple times for each category of workers.*”
37. The IGT Report made the observation that harmonisation of the definition of an employee across all tax and non-tax employer obligations at federal and state levels may be more achievable than a single definition (some stakeholders suggested that the solution was to have a single definition for all obligations). In making this observation the IGT also noted that such a harmonisation project would involve a considerable undertaking, which was beyond its remit.
38. The IGT Report also made the following recommendation (2.1) that the ATO:
- “(a) clarify the protection provided to those who use and rely on the (a) Employee Contractor Decision tool in good faith, promote the tool and allow it to be used by employees and

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<sup>5</sup> See section 12-35 of the *Taxation Administration Act 1953*

<sup>6</sup> See Chapter 2 of the Inspector General of Taxation’s report on the Review into the Australian taxation office’s employer obligations compliance activities, dated December 2016

contractors as well as accompanying the result with links to information outlining their respective rights and obligations; and

(b) implement and promote a Voluntary Certification System which employers, employees and contractors may use, as soon as possible, to confirm worker status and refer them to information about their respective rights and obligations once their status has been determined.”

39. The IGT Report provides that the ATO agreed with part (a) of this recommendation but disagreed with part (b)<sup>7</sup>.
40. During consultations one stakeholder group suggested that states and territories should investigate relying on the ATO Employee Contractor Tool for payroll tax purposes as a means to cut red tape/achieve harmonisation.

### *The Board's observation*

41. The Board concluded that while the definition of employee across the various Acts is based largely on the common law, differences in the concept of an employee reflect different policy choices made by jurisdictions.

## **The potential cost associated with the legislative inconsistencies identified in this Report**

42. Business and industry groups continue to raise concerns about the additional cost imposed on business associated with legislative differences in core legislative definitions and concepts; in particular the remaining differences in payroll tax and land taxes and duties.
43. While the majority of the additional ‘cost’ identified by business could be expected to relate to compliance and administrative costs other ‘economic’ costs may also arise. For example, The Final Report Australia’s Future Tax System found that ‘exemptions in the payroll tax base introduce biases into the allocation of labour across the economy and lead to complexity in administration and compliance, particularly when the exemptions differ (even slightly) between States<sup>8</sup>.
44. The Board has not estimated the likely additional cost associated with the differences in core legislative definitions and concepts between jurisdictions discussed in this Report. However, the Board notes that the significance of these costs has been assessed previously.
45. Following the completion of the payroll tax harmonisation program, the COAG Reform Council assessed the remaining differences in the payroll tax provisions and definitions to be minor<sup>9</sup>:

*“The August 2011 BRCWG<sup>10</sup> Report Card on progress of deregulation priorities stated that its review of payroll tax uniformity: found that common payroll tax provisions and definitions have*

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<sup>7</sup> Details of the ATO response to the IGT Report recommendation 2.1 may be found at page 33 of the Report.

<sup>8</sup> *Australia’s future tax system: Report to the Treasurer* December 2009, Volume 1 at page 300.

<sup>9</sup> COAG Reform Council 23 December 2011, *Seamless National Economy: Report on Performance* – see page 48

<sup>10</sup> Business Regulation and Competition Working Group

*been adopted and that where there are differences, these are minor and will not impact significantly on businesses that operate across jurisdictions.*

46. This assessment of the remaining differences in the payroll tax provisions and definitions as being minor is consistent with the Productivity Commission's estimate of the net benefits of the COAG payroll tax harmonisation<sup>11</sup>. The Commission assessed the likely net benefits from a reduction in ongoing compliance costs of payroll tax-liable businesses to be \$30 million per year in perpetuity. This would amount to an average cost saving of around \$300 per business liable for payroll tax.

### **The Board's recommendation**

47. The Board recommends circulating this report to the relevant state and territory agencies responsible for tax policy.

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<sup>11</sup> Productivity Commission April 2012, *Impacts of COAG Reforms: Business Regulation and VET*, Productivity Commission Research Report Volume 2 – Business Regulation

## Attachment A: Survey of core concepts applied under State and Federal tax laws

### Background information (possibly provided in survey invite to participants)

In Australia taxes are imposed by all levels of government. Business has raised concerns about inconsistent law and administrative practices in respect of core concepts across and between State, State and Federal and Federal taxes. This has led to calls for harmonisation of certain core concepts. By way of example, the first concept the Board is examining for inconsistencies is 'employee/employer/contractor'.

The Board is seeking to identify if the inconsistencies create material impediments for businesses and to test their relative impact. The objective of this survey is to identify the business community's views on which core concepts are subject to inconsistencies in either drafting or interpretation which are hindering business practices.

## Survey Questions

### Employee/r and Contractor

#### *Under Payroll Tax*

- 1) How would you rate your experience with inconsistencies in 'employee/employer/contractor' concepts under state payroll tax across jurisdictions?
  - Extremely easy
  - Very easy
  - Moderately easy
  - Slightly hard
  - Very difficult
- 2) Extensive harmonisation of payroll tax terms has occurred in recent years. Do you believe any remaining inconsistency in the 'employee/employer/contractor' concept under state payroll tax is due to differing legislation or is it due differing administrative practices? Please explain your views (Also please indicate if you believe harmonisation has been achieved).

Free Text Answer

3) What proportion of your compliance costs associated with payroll tax would you attribute to complying with differences (legislative and/or administrative practice) in the 'employee/employer/contractor' concepts under state payroll tax?

- 0-10%
- 11-20%
- 21-30%
- 31-40%
- 41-50%
- 51-60%
- 61-70%
- 71-80%
- 81-90%
- 91-100%

*Across all taxes and jurisdictions (State/State, State/Federal, Federal/Federal)*

4) How would you rate the significance of inconsistencies in the 'employee/employer/contractor' concept across taxes and jurisdictions (including State/State, State/Federal and Federal/Federal taxes) in business practice?

- Very low
- Below average
- Average
- Above average
- Highly significant

5) Can you identify the taxes where inconsistencies in the 'employee/employer/contractor' concept are most significant?

Free text answer

- 6) How often do inconsistencies in the 'employee/employer/contractor' concept impact your business practices?
- Annually
  - Bi-annually
  - Quarterly
  - Monthly
  - Daily
- 7) Are you aware of any examples where the 'employee/employer/contractor' concept is harmonised legislatively but administered differently across jurisdictions? Please provide specifics including its impact on your business practices.

Free text answer

### **Additional core definitional terms across all taxes and jurisdictions**

- 8) List the top three core concepts you would like to see legislatively harmonised across taxes in order of priority (please indicate both the term and taxes).

Free text answer

- 9) How often does the highest priority concept impact your business practices?
- Annually
  - Bi-annually
  - Quarterly
  - Monthly
  - Daily
- 10) How would you rate the benefit of harmonising the highest priority concept to your business practices?
- Extremely beneficial
  - Very beneficial
  - Moderately beneficial
  - Slightly beneficial
  - Not at all beneficial

11) Are you aware of a core concept which is harmonised legislatively but administered differently across jurisdictions?

– Yes

– No

12) [Optional based on answer to previous question] If yes, please identify the concept and the significance the impact of different administration has on your business practice.

Free text answer

Attachment B: Payroll Tax inconsistencies between States and Territories as at 30 March 2017

PAYROLL TAX TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	ATO <sup>12</sup> / WorkCover
<b>Legislation</b>	Payroll Tax Act 2011	Payroll Tax Act 2007	Payroll Tax Act 2009	Payroll Tax Act 1971	Payroll Tax Act 2009	Payroll Tax Act 2008	Payroll Tax Act 2007	Payroll Tax Act 2002	
<b>Apprentices and Trainees</b>  Wages paid to apprentices and trainees are generally taxable unless an exemption or rebate applies.	Taxable unless an approved group training organisation is exempt from PRT for the full term of the approved training contract.  An organisation will only be approved to be a group training organisation if it is not-for-profit.	Wages paid to apprentices and new entrant trainees are taxable  A rebate is available for the full amount of PRT payable in respect of such wages.	Taxable wages	Taxable unless:  - the training is declared to be an apprenticeship or traineeship;  - the wages are paid in the course of the apprenticeship or traineeship  A rebate is also available for the 2017 and 2018 financial years at a rate of 50% and 25% of total apprentice and trainee wages respectively.	Taxable wages	Taxable unless paid to employees administering or participating in group apprenticeships or group training schemes which are exempt subject to the following conditions:  - wages are paid by a non-profit group training organisation; and  - a non-profit group training organisation is appropriately registered.	Taxable unless wages are:  - paid or payable to a re-employed apprentice or trainee;  - paid by an approved group training organisation to a new entrant apprentice or trainee.	Taxable unless:  - the employee is an apprentice;  - a training contract is in place; and  - <i>the contract is registered under the Vocational Education and Training Act 1997 Part 7 Division 2.</i>  or  - the employee is a trainee employed under a training agreement as part of the Australia Traineeship System established by the Governments of the Commonwealth and the State	N/A

<sup>12</sup> ATO refers to Federal income tax laws.

PAYROLL TAX TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	ATO <sup>12</sup> / WorkCover
<b>Employee Share Schemes</b> The grant of a share or option to an employee that constitutes an employee share scheme (ESS) interest is taxable for PRT purposes. Alternatively if the grant does not constitute an ESS interest, the grant is taxable as a Fringe Benefit for PRT purposes.  An ESS interest for PRT purposes must be declared on the relevant date being the first of the vesting date or seven (7) years from the grant date.	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	Can elect to be taxed at grant or at a deferred taxing point  Maximum deferral 7 years	No election available  Maximum deferral 15 years WorkCover: N/A
<b>Exempt organisations</b>  Wages are generally exempt for PRT purposes if paid by organisations with the following characteristics: <ul style="list-style-type: none"> <li>Public Benevolent Institution</li> <li>Religious</li> <li>Charitable</li> <li>Public hospitals</li> </ul>	The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- charitable organisations with an educational purpose (above secondary level)</li> </ul>	The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- certain schools</li> <li>- educational institutions (above secondary level)</li> <li>- educational companies (above secondary level)</li> <li>- an instrumentality of the State</li> </ul>	The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- entities who pay wages to employees engaged in commercial or business activities</li> </ul>	The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- tertiary education providers</li> </ul>	Wages paid by some kindergartens, child care centres and film production companies are exempt subject to conditions.  The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- schools (for profit)</li> <li>- colleges (for profit)</li> <li>- educational institutions other than those affiliated with the University of Adelaide or Flinders University of SA</li> <li>- educational companies (above secondary level)</li> <li>- an instrumentality of the State</li> </ul>	The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- schools (save those who provide education at or below the secondary level (s49 &amp; Div 1, Part 3, Sched 2))</li> <li>- educational institutions (above secondary level)</li> <li>- educational companies (above secondary level)</li> <li>- an instrumentality of the State</li> <li>- technical schools and colleges</li> </ul>	The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- certain schools</li> <li>- educational institutions (above secondary level)</li> <li>- educational companies (above secondary level)</li> <li>- an instrumentality of the State</li> </ul>	The following organisations are specifically not exempt: <ul style="list-style-type: none"> <li>- tertiary education providers;</li> <li>- , which is, a professional association a college or other vocational education and training institution under the <i>Vocational Education and Training Act 1996</i>;</li> <li>- a charitable organisation that is a relevant body *, political party, an industrial association or a 4<sup>th</sup> limb charity* that has as a purpose the promotion of trade, industry or commerce.</li> <li>*the Minister has the power to reinstate the exemption.</li> <li>- wages paid by</li> </ul>	ATO: NCAC registration  WorkCover: N/A

PAYROLL TAX TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	ATO <sup>12</sup> / WorkCover
								a Health Service Provider in connection with a commercial activity as set out in section 35 of the <i>Health Services Act 2016</i>	
<b>Fringe Benefits Tax</b>  Taxability of Fringe Benefits is generally determined in accordance with the Fringe Benefits Tax Assessment Act 1986 (Cth) grossed-up using the Type 2 rate of 1.9608.  Although exempt for FBT purposes under the Fringe Benefits Tax Assessment Act 1986, deposits under the Small Superannuation Accounts Act 1995 are not exempt for PRT purposes.	Taxable unless a benefit is:  - exempt for FBT purposes;  - a tax-exempt body entertainment fringe benefit	Taxable unless a benefit is:  - exempt for FBT purposes;  - a tax-exempt body entertainment fringe benefit	Taxable unless a benefit is exempt for FBT purposes.	Taxable unless a benefit is:  - exempt for FBT purposes;  - a car parking benefit that is not paid through a salary sacrifice arrangement;  - a tax-exempt body entertainment fringe benefit  - Employee salary-sacrificed superannuation contributions do not reduce the taxable value for PRT purposes	Taxable unless a benefit is:  - exempt for FBT purposes;  - a tax-exempt body entertainment fringe benefit	Taxable unless a benefit is:  - exempt for FBT purposes;  - a tax-exempt body entertainment fringe benefit	Taxable unless a benefit is:  - exempt for FBT purposes;  - a tax-exempt body entertainment fringe benefit	Taxable unless:  - a benefit is exempt for FBT purposes;  -  - certain remote area fringe benefits relating to residential fuel, housing assistance, domestic water, holiday transport* and/or education costs*  * subject to limitations.	ATO: N/A  WorkCover: No differences
<b>Maternity, Parental, Adoption and Surrogacy Leave</b>	Maternity & paternity leave for females / males is exempt for up to 14 weeks.  Adoption leave is exempt for all employees for up to 14 weeks	Maternity & paternity leave for females / males is exempt for up to 14 weeks.  Adoption leave is exempt for all employees for up to 14 weeks	Maternity & paternity leave for females / males is exempt for up to 14 weeks.  Adoption leave is exempt for all employees for up to 14 weeks	Maternity & paternity leave for females / males is exempt for up to 14 weeks.  Adoption leave is exempt for all employees for up to 14 weeks.  Surrogacy leave is exempt for all	Maternity leave for females is exempt for up to 14 weeks.  Adoption leave is exempt for all employees for up to 14 weeks	Maternity leave for females is exempt for up to 14 weeks (or equivalent period at reduced pay). Adoption leave is exempt for all employees for up to 14 weeks (or equivalent period at reduced pay)	Maternity leave for females is exempt for up to 14 weeks.  Adoption leave is exempt for all employees for up to 14 weeks	Maternity leave for females is exempt for up to 14 weeks.  Adoption and Parental leave is exempt for all employees for up to 14 weeks	ATO: N/A  WorkCover: N/A

PAYROLL TAX TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	ATO <sup>12</sup> / WorkCover
				employees for up to 14 weeks.					
<b>Legal process</b>	To refer a matter to the ACAT, a written application must be lodged within 28 days of receiving the notice of determination.	An appeal must be made to the NSW CAT / Supreme Court within 60 days of receiving the notice of determination of an objection.	To refer a matter to NCAT or instigate a hearing in the Supreme Court, a written appeal must be commenced within 60 days after the date of notice of determination of an objection.	An appeal must be made to the QCAT or Supreme Court within 60 days of receiving the notice of determination of an objection. 100% of tax and late payment interest payable must be paid before appeal can be lodged.	An appeal must be made to the Supreme Court within 60 days of receiving the notice of determination.  50% of the tax must be paid before an appeal can be lodged.	An appeal may be made to the Administrative Appeals Division of the Magistrates Court or to the Supreme Court within 60 days of receiving the notice of determination.	TAA 1997 (Vic) Indirect referral model: A request for referral to VCAT / review by the Supreme Court must be made to the CSR within 60 days of service of the notice of determination of an objection (or the date on which the determination was due). CSR must refer it within 60 days (with provision for time to stop to obtain further particulars from applicant)	An application for review must be made to the State Administrative Tribunal, within 60 days after the notice of determination of an objection.	ATO: Appeal to AAT / Federal Court must be made within 28 or 60 days  WorkCover: various

PAYROLL TAX TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	ATO <sup>12</sup> / WorkCover
<b>Assessments</b>	No self-assessment provisions.  Lodgement of a return or payment of tax does not constitute an assessment.	Basic self-assessment provisions exist.	No self-assessment provisions.  Lodgement of a return or payment of tax does not constitute an assessment.	Basic self-assessment provisions exist	No self-assessment provisions.  Lodgement of a return or payment of tax does not constitute an assessment.	No self-assessment provisions.  Lodgement of a return or payment of tax does not constitute an assessment.	No self-assessment provisions.  Lodgement of a return or payment of tax does not constitute an assessment. NB: lodgements via Duties Online are 'deemed assessments'.	Self-assessment regime is in place.  Lodgement of a return constitutes a self-assessment.	ATO: formal self-assessment  WorkCover: N/A
<b>Refunds and reassessments</b>  The period of time allowed for the Commissioner to make a reassessment and/or allow for a refund to be claimed.	5 years from the date of assessment (if any).	5 years from the date of assessment.	5 years from the date of assessment (if any).	Generally 5 years from the date of assessment.	Reassessments: 5 years – (with some statutory exceptions) from the date of <u>the initial</u> assessment. Refund applications: 5 years from date of payment	<u>5</u> years from the date of assessment (if any).	Reassessments: 5 years – (with some statutory exceptions) from the date of <u>the initial</u> assessment Refund applications: 5 years from date of payment	5 financial years that precede the financial year in which the reassessment is made	ATO: various  WorkCover: various

PAYROLL TAX TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	ATO <sup>12</sup> / WorkCover
<p><b>Relevant contracts</b> A contract is deemed to be a relevant contract where:</p> <ul style="list-style-type: none"> <li>• A contractor supplies services to the principal for or in relation to performance of work;</li> <li>• The principal supplies services of persons to the contractor for or in relation to the performance of work; or</li> <li>• The contractor is supplied goods by the principal to perform work on those goods and then re-supply the goods back to the engaging entity</li> </ul> <p>Services or fees paid under a relevant contract are treated as taxable wages for PRT unless an exemption applies.</p> <p>Exempt contracts include contracts whereby:</p> <ol style="list-style-type: none"> <li>1. The service is provided to one designated person for 90 days or less in a financial year</li> <li>2. 2 or more persons perform work under the contract</li> <li>3. The provision of services is secondary to the supply of materials and/or equipment</li> <li>4. The service is only required by the principal for less than 180 days in a financial year</li> <li>5. The Commissioner is satisfied that the contractor provides the services to the public at large</li> <li>6. The contractor transports goods in a vehicle provided by the contractor (an owner-driver)</li> <li>7. The contractor provides services as an insurance agent (holder or authorised representative of a AFS license)</li> <li>8. The contractor provides services for or in relation to the door-to-door sale of goods solely for domestic purposes</li> <li>9. The contract is an 'employment agency contract'</li> </ol> <p>Deductions from gross payments to contractors are available for certain types of contractors.</p>	Exemptions 1, 2, 4, 7 and 8 do not apply.	Exemptions 7 and 8 do not apply.	Exemptions 7 and 8 do not apply.	All listed exemptions are available.	All listed exemptions are available.	Exemptions for insurance and door-to-door sellers was removed effective 31 October 2016 (and owner-driver exemption tightened) but all other listed exemptions are available.	All listed exemptions are available.	WA does not have relevant contractor provisions. For a liability to apply there must generally be an employer/employee relationship.	SG – payments to individual contractors can be deemed to be subject to SG.  WorkCover: various

PAYROLL TAX TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	ATO / WorkCover
<b>Tax-free thresholds and rates for the 2017 Financial Year</b>	Annual threshold: \$2,000,000  PRT rate: 6.85%	Annual threshold: \$750,000  PRT rate: 5.45%	Annual threshold: \$1,500,000  PRT rate: 5.50%	Annual threshold: \$1,100,000  A diminishing deduction threshold is applied to those employers with taxable wages between \$1,100,000 to \$5,500,000  No deductions are available to those employers with taxable wages greater than or equal to \$5,500,000  PRT rate: 4.75%	Annual threshold: \$600,000  PRT rate: 4.95%	Annual threshold: \$1,250,000  PRT rate: 6.10%	Annual threshold: \$575,000  PRT rate: 4.85%	Annual threshold: \$850,000  A diminishing threshold is applied to those employers with taxable wages between \$850,000 to \$7,500,000  No threshold is available to those employers with taxable wages greater than or equal to \$7,500,000  PRT rate: 5.50%	ATO: N/A  WorkCover: various

Attachment C: stamp duty and land tax inconsistencies between States and Territories as at 30 March 2017

STAMP DUTY TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Legislation</b>	Duties Act 1999	Duties Act 1997	Stamp Duty Act	Duties Act 2001	Stamp Duties Act 1923	Duties Act 2001	Duties Act 2000	Duties Act 2008
<b>Max Duty Rate (commercial property)</b>	5.09%	5.5%	5.45%	5.75%	3.67%	4.5% (on all property)	5.5%	5.15%
<b>Full abolition of stamp duty</b>	20 year timeframe				Phased abolition of duty on commercial property - duty rates reduced by a third from 7 December 2015, will reduce by a further third from 1 July 2017, before the duty is abolished from 1 July 2018 (excludes residential and primary production)			
<b>Additional taxes on foreign property</b>		9.5% surcharge rate on foreign purchases of residential land  2.75% land tax for foreign owned residential land (ordinary 2%)		3% additional duty on the dutiable value of foreign purchases of residential land		N/A	7% additional duty on the dutiable value of land on foreign purchases of residential land	
<b>Premium property duty</b>		7% duty on houses above \$3m  11% for foreigners				<u>N/A</u>		

STAMP DUTY TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Acquisitions in entities</b>  Different treatment of companies and unit trusts for landholder duty purposes and different rules and thresholds between States  Acquisition thresholds:	Company and trusts – 50%	Company and trusts – 50%	Listed corporation or listed unit trust scheme – 90% All other <u>entities</u> 50%	Public landholders (listed corporations and listed unit trusts): 90%  Private landholders (unlisted corporations): 50%	Private landholders (private companies or trusts): 50%  Public landholders (listed companies or public unit trust schemes): 90%  Separate treatment of “voluntary disposition <i>inter vivos</i> ” for unit trusts – no threshold	Private companies and unit trust schemes – 50%  <u>Listed</u> companies and public unit trust schemes – 90%	Private unit trusts – 20% Private company and wholesale unit trust – 50% <u>Public</u> landholder (listed companies and public unit trusts) - 90%	Listed company and trust 90%  Private company and trust – 50%
Landholding threshold	No minimum	\$2m of land	\$500,000 of land	\$2m of land	\$1m of land until 30 June 2018. No minimum from 1 July 2018	\$500,000 of land	\$1m of land	\$2m of land
Tracing threshold for land of subsidiaries	50% ownership	50% ownership	20% ownership	Corporations / listed unit trusts: if a subsidiary under the <i>Corporations Act 2001</i> ,  Corporate beneficiaries: 50% or more. Trustees: any beneficial interest.	50% ownership	50% entitlement to property distributed	20% ownership	Listed entities – 90% ownership  Unlisted entities -50% ownership  Discretionary trustee – entity is potential beneficiary  Partnership – 50% contribution / losses
Inconsistent duty base for landholder duty  Duty is payable on:	Land only	Land and P&E	Land only	: Land-holdings, which include anything fixed on the land that may be separately owned and	Land and land assets which includes anything fixed on the land that may be separately owned and	Land and goods	Land, which includes anything fixed to the land whether or not the item is a fixture at law, owned	Land and P&E  *Certain P&E are exempt

STAMP DUTY TREATMENT	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
				certain rights or interests in the land.	certain rights or interests in the land		separately from the land or considered to be legally separate to the land. (Discretion to ignore the fixed item in certain circumstances )	
<b>Corporate Reconstruction Relief</b> Inconsistent treatment of unit trusts and requirements to keep group in place in some jurisdictions  Relief extends to unit trusts:	Yes	Yes	Companies only	Companies, but a limited exemption for fixed trusts only	Yes	Yes	Yes	Yes
Inconsistent pre or post-association tests that limit availability where groups have not been in place	12 month pre- and post-association tests	None	3 years pre- and post-association tests	3 years pre- and post-association tests	None	12 month pre- and post-association tests	3 year post-association test	None
Top hatting/consolidation relief for interposing entity between shareholders and existing entity	None	Yes	Yes	Yes, companies and listed unit trusts and widely held unit trusts only	Limited relief via <i>ex gratia</i> (refer to Information Circular 35)	Yes	Limited relief	Yes
<b>Duty on business property</b> Retained duty on goodwill, IP and P&E transferred with business		P&E only	Goodwill, IP, P&E	Goodwill, IP, P&E + trading stock and debts		Duty on goodwill and intellectual property abolished 1 July 2008. No specific exemption for P&E and duty payable on certain goods transferred as part of a transaction involving dutiable property.	P & E only if transferred together with land. Duty not charged on goodwill or IP.	Goodwill, IP, P&E*  *Certain P&E are exempt