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Public Ruling Payroll Tax Act:

EXEMPTION FOR PARENTAL, ADOPTION, SURROGACY OR CULTURAL PARENT LEAVE PAY

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 purpose of this public ruling is to explain the application of the exemption for maternity and paternity leave (collectively, parental leave), adoption leave, surrogacy leave or cultural parent leave.
2. Section 14A of the *Payroll Tax Act 1971* (Payroll Tax Act) exempts certain wages paid or payable to employees in respect of parental leave, adoption leave, surrogacy leave or cultural parent leave.
3. The exemption:
 - (a) applies to wages paid or payable to employees for parental leave, adoption leave, surrogacy leave or cultural parent leave
 - (b) is limited to a maximum of 14 weeks pay at the rate or amount of wages that would normally be paid by the employer if the employee has worked (or an equivalent period of leave at a reduced rate of pay)
 - (c) applies to all wages other than fringe benefits
 - (d) applies irrespective of whether the leave is taken before or after:
 - (i) the birth of a child of an employee
 - (ii) the adoption of a child by an employee
 - (iii) the child starts residing with the employee under a surrogacy arrangement

- (iv) a cultural recognition order is made transferring the parental rights and responsibility for a child to the employee
 - (e) must be supported by keeping relevant records.
4. For payroll tax purposes, parental leave and adoption leave are distinct from the Commonwealth Government's Paid Parental Leave (PPL) scheme payments, which are payments not liable to payroll tax—refer to Public Ruling PTA037.

Ruling and explanation

Definition of 'parental leave'

5. Section 14A(7) of the Payroll Tax Act defines 'parental leave' as maternity or paternity leave.
6. 'Maternity leave' is defined in the Payroll Tax Act as leave given to a female employee in connection with her pregnancy or the birth of her child, other than annual leave, recreation leave, sick leave or similar leave.¹
7. 'Paternity leave' is defined in the Payroll Tax Act as leave given to a male employee in connection with the pregnancy of a female carrying his unborn child or the birth of his child, other than annual leave, recreation leave, sick leave or similar leave.²
8. Parental leave may be taken during or after the pregnancy.³

Example 1

In relation to the birth of her child, Mary took long service leave of 10 weeks, annual leave of 4 weeks, PPL of 18 weeks and unpaid leave of 20 weeks. The wages paid for all the leave taken by Mary are taxable except the PPL.

Example 2

In relation to the birth of his child, John took long service leave of 10 weeks, annual leave for 4 weeks, paid paternity leave of 12 weeks and unpaid leave of 26 weeks. Only the wages paid for the 12 weeks paternity leave are exempt. Wages paid for long service leave and annual leave are taxable.

Definition of 'adoption leave'

9. 'Adoption leave' refers to leave given to an employee in connection with the adoption of a child by the employee, other than annual leave, recreation leave, sick leave or similar leave.⁴
10. The employee may take the adoption leave before or after the adoption of the child.⁵

¹ Section 14A(7) of the Payroll Tax Act

² Section 14A(7) of the Payroll Tax Act

³ Section 14A(2) of the Payroll Tax Act

⁴ Section 14A(7) of the Payroll Tax Act

⁵ Section 14A(2) of the Payroll Tax Act

Example 3

John has taken 6 weeks paid adoption leave in 3 distinct parts: 1 week to familiarise himself with the adoption process, 2 weeks to go interstate or overseas to meet the child and a further 3 weeks after the child arrived in Brisbane. All 6 weeks are taken to be adoption leave. Consequently, wages paid for the 6 weeks leave are exempt.

Definition of ‘surrogacy leave’

11. The Payroll Tax Act defines ‘surrogacy leave’ as leave given to an employee in connection with a child residing with the employee under a surrogacy arrangement, other than annual leave, recreation leave, sick leave or similar leave.⁶
12. ‘Surrogacy arrangement’ is defined as having the meaning given by the *Surrogacy Act 2010* (Surrogacy Act).⁷
13. Under s.7(1) of the Surrogacy Act, a surrogacy arrangement means an arrangement, agreement or understanding between a woman and another person or persons where all the following apply:
 - (a) The woman agrees to become, or try to become, pregnant with the intention that:
 - (i) a child born as a result of the pregnancy is to be treated as the child, not of the woman, but of the other person or persons
 - (ii) the woman will relinquish to the other person or persons custody and guardianship of a child born as a result of the pregnancy.
 - (b) The other person or persons agree to become permanently responsible for the custody and guardianship of a child born as a result of the pregnancy.
14. Section 56 of the Surrogacy Act makes it an offence to enter into a ‘commercial surrogacy arrangement’. Section 10 of the Surrogacy Act provides that a surrogacy arrangement is a commercial surrogacy arrangement if a person receives a payment, reward or other material benefit or advantage (other than the reimbursement of the birth mother’s surrogacy costs) for the person or another person:
 - (a) agreeing to enter into or entering into the surrogacy arrangement
 - (b) permanently relinquishing to one or more intended parents the custody and guardianship of a child born as a result of the surrogacy arrangementor
 - (c) consenting to the making of a parentage order for a child born as a result of the surrogacy arrangement.

⁶ Section 14A(7) of the Payroll Tax Act

⁷ Section 14A(7) of the Payroll Tax Act

15. The exemption is not affected by whether the surrogacy leave is taken before or after the child starts residing with the employee, provided the leave is in connection with the child residing with the employee.⁸

Example 4

A child begins residing with Julie under a surrogacy arrangement on 1 February 2021. Julie takes 14 weeks surrogacy leave, commencing 2 weeks before 1 February 2021, and extending 12 weeks after that date. The 2 weeks before 1 February are spent planning for the child's arrival. The wages paid to Julie for the full 14 weeks surrogacy leave are exempt.

Definition of 'cultural parent leave'

16. The Payroll Tax Act defines 'cultural parent leave' for a cultural parent as leave given to an employee in connection with a cultural recognition order transferring the parental rights and responsibility for a child to the employee, other than annual leave, recreation leave, sick leave or similar leave.⁹
17. 'Cultural parent' is defined under s.10 of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (Traditional Child Rearing Practice Act) as a person who, in accordance with Ailan Kastom child rearing practice¹⁰, agrees to accept the permanent transfer of the parental rights and responsibility for a child from the child's birth parents to the person.
18. 'Cultural recognition order' is defined under Schedule 1 of the Traditional Child Rearing Practice Act as an order made by the Commissioner¹¹ under s.58 of that Act.
19. The exemption is not affected by whether the cultural parent leave is taken before or after a cultural recognition order is made transferring the parental rights and responsibility for a child to the employee, provided the leave is in connection with taking parental rights and responsibility for a child under a cultural recognition order.¹²

Example 5

Leslie takes cultural parent leave in 2 distinct parts: 2 weeks to prepare and assist with the granting of a cultural recognition order and a further 10 weeks after taking parental rights and responsibility for the child under the cultural recognition order. All 12 weeks are taken to be cultural parent leave and the wages paid to Leslie for the period are exempt.

Types of wages that are exempt

20. Wages paid or payable in respect of parental, adoption, surrogacy and cultural parent leave are exempt. This includes the wages, salaries, employer superannuation contributions, allowances, bonuses and commissions that relate to the period of parental, adoption, surrogacy or cultural parent leave. Wages will be exempt to the extent that they relate to the period of parental, adoption, surrogacy or cultural parent leave.

⁸ Section 14A(2) of the Payroll Tax Act

⁹ Section 14A(7) of the Payroll Tax Act

¹⁰ See s.8 of the Traditional Child Rearing Practice Act.

¹¹ Commissioner appointed under s.11 of the Traditional Child Rearing Practice Act

¹² Section 14A(2) of the Payroll Tax Act

Types of wages that are not exempt

21. Wages paid to an employee that are not related to the period of paternal, adoption, surrogacy or cultural parent leave are not exempt. This includes:
- (a) payments made during a period of parental leave, adoption leave, surrogacy leave or cultural parent leave that relate to services performed before the period of leave—such as back pay, commissions, or an annual performance bonus
 - (b) advance payments for future periods of services occurring after the employee returns from leave.

Example 6

Asha goes on maternity leave on 1 July 2021 and is paid a bonus on 6 July 2021 that relates to services she provided in the financial year ending on 30 June 2021. Even though the bonus was paid while Asha is on maternity leave, it is not exempt because it is not related to the maternity leave.

22. Fringe benefits provided to an employee on parental, adoption, surrogacy or cultural parent leave are not exempt.¹³

Maximum entitlement

23. For any one pregnancy, adoption, surrogacy arrangement or cultural recognition order, the exemption applies to a maximum amount equivalent to 14 weeks pay at each employee's normal rate of pay, regardless of whether the employee is a full-time or part-time employee. The leave may also be taken over more than 14 weeks at a reduced rate of pay per week.¹⁴

Example 7

Cathy is a part-time employee and elects to take maternity leave. She works 3 days a week at a rate (including employer superannuation contributions) of \$100 per day. Cathy's employer provides 16 weeks maternity leave. Cathy chooses to take maternity leave over 32 weeks at half her normal rate of pay. The maximum amount of exempt wages that can be paid to Cathy is \$4,200 (\$150 (weekly wage at half pay) × 28 weeks (which is the equivalent to 14 weeks at the employee's normal rate of pay)).

Example 8

ABC Pty Ltd has a policy of providing 12 weeks paid maternity leave. Stella, a full-time employee, elects to take the maternity leave over 24 weeks at half pay. Wages relating to this period are fully exempt.

Example 9

Matteo is a part-time employee and elects to take paternity leave at half pay over a period of 28 weeks. Wages relating to this period are exempt.

¹³ Section 14A(6) of the Payroll Tax Act

¹⁴ Sections 14A(3) and (4) of the Payroll Tax Act

PTAQ014A.3.1**Record keeping**

24. This table shows what documents the employer must obtain and keep when claiming the exemption.

Type of leave	Documents required
Maternity leave	Medical certificate for, or statutory declaration by, the employee stating the employee was pregnant or that the employee has given birth and the date of the birth ¹⁵
Paternity leave	Statutory declaration by the employee stating that a female is pregnant with his unborn child or that the child has been born and the date of the birth ¹⁶
Adoption leave	Statutory declaration by the employee stating that a child has been placed in the employee's custody pending an adoption order or that an adoption order has been made ¹⁷
Surrogacy leave	Statutory declaration from the employee stating that a child has started residing with the employee under a surrogacy arrangement ¹⁸
Cultural parent leave	Statutory declaration by the employee stating a child has started residing with the employee under a cultural recognition order ¹⁹

25. The records substantiating a claim for parental, adoption, surrogacy or cultural parent leave exemption must be kept for five years.²⁰

Date of effect

26. This public ruling takes effect from the date of issue.

Mark Jackson
 Commissioner of State Revenue
 Date of issue: 9 August 2021

¹⁵ Section 14A(5)(a) of the Payroll Tax Act

¹⁶ Section 14A(5)(b) of the Payroll Tax Act

¹⁷ Section 14A(5)(c) of the Payroll Tax Act

¹⁸ Section 14A(5)(d) of the Payroll Tax Act

¹⁹ Section 14A(5)(e) of the Payroll Tax Act

²⁰ Section 118 of the *Taxation Administration Act 2001*

References

Public Ruling	Issued	Dates of effect	
		From	To
PTAQ14A.3.1	9 August 2021	9 August 2021	Current