



Commissioner for Productivity

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The Hon Dominic Perrottet MP
Treasurer and Minister for Industrial Relations
GPO BOX 5341
SYDNEY NSW 2001

Dear Treasurer,

Review of Payroll Tax Administration

As you are aware, my first tasked role as NSW Productivity Commissioner was to undertake a Review of Payroll Tax Administration in New South Wales.

The review has been conducted under the auspices of a Steering Committee led by NSW Treasury and including representatives from the Productivity Commission, the Small Business Commissioner, Revenue NSW and the tax profession.

Assisted by PricewaterhouseCoopers Consulting Australia (PwC), the Steering Committee has developed recommendations in response to the issues uncovered through research, targeted industry interviews and a round of public consultation.

The Steering Committee has submitted a final report from PwC on the Review of Payroll Tax Administration in New South Wales. I endorse the attached report and its recommendations, which will enhance productivity outcomes for businesses in NSW. It will do this by reducing the compliance burden experienced by businesses throughout the payroll tax cycle and improving the customer experience. I anticipate it will be warmly welcomed by the business community.

I am pleased to present the report for your consideration.

Yours sincerely

Peter Achterstraat AM
NSW Commissioner for Productivity

Tuesday 2 October 2018

Review of payroll tax administration in New South Wales

Final report

*Review of payroll tax
administration in New
South Wales*

August 2018

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1 Context and background

1.1 Context

The NSW Productivity Commission was established in February 2018 to ‘drive microeconomic reform and to tackle burdensome regulation in NSW’. In announcing the NSW Productivity Commission, NSW Treasurer, Dominic Perrottet stated that he would ‘like one of the Commission’s first tasks to be a review of payroll tax administration, which the Business Chamber estimates can cost an individual business up to \$10,000 every year’¹.

As part of a suite of microeconomic reforms, the NSW Government announced that it would conduct a review into the administration of payroll tax in NSW (referred to as ‘the review’) in order to reduce the administrative burden on businesses. The main objective of the review is to identify options to reduce the costs incurred by employers in meeting their NSW payroll tax obligations. The review examines administrative arrangements that are required for compliance with anti-avoidance requirements in the legislation, payroll rates, thresholds and exemptions are out of scope of this review.

Whilst payroll tax rates and thresholds are out of scope of this review, announcements relating to payroll tax as part of the 2018-19 NSW Budget are taken into consideration in this report. In that Budget, the Government announced that the payroll tax threshold will increase from \$750,000 to \$1.0 million, progressively over the next four years to 2021-22. As a result, approximately 5,000 firms that would have paid payroll tax will be exempt, avoiding the tax itself and the associated administrative costs. According to the Budget papers, businesses with a payroll greater than \$1.0 million will save up to \$13,625 annually from 2021-22.²

1.2 Review approach

NSW Treasury has been tasked with conducting a review of payroll tax administration in NSW and engaged PricewaterhouseCoopers Consulting Australia (PwC) to assist in conducting this review. The review was overseen by a Steering Committee that played an integral role in considering the feasibility of potential opportunities and identifying further areas for consideration in the review. Members of the Steering Committee include representatives from NSW Treasury, Revenue NSW, Office of the NSW Small Business Commissioner, NSW Productivity Commission and an independent tax expert.

This review comprised of two main phases of consultation:

1. initial round of consultation with a targeted group of key stakeholders
2. public submission process to obtain views, specific examples and supporting evidence around areas of concern and potential opportunities to improve payroll tax administration in NSW.

The review was conducted in two stages relating to the two phases of consultation.

¹ NSW Business Chamber submission to the Review, available at <<https://www.nswbusinesschamber.com.au/NSWBC/media/Policy/180706-NSW-Treasury-Review-of-Payroll-Tax-Administration.pdf>>

² NSW Budget Paper No. 1, Budget Statement 2018-19, available at <https://www.budget.nsw.gov.au/sites/default/files/budget-2018-06/Budget_Paper_1-Budget_Statement_UDPATED_2.pdf>

Stage 1

As part of Stage 1, desktop research, discussions with internal tax advisers, and initial stakeholder consultations were carried out. This was to identify initial opportunities and highlight 'quick-wins' or potential reforms that may be achievable in the short term.

The main focus of the consultations was to identify key issues and opportunities for improvement in payroll tax administration in NSW. The opportunities identified represented initial ideas only and were refined further in the second stage of the review.

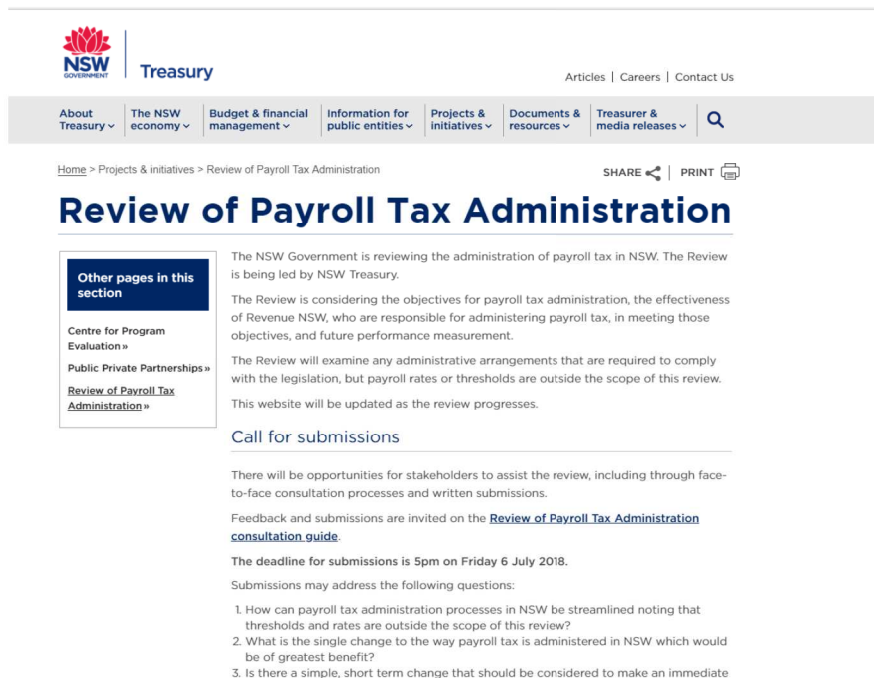
Stage 2

Stage 2 involved collating and analysing findings from the public submissions process, further consultation with Revenue NSW and analysis of additional data received from Revenue NSW. The primary objectives of Stage 2 of the review were to:

- test the applicability and feasibility of the initial opportunities that were identified in Stage 1
- identify any further opportunities to reduce the administrative burden associated with payroll tax in NSW
- take into consideration Revenue NSW's current and past efforts in administering payroll tax in NSW
- develop recommendations to improve the administration of payroll tax in NSW.

Stage 2 included a request for public submissions, announced on NSW Treasury website (Figure 1) and the Department of Premier and Cabinet's 'Have Your Say' website.

Figure 1: Screenshot of NSW Treasury website



Consultations conducted

Discussions with the following stakeholders were conducted during the review:

- Coles Group Limited
- Council of Small Business Australia
- Joint State Taxes Liaison Committee
- Law Society of New South Wales

Context and background

- New South Wales Business Chamber
- Office of the NSW Small Business Commissioner
- Sydney Airport
- Tax Institute of Australia
- The Downer Group

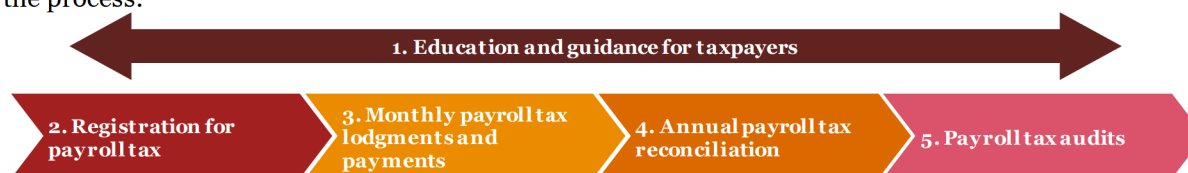
In addition, 18 submissions were received from payroll taxpayers, business advisors, peak bodies and other entities. Appendix B provides the list of public submissions received.

2 NSW Payroll tax process

2.1 Payroll tax process

Payroll tax is applied to a business' NSW wages that exceed the payroll tax threshold. When a business exceeds the threshold, it needs to register for payroll tax, lodge monthly payroll tax returns followed by monthly payments and then undertake an annual payroll tax reconciliation. In certain cases, a business may be selected for payroll tax audits. Throughout the payroll tax process, there is information available online and through other avenues (such as seminars) to provide guidance for taxpayers.

This section sets out the general process for payroll tax in NSW and role of Revenue NSW in the process:



1. Education and guidance for taxpayers

As a self-assessed tax obligation, Revenue NSW provides a number of online tools and resources to assist new and existing payroll tax customers in meeting their payroll tax obligations in NSW, including:

- seminars and free webinars
- website guidance for key wage types and available exemptions
- a checklist of liable and exempt wage items
- factsheets
- Revenue Rulings
- free subscription service to receive email alerts about the latest payroll tax changes
- limited video tutorials.

Revenue NSW's Client Education Unit can also be contacted directly by taxpayers via phone and email.

2. Registration for payroll tax

Employers must register online for payroll tax with Revenue NSW within seven days after the month that their total Australian wages exceeds the monthly tax-free threshold that applies in NSW.

Specific requirements apply to employers that are part of a payroll tax group.

Entities may constitute a single payroll tax group where certain common links exist between the entities. A payroll tax group may be formed under the following circumstances:

- related corporations within the meaning of the *Corporations Act 2001*
- use of common employees
- commonly controlled businesses
- groups arising from tracing of interests in corporations
- a larger group can be formed out of smaller groups.

When a payroll tax group exists:

- only one member of the group can claim the threshold entitlement in NSW
- each member of the group must generally lodge its own payroll tax return every month
- each member of the group is jointly and severally liable for any outstanding payroll tax of the other group members.

Businesses may apply for an exclusion from a group under certain circumstances.

3. Monthly payroll tax lodgments and payments

Employers are required to self-assess their payroll tax liability on a monthly basis. For the first 11 months, businesses liable for payroll tax must make their payment of the calculated payroll tax liability within seven days of the end of each calendar month (or the next business day).

Penalties and interest may apply to any lodgments or payments made after the monthly due date.

Exemption requirements and substantiation

In addition to certain not-for-profit (NFP) entity exemptions, apprentices and trainee exemptions, and a range of general wage component exemptions, there are currently seven specific contractor exemptions that need to be satisfied in order to exclude payments made to contractors from being included in taxable wages.

While exemption substantiation is not required to be lodged with Revenue NSW as part of the monthly or annual payroll tax processes, in the event of an audit it is likely that Revenue NSW would seek substantiation of any exemptions claimed by the employer.

4. Annual payroll tax reconciliation

Employers must prepare and lodge an annual payroll tax reconciliation, with any additional payroll tax liabilities on top of the monthly payments to be paid to Revenue NSW within 21 days after the end of June.

5. Payroll Tax Audits

Revenue NSW's payroll tax compliance program focuses on identifying and contacting liable employers who have failed to register for payroll tax purposes, and investigating registered customers who appear to have understated their wages.

Where issues are identified under audit, Revenue NSW will issue notices of amended assessment to the taxpayer, with interest and penalties often applying in respect of payroll tax underpayments.

The typical period of review under audit by Revenue NSW is the four preceding financial years, plus the current financial year.

Businesses with a payroll tax liability have the option of using Revenue NSW's online calculator, which assists taxpayers in calculating their tax payable each month. However, there is no requirement for clients to use this online calculator and there is no requirement for them to submit their payroll tax calculation to Revenue NSW every month. Further details on the online calculator is provided in Appendix A.

3 *Review recommendations*

The recommendations flowing from the review process are presented in this chapter according to the different stages in the payroll tax process to which they relate. In addition, there are a number of recommendations that fall outside of any specific stage.

Most recommendations could be implemented by Revenue NSW or the NSW Government, independently of other jurisdictions. However, some recommendations require engagement and agreement with other jurisdictions in order to be implemented. The recommendations each contain a marking to indicate the relevant implementation category:

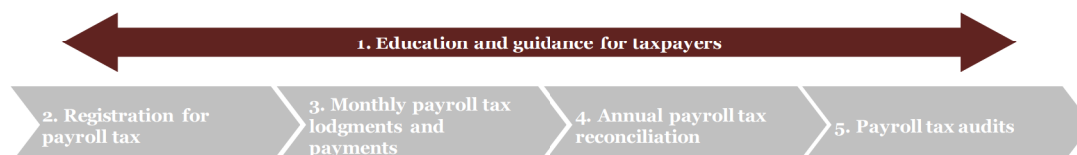


Used to denote those recommendations that the NSW Government can implement independently of other jurisdictions



Used to denote those recommendations that require engagement with other jurisdictions to implement.

3.1 *Education and guidance for taxpayers*



As a tax administrator, Revenue NSW’s roles range from providing education and guidance on the payroll tax system, to conducting audits to ensure tax payers comply with the payroll tax requirements.

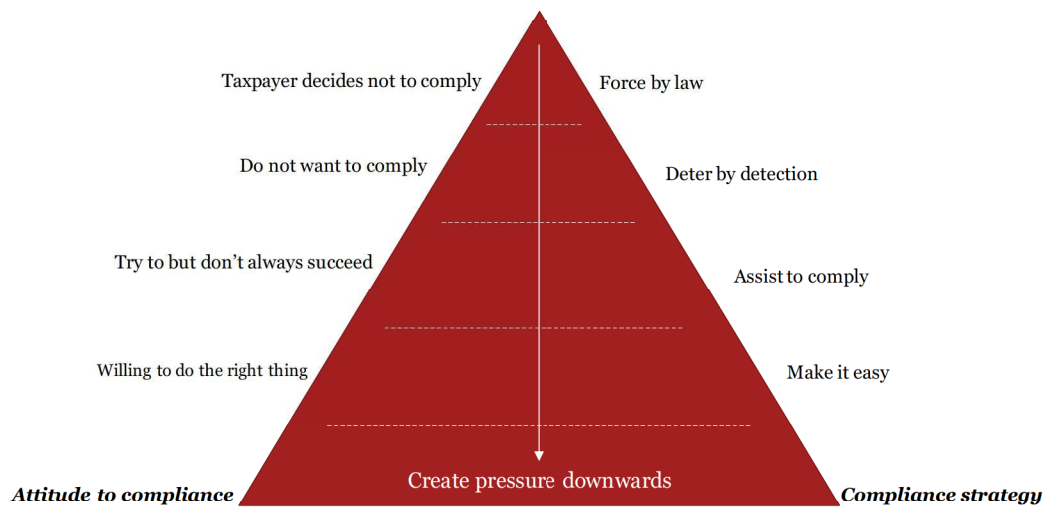
At present, Revenue NSW’s regulatory focus is directed towards an audit/compliance model as evidenced by its higher levels of audit activities with businesses relative to its lower levels of proactive engagement with new and existing payroll tax clients. The sections below provide further details on Revenue NSW’s current approach to audit and engagement.

3.1.1 *Revenue NSW’s current processes and activities under education and guidance*

There are several theoretical models that inform how a tax administrator should interact with its clients. James (2012) developed the ‘compliance model’ to illustrate the action taken by tax authorities in response to the taxpayer’s willingness to comply.³ The model considers that a regulator’s response to any non-compliance should have regard to the reasons for non-compliance. As such, where regulated entities are willing to do the right thing, regulators should generally focus on making compliance easier. Applying detection techniques and the force of law should be reserved for those regulated entities that do not want to comply or decide not to comply. Figure 2 illustrates this model.

³ James, S. (2012), Behavioural economics and the risks of tax administration, *eJournal of Tax Research* 2012, vol. 10, no. 2, pp. 345-363

Figure 2: Compliance Model

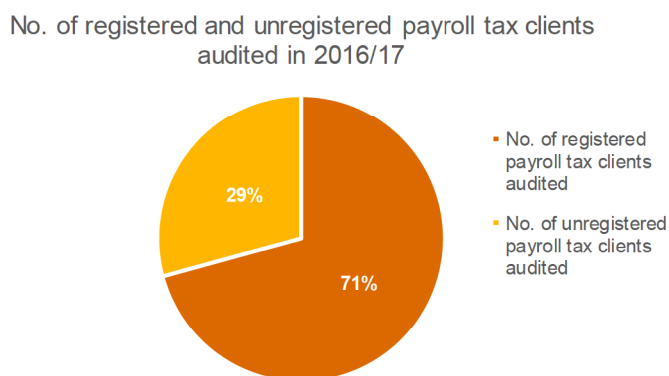


Source: James (2012)

In terms of the current approach applied by Revenue NSW, possible non-compliant businesses are identified through data-matching with different sources such as the State Insurance Regulatory Authority (SIRA), the Australian Taxation Office (ATO) and payroll data from other jurisdictions' revenue offices. Revenue NSW then sends a *Notice of Investigation* informing identified businesses of an audit commencement.

In 2016/17, there were 7,957 audits undertaken, out of which almost a third were with unregistered clients (as shown in Figure 3). Of the unregistered clients that were audited, 97 per cent were found to be liable for payroll tax.

Figure 3: Payroll tax clients audited in 2016/17



Source: PwC analysis of Revenue NSW data

In contrast to the 2,326 unregistered businesses that were audited in 2016/17, Revenue NSW sent letters to approximately 350 businesses that were identified to be nearing the payroll tax threshold (ie. unregistered businesses with a payroll of over \$650,000). These 350 letters aimed to inform businesses that they were approaching the threshold and may need to register for payroll tax. The letters recommended businesses to 'continue to monitor wage levels' as well as informed them of the Revenue NSW website and contact details for customer account advisers.

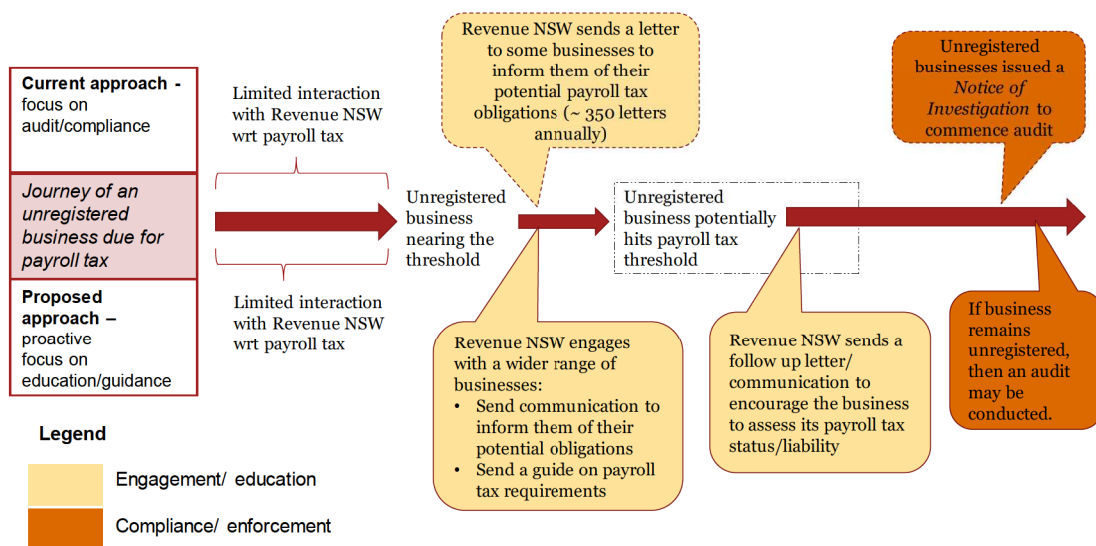
There is a considerable difference in the number of unregistered businesses contacted directly from an education and information-provision perspective (350) versus the number of unregistered businesses that were contacted for audit (2,326).

That almost all the unregistered clients that were audited (97 per cent) were found liable for payroll tax suggests that Revenue NSW’s existing data-matching system effectively identifies unregistered businesses liable for payroll tax. Therefore, there is an opportunity for Revenue NSW to use these systems to engage with a larger number of businesses to provide them with education and guidance in the first instance, potentially avoiding the need to conduct a subsequent audit. Furthermore, data provided by Revenue NSW shows that, on average, the number of years of payroll tax liability assessed for these unregistered businesses was 1.7 years. This highlights an opportunity for Revenue NSW to more proactively engage with unregistered and new businesses earlier in order to achieve increased compliance rates.

It is recommended that Revenue NSW shifts its client engagement model to provide targeted information and guidance to a significantly increased number of unregistered businesses, utilising its existing data analytics capability. This proactive engagement would likely reduce the need for Revenue NSW to send a subsequent *Notice of Investigation* letter as the identified businesses would be more likely to take steps to register for payroll tax, where applicable. If a business continues to be unregistered following the proactive engagement by Revenue NSW, then an audit may be conducted.

This would represent a significant shift in Revenue NSW’s regulatory model from a focus on compliance and enforcement (i.e. audit processes) to an increased focus on education and engagement (i.e. guidance material and more proactive engagement with businesses). The current and proposed approaches are illustrated in Figure 4.

Figure 4: Interactions between Revenue NSW and an unregistered business that becomes liable for payroll tax



Information provided by Revenue NSW indicates there are currently around 190 full-time equivalent (FTE) resources undertaking payroll tax assessments, audits and calls. In comparison, there are significantly fewer resources allocated to education and training. We understand there are four FTE dedicated to education and training activities, as well as some compliance team resources that, at times, undertake sector-specific education based on identified industry needs.

This proposed shift in Revenue NSW’s focus from compliance/enforcement activities to education/engagement activities aligns with the ‘compliance model’ pyramid in Figure 2. The ‘compliance model’ pyramid aligns with the concept of responsive regulation that is based on taxpayers’ motivation. That is, the tax authorities’ actions should be responsive to the taxpayers’ willingness to comply. In addition, insights from behavioural economics could be used to further improve the engagement and communications used by Revenue NSW to encourage higher rates of voluntary compliance by its clients. An example is highlighted below.

Using behavioural economics to encourage compliance

Behavioural economics draws on research from many disciplines to help organisations to design targeted, cost-effective interventions that nudge people towards better decisions and behaviour.

The principles of behavioural economics can be used to understand how people are likely to react to different messages and incentives and therefore develop more effective communication for various types of debt collection. These principles can result in implementing small changes to how choices and information is presented to have a substantial impact on how people respond. These improvements can thus result in better outcomes for both government and clients at little to no significant cost.

Behavioural economics has been used in several contexts to encourage compliance. An example is for Louisville, Kentucky where a randomized controlled trial was conducted to address the issue of unpaid parking tickets.⁴

- **Why?** In the last half of 2015, Louisville had over \$1.1 million in parking fees and fines that went unpaid. Drivers would be charged a late fee and their debt would end up in the hands of a third party collection agency.
- **What was done?** Recipients in the treatment group of the trial received an additional letter designed by the Behavioural Insights Team. These letters included the following based on behavioural economics:
 - The specific consequence of not adhering to the deadline.
 - Including a social norm that provided the recipient of the letter with a statistic on how long it took the majority of drivers to pay their parking fine.
 - An action-oriented picture that made it clear what the recipient of the letter was being asked to do.
- **What was the result?** The new letters increased payments by 10.5 percentage points, from a base rate of 8.1 per cent – after controlling for the parking fine amount and vehicle state of registration. The new letters also more than doubled incoming revenue in the study sample, with each letter generating \$4.53 net revenue on average after accounting for the cost of printing and postage.

Feedback from Revenue NSW notes that the Customer Insights team within the agency has been working on the *Notice of Investigation* letter to improve it to enable better outcomes.

Revenue NSW's current and planned improvements for better education and guidance

Revenue NSW recognises there are opportunities to improve customer experience and provide greater education and guidance. In line with this, work is currently being undertaken by Revenue NSW to provide more guidance for taxpayers, including for example:

- In late 2017, Revenue NSW launched a decision tree on its website called Payroll Tax Assist. The decision tree asks a series of simple questions, and by answering yes or no, taxpayers are able to understand how the various wage components are treated for payroll tax.
- Revenue NSW has been working on an initiative implemented from July 2018 that involves two emails being sent to all newly registered customers to coincide with the spike of new registrations that takes place at that time of the year. The first email welcomes the new registrants and provides information on the resources available to them as well as

⁴ Behavioural Insights Team website accessed at <<https://www.behaviouralinsights.co.uk/north-america/how-can-a-letter-encourage-us-to-pay-our-parking-fines/>>

information on the Jobs Action Plan. The second email provides details of common errors that new businesses typically make.

Stakeholder input around education and guidance

Discussions with stakeholders highlighted the perception that Revenue NSW's efforts focus primarily on compliance and enforcement activities (i.e. audits to drive compliance), rather than focusing on education and guidance. As such there is a perceived greater focus on those businesses that may be non-compliant (potentially due to not being aware of their obligations), compared with providing better guidance upfront to reduce the instances of non-compliance.

Some stakeholders considered Revenue NSW to be one of the more active state tax administrators with regard to employer education (e.g. free online webinars), however, there is scope to find more ways to provide employers with up to date details on Revenue NSW's interpretation of certain payroll tax provisions as well as audit focus areas.

The ATO's release of publicly available Tax Determinations, Interpretive Decisions, Private Rulings and Decision Impact Statements were identified as examples where more real-time information could be made available by Revenue NSW to employers to assist them in complying with their payroll tax obligations.

During the consultations, stakeholders noted difficulties faced by taxpayers in finding the right information in an easy, accessible way. The NSW Business Chamber noted in its submission to the review that,

'Seminar notes provide the most comprehensive overview for employers, though they are hard to find on Revenue NSW's website. Information on the Revenue NSW website is a collection of pages spanning different topics, to varying degrees of detail, without a clear structure for the reader to follow'.

BDO noted that 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.

Additional stakeholder suggestions for proactive engagement by Revenue NSW include:

- 'Have a video showing the annual lodgement process that is easily available on the website, so that businesses do not have to wait until there is a live webinar available' – ITeam Consulting
- 'All new payroll tax registrants should have a training officer (rather than an auditor) visit them in the first three to six months of registration to talk through the areas where most errors arise' – From Indirect Tax Consulting Group.

Providing greater emphasis on early engagement, education and support

Early engagement, education and support should be provided particularly for:

- newly established/small businesses who are under the threshold and unregistered
- unregistered businesses who may be hovering around the threshold or have a payroll tax liability
- registered businesses whose needs may change over time due to changes in their employment structure
- existing businesses from certain industries that face additional complexities associated with payroll tax.

In particular, consideration should be given to:

- Moving away from liability-focused letters to a comprehensive education and training package with information covering:

- NSW payroll tax obligations when operating a business in NSW and information about how payroll tax works in NSW (grouping provisions, thresholds, payment and calculation requirements)
- support contact numbers and links for businesses to contact Revenue NSW for further explanation and understanding
- workshops or online seminars
- helpful and clear steps on what best practice compliance looks like to reduce the likelihood of an audit.
- Utilising and expanding Revenue NSW’s existing data analytics capability to identify a broader range of unregistered businesses to be targeted for upfront engagement activities.
 - For a new payroll tax client, the first interaction with Revenue NSW should be one involving education and guidance instead of audit.
 - Once registered, especially for businesses operating in specific industries that face particular complexities associated with payroll tax, Revenue NSW should continue to provide support in the initial period that the business becomes liable.
- Sending the new package to all currently identified unregistered businesses, whether they have a liability or not, including instructions on how to get in contact with Revenue NSW
- Building the package into the Easy to do Business information package available through Service NSW and into the Office of Small Business Commissioner/Department of Industry websites
- Developing (in consultation with other tax collection branches) a ‘tax trainer’ team who proactively engage and visit businesses to talk through all employer related taxes in NSW (payroll, insurance levies, etc).

Recommendation 1:



Shift Revenue NSW’s regulatory model and effort toward a greater emphasis on early engagement, education and support throughout a business’ interaction with Revenue NSW (i.e. on an ongoing annual or bi-annual basis and throughout a business’ journey through the payroll cycle).
(For NSW only)

3.1.2 Leveraging third party payroll and tax software providers

The NSW Government, in consultation with other jurisdictions, should also explore the potential to engage with payroll and tax software providers (e.g. MYOB, Xero, Quicken, etc) to encourage them to install ‘flags’ or other similar notifications into their systems that could notify businesses that they may need to separately consider their payroll tax obligations, if relevant. We understand that the current systems used by businesses do not include automated modules for payroll tax, potentially due to its complexity and the different arrangements that apply in each jurisdiction. Other difficulties with building in a module for payroll tax within a software program include:

- ensuring compliance with the differences across jurisdictions, including keeping up with changes to rates and thresholds
- liability issues with incorrect calculation of payroll tax amount and associated penalty payments incurred if a business is audited.

However, a flag or a notification could be potentially built into the software from an education perspective to increase awareness of payroll tax for businesses approaching the threshold or just crossing it. This type of notification could help to bring payroll tax more to the ‘front of mind’ of business owners and could potentially lower the number of businesses that may otherwise unknowingly be non-compliant.

Revenue NSW advised that software businesses had been approached in the past, particularly with the rollout of Standard Business Reporting. An impediment to progressing this matter is that there are a number of providers and Payroll Tax is considered to be a relatively small business market compared with the large number of businesses that need to comply with Commonwealth taxes, such as the Goods and Services Tax or Pay as You Go.

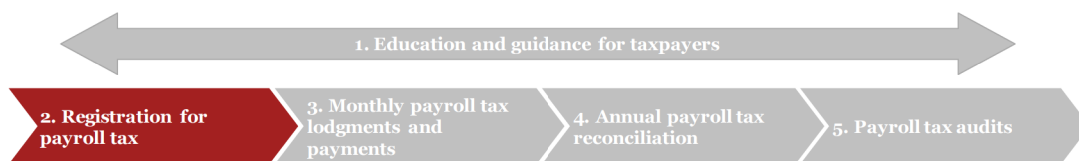
Specifically, there are approximately 120,000 clients nationally for payroll tax. Revenue NSW notes that NSW, as the biggest state, receives on average 5,000 new registrations a year and given the new thresholds for 2021-22, this figure may decrease in the future. This lack of significant scale may be a barrier to gaining interest from business software providers.

Recommendation 2:

NSW Government, in consultation with other jurisdictions, to engage with software providers to explore whether warning flags/notifications could be embedded in their business software packages to advise businesses of potential payroll tax requirements.

(With other jurisdictions)

3.2 Registration for payroll tax



3.2.1 Revenue NSW’s current processes and activities under registration for payroll tax

Currently, a business registers for payroll tax if its total wage bill exceeds the threshold or if it is a member of a group with a nominated group single lodger or a designated group employer.

For a smaller business that is not a member of a group, it may be unaware of its payroll tax liabilities and may remain unregistered until after it has been audited by Revenue NSW. Discussions with Revenue NSW revealed that, on average, when an unregistered business was audited it was found to have approximately 1.7 years of payroll tax liability. When an unregistered business fails an audit, it is liable for the outstanding payroll tax amount plus interest payments and a penalty for non-compliance. However, it is likely that for many unregistered businesses that fail an audit, the main reason for failing to comply with the payroll tax requirements is a lack of awareness or knowledge of their obligations rather than a deliberate attempt to evade tax.

According to the *Taxation Administration Act 1996 (NSW)*, ‘the Chief Commissioner may, in such circumstances as the Chief Commissioner considers appropriate, remit penalty tax by any amount’.

Additional publicly available guidance provided by Revenue NSW in Revenue Ruling PTA036V2 outlines how the Commissioner’s discretion can be applied in relation to the remission of penalties and interest. According to this, where an employer, whose taxable wages have exceeded the threshold, fails to register within the time permitted and pay the tax

owing, the amount of penalty tax applied will reflect the taxpayer’s culpability. For example, if the employer makes a disclosure after investigation has commenced, the payroll tax penalty rate is 20 per cent and if an assessment is issued after the investigation has been completed then the penalty rate is 25 per cent.

In discussions with Revenue NSW, it was noted that although the Chief Commissioner has the discretion to remit penalty tax by any amount, this is rarely exercised.

Impact of increased proactive engagement with taxpayers and incentives to register earlier

If Recommendation 1 is implemented, the first interaction that an unregistered business would have with Revenue NSW is likely to be some form of communication on the payroll tax requirements and the business’ payroll tax obligations.

To encourage these unregistered business to act early on the communication received from Revenue NSW, it is recommended that a discount on any applicable penalties be applied for those businesses that register for payroll tax (for the first time) and pay any outstanding liability within three months of receiving the communication from Revenue NSW. This aligns with the best-practice compliance model in Figure 2 as Revenue NSW would be making it easier for these businesses to comply. This initiative would be expected to increase the rates of voluntary compliance with payroll tax.

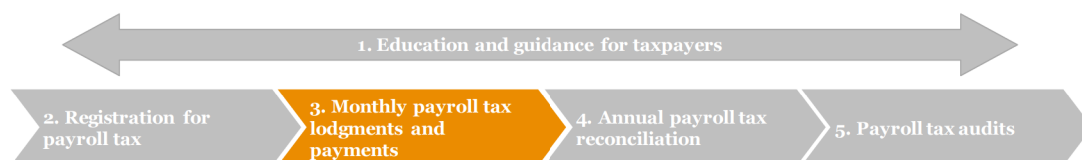
Recommendation 3:



Revenue NSW to consider the feasibility of providing a 50 per cent reduction in any penalties owed, at the Commissioner’s discretion, for those businesses that register for the first time and lodge their payroll tax return within three months of receiving communication from Revenue NSW on their potential obligations.

(For NSW only)

3.3 Monthly payroll tax lodgements and payments



The majority of payroll taxpayers in NSW currently need to make a monthly payroll tax payment, unless they are eligible to make an annual lodgement and payment. Businesses are provided with twelve different payment reference numbers for the year which does not allow for automatic payments to be set up in an easy and efficient way. This impacts on the administrative burden placed on businesses. These issues are discussed further in the sections below.

3.3.1 Revenue NSW’s current processes and activities under monthly lodgements and payments

Businesses are required to calculate their payroll tax liability on a monthly basis to lodge their return, unless their total annual payroll tax liability is \$12,000 (or less) in which case they can lodge an annual return.

Appendix A sets out the detailed processes that a client undergoes when using the monthly calculator provided on Revenue NSW’s website. However, as noted, although Revenue NSW encourages clients to use this online calculator, there is no requirement for clients to use it. If

clients prefer, they are able to send through a payment without using the calculator and this would constitute a monthly lodgement as well as a payment. Payroll taxpayers can pay the monthly tax liability via direct debit, BPAY, electronic fund transfer or by using AusPost.

Based on the legislation (section 87 of *Payroll Tax Act 2007*), every employer who is registered or required to apply for registration as an employer under the Act must:

- a within 7 days after the end of each month except June, lodge with the Chief Commissioner a return relating to that month, and
- b within 21 days after the end of June in each year, lodge with the Chief Commissioner a return relating to that month and to the adjustment of payroll tax paid or payable by the employer during the financial year ending on the close of that month.

Therefore, currently a business would be in breach of the legislation if its monthly payment was based on an estimate rather than actual wages for that month.

Stakeholder feedback around monthly payroll tax lodgements and payments

Depending on the size and structure of the business, the monthly lodgement/payment can be a complex calculation and places a significant administrative burden on businesses. This burden is attributed to the time taken and administrative requirements of the monthly lodgements:

- A stakeholder provided an example where a business needed to lodge 160 separate payroll tax returns every month, across jurisdictions. This equates to more than 20 individual monthly returns in NSW alone, due to the business having multiple entities.
- Another stakeholder reported that the seven day requirement for monthly lodgement and payment is unreasonable and impractical. They suggested that this is due to the large amount of data required to produce an accurate return. This suggests the time-consuming nature of making accurate monthly lodgements can be burdensome and detracts from a focus on core-business activities.

Some stakeholders suggested implementing a tiered approach to the frequency of lodgements, for example:

- The NSW Business Chamber suggested developing an eligibility criteria for employers to access, on an opt-in basis, annual lodgement of payroll tax returns should be extended to employers with a liability of up to \$25,000. Employers with a liability of up to \$50,000 should also have access to such arrangements subject to a monthly remittance to minimise the risk of payment difficulties.
- MLC Insurance said ‘in order to reduce payroll tax administration within our organisation, we would encourage the ability for taxpayers to lodge annual returns across each State and Territory with monthly or quarterly tax instalments (depending on the size of the employer) based on the previous year’s annual payroll tax liability’.

The administrative burden associated with this requirement could be reduced significantly by applying a tiered approach to the frequency of lodgements for payroll tax, depending on the size of a business’ total annual payroll tax liability.

Impact of a tiered model on Revenue NSW and taxpayers

Revenue NSW has advised that implementing a tiered model would require changes to its current systems. It has highlighted the importance of considering how a changed frequency may impact on a customer’s cash flow position and their ability to meet their payroll tax obligations.

Given the recent changes in payroll tax thresholds, Revenue NSW estimates that by 2021-22, there will be 35,350 payroll tax clients (based on 2016/17 customer population and an average 2.1 per cent annual wage increase).

Based on data provided by Revenue NSW on the expected payroll taxpayer population in 2021-22, we tested the number of businesses that would be impacted if the threshold for annual payments was varied as well as a tiered model put in place to allow for monthly payments based on the previous year's payroll tax liability (plus an indexation factor, for example a 3 per cent uplift).⁵

It is recommended that the legislation is amended to enable Revenue NSW to implement a tiered compliance model that provides for less frequent calculation and/or lodgement of payroll tax returns by businesses. That is, businesses with an annual payroll tax liability:

- below a certain level should be able to provide an annual payment, lodgement and reconciliation
- in the mid-tier should be allowed to provide monthly payments based on a fixed estimate, rather than having to calculate a monthly lodgement. The monthly estimate could be based on the business' previous year's payroll tax liability (with a 3 per cent uplift)
- above a certain level (i.e. in the high-tier) would be required to continue with the existing monthly payments that are based on monthly lodgements with annual reconciliation

Table 1 summarises the details of the proposed approach and thresholds.

Table 1: Lodgement, reconciliation and payment frequencies

Payroll tax threshold	Return lodgement frequency	Payment frequency	Payroll tax reconciliation frequency	Voluntary/mandatory	No. of businesses (2021-22 estimates)
Tier 1 PRT ≤ \$20,000	Annual	Annual	Annual	Voluntary	11,470 (32%)
Tier 2 \$20,000 < PRT ≤ \$150,000	Annual	Monthly (based on a fixed estimate)	Annual	Voluntary	16,039 (45%)
Tier 3 PRT > \$150,000	Monthly	Monthly	Annual	Mandatory	7,841 (22%)

Source: PwC analysis based on Revenue NSW data

Under this recommendation, businesses with an annual payroll tax liability of up to \$20,000 could choose to make an annual lodgement and payment. However, Revenue NSW would have the discretion to request a business pay monthly rather than annually if there is evidence of previous compliance issues with payroll tax requirements.

The tiered model would reduce the administrative burden associated with payroll tax for a significant number of businesses. Under the proposed thresholds, only about one-fifth of taxpayers would be required to make monthly payments based on the actual monthly liability.

⁵ A 3 per cent uplift is broadly similar to the Wage Price Index over the past decade, noting that wage growth has been lower in recent years.

Recommendation 4:



Amend legislation to enable Revenue NSW to implement a tiered compliance model that provides for less frequent payment calculation and/or lodgement of payroll tax returns by businesses. A proposed three tiered compliance model is:

- **Businesses with an annual payroll tax liability of up to \$20,000: annual payment, lodgement and reconciliation**
- **Businesses with an annual payroll tax liability above \$20,000 and up to \$150,000: monthly payment of a fixed amount, based on previous year's payroll tax liability (with a 3% uplift); annual reconciliation**
- **Businesses with an annual payroll tax liability above \$150,000: monthly calculation, based on monthly lodgements with annual reconciliation**

This should be implemented from the 2020-21 tax year onwards.

3.3.2 Payment reference numbers for tax payments

In NSW, a separate payment reference number is required each month for each monthly return. However, in several jurisdictions, a single payment reference number is used for every monthly return by an entity (in a financial year). Stakeholders noted that having different reference numbers for each month's lodgement in NSW adds to the administrative costs for businesses. This is particularly the case for those businesses with multiple entities. For instance, a business with five separate entities would have 60 different reference numbers in NSW over a year (i.e. 12 reference numbers per entity).

Specific comments raised in the public submissions process included:

- 'Use a single BPAY reference number for ALL payments for a single entity for a particular year' – ITeam Consulting
- 'Why do monthly payers need a new BPAY number issues each month?' – BMG Accountants

In line with the approach used by other jurisdictions, Revenue NSW should move away from different payment reference numbers for each monthly lodgement to having a single payment reference number.

Revenue NSW has advised that implementing this change would require substantial changes to its current systems. Specifically, it would require a full redevelopment of Revenue NSW's current MARS (tax) system as the system is built upon the notion of a return period – hence the need for a different payment code each month.

Whilst acknowledging the current challenges with a complete overhaul of the current system, there may be opportunities for Revenue NSW to investigate the option of building in a single payment number as a modification to the current system.

Recommendation 5:



Revenue NSW should implement a single payment reference number for all monthly lodgements by an entity.

3.3.3 Issues with grouping provisions and contractor provisions under payroll tax

Stakeholders indicated that the legislation can result in some grey areas for certain groups of taxpayers such as financial advisors, real estate agents and mortgage brokers. These groups face particular issues associated with the contractor and grouping provisions that have substantial evidentiary requirements. As part of its submission to this Review, the Law Society of NSW provided a case study relating to the financial planning industry where the relevant contractor provisions caused concerns due to the regulatory regime within which financial planners operate. The case study is outlined below.

Case study

Financial planners run independent businesses which they operate under a licensing regime imposed by the *Corporations Act 2001* (Cth) (“Corporations Act”). In seeking to apply Division 7 of the Act, the following points are noted:

1 Modernisation of contractor provisions

- To be a relevant contract there must be a payment for services rendered under a contract. However, the way the industry operates particularly now under the Future of Financial Advice (“FOFA”) regime is that planners provide services to their clients (consumers) and it is those clients that make payments to the planners. The licensing regime under which the planners operate requires the licensee to administratively collect the fee from the client and then pass it on to the planner, after the deduction of costs. However, there are no services being provided by the planner to the licensee for which it receives payment. If anything, there are services being provided by the licensee to the planner (e.g. education, para-planning etc). There is therefore arguably no relevant contract that can come within the provisions. However, the nature of the arrangements causes confusion due to the overlay of the Corporations Act obligations and the poor drafting of the definition of a relevant contract which makes it difficult for small businesses, in this case financial planners, to understand how the provisions apply.
- Modern business practice means that the use of external resources in the form of independent contractors is likely to increase as head count and economic issues cause organisations to downsize and seek increasing access to such external resources. The definition of relevant contract therefore requires significant modernisation and clarification to better reflect current business practices as currently it works on a “catch all” and then “exclude by exception” regime.

2 Clarification of exclusions

- There are exclusions for businesses from the relevant contract provisions where there are two or more persons employed in or who provide services for the contractor’s business (the “two or more persons exemption”)⁶. For example, if a sole trader employs another person in his or her business the sole trader should be exempt. In 2005, the Supreme Court of NSW examined a similar provision in the Act in the context of licensed brokers and confirmed not only the application of the two or more persons exclusion but also construed the exemption as having a wide application: *Bridges Financial Services Pty Ltd v Chief Commissioner of State Revenue* [2005] NSWSC 788. However modern business practice and economic conditions mean that small businesses may employ staff part time or on a casual basis or seasonally depending on work load. The exclusion makes little reference to these situations and so again requires modernisation to reflect these scenarios. In addition, in order to prove the exemption, the business must keep extensive records of who was employed, including details of each period of employment, which imposes a huge regulatory burden upon small businesses.

Source: Public submission from the Law Society of New South Wales

As per the Law Society of NSW’s submission,

‘The complexity of the provisions and the burden of proof due to self-assessment means that there is not only uncertainty but also disproportionate costs in trying to comply... The issues faced by the financial planning industry are mirrored across many other industries where regulation has meant particular business practices are used but there is no intention to avoid tax and other business obligations’.

⁶ Section 32(1)(c) of the *Payroll Tax Act 2007*

There is also increased importance of providing greater clarity on the contractor provisions due to the changing nature of employment and the growing use of contractors. The total number of individual Australian Business Number (ABN) holders increased from 1.6 million in 2013 to 2.3 million in 2017, reflecting a growth of 44 per cent. Key industries that saw a significant growth in 2017 (compared to 2013) in the number of individuals obtaining an ABN to work as a sole trader were:⁷

- transport, postal and warehousing: 249 per cent growth
- administrative and support services: 103 per cent growth
- retail trade: 88 per cent growth.

As the number of sole traders increases across different industries, there is a greater need to provide clear guidelines for applying the legislation and clarifying the provisions pertaining to contractors.

Discussions with stakeholders also showed that the associated legislation is open to interpretation and the burden of proof lies with the taxpayer. The administrative burden in these cases arises from the increased efforts in obtaining clarifying information and compiling relevant evidence. This burden could be reduced through better information provision to make it clearer to taxpayers the rationale for decisions about which businesses are grouped and where particular contractors are exempted or included for payroll tax purposes.

Revenue NSW is currently developing a document (Commissioner's Practice Note) that will provide information on specific provisions. The document is designed to clarify information around grouping of taxpayers and various contractor arrangements. It is recommended that the document provide specific case examples for different sectors such as financial advisors, real estate agents, mortgage brokers and the building industry.

As the legislation currently allows for different interpretations across the various jurisdictions, this also gives rise to increased administrative costs for taxpayers operating across multiple jurisdictions. Therefore, taxpayers would benefit if the legislation was amended to provide greater clarity. This would need to be progressed in consultation with other jurisdictions to ensure consistency and cooperation. The legislation should be amended to remove ambiguity and improve clarity. For instance, in the Act:

- section 71(3) (groups arising from the use of common employees) – this section is sufficiently broad to capture and group most businesses; then requiring the businesses to de-group.
- section 72(6) (groups of commonly controlled businesses – discretionary trusts) – this section works to treat individuals who may benefit from a discretionary trust as having a controlling interest in any business that the trust controls. This definition is too broad as many discretionary trust deeds include a class of people who may benefit (e.g. family members of the test individual). This can mean that individuals with no visibility over each other's business may be grouped because they are potential beneficiaries of a trust.

With clarifications on arrangements and practical examples easily available, taxpayers would benefit from lower search costs. The benefits for Revenue NSW include improved compliance rates and possibly a reduction in disputes and any associated litigation costs relating to grouping and contractor issues.

⁷ Labour force statistics as provided by Revenue NSW based on ATO data

Recommendation 6:

Revenue NSW should provide clarification on which grouping arrangements are captured under the grouping provisions and which contractor arrangements are captured under payroll tax definitions:

6a) In the short term, Revenue NSW should develop concise documents to provide practical case examples on which grouping and contractor arrangements are captured under payroll tax requirements and which arrangements are excluded, including providing case examples by sector.

(For NSW only)

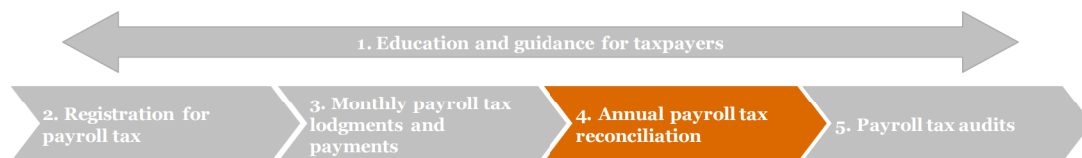


6b) In the longer term, Revenue NSW should work with other jurisdictions to amend the legislation to provide improved clarity and consistency.

(With other jurisdictions)



3.4 Annual payroll tax reconciliation



3.4.1 Revenue NSW's current processes for annual payroll tax reconciliation

At present, as per the legislation, businesses are required to lodge an annual reconciliation 21 days after the end of the financial year. Section 87 of the *Payroll Tax Act 2007* states the following,

‘Every employer who is registered or required to apply for registration as an employer under this Act must:

- a within 7 days after the end of each month except June, lodge with the Chief Commissioner a return relating to that month, and
- b within 21 days after the end of June in each year, lodge with the Chief Commissioner a return relating to that month and to the adjustment of payroll tax paid or payable by the employer during the financial year on the close of that month’.

Consultation with Revenue NSW indicated that most businesses complete their annual reconciliation for payroll tax ahead of the deadline, with a small ‘peak’ between 7 and 10 July. For 2018, there were 13,000 lodgments submitted by 10 July, representing approximately 30 per cent of total lodgments.

Stakeholder feedback on annual payroll tax reconciliation

Discussions with stakeholders on the time period for annual payroll tax reconciliations yielded mixed responses. While some taxpayers thought the current deadline (where businesses are required to lodge an annual reconciliation by 21 July each year) provided sufficient time, there were other taxpayers who suggested that an extended time period would be beneficial.

In particular, tax agents that are responsible for a number of different lodgements across various clients are likely to view the 21 days allowance as challenging, and would benefit from an additional week or so to make the lodgement. This was also echoed in the submission from BDO where they noted that ‘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 focussed on the year end compliance matters (including finalisation of payment summaries etc)’. To accommodate for this, BDO suggested providing an extension for advisors – an advisor lodgement program could be implemented whereby employers that lodge with the assistance of an advisor become eligible for an extension.

Extending the timeframe for tax agents in particular would be consistent with the approach used by the ATO for income tax, where registered tax agents have a longer time frame to make lodgements on behalf of their clients.

Impact of a longer timeframe on Revenue NSW

The current systems that Revenue NSW uses do not distinguish between businesses that use tax agents and businesses that do not. Therefore, any introduction of a longer timeframe for the annual reconciliation would need to be extended to all taxpayers (regardless of whether they use tax agents).

In the longer term, Revenue NSW should engage with other jurisdictions with the aim to harmonise the extended deadline. This would be particularly beneficial to those businesses that operate across multiple jurisdictions.

An adverse impact of the proposed change is that it would delay the amount of adjustment revenue collected by Revenue NSW by a week (for those businesses that delay their lodgement due to the extended deadline).

Recommendation 7:

7a) Amend the legislation to enable Revenue NSW to extend the deadline for annual reconciliation from 21 days to 28 days after the end of June.

(For NSW only)

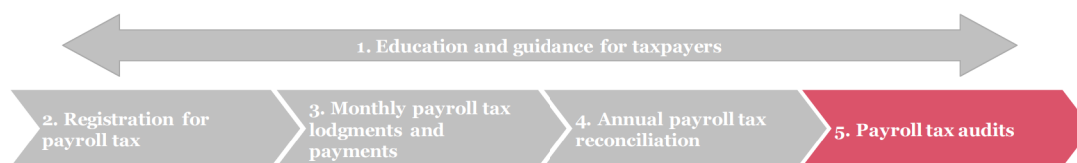


7b) In the longer term, Revenue NSW should engage with other jurisdictions to implement the extended deadline across all jurisdictions.

(With other jurisdictions)



3.5 Payroll tax audits



3.5.1 Revenue NSW's current processes for payroll tax audits

Revenue NSW carries out two main types of audits – full audits and light touch audits. The light touch audits aim to reduce the compliance costs associated with audits. Table 2 shows the number of each type of audit conducted in the last three financial year and the overall average case duration.

Table 2: Full audits and light touch audits by Revenue NSW

Financial year	No. of full audits	No. of light touch audits	Duration (days)
2015-16	3071	20	19
2016-17	2694	90	35
2017-18	2825	259	46

The figures in Table 2 represent those clients that were not escalated from a light touch audit to a full audit.⁸ As per Revenue NSW, the increasing time frames for completion of audits is attributed to the trialling of an audit strategy across customers with increasing risk ratings to identify the suitability of the approach to different risk categories.

Revenue NSW has obtained relatively high scores in customer satisfaction. In 2015-16 and 2016-17, Revenue NSW achieved an audit survey customer rating of 87 per cent. In the April 2018 Customer Satisfaction and Effort Survey for Business Taxes, Revenue NSW obtained the following results:

- Knowledgeable – 93 per cent
- Fair – 92 per cent
- Accountable – 89 per cent
- Easy to deal with – 94 per cent.

Stakeholder feedback on payroll tax audits

Some stakeholders have indicated that the payroll tax audit processes of Revenue NSW are more comprehensive and time consuming and take longer to finalise than other jurisdictions, which increases the administrative burden on employers in responding to audit information requests. This anecdotal evidence, however, does not take into account any differences between jurisdictions in the effectiveness of the audit process in identifying errors made by employers in their payroll tax returns.

Stakeholders advised there is some inconsistency across the payroll tax audit experiences of businesses. It was suggested that the experience depended on the particular auditor that conducted the audit. Variable audit experiences can create uncertainty around audit

⁸ A light touch audit may be escalated to a full audit if the audit process indicates there may be additional risks associated with the client.

requirements and the conduct of the audit, which can be difficult particularly for smaller businesses with fewer resources available to divert to the audit process.

Stakeholders also highlighted the time-consuming nature of some audits by Revenue NSW, exacerbated by the onerous evidentiary requirements placed on the taxpayer. There was a general view that Revenue NSW tended to ask for a wide variety of data in a particular format which required the business to spend significant time and effort to compile the requested information, regardless of its relevance. According to BDO:

‘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.’

Similarly, the NSW Law Society in its submission stated that:

‘Depending on the audit team, the prevailing sentiment amongst our members is that Revenue NSW adopts a fairly bureaucratic approach to both undertaking their audits and imposing penalties. The feedback from taxpayers is that payroll tax audits will generally result in high compliance costs to the business and will cause displacement of day-to-day operations’.

The NSW Business Chamber’s submission also raised concerns relating to payroll tax audits:

- ‘The comprehensiveness of information required to be provided to audit officers such that it appears to be a fishing exercise.’
- ‘A lack of proportionality between the extent of an audit and the payroll tax liability of a business (for example where a business incurs significant costs associated with an audit yet their actual payroll tax liability is low).’
- ‘A lack of transparency and clarity around the purpose of an audit and what triggers (if any) have given rise to the audit.’
- ‘A strong perception that businesses applying for the Jobs Action Plan rebate have been audited based on information provided when applying for the rebate.’
- ‘An adversarial approach to audits to a more cooperative and outcomes-based approach utilised by the ATO.’

Some of the stakeholder suggestions to improve payroll tax audits include ensuring:

- that auditors have a greater knowledge about the industry that they are auditing, as well as allowing more face to face contact during the process so that auditors are able to better understand how the business operates (from confidential submission)
- early engagement to provide efficiencies by having the same team throughout that is familiar with the payroll tax group from the audit process. This same team can assess the information gathered on audit and request any further information needed to exercise the discretion to exclude the relevant member from the group.

Some stakeholders also noted that there has been a considerable improvement over time in their audit experiences. This positive customer experience is consistent with the high satisfaction scores obtained in the Revenue NSW surveys.

Overall, these issues suggest that there may be an opportunity for a cultural shift in how Revenue NSW’s audit team operates that could deliver a further improved customer experience, with greater consistency and transparency. This would also take into account the feedback received from the Indirect Tax Consulting Group from its public submission which stated:

‘There has definitely been a more aggressive position taken by RNSW to the administration of payroll tax in the last five years. Good for the Government in that it has brought additional revenue, but at the cost of totally and permanently damaging

relationships between many taxpayers and RNSW and in my cases significantly damaged or even destroyed businesses, apart from creating huge stress for business owners’.

Some stakeholders also raised concerns with the current approach to payment plans which apply to those businesses with outstanding payroll tax liabilities and penalties. Where a business fails an audit, it generally has up to 12 months to pay its payroll tax liability plus any penalties and interest. However, in certain cases, and especially for smaller businesses with relatively large obligations, this time limit can be a significant burden, particularly when the penalty stems from not fully understanding its payroll tax requirements (rather than a deliberate attempt at tax evasion). An example was provided of a taxpayer that had a payroll tax liability (stemming from a grouping issue), which was multiples of its annual profit. Therefore, paying the outstanding amount over a 12 month period could be financially crippling.

Currently, taxpayers can apply to the Taxation Hardship Review Board if they are unable to pay the tax due or are unhappy with the instalment arrangement offered by Revenue NSW. The Taxation Hardship Review Board is an independent statutory board responsible for determining whether a taxpayer has the financial ability to meet its tax obligations.

Then, on a case-by-case basis, the option of a longer payment plan is offered to businesses to assist in paying their debts. However, it is unclear how it is decided which businesses are offered an extended payment plan. It would be beneficial to develop and publish clear criteria on how payment plan options and the length of the plan are determined.

Impact of making the audit process easier for clients

Revenue NSW should ensure that there is greater transparency and clarity around audit processes to make it easier for clients being audited. Going through the audit process can be especially burdensome if clients are not clear on reasons why they are being audited or how they can prepare for the audits. Revenue NSW can alleviate any concerns or fears that businesses may have by providing a clear map of the audit process to help them understand the various steps involved. To assist clients in better preparing for the audits as well as to ensure an efficient audit process, Revenue NSW can be more transparent in the evidentiary requirements including requesting targeted evidence based on the rationale of the audits. In alignment with Recommendation 1, Revenue NSW can help clients to be more compliant through better education and guidance as well as help clients prepare by setting expectations around the audit process.

Recommendation 8:



Revenue NSW should focus audit processes equally on making the experience easy for the client and balancing evidentiary requirements, via

- **providing clarity and rationale for the audit and linking the rationale to the particular part of the legislation that has triggered the audit**
- **requesting evidence based on the rationale provided and explaining how the evidence the business supplies will support its case**
- **include advice in the education and training packages (as in Recommendation 1) on how to avoid an audit (i.e. how to ensure your business is operating as a best practice compliant business) as well as what to expect when undergoing an audit.**

(For NSW only)

3.6 Other opportunities

In our stakeholder discussions, there were a number of other opportunities identified that, although related to payroll tax administration, did not align with any particular phase discussed in the earlier sections.

3.6.1 Simplifying the information requirements for de-grouping applications

The current application form for exclusion from grouping requires businesses to address 50 questions, with a number of them requiring further substantiation through evidence. Although not all 50 questions may be relevant to all businesses, the form itself and the associated processes can seem daunting. Complexity also increases when there are multiple entities involved and evidence is required for individual entities.

The contents of the form are similar across the different jurisdictions. However, Victoria has replaced its paper-based payroll tax forms with online SmartForms to save time.⁹ The SmartForm allows respondents to save draft versions as they go along (for up to 30 days), upload documents where needed and see the questions ahead of time to understand what is needed. Revenue NSW has provided feedback that the provision of a Smart Form or online application forms part of the current Payroll Tax Product Strategy.

Stakeholder discussions revealed that some business owners found the process of undergoing de-grouping so onerous that they chose to continue paying payroll tax despite considering they had sufficient grounds to be de-grouped. Furthermore, the complexities around the grouping provisions make it more difficult for businesses. Feedback from the public submissions noted:

- ‘Grouping is a subjective argument and totally at the discretion of an OSR officer with limited practical business experience’ – BMG Accountants
- ‘Even RNSW staff have acknowledged that the grouping provisions cast the net so wide that potentially all or most business in NSW/Australia could technically be grouped with each other... De-grouping provision: I would say as a general comment that s 79 sets the bar too high and too many businesses remain grouped notwithstanding that they are by and large completely separate businesses.’ – Indirect Tax Consulting Group

If the information required for de-grouping could be streamlined, businesses would face a reduced administrative burden resulting from less evidentiary requirements for de-grouping. Revenue NSW could also investigate the option of moving towards using a SmartForm similar to that used by Victoria.

By streamlining or allowing for a prioritisation of information requirements, Revenue NSW could reduce the administrative burden on businesses by allowing them to determine, early on, how much evidence needs to be provided with their application. This could be implemented, for example, by developing a decision tree flowchart or a SmartForm that guides the business on the evidence needs relevant to it.

However, from our discussions with Revenue NSW, we note that where a business employs in more than one jurisdiction and requests an exclusion, it is actioned in terms of a harmonised protocol where all affected jurisdictions have to agree with the decision. Any simplification of the information requirements would require jurisdictional support. This could potentially impact on the development of a decision tree or Smart Form.

⁹ State Revenue Office Victoria website, available at < <https://forms.business.gov.au/smartforms/landing.htm?formCode=pta-05>>

Recommendation 9:

9a) Revenue NSW should investigate streamlining the requirements and the potential for a SmartForm for de-grouping applications.

(For NSW only)



9b) In consultation with other jurisdictions, Revenue NSW should investigate simplifying the information requirements for de-grouping applications.

(With other jurisdictions)



3.6.2 Implementing common forms across jurisdictions

Businesses operating across multiple jurisdictions face increased administrative burden when collating information for their monthly and annual lodgements, and transferring the information into various forms across the different jurisdictions. This is especially burdensome when a business has multiple entities, operating across multiple jurisdictions.

A stakeholder with multiple entities noted that a complete harmonisation of forms would make a significant difference to reducing payroll tax-related administrative burden. Currently, it is required to manually draw out information from its systems every month that are relevant to each jurisdiction's unique forms. This manual process was considered to be inefficient and to increase the possibility of errors being made.

The monthly lodgement forms and the annual reconciliation forms could be harmonised across all jurisdictions to reduce the number of manual processes involved. This would reduce the error rates and make the monthly lodgement process more efficient. These forms could be largely standardised, allowing for a separate section at the end to account for any state-specific requirements.

Recommendation 10:

Revenue NSW should work with other jurisdictions to explore opportunities to standardise monthly lodgement forms (or online calculators) and the annual reconciliation forms.

(With other jurisdictions)



3.6.3 Timing of any changes to the payroll tax rate or threshold

As part of initial stakeholder consultations, stakeholders noted the increased administrative burden in certain instances where the payroll tax rate was changed halfway through the financial year. This meant that for a business, it would have a tax liability relating to a separate rate for different parts of the year. This increased the administrative burden, particularly during the annual reconciliation.

For example, in 2009-10, the payroll tax rate was 5.75 per cent at the start of the financial year and was reduced to 5.64 per cent in the second half of the year. This would also have an impact on Revenue NSW as calculations for refunds or liabilities would be more complex when there is a change in rate. To reduce the administrative impact, any change to payroll tax rates or thresholds should be limited to the start of the financial year, unless there is a specific reason why a change is required during a financial year.

Where the NSW Government decides on a change to either the rate of payroll tax or threshold level, this should be applicable from the start of a new financial year (and not put in place during a financial year). This would reduce the associated administrative burden on businesses.

There is support from Revenue NSW to implement a recommendation that restricts any changes to the start of a new financial year. Revenue NSW notes that changes to the payroll tax rate or threshold at any time other than from 1 July add to the compliance burden for the customer. It also impacts on Revenue NSW's administration and system.

Recommendation 11:

The NSW Government should restrict any future changes to payroll tax rates or thresholds to the start of a financial year, unless exceptional circumstances exist.

(For NSW only)



3.6.4 Aligning definitions with State Insurance Regulatory Authority

The various definitions across the different pieces of legislation can increase the administrative burden on businesses. The submission from Robert Norman & Associates highlighted this:

‘The definition of an employee needs urgent revision. Business is confronted with three different definitions of “employee” – one for income tax, one for workers’ compensation and one for payroll tax. This frustrating situation has existed for many years and it is well past the time when the one definition should apply to all three pieces of legislation’.

This was similarly raised by the NSW Business Chamber:

‘While the submission primarily considers the interaction between ATO and payroll tax reporting, the Chamber notes that the definition of wages (for workers compensation record-keeping and reporting purposes) is different. The definition of wages for payroll tax and workers compensation purposes are not aligned mainly due to the fact that they are designed to achieve different public policy outcomes. Considering payroll tax in isolation may limit the potential red tape savings for business and the Chamber encourages a broad approach’.

Therefore, the administrative burden on businesses could be reduced if definitions were more closely aligned.

There have been previous efforts by Revenue NSW to work with other government entities to align definitions. In 2004, a working group was established between NSW WorkCover (now the State Insurance Regulatory Authority), the then Office of State Revenue and NSW Treasury. The working group recommended aligning definitions, following which all components under wages were aligned as were the grouping provisions. However, the key difference that remains relates to contractors due to the conflicting policy objectives.

Following from this, in 2007, minor changes were made to the legislation as part of harmonisation efforts with Victoria. The key change made in this regard was in relation to trusts. The provisions relating to contractors and grouping remained unchanged.

It is recognised that, in order to align definitions, the type of reform would be ambitious and would likely have complex flow-on policy and operational impacts that would need to be worked through carefully.

Recommendation 12:

An appropriate independent body should investigate better aligning the different definitions of employee and contractor with those of other relevant government entities, including:

12a) in the short term, engage with the State Insurance Regulatory Authority to more closely align employee and contractor definitions where applicable

(For NSW only)



12b) in the longer term, work with other jurisdictions to explore opportunities to further align payroll tax definitions across jurisdictions, including employee and contractor definitions.

(With other jurisdictions)



4 Potential opportunities for further investigation

4.1.1 Alignment with Single Touch Payroll

Single Touch Payroll (STP) was introduced by the Australian Taxation Office (ATO) from 1 July 2018 for all business with 20 or more employees. STP aims to reduce red tape for employers of all sizes by requiring the use of approved payroll software or third party payroll vendors to transmit real-time details of certain employee payments to the ATO.

Revenue NSW has indicated that the roll out of the ATO's STP system provides an opportunity for jurisdictions to leverage the investment already made in providing the infrastructure to support collecting information from a customer's ERP system.

Revenue offices across jurisdictions were recently involved in discussions with the ATO in relation to potential opportunities to align with STP. This has largely been driven through forums such as the Australian Tax and Revenue Offices' Compliance Committee and the Commission's Business Practices Committee.

This is likely to be a medium-term goal with potentially five to 10 years before states are able to use STP in a meaningful way for payroll tax.

STP provides a number of potential benefits for payroll tax:

- Use of ATO data already collected through STP may present the opportunity for certain elements of the monthly or annual payroll tax returns to be pre-populated automatically, based on real-time salary and superannuation data that has already been reported to the ATO by employers during each pay run.
- Potential reduction in the need for Revenue NSW to conduct detailed payroll tax audits for employers already registered for payroll tax in NSW in respect of any employee payments reported through STP. This is on the basis that the ATO expects the collection of real-time salary and superannuation data will promote higher accuracy in the reporting of these amounts by employers.

While there are benefits associated with using STP, there are a number of barriers currently that limit its ability to be used for payroll tax purposes in the near term.

- As STP was designed by the ATO to collect employee salary and superannuation data for its own purposes, the STP reporting framework is not currently able to consider the various payroll tax exemptions available to employers as a result of the legislative differences in State and Federal tax regimes (for example, the payroll tax exemption on parental leave payments of up to 14 weeks at full-time pay). In the event that STP data were used to pre-populate monthly or annual payroll tax returns, this would present a potential administrative burden for any employers that need to adjust the STP amounts by any wages that are exempt from payroll tax.
- Additionally, STP is not expected to currently be able to differentiate between wages paid in multiple jurisdictions by an employer. This would reduce the effectiveness of any steps to pre-populate STP data for payroll tax purposes for any employers operating in multiple jurisdictions.
- At present, STP is able to capture salary and superannuation data, which only comprises a subsection of the items that need to be reported for payroll tax purposes. While it may be possible to separately pre-populate other ATO data such as fringe benefit tax return values and Employee Share Scheme reporting values, many employers would still have other non-payroll items (for example, contractor payments and wages paid by overseas entities) that would need to be considered for payroll tax which are not captured currently in the ATO's data.

Given these challenges and the fact that STP is still in the early phases of its implementation by the Australian Government, it is suggested that further consideration be given in 12 to 18 months time to implementing a strategy to adopt STP for payroll tax purposes. In the meantime, existing forums should be used to further explore with other jurisdictions how the barriers identified above could be addressed.

4.1.2 Expanding the remit of the NSW Ombudsman

The Law Society of New South Wales noted in its submission that ‘... internal reviews of decisions often appear revenue focused rather than truly independent.’ While it is outside the scope of this review, the NSW Government could consider investigating whether there are any opportunities to expand the remit of the NSW Ombudsman to handle a broad range of complaints relating to payroll tax administration.

The NSW Ombudsman is an independent organisation established to review matters about the treatment of individuals by NSW government agencies.

According to the website for the NSW Ombudsman:

‘Our complaint handling work is aimed at exposing and eliminating conduct that is illegal, unreasonable, unjust or oppressive, improperly discriminatory, based on improper or irrelevant grounds, based on a mistake of law or fact, or otherwise wrong’.

Although there is not a specific list of payroll tax matters that are considered within the reach of the Ombudsman, it is expected that the Ombudsman’s scope in relation to payroll tax would be limited to:

- procedural issues, such as unfair treatment or conduct by Revenue NSW auditors
- failure of the Commissioner to follow legislative procedures in relation to imposition of penalties or interest
- situations where a taxpayer was unsatisfied with a Revenue NSW response to a complaint that they had raised directly with Revenue NSW.

The NSW Ombudsman’s role would not be expected to extend to technical matters, as taxpayer challenge of Revenue NSW decisions is made through either the objection process (lodged by taxpayers with Revenue NSW) or through Tribunal/Court hearings.

Revenue NSW clearly publicises the option for clients to obtain an external review through the NSW Ombudsman. As part of the potential avenues for providing feedback to Revenue NSW, clients have the following options:

- completing a client feedback form
- email
- going into Revenue NSW offices
- calling any of the enquiry lines.

However, if clients are not satisfied with the solution provided by Revenue NSW, they can request an Alternative Dispute Resolution from the NSW Ombudsman. Clients can take their complaint to the NSW Ombudsman directly, however, Revenue NSW requests that in the first instance clients come to them so that Revenue NSW has an opportunity to resolve the issue. This is in line with NSW Ombudsman’s approach as it refers to itself as the agency of last resort.

As a first step, the NSW Government could explore how many complaints relating to payroll tax are currently handled by the NSW Ombudsman, if any, and how many objections that currently go to the NSW Civil and Administrative Tribunal (NCAT) could be handled instead by the NSW Ombudsman. If there are a substantial number of disputes that could be

Potential opportunities for further investigation

handled by the NSW Ombudsman without having to go to NCAT, businesses would save on the associated administrative costs. Similarly, where there are businesses that do not escalate their complaints to NCAT due to the costs involved, the NSW Ombudsman may be able to provide a cheaper alternative dispute resolution process.

Appendix A Using the online calculator

Revenue NSW provides an online monthly calculator to assist taxpayers in calculating their tax payable each month. There is no requirement for clients to use this online calculator and there is also no requirement for them to submit their payroll tax calculation to Revenue NSW every month. However, if a taxpayer uses the monthly calculator, they are able to view previously saved monthly calculations and modify the most recently saved monthly calculation for each month. All saved monthly calculations can be viewed through the Return History Summary screen of the payroll tax online services.

Figure 5 below shows the form that a Revenue NSW client would have to fill in when using the monthly payment calculator to complete a monthly return.

Figure 5: Revenue NSW online monthly payroll tax calculator

The screenshot shows the 'Payroll tax – monthly payment calculator' interface. On the left is a navigation menu with options like 'Change of details', 'Lodge your annual reconciliation', and 'Calculate a monthly return'. The main form area includes a 'Select return period' dropdown set to 'September 2018'. Below this is the 'Client details' section with fields for Client ID, Client name, and several mandatory questions (marked with an asterisk) about government department status and threshold claiming. The 'Basis for claiming the threshold' section offers radio button options: 'Designated group employer', 'Group single lodger', and 'Not grouped'. The 'NSW wage components' section lists various categories such as 'Salaries and wages', 'Fringe benefits', 'Superannuation contribution', and 'Termination payments', each with an input field and a help icon. An 'Interstate wages' section is also present. At the bottom, there are buttons for 'Print', 'Cancel', 'Calculate and save', and 'Other payment options'.

Source: Revenue NSW website

Once the form is completed, the monthly payment calculator helps to work out the monthly tax payable and provides the date that the payment would need to be lodged by. An example of a saved form with the payroll tax calculations is shown in Figure 6.

Figure 6: Example of a saved monthly payroll tax calculator

NSW Revenue
22 Aug 2018 18:53:05

Payroll tax – monthly payment calculator

Select return period: August 2018

Client details
 Client ID: [Redacted]
 Client name: [Redacted]
 Are you a Government department listed in Column 1, Schedule 3, Public Finance and Audit Act 1983? No
 Are you claiming the threshold? No

NSW wage components

Salaries and wages	77,432.99
Fringe benefits	3,351.06
Superannuation contribution	7,356.14
Termination payments	0.00
Contractor payments	0.00
Allowances	0.00
Bonuses/Commissions	0.00
Directors fees	0.00
Shares and options	0.00
Apprentice and trainee wages	0.00

Interstate wages: 27,353.73

Payroll tax calculations

Total NSW wages	88,141.09
Australian wages	115,494.82
Threshold entitlement	0.00
Taxable NSW wages	88,141.09
NSW apprentice and trainee offset	0.00
Tax payable (@ 5.45%)	4,803.69
Return due date	Fri, 7 Sep 2018

Note: This is only a calculation to assist you to work out your monthly tax payable. This is not an assessment.
 You will need to lodge payment of \$4,803.69 by Friday, 7 September 2018.

Payment options
 You are not currently registered to use the online payment facility.
 Press the **Register for online payment** button to register and pay online using our online payment (direct debit) facility.
 For alternate payment options, select the **Other payment options** button.

Your calculation has been saved.

Print Register for online payment Other payment options Modify calculation Close

Source: Revenue NSW website

A record of the most recently saved calculation can be found in the 'return history summary' section of Revenue NSW's website, along with other previous months (Figure 7).

Figure 7: Example of a return history summary page showing monthly calculations and annual reconciliations

Return history summary

Monthly calculations

This table contains a summary of previously saved calculations for the current financial year. Select the return period to view complete details of the monthly return. If you have multiple payments in a month, all payments will be displayed for that month. If any payment details are incorrect, please contact us.

Return period	Calculation date	Calculation source	Version no.	Tax payable	Payments received	Payment receipt date	Direct debit scheduled payment amount	Direct debit scheduled payment date
Aug 2018	22 Aug 2018	Web Form	1	4,803.69				
Jul 2018	02 Aug 2018	Web Form	3	3,939.69	3,939.69	08 Aug 2018		

Annual reconciliation

This table contains a summary of previously saved 2018 Annual Reconciliations. To view your return/lodgement or to make changes to it, select the most recent 'Lodgement date'.

Return period	Lodgement date	Lodgement source	Version no.	Submitted	Tax payable calculation	Payments received	Direct debit scheduled payment amount	Direct debit scheduled payment date
2017 - 2018	11 Jul 2018	Web Form	1	Yes	23,054.36	13,661.57		

Source: Revenue NSW website

Clients are able to view, print and modify the monthly calculations as shown in Figure 8.

Figure 8: Example of a return history summary page showing all NSW wage components for a July return

Return history summary

Monthly calculation — July 2018

Calculation source: Web Form
 Calculation period: 1 Jul 2018 – 31 Jul 2018
 Lodgement version number: 3
 Lodgement date: 2 Aug 2018
 Return due date: 7 Aug 2018
 Government department?: No
 Claiming threshold?: No

NSW wage components

Salaries and wages	62,963.83
Fringe benefits	3,342.45
Employer superannuation contribution	5,981.57
Termination payments	0.00
Contractor payments	0.00
Allowances	0.00
Bonuses/Commissions	0.00
Directors fees	0.00
Shares and options	0.00
NSW apprentice and trainee wages	0.00
Total NSW wages	72,287.85
Interstate wages	27,363.24
Total Australian wages	99,651.09
Threshold entitlement	0.00
NSW apprentice and trainee offset	0.00
Tax payable	3,939.69

Back Print Modify monthly calculation

Source: Revenue NSW website

Using the online calculator

Revenue NSW does not require clients to use this online monthly calculator and clients are able to submit a payment each month based on their own calculations. However, Revenue NSW encourages clients to use the monthly online calculator as they may find it beneficial for their annual reconciliations when all prior information will be pre-populated from saved monthly returns.

Appendix B List of public submissions received

1. BDO
2. BMG Accountants
3. David Ramsbottom
4. Department of Planning and Environment
5. Direct Selling Australia
6. Harry Lakis, Barrister (Queensland)
7. Indirect Tax Consulting Group
8. ITeam Consulting
9. Johnsons MME
10. Kennedy Luxury Group
11. Law Society of NSW
12. MLC Insurance
13. Narredera Medical Centre (Riverina GP Super Clinic)
14. NSW Business Chamber
15. Primary Communication
16. Restaurant and Catering Australia
17. Robert Norman and Associates
18. Confidential

Appendix C

Recommendations

Review recommendations	
1	Shift Revenue NSW's regulatory model and effort toward a greater emphasis on early engagement, education and support throughout a business' interaction with Revenue NSW (i.e. on an ongoing annual or bi-annual basis and throughout a business' journey through the payroll cycle).
2	NSW Government, in consultation with other jurisdictions, to engage with software providers to explore whether warning flags/notifications could be embedded in their business software packages to advise businesses of potential payroll tax requirements.
3	Revenue NSW to consider the feasibility of providing a 50 per cent reduction in any penalties owed, at the Commissioner's discretion, for those businesses that register for the first time and lodge their payroll tax return within three months of receiving communication from Revenue NSW on their potential obligations.
4	<p>Amend legislation to enable Revenue NSW to implement a tiered compliance model that provides for less frequent payment calculation and/or lodgement of payroll tax returns by businesses. A proposed three tiered compliance model is:</p> <ul style="list-style-type: none"> • Businesses with an annual payroll tax liability of up to \$20,000: annual payment, lodgement and reconciliation • Businesses with an annual payroll tax liability above \$20,000 and up to \$150,000: monthly payment of a fixed amount, based on previous year's payroll tax liability (with a 3% uplift), annual reconciliation • Businesses with an annual payroll tax liability above \$150,000: monthly payment, based on monthly lodgements with annual reconciliation <p>This should be implemented from the 2020-21 tax year onwards.</p>
5	Revenue NSW should implement a single payment reference number for all monthly lodgements by an entity.
6	<p>Revenue NSW should provide clarification on which grouping arrangements are captured under the grouping provisions and which contractor arrangements are captured under payroll tax definitions:</p> <ol style="list-style-type: none"> a) In the short term, Revenue NSW should develop concise documents to provide practical case examples on which grouping and contractor arrangements are captured under payroll tax requirements and which arrangements are excluded, including providing case examples by sector. b) In the longer term, Revenue NSW should work with other jurisdictions to amend the legislation to provide improved clarity and consistency.
7	<ol style="list-style-type: none"> a) Amend the legislation to enable Revenue NSW to extend the deadline for annual reconciliation from 21 days to 28 days after the end of June. b) In the longer term, Revenue NSW should engage with other jurisdictions to implement the extended deadline across all jurisdictions.
8	<p>Revenue NSW should focus audit processes equally on making the experience easy for the client and balancing evidentiary requirements, via</p> <ul style="list-style-type: none"> • providing clarity and rationale for the audit and linking the rationale to the

Review recommendations	
	<p>particular part of the legislation that has triggered the audit</p> <ul style="list-style-type: none"> • requesting evidence based on the rationale provided and explaining how the evidence the business supplies will support its case • include advice in the education and training packages (as in Recommendation 1) on how to avoid an audit (i.e. how to ensure your business is operating as a best practice compliant business) as well as what to expect when undergoing an audit.
9	<ul style="list-style-type: none"> a) Revenue NSW should investigate streamlining the requirements and the potential for a SmartForm for de-grouping applications. b) In consultation with other jurisdictions, Revenue NSW should investigate simplifying the information requirements for de-grouping applications.
10	Revenue NSW should work with other jurisdictions to explore opportunities to standardise the monthly lodgement forms (or online calculators) and the annual reconciliation forms for all clients.
11	The NSW Government should aim to restrict any future changes to payroll tax rates or thresholds to the start of a financial year, unless exceptional circumstances exist.
12	<p>An appropriate independent body should investigate better aligning the different definitions of employee and contractor with those of other relevant government entities, including:</p> <ul style="list-style-type: none"> a) in the short term, engage with the State Insurance Regulatory Authority to more closely align employee and contractor definitions where applicable. b) in the longer term, work with other jurisdictions to explore opportunities to further align payroll tax definitions across jurisdictions, including employee and contractor definitions.

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