

COMMISSIONER'S GUIDELINE

CG-PRT-007:

Expatriate employees

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	22 July 2008	1 July 2008	Current

Purpose

The *Pay-roll Tax Act* (the PRT Act), was amended with effect from 1 July 2008 to harmonise its operation with all other states in eight key areas¹. One of the areas is liability for wages² paid for services performed in another country.

Whether wages of an employer are subject to the payment of payroll tax in the Territory will depend upon where the work is performed by an employee and where the payment is received by an employee.

Employers who have expatriate employees should be aware that wages that include a wide variety of payments made to these employees may be subject to payroll tax where:

- payments are received in the Territory in relation to employees working overseas; or
- payments are received overseas by employees working in the Territory.

The purpose of this guideline is to clarify an employer's liability under the harmonised provisions, the previous provisions, the transitional period and related issues.

Harmonised provisions

Expatriate employees working overseas

Assignment for less than six months

From 1 July 2008, wages received in the Territory by an expatriate employee who is working in another country (or countries) are taxable where the assignment in another country (or countries) is for no more than six continuous months.

¹ Refer to Revenue Circular RC-PRT-001 2008-09 Payroll tax changes for details of these changes. The circular can be accessed on the TRO website www.revenue.nt.gov.au

² The definition of 'wages' includes bonuses, allowances, commissions, superannuation contributions and fringe benefits. Refer to section 4(1) of the PRT Act for precise details.

If only part of the wages earned by an expatriate employee working in another country (or countries) is received in the Territory, then such wages must be declared for payroll tax.

Assignment for greater than six months

Where services are performed by an employee on a continuous assignment in another country (or countries) for greater than six months, any wages received in the Territory are not subject to payroll tax. That is, the exemption from payroll tax on such wages applies for the whole assignment, including the first six months.

The six-month period does not have to be within the one financial year but must be a continuous period. Where an employee, working in another country (or countries), returns to Australia, it will not be considered as a break in continuity where:

- the employee returns for a holiday; or
- the employee returns to perform work exclusively related to the overseas assignment for a period of less than one month,

and in either case, the employee immediately returns to that overseas country to perform further work on the assignment.

Services performed offshore

Any wages that relate to services performed offshore and beyond the limits of any Australian State or Territory, but not in another country, are taxable if they are received in the Territory irrespective of the duration of the assignment. As such, the exemption that applies to wages received in the Territory for work performed in another country is not applicable.

Claiming the exemption

Where it is anticipated that an employee will be on an assignment in another country (or countries) for a continuous period of more than six months ('the qualifying period'), the exemption may be claimed from the commencement of the assignment. However, should the qualifying period not be satisfied (eg. the employee returning permanently to Australia within this period), the employer will be required to make an adjustment to the relevant returns and pay the additional tax payable.

Previous provisions and transitional arrangements

Prior to 1 July 2008, only wages paid in the Territory for services performed after six months continuous service in another country were exempt from payroll tax. That is, wages paid for the first six months were liable to tax.

Under the transitional arrangements, where an employee commences service in another country prior to 1 July 2008 but completes the six-month continuous service after 1 July 2008, wages paid for services on or after 1 July 2008 are exempt from payroll tax.

Related matters

Expatriate employees working within the Territory

It is common practice for overseas parent companies to send employees to work for their Territory subsidiaries or branches on a permanent or temporary basis. Wages paid to such persons in the Territory are subject to payroll tax in the Territory in any calendar month where the employee works wholly or partly in the Territory.

Wages paid in another State or Territory are subject to payroll tax in the Territory in any calendar month where the employee works wholly in the Territory. Wages paid outside Australia are subject to payroll tax in the Territory in any calendar month where the employee works wholly in the Territory.

Where the expatriate employee receives his/her wages in the Territory, but works in two or more States or Territories other than the Territory in a calendar month, such wages are taxable in the Territory.

Wages paid in a foreign currency

The *Taxation Administration Act*³ provides that if an amount involved in the calculation of tax is not in Australian currency, the amount is to be converted to Australian currency at the rate of exchange last reported by the Reserve Bank of Australia before the tax liability arose.

If this creates difficulties, the employer may use, as an alternative, the yearly average rate for the financial year as published by the Australian Taxation Office. The previous year's figure may be applied for the purpose of making monthly returns, provided that the current year's rate is used to make an appropriate adjustment in the Annual Adjustment return.

Coastal waters of the Territory

By application of the *Off-shore Waters (Application of Territory Laws) Act* (NT) and the *Coastal Waters (Northern Territory Powers) Act* (Cth), 'coastal waters of the Territory' means within three nautical miles from the low water mark of the Territory (including the low water mark from islands that form part of the Territory).

Therefore, for the purposes of the PRT Act, any services provided in the coastal waters of the Territory are services provided in the Territory.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from [TRO's website](#).

³ See section 28
CG-PRT-007
Page 3 of 4

Date of effect

This Guideline takes effect from 1 July 2008.



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