

Wages Subject to Payroll Tax

Given that payroll tax is a state (including the Territory and the Australian Capital Territory) tax, it is necessary to consider the respective payroll tax legislation of each state. This is particularly relevant for employers with employees in more than one state, offshore or in another country whether on a temporary or permanent basis.

To determine whether wages paid or payable to an employee are subject to tax in the Territory, two factors need to be considered:

- the place where the services are performed; and
- the place where the wages are paid or payable.

Note: *New nexus rules were announced by state and territory Treasurers on 26 June 2009 for the imposition of payroll tax on wages paid to workers that provide services in more than one state or territory in a month.*

Legislation to effect the change, which is to apply retrospectively from 1 July 2009, has not been made at the time of publication of this Guide. For further details on the announcement including the transitional arrangements, please refer to Revenue Circular [RC-PRT-003: New nexus rules for workers providing services in more than one state or territory](#).

This Guide will be updated when the amending legislation is passed.

As a general rule, if an employee works solely in one state (this generally includes the coastal waters of a state) during a calendar month, the wages paid for that month are taxable in that state irrespective of where the wages are received. This includes where an employer sends an employee on a temporary assignment in another state. For example, John Brown works for Eddie's Electrical Contractors in Victoria. The business wins a contract to provide electrical services in the Territory. John is sent to the Territory for the duration of the project, which took three months to complete commencing 1 January 2009. Wages paid to John for this period are subject to payroll tax in the Territory.

Providing services solely in a particular state does not mean an employee must reside in the state where the services are performed. For example, if an employee resides in Western Australia but is flown by his employer to the workplace in the Territory on a 'two weeks on, one week off' basis and does not provide services in another state, the services are provided solely in the Territory. These are commonly referred to as fly-in, fly-out (FIFO) work arrangements.

However, if in any one month the employee works in more than one state, offshore (i.e. outside of the coastal waters of a state) or in another country, it is necessary to consider both where the work is performed and where the employee receives the wages.

The following table illustrates the scenarios under which wages are taxable in the Territory:

Where wages are received	Where work is performed during a month
1. In the Territory	Wholly or partly in the Territory
2. In the Territory	In two or more states other than the Territory
3. In the Territory	Wholly in another country (or countries) on assignment for less than six continuous months
4. In the Territory	Wholly or partly outside a state but not in another country (i.e. offshore outside of the coastal waters of the state)
5. In the Territory	Partly interstate and partly in another country (or countries)
6. In another State or another country	Wholly in the Territory
7. Outside of Australia	More than 50 percent performed in the Territory

In circumstances other than those shown above, wages are not taxable in the Territory, but may be taxable in another state. Where an employee is working outside any state, but not in another country, the wages are taxable under the PRT Act if they are paid in the Territory. Employees working on an oil rig would not be considered as working in another country unless the oil rig is physically located in another country.

Where Wages are Paid

Wages are deemed to be paid at the place at which the employee, or the employee's agent, receives them. For example, if an electronic deposit is made to a New South Wales (NSW) bank account for employee Jenny Smith, then her wages are deemed to have been paid in NSW.

Wages that are a grant of a share or an option in a company are taken to have been paid in the state where the company is taken under the *Corporations Act 2001* (Cth) to be registered.

Employees Outside Australia

Where services are performed in another country (or countries) by an employee whose wages are paid in the Territory, the following points need to be considered:

- Wages are exempt only if the employee has worked in another country (or countries) for a continuous period of more than six months (i.e. the exemption from payroll tax applies for the whole assignment, including the first six months).

Note: Prior to 1 July 2008, only wages paid after a continuous period of six months of service were exempt from payroll tax.

- The six-month period does not have to be within one financial year but must be a continuous period.
- An employee working in another country will be considered to have worked continuously if the employee returns to Australia under the following circumstances:
 - for a holiday; or
 - to perform work exclusively related to the overseas assignment for a period of less than one month.

In either case, the employee must return immediately to that country to perform further work on the assignment.

Indirect Payments

Where it is anticipated an employee will be on an assignment in another country for a continuous period of more than six months, the exemption may be claimed from the commencement of the assignment. However, if the qualifying period is not met, employers are required to adjust their returns and pay any additional tax payable.

For further information on the liability of wages paid to expatriate employees, refer to [Payroll Tax Ruling PTA002 – Expatriate Employees](#).