

Revenue Ruling

Public Ruling (Ceased 30 June 2009)

Ruling Number	:	PTA002
Title	:	Expatriate Employees
Tax Line	:	Payroll Tax
Legislative Reference	:	<i>Payroll Tax Act 2008</i>
Previous Ruling	:	PUB-PT-2008-3
Date of Ruling	:	1 July 2008 – 30 June 2009
Note	:	Refer to Revenue Ruling PTA039 for a detailed explanation of the operation of the new payroll tax nexus provisions from 1 July 2009
Attachments	:	-

Preamble

The *Payroll Tax Act 2008* (the Act), which commenced on 1 July 2008, rewrites the *Pay-roll Tax Act 1971* and harmonises the payroll tax legislation with Victoria and NSW. One of the areas which has been harmonised is the liability for wages paid for services performed in another country.

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

Employers who have expatriate employees should be aware that wages which include a wide variety of payments made to these employees, may be subject to payroll tax where payments are received in Tasmania in relation to employees working overseas or payments received overseas by employees working in Tasmania.

The purpose of the revenue ruling is to clarify an employer's liability under section 10 of the Act in respect of wages paid to expatriate employees.

Ruling

Expatriate employees working overseas

Assignment for less than six months

Wages received in Tasmania by an expatriate employee who is working in another country, or countries, are taxable where the assignment in another country, or countries, is no more than six continuous months.

If only part of the wages earned by an expatriate employee working in another country or countries are received in Tasmania, 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 Tasmania are not subject to payroll tax (i.e. the exception 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, returns to Australia, it will not be considered to be a break in continuity in the following circumstances:

- 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 Tasmania irrespective of the duration of the assignment. As such the exemption that applies to wages received in Tasmania for work performed in another country is not applicable.

Expatriate employees working within Tasmania or paid in Tasmania

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

Wages paid outside Australia are subject to payroll tax in Tasmania in any calendar month where the employee works mainly in Tasmania.

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

Although the basis for determining whether payments made, or benefits provided, to expatriates are subject to payroll tax is essentially the same as applies to other wage payments, the following clarification is provided.

Wages paid in a foreign currency

When calculating the value of the payment, the State Revenue Office will accept an exchange rate conversion, based upon the Reserve Bank of Australia's daily rate published, for the day of payment. 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.

Bonuses paid overseas to expatriates relating to employer/group performance

Subject to the following paragraph, the value of bonuses paid overseas as a result of an employer's, or employer group's performance, are subject to payroll tax and should be declared in Tasmania to the extent that they relate to a period in which the expatriate worked in Tasmania, regardless of when the bonus is paid

If the bonus is paid for a period in which the expatriate worked wholly in Tasmania, the whole of the bonus paid is subject to payroll tax.

A bonus paid overseas for a financial year in which the expatriate worked at least partly in Tasmania, will be subject to payroll tax in Tasmania only if the expatriate worked in Australia for more than one half of that financial year. The amount of bonus to be declared is to be calculated on a pro rata basis using the number of calendar months in which the expatriate worked mainly in Tasmania.

For example, where an annual bonus of \$12 000 is paid overseas to an expatriate employee who worked in Australia for a total of seven months, of which three months were worked mainly in Tasmania, three-twelfths of \$12 000 (\$3 000) is subject to Tasmanian payroll tax.

The bonus would not be taxable in Tasmania if the expatriate employee worked in Australia for less than six months.

Fringe benefits

Benefits provided to expatriate employees which fall within the provision of the *Fringe Benefits Tax Assessment Act 1986* are subject to payroll tax based on the taxable value of the fringe benefit grossed up using the Type 2 factor only.

Employer contribution to superannuation funds

The definition of wages includes employer contributions to superannuation funds. The superannuation contributions of expatriate employees are taxable if paid or payable for or in relation to a person whose wages, or other remuneration, are subject to payroll tax.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling.

Enquiries about this Revenue Ruling should be directed to the Research, Analysis and Legislative Review Section on telephone (03) 6166 4400 or e-mail at revenuereview@treasury.tas.gov.au Copies of this ruling may be obtained from our website www.sro.tas.gov.au.

All rulings must be read subject to Revenue Ruling PUB-GEN-2008-29, "Explanation and status of Revenue Rulings".



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