

REVENUE CIRCULAR

RC-PRT-004:

PAYROLL TAX NEXUS RULES – NEW ARRANGEMENTS

Purpose

This Circular explains the new nexus rules that apply from 1 July 2009 for the imposition of payroll tax on wages paid to employees that perform services in more than one Australian jurisdiction (jurisdiction) or in one or more jurisdictions and overseas in a month. It also details the nexus rules generally and transitional arrangements.

Introduction

The payroll tax nexus provisions determine in which jurisdiction payroll tax is to be paid.

In June 2009, all jurisdictions agreed to amend the rules in respect of wages paid to employees that perform services in more than one jurisdiction or one or more jurisdiction and overseas in a month. These changes have effect from 1 July 2009. At the date of this Circular, five jurisdictions, namely NT, NSW, Victoria, Tasmania and the ACT have passed legislation to implement the new nexus rules. The remaining jurisdictions are expected to amend their legislation by 30 June 2010.

It is important to note that these changes do not affect the imposition of payroll tax on wages paid to employees that perform services wholly in one jurisdiction in a month as is the case for the majority of employees. In these circumstances, payroll tax will continue to be paid to the jurisdiction where those services are wholly performed.

Terms

For the purpose of this Circular:

- **ABN address** means the registered address for service of notices under the *A New Tax System (Australian Business Number) Act 1999* (Cth).
- **Australian jurisdiction** means a State and Territory of Australia including their territorial waters.
- **Employee** includes other persons to whom taxable wages are paid such as directors and contractors who are deemed to be employees.
- **Month** means a calendar month such as January, February etc.
- **Overseas** means outside of an Australian jurisdiction.
- **Paid** includes payable.
- **TRO** means the Territory Revenue Office.

Nexus provisions

Payroll tax is payable when an employer's total Australian wages exceed the payroll tax-free threshold (deduction amount). Australian wages comprise NT wages and interstate wages. NT wages are the wages subject to payroll tax under the *Payroll Tax Act* (the PRT Act). Interstate wages are those subject to payroll tax under corresponding legislation in other jurisdictions.

To determine whether wages are subject to NT payroll tax, section 11 of the PRT Act requires an employer to determine the place (or places) where an employee has performed services in that month. Where the services are not wholly performed in the NT, the following factors also need to be considered depending on the circumstances:

- where the employee's principal place of residence is located, or
- where the employer's registered ABN address/principal place of business is located, or
- the place where the wages are paid to the employee, or
- the place where the services are mainly performed.

The application of the nexus rules are explained in more detail below. In conjunction with this Circular, the attached flowchart will also assist employers in applying these rules.

It is important to note that the nexus rules must be applied each and every month.

Determining where wages are taxable – section 11

Sections 11, 11A, 11B and 11C of the PRT Act detail the circumstances where wages are liable to payroll tax as follows:

Where Services are performed wholly in one jurisdiction – section 11(1)(a)

If services in a month are performed wholly in one jurisdiction, payroll tax is payable in that jurisdiction.

This looks at the place where services are performed by the employee in the month that the wages are paid even if that place is not where the employee usually performs services.

For example, wages paid to an employee in June 2010 who ordinarily performs services in NSW but in that month performed services wholly in the NT (for example, to complete a temporary project), are taxable in the NT.

Where services are performed in more than one Australian jurisdiction and/or partly overseas – section 11(1)(b)

If services in a month are performed in more than one jurisdiction or in one or more jurisdictions and overseas, the new provisions provide a tiered test for determining the payroll tax liability as follows.

Test 1 – Employee’s principal place of residence – section 11A

Payroll tax is payable in the jurisdiction where the employee’s principal place of residence (PPR) is located in that month. If an employee had more than one PPR in the month (e.g. they have changed address), it is taken to be their PPR on the last day of that month.

In the case of a corporation that is deemed to be an employee under the PRT Act (e.g. a corporation that is deemed to be an employee under the contractor provisions or under the employment agency provisions), the corporation’s PPR is taken to be in the jurisdiction where its ABN address is located or, if it does not have an ABN, in the jurisdiction where its principal place of business (PPB) in Australia is located.

Test 2 – Employer’s ABN address or principal place of business – section 11B

If an employee does not have a PPR in an Australian jurisdiction during the month, payroll tax is payable in the jurisdiction where the employer’s ABN address is located.

If the employer does not have an ABN address, or has two or more ABN addresses in different jurisdictions, payroll tax is payable in the jurisdiction where the employer’s PPB in Australia is located.

If the employer has more than one PPB in a month (e.g. when an employer changes their PPB address part way through a month), the PPB is the address on the last day of that month.

Test 3 – Where wages are paid – section 11(1)(b)(iii) and section 11(C)(5)

If the employee does not have a PPR and the employer does not have an ABN address or a PPB in an Australian jurisdiction, payroll tax is payable in the jurisdiction where the wages are paid.

If wages are paid in a number of jurisdictions, payroll tax is payable in the jurisdiction where the largest proportion of wages is paid.

For example, Molly Smith is employed by ABC Pty Ltd and neither is based in an Australian jurisdiction. During October 2010, Molly performs services in more than one jurisdiction and is remunerated for those services in NSW (\$200), Vic (\$300) and NT (\$1000). Payroll tax on the aggregated wages (\$1500) is payable in the NT as that is where the largest portion of the wages were paid.

Test 4 – Services performed mainly in NT – section 11(1)(b)(iv)

If both the employee and the employer are not based in an Australian jurisdiction and the wages are not paid in Australia, payroll tax is payable in the NT if the employee's services were performed mainly (i.e. more than 50 per cent) in the NT during the month.

For example, an overseas holding company sends its UK employee, Bill Smith, to work on a project in the NT for 16 days of a month. For the remainder of the month Bill works in the UK. Bill stays in a hotel during his time in Australia and his wages continue to be paid into his UK bank account. As Bill's services for the month were mainly performed in the NT, payroll tax for that month is payable in the NT on the total wages paid to Bill in that month.

Overseas employment – section 11(1)(c)

Employees working in another country – assignment for less than six continuous months

Wages paid in the NT to an expatriate employee performing services wholly in another country (or countries) for a period of less than six continuous months are taxable in the NT.

If the wages are paid in more than one Australian jurisdiction during that month, payroll tax is payable on the sum of all wages paid in Australian jurisdictions to the jurisdiction where the largest proportion of wages is paid.

Employees working in another country – assignment more than six continuous months

Wages paid in the NT are exempt from payroll tax if the employee has performed services wholly in another country (or countries) for a continuous period of more than six months. The exemption includes wages paid for the first six months service.

The six month period does not have to be within a financial year but must be a continuous period.

Providing an employee immediately returns to another country to continue the assignment, it will not be regarded as a break in continuity of service if they return to Australia in the following circumstances:

- for a holiday; or
- to perform services exclusively relating to that assignment for a period of less than one month.

If an employee returns to Australia in any other circumstances, the six month continuous service period starts again on the date that they recommence performing services in the other country.

Services performed offshore

Wages paid in the NT for services wholly performed outside any Australian jurisdiction and not in another country (i.e. offshore) are taxable in the NT irrespective of the duration of the assignment. This would typically apply to oil rig workers.

If wages are paid in more than one Australian jurisdiction, payroll tax is payable on the total wages paid in Australia in the jurisdiction where the largest proportion of the wages were paid.

As the services are performed offshore and not in another country, the above exemption for services provided in another country for a continuous period of more than six months does not apply.

Wages paid in a foreign currency

When calculating the value of wages paid in a foreign currency, TRO will accept an exchange rate conversion based upon the Reserve Bank of Australia's daily rate published at the date of payment or the yearly average rate for the financial year, as published by the Australian Taxation Office (ATO).

The previous year's ATO figure may be applied for the purpose of calculating monthly returns provided the current year's rate is used to make an appropriate adjustment in the Annual Adjustment return.

Further deeming provisions under section 11

Section 11 also details a number of other factors that employers may need to take into account in conjunction with the tests outlined above in determining when and where their payroll tax liability arises.

Tax is payable in the month in which wages were paid – section 11(3)

Where wages relate to services performed by an employee over several months (i.e. an annual bonus), the liability for payroll tax is determined by reference to where the employee performed services in the month that those wages were paid.

For example, in June 2010 Joe was paid his usual \$3000 monthly wage and a \$2000 bonus for services performed during the financial year ending June 2010. Even though the bonus relates to services performed for the whole financial year, only the services performed by Joe in June 2010 are relevant for determining the payroll tax liability on the wages paid to Joe in that month.

If Joe performed services wholly in the NT in June 2010, payroll tax is payable in the NT on the \$5000 wages paid to Joe in that month even though the bonus may relate to services provided by Joe in other jurisdictions during the financial year.

Similarly, if Joe provided services in more than one jurisdiction in June 2010 and his PPR for that month was in the NT, payroll tax is payable in the NT.

Wages paid in a different month to when they were payable – section 11(7)

If wages are paid in a different month to the month they are contractually payable, payroll tax is determined by reference to where the employee performed services in the earlier month.

For example, wages are paid to Bill in August 2010 but under his employment contract, they should have been paid in May 2010. In May 2010, Bill performed services wholly in the NT. As May 2010 is the earlier month, payroll tax is payable in the NT even if Bill performed services wholly in NSW in August 2010.

Two or more payments in one month – section 11(2) and section 11(3)

There may be instances where an employee receives two payments of wages from their employer in one month. The payments may relate to services being provided wholly in one jurisdiction or in two or more jurisdictions.

For example, Mrs Smith receives wages of \$1000 on 14 November 2010 for services performed in NSW. She receives another \$2000 on 28 November from the same employer for services performed in the NT. The two amounts are aggregated as they both relate to services performed by Mrs Smith in that month (i.e. in NSW and the NT).

Accordingly, Mrs Smith's wages for November 2010 (\$3000) would relate to services performed in more than one jurisdiction in the month. If Mrs Smith's PPR in November 2010 was in the NT, payroll tax would be payable in the NT on the full amount of the wages paid in November 2010 (\$3000).

Employee does not perform services in the month that wages are paid – section 11(4) and 11(5)

There may be situations where an employee does not perform services in the month that wages are paid.

Where the employee has previously performed services for the employer, the liability for payroll tax for that month is determined by reference to the most recent month that employee performed services for that employer.

For example, Mr Black is paid \$10 000 in December 2010 but he did not perform services for his employer in that month. He last performed services for his employer in October 2010 wholly in the NT. Accordingly, payroll tax is payable on the \$10 000 in December 2010 in the NT.

If Mr Black provided services in more than one jurisdiction in October 2010, payroll tax for that month would be determined by reference to the rules applicable for services performed in more than one jurisdiction (i.e. his PPR, his employer's ABN address or PPB etc).

If the employee has not previously performed services for the employer, the liability for payroll tax is determined by reference to where it can be reasonably expected that services will be performed by the employee.

For example, if Mr Black accepts an offer of employment in August 2010 to commence work in the NT in November 2010 and receives a payment of wages in August 2010, Mr Black would be taken to have performed services in August 2010 in the NT (being the place it can be reasonably expected that services will be performed) and payroll tax on those wages would therefore be payable in the NT.

Shares and options – section 26

The grant of shares and options to employees are wages for payroll tax purposes and the nexus rules in sections 11, 11A, 11B and 11C of the PRT Act apply as detailed above.

For shares and options in a local company, section 26 of the PRT Act deems the NT as the place where such wages are paid. This is only relevant for determining the jurisdiction where payroll tax is payable in the following circumstances:

- the employee performed services in more than one jurisdiction or more than one jurisdiction and overseas in the month the shares or options were granted; and
 - the employee does not have an Australian PPR in that month; and
 - the employer does not have an ABN address or PPB in Australia in that month; or
- the employee performed services wholly outside of all Australian jurisdictions in the month that the shares or options were granted (subject to the exemption for services performed in another country for a continuous period of more than six months as detailed above).

A local company is a company incorporated or taken to be incorporated under the *Corporations Act 2001* that is taken to be registered in NT for that Act, or is a body corporate incorporated under an NT Act.

Transitional arrangements

Under the amending legislation, from the April 2010 return period affected employers are required to include wages in their monthly returns based on the new nexus rules, however it is recognised that some employers may not be able to comply with this requirement due to necessary system changes. In these circumstances, TRO will permit the adjustment to be made in the 2009-10 Annual Adjustment return due by 21 July 2010, without penalty or interest, providing the return is lodged and tax is paid by the due date.

Other publications

TRO is in the process of updating its website and publications to reflect the new nexus rules (including the *Employers' Guide to Payroll Tax in the Northern Territory*) and is working in consultation with other jurisdictions to develop harmonised Payroll Tax Rulings PTA001 *Northern Territory Payroll Tax Liability for Wages Paid by an Employer* and PTA002 *Expatriate Employees*.

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 Circular. All Circulars and Guidelines are available from TRO's website.



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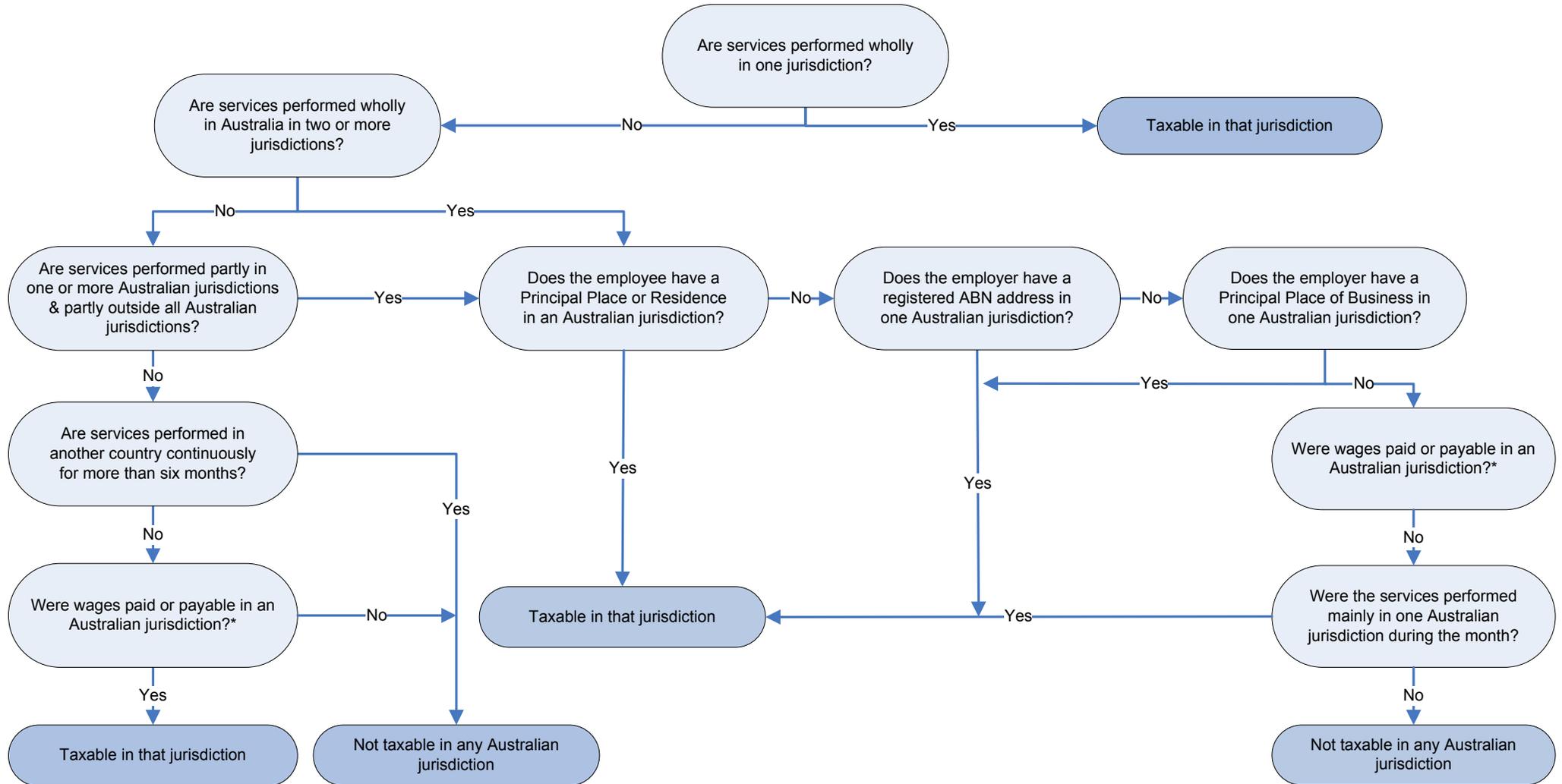
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Establishing Liability for Payroll Tax



* where wages are paid in two or more Australian jurisdictions, payroll tax is payable on the total wages paid in Australia to the jurisdiction where the highest proportion of those wages are paid