COMMISSIONER'S GUIDELINE

CG-PRT-008

Hiring resident employees

Version	Issued	Dates of effect From:	To:
1	1 May 2018	1 May 2018	Current

Purpose

1. This guideline explains how the payroll tax exemption for hiring Northern Territory residents operates and the factors considered by the Territory Revenue Office (TRO) when reviewing claims made by employers.
2. This guideline is published pursuant to Schedule 2, Part 4, Division 4, clause 20G of the *Payroll Tax Act*.
3. This guideline is to be read in conjunction with the following publications:
   i. for an overview of employer's payroll tax obligations and whether you should be registered for payroll tax in the Territory – I-PRT-001: The Employers Guide to Payroll Tax in the NT
   ii. for an explanation as to what is considered a principal place of residence – Commissioner's Guideline CG-HI-005: Principal place of residence.

Payroll tax exemption

4. The exemption was announced as part of Budget 2018-19 to encourage the employment of Territory residents.
5. From 1 May 2018, as an employer, you may be eligible for a payroll tax exemption (the exemption) for up to two years in relation to wages paid to:
   i. a Territory resident who, when hired, increases the total number of Territory residents employed in your business
   ii. an existing employee of your business, who relocates from living interstate or overseas to reside in the Territory as their principal place of residence
   iii. or a Territory resident hired to replace a former employee who resides interstate or overseas.
6. Where you satisfy the eligibility criteria outlined in this guideline, you may be able to claim an exemption from the payroll tax that would otherwise be payable on the taxable wages of that employee.
7. The eligibility criteria for the exemption is explained below.

Key terms

8. **Baseline count**: means the total number of full or part-time employees, including those employed under a relevant contract, that have their principal place of residence in the Territory at 30 April 2018.

Principal Place of Residence: is typically a person's home where they reside on an ongoing or permanent basis as their settled or usual abode.

Occupation that is transient, temporary or of a passing nature, such as accommodation in a workers camp or a hotel, will not be sufficient to establish occupation as a principal place of residence.

For more information, please review Commissioner's Guideline CG-HI-005: Principal place of residence.

Resident employee: is an employee who resides in the Territory as their principal place of residence.

Eligibility

Hiring resident employees

9. In order to be eligible for the exemption, you must either:
   i. increase your total number of resident employees above your baseline count by hiring new resident employees after 30 April 2018
   ii. relocate a non-Territory resident employee, employed by you as at 30 April 2018, to the Territory as their principal place of residence (a relocated employee)
   iii. or replace a former non-Territory resident employee with a resident employee that performs the same role after 30 April 2018 (a replacement employee).
10. Resident employees must be:
    i. full or part-time employees
    ii. or employees working under a relevant contract (see I-PRT-001: The Employers Guide to Payroll Tax in the NT for more information).
11. Resident employees cannot be:
    i. a casual employee
    ii. or a person in an employment agency contract.
12. The exemption is available only in respect of wages paid or payable for a maximum period of two years beginning on the date the resident employee's wages first became eligible for the exemption.

Calculating your baseline count

13. For the purpose of the exemption in clause 9(i) above, you must establish your baseline count of resident employees (see clause 10).
14. The following employees must be excluded from the baseline count as they are not resident employees for the purpose of the exemption:
    i. casual employees
    ii. employees that reside outside of the Territory who are employed by you on a fly-in fly-out basis
    iii. employees employed under an employment agency contract.
15. If you have employees that reside out of the Territory who commute to work in the Territory, these employees are excluded from the baseline count and are not considered resident employees.

Example

At 30 April 2018, TC Mining Pty Ltd has 40 employees. Of these 40 employees, 30 have a principal place of residence in the Territory, while 10 workers reside in South Australia but work in Tennant Creek on a fly-in fly-out basis.

Of those 30 employees based in the Territory, three are hired on a relevant contract, five are casual employees, 10 are part-time employees and the remaining 12 are full time.

TC Mining therefore has a baseline count of 25 resident employees. Workers who reside in South Australia as their principal place of residence or casual employees are not counted as resident employees either for the baseline count or when assessing if your resident employee count has changed.

Increasing your resident employee count

16. You may claim the exemption in relation to taxable wages paid or payable to a resident employee if:
    i. the resident employee was hired on or after 1 May 2018 and before 1 July 2020
    ii. at the time the employee's wages are paid or payable, your total number of resident employees is greater than the baseline count.
17. For the purpose of determining whether your resident employee count has increased, you must disregard any relocated or replacement employees.

Example

Bob's Bricks Pty Ltd has 40 Territory employees at 30 April 2018. Bob's Bricks hires an additional five Territory resident employees at 1 June 2018, bringing total employment to 45 resident employees. Bob's Bricks can claim a payroll tax exemption for the wages of the five additional Territory resident staff hired on 1 June 2018.

18. The exemption is limited to the taxable wages paid to resident employees in excess of your baseline count.
19. This means when the number of resident employees you have above the baseline count decreases, you are no longer eligible to claim or receive an exemption for those employees.
20. Such a decrease may occur when a resident employee:
    i. resigns, retires or otherwise has their employment terminated
    ii. is relocated away from the Territory and their principal place of residence is no longer in the Territory.

Example

Bob's Bricks Pty Ltd has a baseline count of 40 resident employees as at 30 April 2018. Bob's Bricks hires five resident employees on 1 July 2018 for a total of 45 resident employees. Bob's Bricks is able to claim an exemption on the taxable wages paid to the five resident employees who increased the resident employee baseline count. At 1 August 2018, two resident employees resign reducing Bob's Bricks total resident employees to 43.

From 1 August 2018, Bob's Bricks can only claim the exemption for the three additional resident employees' wages.

21. You must be able to identify and substantiate the taxable wages paid or payable to individual resident employee's wages that increase your employment above the baseline count.

22. If the number of your resident employees fall below the baseline count, you will no longer be eligible for the exemption for any of your employees.

Example

At 30 April 2018, Pete's Pies Pty Ltd had a baseline count of 30. On 1 July 2018, Pete's Pies employed six additional resident employees. This increased Pete's Pies resident employee numbers to 36, which is six above the baseline count.

As a result, the exemption can be claimed by Pete's Pies in its monthly returns for wages paid or payable to those six employees for a maximum of up to two years from the date their respective wages were payable.

On 1 January 2019, eight employees ceased employment with Pete's Pies, which reduced its number of resident employees to 28 and below the baseline count of 30.

Pete's Pies is no longer eligible for the exemption for any of its resident employees in its monthly returns.

By March 2019, Pete's Pies has employed two Territory residents in full time roles, increasing the number of resident employees to 30, level with the baseline count. As the number of resident employees is not above the baseline count, no exemption can be claimed.

On 30 September 2019 Pete's Pies employ Hayley, a Territory resident on a permanent, part-time basis. This brings the number of Pete's Pies resident employees to 31, one above the baseline count.

Pete's Pies can claim the exemption on wages paid or payable to Hayley from 30 September 2019.

If your liability commences after 1 May 2018

23. If you are not required to register for payroll tax until after 30 April 2018 but your business operated and paid wages in the Territory at that date, you must nominate a baseline count that reflects the number of resident employees your business had at 30 April 2018.

24. The Commissioner of Territory Revenue must be satisfied that the nominated baseline count accurately reflects the resident employee numbers of your business.

25. If you are a new business commencing or moving into the Territory after 30 April 2018, the Commissioner may vary your baseline count from zero, taking into account the circumstances of your business and level of new employment generated in the Territory.

26. Factors that may be taken into account in determining an appropriate baseline count are the nature of the business, source of its employees and whether it competes with other similar businesses already in the Territory. Further information in relation to the Commissioner's discretion to vary the baseline count is outlined later in this guideline.

Relocated or replacement employees

27. You may claim the exemption in relation to taxable wages paid or payable to a relocated or replacement employee. This exemption is not dependent on the number of employees exceeding the baseline count.

Relocated employees

28. Where you relocate an employee who resides out of the Territory, either interstate or overseas, to the Territory, which becomes their principal place of residence, you may be able to receive an exemption in respect of the employee's taxable wages.

29. Existing employees that may relocate to a principal place of residence in the Territory and include:

    i. fly-in fly-out workers

    ii. drive-in drive-out workers.

30. You must be able to demonstrate that:

    i. at 30 April 2018, the relocated employee was employed by you but not a resident in the Territory

    ii. and on or after 1 May 2018 and before 1 July 2020, the Territory becomes the relocated employee's principal place of residence. That is, they must permanently reside in the Territory.

Example

At 30 April 2018, Territory Legal Pty Ltd employs a fly-in fly-out consultant, Sasha, who lives in Melbourne. On 30 September 2018, Sasha decides to move to the Territory permanently and purchases a home in Darwin as her principal place of residence. Sasha's wages may be eligible for an exemption from the date she moves to Darwin provided her employment terms satisfy the resident employee requirements set out in clauses 10 and 11.

Example

Southern Mining Pty Ltd has five employees who reside in Queensland and have a fly-in fly-out arrangement to work in Southern Mining's office in Alice Springs.

On 1 January 2019, two of these employees, Rose and Joe move to the Territory. Rose moves her family and leases a home in Alice Springs, where she now lives and works full time for Southern Mining. Joe stays in a motel until 1 March 2019 while his family remains in Queensland and works on a full-time basis. On 1 March 2019, Joe moves back to Queensland and continues working for Southern Mining on a fly-in fly-out basis.

Southern Mining can claim the exemption in respect of Rose as she has relocated and now has her principal place of residence in the Territory. The exemption cannot be claimed for Joe as he does not move to the Territory as his principal place of residence and his relocation to the Territory is transient or temporary.

Replaced employees

31. Your business may be able to claim an exemption in respect of replaced non-resident employees where you can demonstrate that:

    i. the non-resident employee was employed by your business at 30 April 2018

    ii. the role previously filled by a non-resident employee is now filled by a resident employee

    iii. and the replacement of the non-resident employee took place within six months of the non-resident ceasing employment with you.

Example

At 30 April 2018, Northern Mining Co. has several fly-in fly-out engineers who live in Sydney but work solely at its Territory mine. On 1 December 2018, one Sydney-based employee, Ollie, retires but rather than hiring another Sydney-based engineer, Northern Mining hires a local engineer, Jesse, from Alice Springs on 1 March 2019 to perform Ollie's role. Jesse's wages may be exempt from payroll tax as she is replacing a non-resident employee.

32. The exemption for wages paid or payable to relocated or replacement employees is not dependent on an employer's baseline count. That is, even if the relocated or replacement employee does not increase the employer's employment above their baseline count, the exemption may still apply.

Example

Northern Mining Co. had 30 resident employees at 30 April 2018 (its baseline count). Two resident employees resign on 1 July 2018, leaving Northern Mining with total resident employment that is less than their baseline count.

If Northern Mining then replaces a Sydney-based fly-in, fly-out employee with an Alice Springs resident, Damien, on 1 March 2019, it can claim an exemption for Damien's wages, even though the resident employee count remains below the baseline count.

However, Damien would not be included when counting Northern Mining's overall resident employment despite residing in Alice Springs.

How to claim the exemption

33. Employers wishing to claim the exemption must use INTRA for lodgement of the monthly and annual returns. INTRA is the Territory's online lodgement facility and will calculate your entitlement to the exemption based on information you submit.

34. For each employee you are claiming the exemption, you must retain:

   i. evidence the person is a resident employee for the return period

   ii. evidence of the employment status and commencement date (for example, whether an employee works full or part time)

   iii. if a relocated employee, evidence of the person's employment as at 30 April 2018 and evidence of when the person became a resident employee

   iv. if a replacement employee, evidence to support:

      a. the non-resident status of the former employee at 30 April 2018

      b. the role performed by the former employee and the date his or her employment ended

      c. the employment status, date of commencement and role performed by the new resident employee.

35. More information on INTRA can be found at https://treasury.nt.gov.au/dtf/revenue/intra.

Discretions

36. In recognition of circumstances where an employer may have a change in business structure or conduct that appears to satisfy the terms of the exemption without having an actual impact on employment of resident employees, the *Payroll Tax Act* provides the Commissioner with the discretion to:

   i. vary or refuse, in whole or in part, a claim for the exemption

   ii. or vary the baseline count for an employer, or allocate baseline counts among employers.

37. In order to exercise this discretion, the Commissioner must be satisfied that circumstances exist where:

   i. despite an appearance of an increase in number of resident employees after 30 April 2018, no substantial change actually occurred

ii. the claim, baseline count or other information the claim is based on does not accurately reflect the employers' situation or employees' circumstances

iii. the claim is not justified by any material benefit to the employment of resident employees

iv. the employer's business structure has changed significantly since 30 April 2018. A significant change could involve a merger, takeover or other form of restructure.

38. Circumstances where it may be appropriate to vary the baseline count include:

i. where employees move between members of a payroll tax group

ii. when a company changes its business operations or structure resulting in a movement of employees, such as a de-merger

iii. where an employer commences operation or takes over a pre-existing business after 30 April 2018

iv. where there is an unexplained or unusual difference between the exemption claimed and new employees hired

v. where a claim for the exemption is not substantiated by records.

39. There are a number of factors the Commissioner may consider when determining whether to exercise this discretion. These include, but are not limited to:

i. the overall impact on a business's employee numbers when resident employees are transferred between entities

Example

Simon's Machinery Pty Ltd and Central Mining Pty Ltd are grouped for the purposes of payroll tax in the Territory. Simon's Machinery, the designated group employer, has a baseline count of 50 and Central Mining has a count of five.

At 30 August 2019, Simon's Machinery has five additional resident employees above the baseline count for which it is receiving the exemption, while Central Mining has three additional resident employees, Charlie, Sasha and Ollie, above the baseline count for which it is receiving the exemption. Central Mining transfers Charlie, Sasha, Ollie and another pre-existing employee, Rosie, to Simon's Machinery and then claims the exemption for the transferred resident employees.

Although the transfer of all four employees may increase Simon Machinery's employment to above its baseline count, the Commissioner may vary the claim for exemption to exclude Rosie as her taxable wages were not receiving an exemption previously and the transfer between group members does not result in an increase in net employment.

Simon's Machinery may continue to receive the exemption in respect of Charlie, Ollie, and Sasha, however the Commissioner would vary the exemption so it only applied for the remainder of the two-year period from the date they were initially employed by Central Mining.

ii. any changes in the structure of a business, including by restructure, such as a takeover or merger

Example

Banjo's Pools Pty Ltd has a baseline count of 50 on 30 April 2018, while Simply Spas Pty Ltd has a baseline count of 30.

Banjo's Pools and Simply Spas merge into a new entity, Waterworld Pty Ltd.

Waterworld acquires all of Banjo's Pools and Simply Spa's resident employees and nominates a baseline count of zero, claiming an exemption in relation to all its wages. It then hires one additional resident employee.

On review, the Commissioner adjusts Waterworld's baseline count to reflect all of the resident employees acquired at merger date, being the combined total of Banjo's Pools and Simply Spa's baseline counts (totalling 80 employees). Waterworld will be able to receive the exemption in respect of the one additional resident employee Waterworld has employed and any subsequent new employees, provided it continues to satisfy the criteria for the exemption.

iii. the period of time an employer applies for an exemption in respect of its eligible resident employees

iv. the number of resident employees receiving the exemption, compared to the business's overall employment numbers

v. the establishment of a new business commencing operation after 30 April 2018

Example

Dale's Donuts Pty Ltd is a new company commencing operations on 1 July 2019. On 2 July 2019, Dale's Donuts acquires an existing business with 35 resident employees and nominates its baseline count as zero.

The Commissioner reviews the documents submitted by Dale's Donuts and is not satisfied there was any material benefit to the employment of resident employees and it would be appropriate to vary the baseline count to include the number of employees already employed in the business at 30 April 2018.

Example

Holly's Hardware Pty Ltd is a known national brand which has announced a new store in the Territory. Holly's Hardware leases premises and employs 50 Territory residents to commence when the business opens on 1 June 2018.

Forty employees are experienced staff sourced from similar businesses in the Territory and 10 were new employees previously unemployed.

As Holly's Hardware did not have any resident employees on 30 April 2018 its baseline count is zero and it seeks confirmation from the Commissioner that the exemption applies on wages paid to all resident employees employed after that date.

Although a welcome addition to the Territory, Holly's Hardware only resulted in the net employment of an additional 10 resident employees and an exemption on its total taxable wages would provide it with an unfair competitive advantage over similar businesses.

The Commissioner may exercise discretion to vary Holly's Hardware's baseline count from zero to 40, being the number of existing resident employees, and allow the exemption in relation to the additional 10 resident employees engaged.

vi. any other matters the Commissioner considers relevant.

Supporting information

40. If you claim the exemption from 1 May 2018 or some later date, you will be required to obtain and keep sufficient records to demonstrate your eligibility for the exemption in respect of your employees' wages.

41. If you are unable to produce appropriate documents to support your claim, an assessment may issue requiring payment of tax on wages previously claimed as exempt.

42. The record keeping requirements at section 79 of the *Taxation Administration Act* apply to these records.

Commissioner's guidelines

43. Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated and is to be read as one with this guideline. All circulars and guidelines are available from the Territory Revenue Office website.

Date of effect

44. This version of the guideline takes effect from 1 May 2018.

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COMMISSIONER OF TERRITORY REVENUE

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