



Office of State Revenue
NSW TREASURY

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Payroll Tax Act 2007

Revenue Ruling No. PTA002

Expatriate employees

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PTA002	12 July 2007	1 July 2007	30 June 2009	See Payroll Tax Nexus Provisions Factsheet

Preamble

The *Payroll Tax Act 2007* (the Act), which commenced on 1 July 2007, rewrites the *Pay-roll Tax Act 1971* and harmonises the payroll tax legislation in Victoria and NSW. One of the areas which has been harmonised is liability for wages paid for services performed in another country.

Whether wages of an employer are subject to the payment of payroll tax in NSW 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 which include a wide variety of payments made to these employees, may be subject to payroll tax where payments are received in NSW in relation to employees working overseas or payments are received overseas by employees working in NSW.

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 NSW 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 (6) continuous months.

If only part of the wages earned by an expatriate employee working in another country or countries are received in NSW, 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 (6) months, any wages received in NSW are not subject to payroll tax (i.e. 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, 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 NSW irrespective of the duration of the assignment. As such the exemption that applies to wages received in NSW for work performed in another country is not applicable.

Expatriate employees working within NSW or paid in NSW

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

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

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

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 Office of State Revenue 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 NSW to the extent that they relate to a period in which the expatriate worked in NSW, regardless of when the bonus is paid. If the bonus is paid for a period in which the expatriate worked wholly in NSW, 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 NSW, will be subject to payroll tax in NSW 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 NSW.

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 NSW, three-twelfths of \$12 000 (\$3 000) is subject to NSW payroll tax.

The bonus would not be taxable in NSW if the expatriate employee worked in Australia for less than six (6) months.

Fringe benefits

Benefits provided to expatriate employees which fall within the provisions 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 Office of State Revenue is made on the merits of each individual case having regard to any relevant ruling.

Tony Newbury

Chief Commissioner of State Revenue

12 July 2007