



Pay-roll Tax

Nexus Provisions

Pay-roll Tax Assessment Act 2002

Effective from 25 June 2010

Background

The *Pay-roll Tax Assessment Amendment Act 2010* amended the *Pay-roll Tax Assessment Act 2002* (“the Act”) with effect from 1 July 2009 to harmonise the nexus provisions of Western Australia’s pay-roll tax legislation with those of other jurisdictions.

These changes only affect wages paid or payable for persons providing their services in more than one jurisdiction in a month, or partly in more than one jurisdiction and partly overseas in a month. Where a worker provides their services wholly in one jurisdiction, as is the case for the majority of workers, pay-roll tax will continue to be paid to the jurisdiction where those services are performed.

This fact sheet explains the new nexus rules and also clarifies the circumstances in which wages must be declared in Western Australia for pay-roll tax purposes, including wages paid for services performed in another country (or other countries).

This fact sheet must be read in conjunction with the attached flowchart which explains how the various scenarios will be treated, and shows the circumstances in which wages are taxable in Western Australia.

For the purpose of this fact sheet, “overseas” means outside all Australian jurisdictions.

NOTE: The liability for Western Australian pay-roll tax must be considered separately for each calendar month.

Introduction

Pay-roll tax is payable when an employer’s total Australian wages exceed the tax-free annual threshold. Australian wages comprise Western Australian wages and all interstate wages. Western Australian wages are the wages subject to tax under the Act. Interstate wages are those wages subject to tax in the other jurisdictions under their equivalent pay-roll tax legislation. To determine whether the wages paid or payable in respect of each monthly return period are subject to

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Western Australian pay-roll tax, section 6A of the Act outlines a number of factors which need to be considered:

- the place where the services are performed;
- the employee's principal place of residence;
- the employer's registered ABN address/principal place of business; or
- the place where the employee received the wages.

Determining where wages are taxable – section 6A of the Act

Sections 6A, 6B, 6C and 6D assist employers in determining where wages are liable to pay-roll tax.

A. Where services are performed wholly in one jurisdiction

If services are performed wholly in one jurisdiction in the relevant month, pay-roll tax is payable in that jurisdiction.

This looks at the place where services are performed by the person in the month that the wages are paid or payable, even if that place is not where the person usually performs services. For example, wages paid in June 2010 to a person who ordinarily performs services in Western Australia, but in June 2010 performed services wholly in NSW to complete a temporary project, would be taxable in NSW.

B. Where services are performed in more than one Australian jurisdiction and/or partly overseas

If services are performed in more than one jurisdiction and not overseas or in one or more jurisdiction and overseas, the new provisions provide a tiered test for determining liability.

Test 1 – Principal place of residence of person performing services – section 6B

Pay-roll tax is payable in the jurisdiction in which the principal place of residence (PPR) of the person performing the services is located.

If an employee has more than one PPR in the relevant month, the employee's PPR on the last day of that particular month is the one taken to be the PPR.

In the case of a corporate employee that is taken to be an employee under the Act (e.g. an incorporated worker that is taken to be an employee under common-law provisions or under the employment agency provisions) the PPR of the corporate employee is the ABN address; or where there is no ABN the principal place of business (PPB) of the corporate employee.

Test 2 – Employer’s ABN or principal place of business – section 6C

If the person performing the services does not have a PPR in an Australian jurisdiction during the relevant month, pay-roll tax is payable in the jurisdiction where the employer has their registered ABN address.

If the employer does not have a registered ABN address, or has two or more ABN addresses in different jurisdictions, tax is payable in the jurisdiction where the employer has their PPB.

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

Test 3 – Where wages are paid or payable – section 6A(1)(b)(iii) and 6D

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

If wages are paid or payable in a number of jurisdictions, then pay-roll tax is paid in the jurisdiction in which the largest proportion of wages is paid.

For example, Mrs Smith provides services to her employer ABC Pty Ltd in October in more than one jurisdiction. Mrs Smith is remunerated for her services in October. She has no PPR in an Australian jurisdiction and ABC Pty Ltd does not have an ABN address or its PPB in an Australian jurisdiction. She receives \$200 in Western Australia, \$300 in Queensland and \$1000 in South Australia. The payments are aggregated, and tax is payable on the total amount of \$1500 in South Australia because that is where the largest proportion of wages were paid.

Test 4 – Services performed mainly in Western Australia – section 6A(1)(b)(iv)

If both the employee and the employer are not based in an Australian jurisdiction and wages are not paid in Australia, pay-roll tax is paid in Western Australia if the services were performed mainly (i.e. actual time worked is more than 50%) in Western Australia during the month.

For example, an overseas holding company sends its employee John Doe to work at its Western Australian subsidiary for 16 days of a month. The worker stays in a hotel during this time and John’s wages continue to be paid into his bank account in London. As John remains the employee of the overseas holding company but performed services mainly in Western Australia for the month, all his wages for the month are liable to pay-roll tax in Western Australia.

C. Overseas employment

Employees working in another country – assignment not more than six months

Wages received in Western Australia by an expatriate employee who is working in another country, or countries, are taxable where the assignment in another country, or other countries, is no more than six continuous months. If only part of the wages earned by an expatriate employee working in another country or other countries are received in Western Australia, such wages must be declared for pay-roll tax. If the wages earned by the expatriate employee are paid in more than one Australian jurisdiction, tax is payable where the largest proportion of wages is paid.

Employees working in another country – assignment more than six months

Wages are exempt if the employee has worked in another country for a continuous period of more than six months (i.e. the exemption from pay-roll tax 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. It will not be considered to be a break in continuity where an employee, working in another country, returns to Australia in the following circumstances:

- for a holiday;
- 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 country to perform further work on the assignment.

If an employee returns to Australia in any other circumstances, the six month period will recommence from the date that the employee recommences work in the overseas country.

Services performed offshore

Any wages that relate to services performed offshore and beyond the limits of any Australian jurisdiction, but not in another country, are taxable if they are paid in Western Australia irrespective of the duration of the assignment. As such the exemption that applies to wages received in Western Australia for work performed in another country is not applicable.

Where an employee is working outside any jurisdiction, but not in another country, the wages are taxable in the jurisdiction in which they are received. 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.

Wages paid in a foreign currency

When calculating the value of the payment, the Commissioner 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.

Further provisions

Section 6 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 pay-roll tax liability arises.

1. Tax is payable in the month in which wages are paid – section 6A(3)

Where wages relate to services performed by a person over several months (e.g. an annual bonus), pay-roll tax is payable in the jurisdiction where the services were performed in the month the wages are paid or payable.

For example, in June 2010 Joe is paid \$3000 wages for services performed in that month and also a \$2000 bonus for services performed during the financial year ending June 2010. Even though the bonus payment relates to services performed for the whole of the financial year, only the services performed in June 2010 will be used in determining whether services were provided wholly in a jurisdiction or in more than one jurisdiction.

If Joe performed services wholly in Western Australia in June 2010, pay-roll tax on the \$5000 wages will be payable in Western Australia.

If Joe performed services in more than one jurisdiction in June 2010, pay-roll tax on the \$5000 wages will be payable in the jurisdiction where Joe had his PPR in June 2010.

2. If wages are paid in a different month from when they were payable – section 6A(7)

If wages are paid in a different month from the month they are payable, liability arises in the earlier of the two months.

For example, wages are paid in August 2010, but under the contract with the person providing the services, those wages should have been paid in May 2010 in Western Australia. As May is the earlier month, the payments are taxable for May in Western Australia based on where the services were performed.

3. If there are two or more payments in one month

There may be instances where an employee receives two payments of wages from the same 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 for services performed in Western Australia. She receives another \$2000 on 28 November from the same employer for services performed in South Australia. The two amounts are to be aggregated and treated as if paid for all services performed by Mrs Smith in that month (i.e. in Western Australia and in South Australia). Therefore, pay-roll tax is payable in the jurisdiction where Mrs Smith has her PPR.

4. Where services are not performed in any jurisdiction in the month in which wages are paid – section 6(5)

There may be instances where services are not performed in a particular month in which the wages are paid. In such circumstances, the liability for pay-roll tax is determined by ascertaining where services were provided for that employer during the most recent month.

For example, Mrs Smith is paid in the month of December but has not provided services to the employer in that month. The last month Mrs Smith provided services to that employer was October and those services were provided wholly in Western Australia. As such, pay-roll tax is payable in Western Australia for the wages paid to Mrs Smith in December.

However, if Mrs Smith provided services in more than one jurisdiction in the month of October then the December's pay-roll tax liability will be determined by her PPR.

If no services were provided to the employer, tax would be payable in the jurisdiction where it could reasonably be expected that the person providing services would provide those services.

For example, if Mrs Smith accepts an offer of employment in August to commence work in Western Australia in November and receives a payment of wages in August, services are taken to have been performed in Western Australia in August.

Shares and options

A pay-roll tax liability for the grant of a share or option is also governed by the new nexus provisions contained in section 6 of the Act and explained in this fact sheet.

However, certain circumstances relating to shares and options attract different nexus rules.

NOTE: The flowchart does not apply in the following circumstances.

Section 9DH of the Act identifies the place where wages are payable when a share or option is granted. Section 9DH applies in the following circumstances:

- a). The person performs services in more than one Australian jurisdiction and/or partly overseas;
- the person does not have a PPR in an Australian jurisdiction; and
- the employer does not have an ABN address or PPB in an Australian jurisdiction.
- b). The person performs services wholly outside all Australian jurisdictions for less than six months but is paid in an Australian jurisdiction.

In these situations where the grant of a share or option constitutes wages, the share or option is taken to be paid in the jurisdiction where the share or option is in a local company.

Note: The information contained in this FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Pay-roll Tax Assessment Act 2002* and reference should be made to the Act for complete details.

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