



Australian Capital Territory

Payroll Tax Amendment Act 2009

A2009-43

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Australian Capital Territory

Payroll Tax Amendment Act 2009

A2009-43

An Act to amend the *Payroll Tax Act 1987*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Payroll Tax Amendment Act 2009*.

2 Commencement

This Act is taken to have commenced on 1 July 2009.

3 Legislation amended

This Act amends the *Payroll Tax Act 1987*.

**4 Meaning of *wages*
Section 2 (1)**

substitute

- (1) For this Act, *wages* means—
- (a) an amount paid or payable to a person in relation to the person's capacity as an employee or former employee; or
 - (b) if the person is not an employee or a former employee—an amount mentioned in subsection (2) paid or payable for services performed by the person.

**5 Place where wages payable
Section 2BA (2), note**

substitute

Note The place where wages are paid or payable is sometimes relevant to deciding if the wages are liable to payroll tax under this Act (see s 2E).

6 Section 2D

substitute

2D Wages to which this Act applies

This Act applies to wages that—

- (a) are taxable in the ACT because of section 2E; and
- (b) are not exempt wages under section 2F.

2E Wages taxable in the ACT

- (1) For this Act, wages are taxable in the ACT if—
 - (a) the wages are paid or payable by an employer for or in relation to services performed by an employee entirely in the ACT; or
 - (b) the wages are paid or payable by an employer for or in relation to services performed by an employee in 2 or more Australian jurisdictions, or partly in 1 or more Australian jurisdictions and partly outside all Australian jurisdictions, and—
 - (i) the employee is based in the ACT; or
 - (ii) if the employee is based outside an Australian jurisdiction—the employer is based in the ACT; or
 - (iii) if the employee and the employer are based outside an Australian jurisdiction—the wages are paid in the ACT; or
 - (iv) if the employee and the employer are based outside an Australian jurisdiction, and the wages are paid or payable outside an Australian jurisdiction—the ACT is the Australian jurisdiction in which the higher or highest proportion of the services is performed; or

- (c) the wages are paid or payable by an employer for or in relation to services performed by an employee entirely outside all Australian jurisdictions and paid or payable in the ACT.

Note Section 2F (1) (a) provides an exemption for wages paid or payable for services provided entirely in another country for a continuous period of more than 6 months.

- (2) An assessment of whether wages are taxable in the ACT must—
 - (a) take into account only the services performed by an employee for an employer in the month in which the wages are paid or payable; and
 - (b) treat any wages paid or payable by an employer for or in relation to an employee in a particular month as paid or payable for or in relation to the services performed by the employee for the employer in the month.

Example

If wages paid in a month are paid to an employee for services performed over several months, an assessment of whether the wages for the month are taxable in the ACT must take into account only services performed by the employee in the month in which the wages are paid. Services performed in one of the previous months are disregarded, except in an assessment of whether wages paid in one of the previous months is taxable in the ACT.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, if no services are performed by an employee in a month in which wages are paid or payable—
 - (a) an assessment of whether the wages are taxable in the ACT is to be decided by taking into account only the services performed by the employee for the employer in the month in which the employee last performed services for the employer (the *last service month*); and

- (b) the wages are taken to be paid or payable for or in relation to the services performed by the employee for the employer in the last service month.
- (4) However, if no services are performed by an employee for an employer in a month in which the wages are paid or payable or in any past month—
- (a) the wages are taken to be paid or payable for or in relation to services performed by the employee in the month in which the wages are paid or payable; and
 - (b) the services are taken to have been performed at a place or places where it is reasonable to expect that the services will be performed by the employee for the employer.
- (5) An assessment of whether wages paid by an employer to an employee in a month are taxable in the ACT must be based on the total of all wages paid or payable by the employer for the employee in the month, and treated as if the wages were paid or payable for all services performed by the employee in the month in which the wages are paid or payable, or the month in which the employee last performed services for the employer, according to the circumstances.

Example

If in January an employer pays an amount of wages for an employee's services in the ACT, and the same employer pays another amount of wages for the same employee's services in another jurisdiction in the same month, the wages paid by the employer to the employee must be totalled and treated as if the total sum was paid for all services performed by the employee in January. Subsection (1) (b) would be applied to work out whether the wages are taxable in the ACT.

- (6) In an assessment of whether wages are taxable in the ACT, if wages are paid in a different month from the month in which they are payable, the wages are taken to have been paid in whichever of the 2 months happens first.

2F Exempt wages

- (1) For this Act, the following are *exempt wages*:
 - (a) wages that are paid or payable for or in relation to services performed by a person entirely in another country for a continuous period of more than 6 months beginning on the day when wages are first paid or payable to the person for the services;
 - (b) wages declared by the Minister to be exempt wages for section 2D.
- (2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

2G Jurisdiction in which employee is based

- (1) For this Act, the jurisdiction in which an employee is based is the jurisdiction in which the employee's principal place of residence is located.
- (2) The jurisdiction in which an employee is based is to be decided by taking into account the state of affairs for the month in which the relevant wages are paid or payable.
- (3) If more than 1 jurisdiction would qualify as the jurisdiction in which an employee is based in a month, the jurisdiction in which the employee is based must be decided by taking into account the state of affairs on the last day of that month.
- (4) For this Act, an employee who does not have a principal place of residence is taken to be an employee who is not based in an Australian jurisdiction.
- (5) For wages paid or payable to a corporate employee, the jurisdiction in which the employee is based is to be decided under section 2H as if a reference in that section to an employer were a reference to an employee.

(6) In this section:

corporate employee means a company—

(a) that—

- (i) performs work for or in relation to which services are supplied to another person under a contract, agreement or undertaking; or
- (ii) performs work for a client of an employment agent as part of the services provided by the agent to the client for which the agent receives payment; or

(b) to which a payment is made that is taken to be wages payable to an employee under section 5 (1) (c).

2H Jurisdiction in which employer is based

(1) For this Act, the jurisdiction in which an employer is based is—

- (a) if the employer has an ABN—the jurisdiction in which the employer's registered business address is located; or
- (b) in any other case—the jurisdiction in which the employer's principal place of business is located.

(2) If an employer has a registered business address in more than 1 jurisdiction, the jurisdiction in which the employer is based is the jurisdiction in which the employer's principal place of business is located.

(3) If wages are paid or payable in connection with a business carried on by an employer under a trust, the employer's registered business address is—

- (a) if the trust has an ABN—the registered business address of the trust; or
- (b) if the trust does not have an ABN—the business address of the trustee of the trust.

- (4) The jurisdiction in which an employer is based is to be decided by taking into account the state of affairs for the month in which the relevant wages are paid or payable.
- (5) If more than 1 jurisdiction would qualify as the jurisdiction in which an employer is based in a month, the jurisdiction in which the employer is based must be decided by taking into account the state of affairs on the last day of the month.
- (6) For this Act, an employer is taken to be an employer who is not based in an Australian jurisdiction if the employer has neither a registered business address nor a principal place of business.

2I Place and date of payment of wages

- (1) For this Act, wages are taken to have been paid at a place if, for payment of the wages—
 - (a) an instrument is sent or given or an amount is transferred by an employer to a person or a person's agent at the place; or
 - (b) an instruction is given by an employer for the crediting of an amount to the account of a person or the person's agent (a *payment instruction*) at the place.
- (2) The wages are taken to have been paid on the date that the instrument was sent or given, the amount was transferred or the account credited in accordance with the payment instruction.
- (3) Wages are taken to be payable at the place at which they are paid.
- (4) However, wages that are not paid by the end of the month in which they are payable are taken to be payable at—
 - (a) the place where wages were last paid to the employee; or
 - (b) if wages have not been previously paid by the employer to the employee—the place where the employee last performed services for the employer before the wages became payable.

- (5) If wages paid by an employer for or in relation to services performed by a particular employee in a month are paid or payable at more than 1 place in Australia, the wages paid or payable for the month are taken to have been paid at the place where the higher or highest proportion of the wages is paid or payable.

Note Under s (5), only 1 jurisdiction may be considered to be the jurisdiction in which the wages are paid or payable.

**7 Agreement etc to reduce or avoid liability to payroll tax
Section 5 (1) (c)**

after

wages

insert

paid or payable to an employee

**8 Registration of employers
Section 7 (2)**

omit

may

substitute

must

9 Division 2.2 heading, new note

insert

Note Wages mentioned in s 2F are also exempt wages.

10 New section 101

insert

101 Transitional—Payroll Tax Amendment Act 2009

- (1) The amendments made to this Act by the *Payroll Tax Amendment Act 2009* (the *amendments*) apply in relation to taxable wages that are paid or payable on or after 1 July 2009.
- (2) If an employer to whom section 7 (Registration of employers) did not apply in an expired month becomes, as a result of the amendments, an employer to whom section 7 does apply for an expired month, section 7 (6) (c) applies to the employer as if a reference to 7 days after the end of the month were a reference to 7 days after the day the *Payroll Tax Amendment Act 2009* is notified.

Note This subsection extends the usual period an employer, to whom s 7 applies, is required to be registered under pt 2 to avoid committing an offence to take account of the retrospective commencement of the amendments.

- (3) If an employer to whom section 16 (Payroll tax returns) did not apply in an expired month becomes, as a result of the amendments, an employer to whom section 16 does apply for an expired month, section 16 (3) (b) applies to any payroll tax return the employer is required to lodge for an expired month as if a reference to 7 days after the end of the month were a reference to 7 days after the day the *Payroll Tax Amendment Act 2009* is notified.

Note This subsection extends the usual period for lodging a payroll tax return to take account of the retrospective commencement of the amendments.

- (4) If an employer to whom section 16 applied in an expired month becomes, as a result of the amendments, an employer to whom section 16 does not apply and the employer paid tax in accordance with section 16 (2) (c) for an expired month, the commissioner must refund the amount of tax that the employer is not liable to pay if the employer applies for a refund of that amount.

(5) In this section:

expired month means a month that—

- (a) happens after June 2009; and
- (b) ends before the day the *Payroll Tax Amendment Act 2009* is notified.

11 Dictionary, note 2

insert

- ACT
- State

12 Dictionary, new definitions

insert

ABN—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

Australian Business Register—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

Australian jurisdiction means the ACT, another Territory or a State.

exempt wages—see section 2F.

instrument includes a cheque, bill of exchange, promissory note, money order or a postal order issued by a post office.

registered business address, for an entity that has an ABN, means the address entered in the Australian Business Register as the entity's address for service under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 October 2009.

2 Notification

Notified under the Legislation Act on 23 November 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Payroll Tax Amendment Bill 2009, which was passed by the Legislative Assembly on 12 November 2009.

Clerk of the Legislative Assembly

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