

2009

**The Legislative Assembly for
Australian Capital Territory**

Payroll Tax Amendment Bill 2009

Explanatory Statement

**Circulated by authority of
Treasurer
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Background

On 26 June 2009, all States and Territories announced that agreement had been reached across Australia to implement new uniform payroll tax rules. The new rules provide greater clarity where an employer pays wages that relate to an employee who works in more than one jurisdiction in a month, such as in the airline industry.

These amendments implement the agreed changes to make payroll tax payable to the Territory where the employer pays wages that relate to an employee who works in more than one jurisdiction in a month and the employee resides in the Territory.

In cases where the worker does not reside in Australia, payroll tax will be payable in the jurisdiction where the registered Australian Business Number address of the employer is located.

The new arrangements implemented by these amendments will provide greater clarity to affected employers and will provide a more robust taxation regime in light of modern electronic payment methods, and will reduce potential compliance costs that could otherwise arise for employers under existing arrangements.

All States and Territories are progressively seeking to legislate the new arrangements. However, to ensure that double taxation issues do not arise for employers due to the change in nexus, all States and Territories have agreed to commence the changes from 1 July 2009. These amendments are therefore made to commence retrospectively from that date.

These amendments will have no impact on the bulk of employers who have employees who work solely in one jurisdiction.

Summary

The Payroll Tax Amendment Bill 2009 (the Bill) amends the *Payroll Tax Act 1987* (the Act) in respect of the nexus provisions that relate to an employer's payroll tax liability where an employee works in more than one jurisdiction in a month.

Overview

The Bill amends the provisions that determine in which jurisdiction payroll tax is payable, where an employee works in more than one jurisdiction in a month.

Commencement Date

The Bill amends the Act so that the amendments have a retrospective effect to 1 July 2009.



Details of the *Payroll Tax Amendment Act 2009*

Clause 1 – Name of Act

This clause provides that the Act is named the *Payroll Tax Amendment Act 2009*.

Clause 2 – Commencement

This clause provides that the Act commenced on 1 July 2009.

Clause 3 – Legislation amended

This clause provides that the Act makes amendments to the [Payroll Tax Act 1987](#).

Clause 4 – Meaning of wages Section 2 (1)

This clause replaces the current clause with the meaning of *wages*.

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

This clause replaces the current note in section 2BA (2), making reference to the new section 2E (Wages taxable in the ACT).

Clause 6 - Section 2D

This clause substitutes the existing section 2D with new sections 2D, 2E, 2F, 2G, 2H and 2I:

Section 2D – Wages to which this Act applies

This clause outlines that wages are either taxable or exempt wages in the ACT for the purposes of this Act, with qualification by reference to sections 2E or 2F.

Section 2E – Wages taxable in the ACT

This clause qualifies that wages are taxable in the ACT if the wages are paid or payable for services that are performed only in the ACT and not in any other jurisdiction within Australia.

However, if the wages are paid or payable for services performed in more than one jurisdiction or partly in one jurisdiction and partly outside of Australia, then a series of tests listed through 2E determine, based on the relevant circumstances, whether the wages are in fact taxable in the ACT.

Section 2F –Exempt Wages

This clause outlines that exempt wages are wages paid for services performed entirely in another country for a continuous period of more than 6 months, and are also wages that are declared exempt wages by the Minister.

Section 2G – Jurisdiction in which employee is based

This clause provides a series of tests which determine the jurisdiction in which an employee is based. The primary test is subsection (1), that the jurisdiction in which the employee's principal place of residence is located, is to be taken as the jurisdiction in which the employee is based. If an employee does not have an Australian principal

place of residence, then that employee is treated as an employee who is not based in an Australian jurisdiction.

Section 2H – Jurisdiction in which employer is based

This clause is to be referenced when it cannot be determined in which jurisdiction an employee is based. Similar to 2G, this clause provides a series of tests to determine the jurisdiction in which an employer is based. The primary test in this clause is (1) (a): if the employer has an ABN, the employer's registered business address determines the jurisdiction in which the employer is based. If the employer does not have an ABN, then it is determined by the location of the employer's principal place of business.

However, if the employer has a registered business address in more than one jurisdiction, then the principal place of business of the employer is taken into account for determining where the employer is based.

If an employer does not have a registered business address or a principal place of business, then the employer is treated as if they are not based in any Australian jurisdiction.

Section 2I – Place and date of payment of wages

This clause describes how the place and date of wages is to be determined.

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

This clause inserts 'paid or payable to an employee' after 'wages'.

Clause 8 – Registration of employers Section 7 (2)

This clause substitutes 'may' with 'must'.

Clause 9 – Division 2.2 heading, new note

This clause inserts, under the heading of Division 2.2, the new note : 'Wages mentioned in s 2F are also exempt wages'.

Clause 10 – New section 101 – Transitional – Payroll Tax Amendment Act 2009

This clause clarifies that the amendments made by this Act are retrospectively effective from 1 July 2009.

The clause provides employers a longer period of time (a further 7 days) to register for payroll tax if the employers became liable as a result of these amendments.

Similarly, employers are provided another further 7 day extension to lodge any returns as a result of becoming liable to do so by the enactment of these amendments.

If as a result of the amendments, an employer becomes not liable to pay tax in a period between 1 July 2009, and the date that the Amendment Act is notified, and they have already lodged a return and paid tax for that period, then the commissioner must refund the amount of tax paid in that period.

The clause provides a definition of *expired month*, as the time between 1 July 2009 (the effective date) and the date the Amendment Act is notified.

Clause 11 – Dictionary, note 2

This clause inserts *ACT* and *State* into the current note 2 in the Dictionary.

Clause 12 – Dictionary, new definitions

This clause inserts new definitions into the Dictionary.

