

Pay-roll Tax

Circular No. 297
(replaces Circular No 160)

EXPATRIATE EMPLOYEES

The *Pay-roll Tax (Harmonisation Project) Amendment Act 2008*, which was assented to on 26 June 2008 and comes into operation on 1 July 2008, makes amendments to the *Pay-roll Tax Act 1971* (the "Act") to harmonise legislative and administrative arrangements with other States and Territories.

One of the areas that has been harmonised is in relation to the liability for wages paid for services performed in another country.

Whether wages of an employer are subject to the payment of pay-roll tax in South Australia 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 pay-roll tax where payments are received in South Australia in relation to employees working overseas or payments are received overseas by employees working in South Australia.

The purpose of this Circular is to clarify an employer's liability under section 8 of the Act in respect of wages paid to expatriate employees.

Expatriate employees working overseas

Assignment for less than six months

Wages received in South Australia 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 continuous months.

If only part of the wages earned by an expatriate employee working in another country or countries are received in South Australia, then such wages must be declared for pay-roll 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 months, any wages received in South Australia are not subject to pay-roll tax (i.e. the exemption from pay-roll 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 South Australia irrespective of the duration of the assignment. As such the exemption that applies to wages received in South Australia for work performed in another country is not applicable.

Expatriate employees working within South Australia or paid in South Australia

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

Wages paid outside Australia are subject to pay-roll tax in South Australia in any calendar month where the employee works mainly in South Australia.

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

Although the basis for determining whether payments made, or benefits provided, to expatriates are subject to pay-roll tax is essentially the same as applies to other wage payments, the following clarifications are provided:

- Wages paid in a foreign currency

When calculating the value of the payment, RevenueSA will accept an exchange rate conversion, based upon the Reserve Bank of Australia's daily rate published, for the day of payment.

- 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 pay-roll tax and should be declared in South Australia to the extent that they relate to a period in which the expatriate worked in South Australia, regardless of when the bonus is paid. If the bonus is paid for a period in which the expatriate worked wholly in South Australia, the whole of the bonus paid is subject to pay-roll tax.

A bonus paid overseas for a financial year in which the expatriate worked at least partly in South Australia, will be subject to pay-roll tax in South Australia 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 South Australia.

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 South Australia, three-twelfths of \$12,000 (\$3,000) is subject to South Australian pay-roll tax.

The bonus would not be taxable in South Australia if the expatriate employee worked in Australia for less than six months.

- Fringe benefits

Benefits provided to expatriate employees which fall within the provisions of the *Fringe Benefits Tax Assessment Act 1986* are subject to pay-roll 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 pay-roll tax.

This Circular is effective from 1 July 2008.

Please note that circulars do not have the force of law.

FURTHER INFORMATION

Further information regarding these amendments may be obtained from RevenueSA.

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