

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Pay-roll Tax

Circular No. 160

LIABILITY WHERE SERVICES PERFORMED OFFSHORE, IN ANOTHER STATE OR TERRITORY OR OUTSIDE AUSTRALIA

INTRODUCTION

Pay-roll tax is a tax which is payable in all States and Territories of Australia and is administered by each State or Territory under their own separate legislation.

An employer is required to determine the State or Territory in which pay-roll tax is payable. Generally pay-roll tax is payable to the State or Territory where the services in their entirety are performed. For example, a South Australian employer is obliged to pay pay-roll tax to the Victorian authority in relation to the wages of an employee whose services in their entirety were performed within the territorial limits of Victoria. This Circular provides employers with information of the territorial limits of the States and Territories of Australia for pay roll tax purposes.

Where the services are performed outside the territorial limits of any State or Territory or outside Australia, but payment is made in Australia, this Circular will assist to determine the State or Territory in which the pay-roll tax is payable.

This Circular has been developed jointly by all States and Territories to ensure that, where wages are paid in such circumstances, pay-roll tax is not sought by more than one State or Territory.

RULING

In general, a liability for pay-roll tax arises in a particular State or Territory where:-

- services are performed wholly in that State or Territory regardless of where the wages are paid or payable;
- or
- wages are paid or payable in that State or Territory in respect of services which are not performed wholly in another State or Territory.

The reference to a particular State or Territory in the pay-roll tax legislation of that State or Territory includes the area within the territorial limits of that State or Territory; it includes the sea adjacent to that State or Territory up to certain limits which differ between the jurisdictions. These limits are provided in the Schedule to this Circular.

Consequently, the liability of wages to pay-roll tax in some jurisdictions extends beyond payment for services performed on the land of a State or Territory, to include payment for services performed offshore but within the coastal limits of that State or Territory.

The attached Schedule details the territorial (coastal) limits of each State or Territory so that employers can determine whether they are operating within a particular State or Territory.

Where a drilling rig, platform, etc is operating **within** the territorial (coastal) limits of a particular State or Territory, wages paid or payable for services performed on that rig, platform, etc will be liable to pay-roll tax in that State or Territory, regardless of where the wages are paid or payable. For example:-

- wages paid in New South Wales for services performed on a drilling rig operating within the coastal limits of South Australia are liable to pay-roll tax in South Australia.

Where a rig, platform, etc is operating **outside** the coastal limits of all States or Territories, or an employee performs services entirely outside Australia (eg in another country), the jurisdiction in which the pay-roll tax liability arises is determined by the State or Territory where the wages are paid or payable. A number of jurisdictions provide an exemption in respect to wages paid for services performed entirely outside Australia for a continuous period of more than 6 months.

Accordingly, employers should check with the jurisdiction in which the wages are paid in order to ascertain the position in that jurisdiction.

SOUTH AUSTRALIAN RULING

In South Australia, wages are taxable where they are related to services performed outside Australia but the employee has, during the preceding six months, performed or rendered services for the employer in South Australia. In other words, if an employee has performed or rendered services in South Australia up to a certain time and thereafter performs outside Australia in its entirety services for a continuous period of greater than six months, the wages paid during the first six months when the employee was overseas will be liable to South Australian pay-roll tax.

Wages received in South Australia or paid from the commencement of the 7th month onwards where the employee continues to work outside Australia, are not taxable.

FURTHER INFORMATION?

Location

State Taxation Office
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

Postal

Commissioner of State Taxation
State Taxation Office
Box 2149 GPO
ADELAIDE SA 5001

Telephone

(08) 8204 9880

Facsimile

(08) 8226 3805

Website

<http://www.treasury.sa.gov.au/tax.html>

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COMMISSIONER OF STATE TAXATION

Historical Use Only

SCHEDULE

COASTAL LIMITS OF EACH STATE AND TERRITORY

South Australia

For the purposes of the *Pay-roll Tax Act 1971*, South Australia's coastal border is taken to be the "mean low watermark baseline." In general terms the Territorial sea, "mean low watermark baseline" follows the low watermark on the State's mainland and islands and deviates offshore across river mouths and bays if less than 24 nautical miles in width. The attached map provides a general reference.

Western Australia

By virtue of section 3(1)(b) of the *Offshore (Application of Laws) Act 1982*, any reference to "Western Australia" in a written law of the State is deemed to include a reference to the "coastal waters" of the State.

Accordingly, for the purposes of the *Pay-roll Tax Assessment Act* in Western Australia, and in the context of offshore oil and gas rigs and platforms etc, the coastal limits of Western Australia means, in general terms, all seas adjacent to the State within 3 nautical miles of the seaward side of the territorial sea baseline. The territorial sea baseline follows the low water mark on the State's mainland and islands and deviates offshore across river mouths and bays of less than 24 nautical miles in width.

As a guide, a rig, platform, etc is considered to be operating within the coastal waters of Western Australia if conducting operations under a Drilling Reservation, Exploration Permit, Production Licence, Retention Lease, Special Prospecting Authority, Access Authority, Petroleum Lease or Pipeline Licence issued by the Western Australian Department of Minerals and Energy under the *Petroleum Act 1967*, *Petroleum Pipelines Act 1969* or *Petroleum (Submerged Lands) Act 1982*.

Queensland

For the purposes of the *Queensland Pay-roll Tax 1971*, a reference to Queensland means the land territory of Queensland as delineated at the coast by the low water mark.

Victoria

For the purposes of the *Victorian Pay-roll Tax Act 1971*, a reference to Victoria means Victoria's land mass, inland waters and coastal waters down to the low water mark.

New South Wales

For the purposes of the *Pay-roll Tax Act 1971* (NSW), the expression “in New South Wales” means within the territorial limits of New South Wales, together with coastal waters of the State including the 3 mile limit of the coastal sea of New South Wales.

Tasmania

By virtue of section 5 of the *Coastal Waters (State Powers) Act 1980* (Commonwealth), Tasmania exercises jurisdiction over its coastal waters. As a result of the Act, Tasmania extends its legislation to the breadth of the territorial sea. That distance is currently 3 nautical miles. There are baselines from which that distance is measured so that large stretches of internal waters are not included in the measurement.

The terms “adjacent area of Tasmania” and “coastal waters of the State” are defined in both the *Coastal Waters (State Powers) Act 1979* and the *Coastal and Other Waters (Application of State Laws) Act 1982* (Tas).

For the purposes of the *Pay-roll Tax Act 1971*, any operations being conducted within the 3 mile limit would be liable for pay-roll tax in Tasmania.

Northern Territory

By virtue of section 3(1)(b) of the *Off-shore Waters (Application of Territory Laws) Act, 1985*, any reference in a written law of the Territory to “the Territory”, “the Northern Territory” or other similar reference is deemed to include a reference to the “coastal waters” of the Territory.

For the purposes of the *Pay-roll Tax Act* in the Northern Territory, including off-shore oil and gas rigs and platforms etc, “coastal waters” means that part or parts of the territorial sea of Australia and is within the adjacent area in respect of the Territory, subject to the limitation that the area in question must not be further than 3 nautical miles from the Australian territorial sea base line as defined by proclamation in the Commonwealth Gazette number S29 dated 9 February 1983.