

Contents	Page
What this ruling is about	1
Ruling and explanation	1
Definitions	7
Date of effect	7
References	7
Attachment	8

Public Ruling
Payroll Tax Act—Harmonised:
PAYROLL TAX NEXUS PROVISIONS

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. The *Pay-roll Tax (Harmonisation) Amendment Act 2008* amended the *Payroll Tax Act 1971* (the Payroll Tax Act) with effect from 1 July 2008 to harmonise certain aspects of Queensland's payroll tax system with the systems of other jurisdictions.
2. The nexus provisions of the Payroll Tax Act determine in which Australian jurisdiction (state or territory) payroll tax is to be paid. The nexus provisions were amended effective from 1 July 2009.
3. The purpose of this public ruling is to explain the nexus rules and clarify the circumstances when wages must be declared in Queensland for payroll tax purposes. It also clarifies the liability for wages paid for services performed outside all Australian jurisdictions. This public ruling should be read in conjunction with the attached flowchart which explains how the various scenarios will be treated and show the circumstances in which wages are taxable in Queensland.

Ruling and explanation

4. Payroll tax is payable when an employer's total Australian wages exceed the payroll tax-free threshold (deduction amount). Australian wages comprise Queensland wages and interstate wages. Queensland wages are the wages subject to payroll tax under the Payroll Tax Act. Interstate wages are those wages subject to payroll tax in other jurisdictions under their equivalent payroll tax legislation.
5. To determine whether the wages paid or payable in respect of each monthly return period are subject to Queensland payroll tax, s.9 of the Payroll Tax Act firstly requires an employer to determine whether the employee has entirely performed services in Queensland in a calendar month.

6. Where an employee has not entirely performed services in Queensland in the month, the nexus provisions provide four tiered tests which require the following factors to be considered:
- (a) the employee's principal place of residence
 - (b) the employer's registered ABN address / principal place of business
 - (c) the place where the wages are paid to the employee
 - (d) the place where the services are mainly performed.

Determining where wages are taxable

7. Sections 9, 9A, 9B and 9C of the Payroll Tax Act are relevant in determining whether wages are liable for payroll tax.

Where services are performed entirely in one jurisdiction – section 9(1)(a)

8. If services in a month are performed entirely in one jurisdiction, payroll tax is payable in that jurisdiction.
9. Section 9(1)(a) of the Payroll Tax Act considers the place where services are performed by the employee in the month that the wages are paid or payable even if that place is not where the employee usually performs services.

Example 1

Joe normally performs his duties in Queensland. In June 2010, Joe is sent to Victoria for a temporary project and performs all his services in Victoria that month. Wages paid to Joe in June 2010 for those services are liable to payroll tax in Victoria.

Where services are performed in more than one Australian jurisdiction and/or partly outside all Australian jurisdictions – section 9(1)(b)

10. If services are performed in a month in more than one Australian jurisdiction or in one or more Australian jurisdictions and outside all Australian jurisdictions, the nexus provisions provide four tiered tests for determining payroll tax liability. These tiered tests must be applied in sequence.

Test 1 – Employee's principal place of residence – section 9A

11. Payroll tax is payable in the Australian jurisdiction in which the employee's principal place of residence (PPR) is located in that month.
12. If an employee has more than one PPR in that month the employee's PPR on the last day of that particular month is the one taken to be the PPR.

13. In the case of a corporation that is deemed to be an employee under the Payroll Tax Act (e.g. a corporation that is deemed to be an employee under the contractor provisions or under the employment agency provisions) the corporation's PPR is taken to be in the jurisdiction where its Australian Business Number (ABN) address is located or, if it does not have an ABN address or has two or more ABN addresses in the jurisdiction, where its principal place of business (PPB) in Australia is located. If the corporate employee has more than one PPB in a month (e.g. where the corporate employee changes its PPB address part way through a month) the PPB is the address on the last day of that month.

Test 2 – Employer's ABN address or PPB – section 9B

14. If an employee does not have a PPR in an Australian jurisdiction during that month payroll tax is payable in the jurisdiction where the employer's ABN address is located.
15. If the employer does not have an ABN address or has two or more ABN addresses in different jurisdictions, payroll tax is payable in the jurisdiction where the employer's PPB in Australia is located.
16. If the employer has more than one PPB in a month (e.g. where an employer changes their PPB address part way through a month) the PPB is the address on the last day of that month.

Test 3 – When wages are paid or payable – sections 9(1)(b)(iii) and 9C(5)

17. 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, payroll tax is payable in the jurisdiction where the wages are paid or payable.
18. If wages are paid or payable in a number of jurisdictions, payroll tax is paid on the aggregate of the wages in the jurisdiction where the largest proportion of wages is paid.

Example 2

Mary is employed by ABC Pty Ltd and Mary does not have a PPR in an Australian jurisdiction and ABC Pty Ltd does not have an ABN address or a PPB in an Australian jurisdiction during October 2010. Mary performs services in more than one jurisdiction and is remunerated for those services in Queensland (\$200), Victoria (\$300) and South Australia (\$1,000). The payments are aggregated and tax is payable on the total amount of \$1,500 in South Australia because that is where the largest proportion of wages is paid.

Test 4 – Services performed mainly in Queensland – section 9(1)(b)(iv)

19. 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 and wages are not paid in an Australian jurisdiction, payroll tax is payable in Queensland if the services were mainly performed in Queensland during the month. Services are mainly performed in Queensland if the actual time worked in Queensland is more than 50% during the month.

Employment in another country*Employees working in another country – assignment for less than six continuous months*

20. Wages paid or payable in Queensland to an employee performing services entirely in another country (or countries) (that is, an expatriate employee) for a period of up to six continuous months, are taxable in Queensland.
21. If only part of the wages earned by an expatriate employee is paid in Queensland and the remaining part is paid in another country, the part of the wages paid in Queensland must be declared for payroll tax. If the wages earned by the expatriate employee working in another country or countries is paid in more than one Australian jurisdiction, payroll tax is payable on the aggregate of the Australian wages in the jurisdiction where the largest proportion of wages is paid.

Employees working in another country – assignment more than six months

22. Wages paid in Queensland are exempt from payroll tax if the employee has performed services entirely in another country or countries for a continuous period of more than six months after wages were first paid for the employee for the services. The exemption includes wages paid for the first six months of service.
23. The six-month period does not have to be within the one financial year but must be a continuous period.
24. Providing an employee immediately returns to another country to continue the assignment it will not be considered to be a break in continuity of service if they return to Australia for a holiday or to perform services exclusively related to the overseas assignment for a period of less than one month.
25. If an employee returns to Australia in any other circumstances the previous period of continuous service in another country is ended. A fresh period of continuous service starts again on the date that the employee recommences performing services in another country.

Services performed offshore

26. Wages paid in Queensland for services performed entirely outside any Australian jurisdiction are taxable in Queensland irrespective of the duration of the assignment. This would typically apply to oil rig workers.
27. If wages are paid in more than one Australian jurisdiction payroll tax is payable on the aggregate of the wages in the jurisdiction where the largest proportion of wages is paid.
28. As the services are not performed in another country the exemption for services provided outside all Australian jurisdictions for a continuous period of more than six months does not apply.

Wages paid in a foreign currency

29. When calculating the value of wages paid in a foreign currency Queensland Revenue Office will accept an exchange rate conversion based upon the Reserve Bank of Australia's daily rate published for the day of payment or the yearly average rate for the financial year as published by the Australian Taxation Office (ATO).

30. The previous year's ATO figure may be applied for the purpose of making monthly returns provided the current year's rate is used to make an appropriate adjustment in the Annual Adjustment return.

Further deeming provisions under section 9

31. Section 9 of the Payroll Tax Act also details a number of other factors that employers may need to take into account, in conjunction with the four tiered tests outlined above, in determining when and where their payroll tax liability arises.

Wages paid in a particular month are deemed to relate to services performed in that month – section 9(3)

32. Wages paid by an employer to an employee in a particular month are deemed to be paid in relation to services performed by that employee in that month even if the wages relate to services performed by an employee over several months (i.e. an annual bonus).

Example 3

In June 2010, Peter was paid his usual \$3,000 wages for services performed in that month and also a \$2,000 bonus for services performed during the financial year ending June 2010. Even though the bonus payment relates to services performed for the whole financial year, it is deemed to be paid in relation to services performed by Peter in June. Therefore only the services performed in June 2010 will be used in determining whether services were provided entirely in a jurisdiction or in more than one jurisdiction.

If Peter performed services entirely in Queensland in June 2010, payroll tax would be payable in Queensland on the \$5,000 wages paid to Peter in that month even though the bonus may relate to services provided by Peter in other jurisdictions during the financial year. If Peter provided services in more than one jurisdiction in June 2010, the four tiered tests are used to determine in which jurisdiction payroll tax would be payable. In most cases this would be the jurisdiction where Peter had his PPR in June 2010.

Wages are paid in a different month from when they were payable – section 9(7)

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

Example 4

Wages are paid to Bill in August 2010 but under his employment contract they should have been paid in May 2010. In May 2010, Bill performed services entirely in Queensland. As May is the earlier month, payroll tax on the wages for Bill's May services is payable in Queensland even if Bill performed services entirely in Victoria in August. Any additional wages paid in August must be separately analysed.

However, if Bill was paid in August 2010 in advance of his contractual entitlement to payment in September 2010, the wages would be liable in Victoria, where Bill provided services in August (being the earlier month).

Where there are two or more payments in a month – section 9(6)

34. There may be instances where an employee receives two payments from the same employer in one month where one amount is paid for services performed in one jurisdiction and the other amount is paid for services performed in another jurisdiction.

Example 5

Rose receives wages of \$1,000 on 14 November 2010 for services performed in Queensland. She receives another \$2,000 on 28 November 2010 from the same employer for services performed in Victoria. The two amounts are to be aggregated together and treated as if paid for all services performed by the employee in that month (i.e. Queensland and Victoria). Therefore the four tiered tests are used to determine in which jurisdiction payroll tax is payable. In most cases this would be the jurisdiction where Rose has her PPR in November 2010.

Where no services are performed in the month in which wages are paid – section 9(4) & (5)

35. There may be situations where an employee does not perform services in the month that wages are paid. In such circumstances, the liability for payroll tax is determined by ascertaining where services were provided for that employer during the most recent prior month.

Example 6

Jane is paid in the month of December but has not provided services to the employer in that month. The last month Jane provided services to that employer was October and those services were provided entirely in Queensland. As such payroll tax is payable in Queensland for the wages paid to Jane in December. However, if Jane provided services in more than one jurisdiction in October, the payroll tax liability for the wages paid in December will be determined by using the four tiered tests. In most cases this would be the jurisdiction where Jane has her PPR in October.

36. There may also be instances where wages are paid to an employee but no services have ever been performed by the employee for the employer. For the purposes of determining where the payroll tax is payable, services are deemed to have been performed at a place or places where it may be reasonably expected that the services will be performed.

Example 7

If Jane accepts an offer of employment in August 2010 to commence work in Queensland in November 2010 and receives a payment of wages in August 2010, Jane would be taken to have performed services in August 2010 in Queensland (being the place it can be reasonably expected that services will be performed) and payroll tax on those wages would therefore be payable in Queensland.

Shares and options

37. Payroll tax liability for the grant of a share or option is also governed by the nexus rules contained in ss.9, 9A, 9B and 9C of the Payroll Tax Act as well as s.13W of the Payroll Tax Act.
38. If all the work was performed in Queensland in the month in which the relevant day falls (i.e. the granting or vesting date), then the shares or options are taxable in Queensland. If the work performed in the month in which the relevant days falls was performed in more than one Australian jurisdiction, or in one or more Australian jurisdictions and outside all Australian jurisdictions, then the payroll tax liability for the shares or options will be determined by using the four tiered tests.
39. For the purposes of test 3, s.13W of the Payroll Tax Act identifies the place where wages constituted by the grant of the shares or options are taken to be paid or payable. If the share is a share in a Queensland company or in the case of an option, an option to acquire shares in a Queensland company, the relevant wages are taken to be paid in Queensland.

40. If the share or option is not in a Queensland company, the relevant wages are taken to be paid outside Queensland.
41. In this context, 'Queensland company' means a company incorporated or taken to be incorporated under the *Corporations Act 2000* (Cwlth) that is taken to be registered in Queensland for the purposes of that Act, or any other body corporate that is incorporated under an Act of Queensland.

Definitions

ABN address means the address for service of notices under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth) as shown in the Australian Business Register kept under that Act.

Australian jurisdiction means a state or territory of Australia (the boundaries of each state or territory include coastal waters as defined in jurisdiction specific references e.g. *Interpretations Act 1987* (NSW), *Coastal and Other Waters (Application of State Laws) Act 1982* (Tas))

Employee includes other persons to whom taxable wages are paid such as directors and contractors who are deemed employees.

Month means a calendar month such as January, February etc.

Date of effect

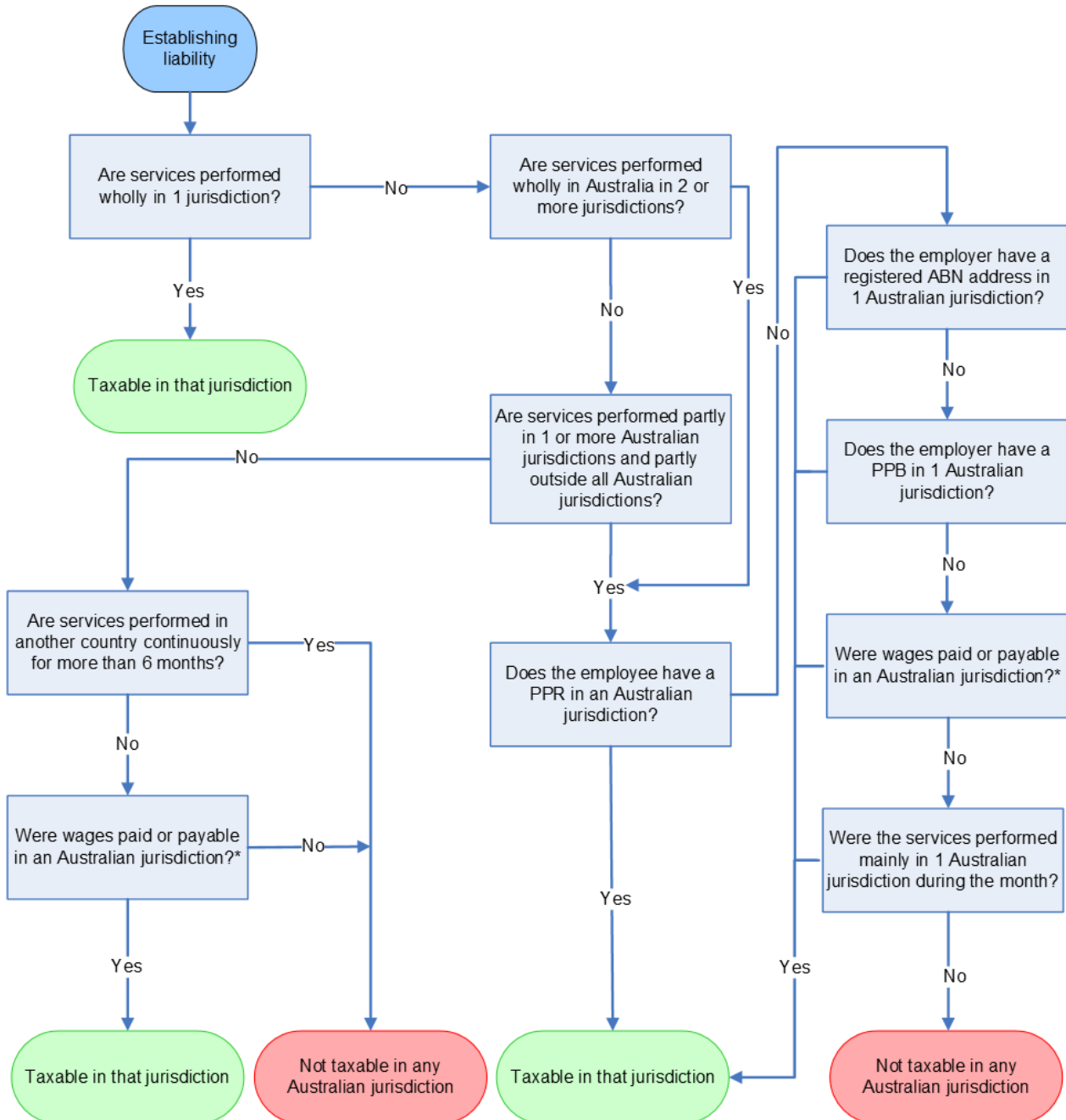
42. This public ruling takes effect from the date of issue.

Tony Kulpa
 Commissioner of State Revenue
 Date of issue: 3 June 2011

References

Public Ruling	Issued	Dates of effect	
		From	To
PTA039.1	3 June 2011	3 June 2011	Current

Attachment



* Where wages are paid in 2 or more Australian jurisdictions, payroll tax is payable where the largest proportion of wages is paid.