

NORTHERN TERRITORY OF AUSTRALIA

PAYROLL TAX AMENDMENT ACT 2010

Act No. 1 of 2010

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 1 of 2010

An Act to amend the *Payroll Tax Act*

[Assented to 17 March 2010]
[Second reading 26 November 2009]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Payroll Tax Amendment Act 2010*.

2 Commencement

This Act is taken to have commenced on 1 July 2009, immediately after the commencement of the *Payroll Tax Act 2009*.

3 Act amended

This Act amends the *Payroll Tax Act 2009*.

4 Amendment of section 3 (Definitions)

(1) Section 3

insert (in alphabetical order)

ABN means the ABN (Australian Business Number) for an entity within the meaning of *A New Tax System (Australian Business Number) Act 1999* (Cth).

Australian jurisdiction means a State or Territory.

instrument includes:

- (a) a cheque, bill of exchange and promissory note; and
- (b) a money order, or a postal order, issued by a post office.

registered business address means an address for service of notices under *A New Tax System (Australian Business Number) Act 1999* (Cth) on an entity that has an ABN, as shown in the Australian Business Register kept under that Act.

taxable in this jurisdiction, see section 11.

- (2) Section 3, note at the end

omit

and 30

substitute

, 30 and 66A

5 Repeal and substitution of sections 10 and 11

Sections 10 and 11

repeal, substitute

10 What are taxable wages

- (1) For this Act, **taxable wages** are wages that are taxable in this jurisdiction.
- (2) However, **exempt wages** are not taxable wages.

11 Wages that are taxable in this jurisdiction

- (1) For this Act, wages are **taxable in this jurisdiction** if:
 - (a) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly in this jurisdiction; 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 one or more Australian jurisdictions and partly outside all Australian jurisdictions, and:
 - (i) the employee is based in this jurisdiction; or

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- (ii) the employer is based in this jurisdiction (in a case where the employee is not based in an Australian jurisdiction); or
 - (iii) the wages are paid or payable in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction); or
 - (iv) the wages are paid or payable for services performed mainly in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction and the wages are not paid or payable in an Australian jurisdiction); or
- (c) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly outside all Australian jurisdictions and are paid or payable in this jurisdiction.

Note for subsection (1)(c)

Section 66A provides an exemption for wages paid or payable for services performed wholly in one or more other countries for a continuous period of more than 6 months.

- (2) The question of whether wages are taxable in this jurisdiction is to be determined by reference only to the services performed by the employee in respect of the employer during the month in which the wages are paid or payable, subject to this section.
- (3) Any wages paid or payable by an employer in respect of an employee in a particular month are taken to be paid or payable for or in relation to the services performed by the employee in respect of the employer during that month.

Example for subsections (2) and (3)

Wages paid to an employee in June 2010 by an employer include wages for services performed by the employee wholly in this jurisdiction in that month and a bonus for services performed by the employee during the financial year ending at the end of June 2010, which were services partly performed in this jurisdiction and partly in other Australian jurisdictions. The question of whether the wages paid in June 2010 are taxable in this jurisdiction is to be determined by reference only to services performed in that month and services performed in the previous months of that financial year must be disregarded. As a result, the wages paid in June 2010 are taxable in this jurisdiction because of subsection (1)(a).

The services performed in the previous months of that financial year will be relevant to the question of whether wages paid in each of those months are taxable in this jurisdiction, which will need to be determined having regard to subsection (1)(a) and (b).

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- (4) If no services are performed by an employee in respect of an employer during the month in which the wages are paid or payable to or in relation to the employee:
- (a) the question of whether the wages are taxable in this jurisdiction is to be determined by reference only to the services performed by the employee in respect of the employer during the most recent prior month in which the employee performed services in respect of the employer; and
 - (b) the wages are taken to be paid or payable for or in relation to the services performed by the employee in respect of the employer during that most recent prior month.
- (5) If no services were performed by an employee in respect of an employer during the month in which wages are paid or payable to or in relation to the employee or in any prior 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 may be reasonably expected that the services of the employee in respect of the employer will be performed.
- (6) All amounts of wages paid or payable in the same month by the same employer in respect of the same employee are to be aggregated for the purposes of determining whether they are taxable in this jurisdiction (as if they were paid or payable for all services performed by the employee in the month in which the wages are paid or payable, or the most recent prior month, as the case requires).

Example for subsection (6)

If one amount of wages is paid by an employer in a particular month for services performed in this jurisdiction, and another amount of wages is paid by the same employer in the same month for services performed by the same employee in another Australian jurisdiction, the wages paid are to be aggregated (as if they were paid for all services performed by the employee in that month). Accordingly, subsection (1)(b) would be applied for the purpose of determining whether the wages are taxable in this jurisdiction.

- (7) If wages are paid in a different month from the month in which they are payable, the question of whether the wages are taxable in this jurisdiction is to be determined by reference to the earlier of the relevant months.

11A 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 determined by reference to the state of affairs existing during the month in which the relevant wages are paid or payable.
- (3) If more than one jurisdiction would qualify as the jurisdiction in which an employee is based during a month, the jurisdiction in which the employee is based is to be determined by reference to the state of affairs existing on the last day of that month.
- (4) An employee who does not have a principal place of residence is taken, for the purposes of this Act, to be an employee who is not based in an Australian jurisdiction.
- (5) In the case of wages paid or payable to a corporate employee, the jurisdiction in which the employee is based is to be determined in accordance with section 11B instead of this section (as if a reference in section 11B to an employer were a reference to an employee).
- (6) In this section:
corporate employee means:
 - (a) a company that is taken to be an employee under section 34 or 39; or
 - (b) a company to whom a payment is made that is taken to be wages payable to an employee under section 42 or 47.

11B Jurisdiction in which employer is based

- (1) For this Act, the jurisdiction in which an employer is based is:
 - (a) the jurisdiction in which the employer's registered business address is located (if the employer has an ABN); or
 - (b) the jurisdiction in which the employer's principal place of business is located (in any other case).
- (2) 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 the registered business address of the trust or, if the trust does not have an ABN, the registered business address of the trustee of the trust.

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- (3) If an employer has registered business addresses located in different jurisdictions at the same point in time, the jurisdiction in which the employer is based at that point in time is the jurisdiction in which the employer's principal place of business is located.
 - (4) The jurisdiction in which an employer is based is to be determined by reference to the state of affairs existing during the month in which the relevant wages are paid or payable.
 - (5) If more than one jurisdiction would qualify as the jurisdiction in which an employer is based during a month, the jurisdiction in which the employer is based is to be determined by reference to the state of affairs existing on the last day of that month.
 - (6) An employer who has neither a registered business address nor a principal place of business is taken, for the purposes of this Act, to be an employer who is not based in an Australian jurisdiction.

11C Place and date of payment of wages

- (1) For this Act, wages are taken to have been paid at a place if, for the purpose of the payment of those 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 that place; or
 - (b) an instruction is given by an employer for the crediting of an amount to the account of a person or a person's agent at that 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 instruction (as the case requires).
- (3) Wages are taken to be payable at the place at which they are paid, subject to this section.
- (4) 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 by the employer to the employee; or
 - (b) if wages have not previously been paid by the employer to the employee – the place where the employee last performed services in respect of the employer before the wages became payable.

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- (5) If wages paid or payable in the same month by the same employer in respect of the same employee are paid or payable in more than one Australian jurisdiction, the wages paid or payable in that month are taken to be paid or payable in the Australian jurisdiction in which the highest proportion of the wages are paid or payable.

Note for subsection (5)

Section 11(6) requires all wages paid or payable in the same month by the same employer in respect of the same employee to be aggregated for the purpose of determining whether the wages are taxable in this jurisdiction. This subsection ensures only one Australian jurisdiction can be considered to be the jurisdiction in which the wages are paid or payable.

6 Amendment of section 13 (What are wages)

After section 13(2)

insert

- (3) This Act applies in respect of wages mentioned in subsection (1)(a) to (e) that are paid or payable to or in relation to a person who is not an employee in the same way as it applies to wages paid or payable to an employee (as if a reference in this Act to an employee included a reference to any such person).

7 Amendment of section 24 (Inclusion of shares and options granted to directors as wages)

Section 24(4)

omit, substitute

Note for section 24

Section 13 provides that a reference to an employee in this Act includes a reference to any person to whom any amount that is treated as wages under this Act is paid or payable. See also section 11, under which the wages are taken to be paid or payable for services performed.

8 Repeal of section 25

Section 25

repeal

9 Amendment of section 26 (Place where wages are payable)

Section 26(2), note

omit, substitute

Note for subsection (2)

The place where wages are paid or payable is sometimes relevant to determining whether the wages are taxable in this jurisdiction. See section 11.

10 New Part 4, Division 9

After section 66

insert

Division 9 Services outside Australia

66A Wages paid or payable for or in relation to services performed in other countries

Wages are **exempt wages** if they are paid or payable for or in relation to services performed by an employee wholly in one or more other countries for a continuous period of more than 6 months beginning on the day on which wages were first paid or payable to that employee for the services so performed.

11 New Part 11

After section 112

insert

Part 11 Transitional matters for Payroll Tax Amendment Act 2010

113 Application

- (1) Subject to subsections (2) and (3), the amendments made to this Act by the *Payroll Tax Amendment Act 2010* apply in respect of taxable wages that are paid or payable on or after 1 July 2009.
- (2) The amendments made to this Act by the *Payroll Tax Amendment Act 2010* are to be applied for the purpose of determining the correct amount of payroll tax (within the meaning of section 82) payable by an employer in respect of the financial year commencing on 1 July 2009 (including in respect of expired months).

(3) Section 9 continues to apply in respect of an expired month as if the amendments made to this Act by the *Payroll Tax Amendment Act 2010* had not been made.

(4) In this section:

expired month means a month occurring after June 2009 that ended before or on the day on which the Administrator's assent to the *Payroll Tax Amendment Act 2010* is declared.