



<b>REVENUE CIRCULAR PTA039</b>
Nexus Provisions - <i>Payroll Tax Act 2011</i>
Issue Date: 30 June 2011
Status: Current – Effective 1 July 2011
Previous Circular: -PTX002

## **Preamble**

The *Payroll Tax Act 2011* (the Act), which commenced on 1 July 2011, rewrites the *Payroll Tax Act 1987* (the 1987 Act) and harmonises the payroll tax legislation in the Australian jurisdictions.

1. The nexus provisions of the 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.
2. This Circular explains the nexus rules and clarifies the circumstances when wages must be declared in the ACT for payroll tax purposes. It also clarifies the liability for wages paid for services performed outside all Australian jurisdictions. It should be read in conjunction with the attached Flowchart which explains how the various scenarios will be treated and shows the circumstances in which wages are taxable in the ACT.

## **Circular**

### **Payroll Tax Nexus Provisions**

3. Payroll tax is payable when an employer's total Australian wages exceed the payroll tax-free threshold (deduction amount). Australian wages comprise ACT wages and interstate wages. ACT wages are the wages subject to payroll tax under the Act. Interstate wages are those wages subject to payroll tax in the other jurisdictions under their equivalent payroll tax legislation.
4. To determine whether the wages paid or payable in respect of each monthly return period are subject to ACT payroll tax, section 11 of the Act firstly requires an employer to determine whether the employee has wholly performed services in the ACT in a calendar month.
5. Where an employee has not wholly performed services in the ACT in the month, the nexus provisions provide four tiered tests, which require the following factors to be considered:
  - the employee's principal place of residence, or
  - the employer's registered ABN address/principal place of business, or
  - the place where the wages are paid to the employee, or
  - the place where the services are mainly performed.

## **Determining where wages are taxable - Sections 11 – 11C**

6. Sections 11, 11A, 11B and 11C need to be applied by employers in determining where wages are liable for payroll tax.

### **Where Services are Performed Wholly in One Jurisdiction – Section 11(1)(a)**

7. If services in a month are performed wholly in one jurisdiction, payroll tax is payable in that jurisdiction.
8. Section 11(1)(a) 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.
9. For example, Joe normally performs his duties in the ACT. In June 2010, he is sent to NSW for a temporary project and performs all his services in NSW that month. Wages paid to Joe in June 2010 for those services are liable to payroll tax in NSW.

### **Where Services are Performed in More Than One Australian Jurisdiction and/or Partly Outside all Australian jurisdictions – Section 11(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 new 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 11A***

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 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 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 principal place of business - Section 11B**

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. when 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 - Where wages are paid or payable- Sections 11(1)(b)(iii) & 11C(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.
19. For example, 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.
20. Mary performs services in more than one jurisdiction and is remunerated for those services in the ACT (\$200), NSW (\$300) and Victoria (\$1000). The payments are aggregated and tax is payable on the total amount of \$1500 in Victoria because that is where the largest proportion of wages is paid.

#### **Test 4 - Services performed mainly in ACT – s11(1)(b)(iv)**

21. 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 the ACT if the services were mainly performed in the ACT during the month. Services are mainly performed in the ACT if the actual time worked in the ACT is more than 50 per cent during the month.

#### **Employment In Another Country**

##### **Employees working in another country - assignment for less than six continuous months**

22. Wages paid or payable in the ACT to an employee performing services wholly in another country (or countries) (that is, an expatriate employee) for a period of up to six continuous months, are taxable in the ACT.
23. If only part of the wages earned by an expatriate employee is paid in the ACT and the remaining part is paid in another country, the part of the wages paid in the ACT 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**

24. Wages paid in the ACT are exempt from payroll tax if the employee has performed services wholly 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.
25. The six month period does not have to be within the one financial year but must be a continuous period.
26. 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 in the following circumstances:
  - for a holiday; or
  - to perform services exclusively related to the overseas assignment for a period of less than one month.
27. 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 the other country.

### **Services performed offshore**

28. Wages paid in the ACT for services performed wholly outside any Australian jurisdiction are taxable in the ACT irrespective of the duration of the assignment. This would typically apply to oil rig workers.
29. 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.
30. 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**

31. When calculating the value of wages paid in a foreign currency, the ACT 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).
32. The previous year's ATO figure may be applied for the purpose of making monthly returns, provided that the current year's rate is used to make an appropriate adjustment in the Annual Adjustment return.

### **Further Deeming Provisions under Section 11**

33. Section 11 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 11(3)**

34. 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).
35. For example, in June 2010 Peter was paid his usual \$3000 wages for services performed in that month and also a \$2000 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 wholly in a jurisdiction or in more than one jurisdiction.
36. If Peter performed services wholly in the ACT in June 2010 payroll tax would be payable in the ACT on the \$5000 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.

### **If wages are paid in a different month from when they were payable – Section 11(7)**

37. If wages are paid in a different month from the month they are payable, liability arises in the earlier of the two months. For example, 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 wholly in the ACT. As May is the earlier month, payroll tax on the wages for his May services is payable in the ACT even if Bill performed services wholly in NSW in August. Any additional wages paid in August must be separately analysed.

38. On the other hand, if Bill was paid in August 2010, in advance of his contractual entitlement to payment in September 2010, the wages would be liable in NSW, where he provided services in August (being the earlier month).

#### **If there are two or more payments in one month – Section 11(6)**

39. There may be instances where an employee receives two payments of wages 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.
40. For example, Rose receives wages of \$1000 on 14 November 2010 for services performed in the ACT. She receives another \$2000 on 28 November 2010 from the same employer for services performed in NSW. 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. in the ACT and NSW). Therefore, the four tiered tests are used to determine in which jurisdiction payroll tax is payable. In most cases, this will be the jurisdiction where Rose has her PPR.

#### **Where no services are performed in the month in which wages are paid – Sections 11(4) & (5)**

41. 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.
42. For example, 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 wholly in the ACT. As such, payroll tax is payable in the ACT for the wages paid to Jane in December.
43. 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 will be the jurisdiction where her PPR was located in October.
44. 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.
45. For example, if Jane accepts an offer of employment in August 2010 to commence work in the ACT in November 2010 and receives a payment of wages in August 2010, Jane would be taken to have performed services in August 2010 in the ACT (being the place it can be reasonably expected that services will be performed) and payroll tax on those wages would therefore be payable in the ACT.

#### **Shares and options**

46. Payroll tax liability for the grant of a share or option is also governed by the nexus rules contained in sections 11, 11A, 11B and 11C of the Act as well as section 26 of the Act.
47. If all the work was performed in the ACT in the month in which the relevant day falls (i.e. the granting or vesting date), then the shares or options are taxable in the ACT. If the work performed in the month in which the relevant day 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.

48. For the purposes of test 3, section 26 of the 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 an ACT company or in the case of an option, an option to acquire shares in an ACT company, the relevant wages are taken to be paid in the ACT.
49. If the share or option is not in an ACT company, the relevant wages are taken to be paid outside the ACT.
50. In this context, "ACT company" means:
- a company incorporated or taken to be incorporated under the Corporations Act that is taken to be registered in the ACT for the purposes of that Act; or
  - any other body corporate that is incorporated under an Act of the ACT.

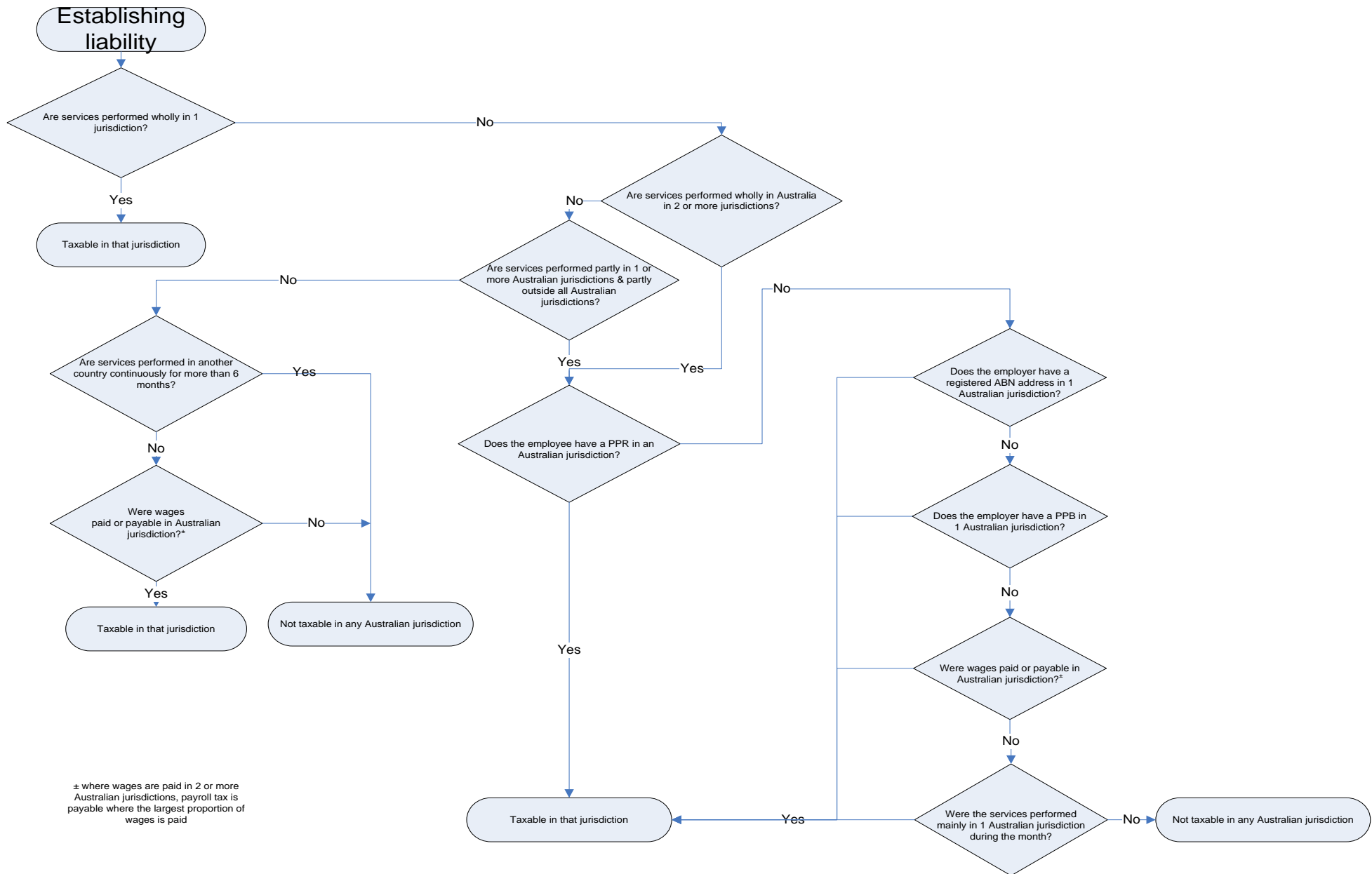
### Definitions

51. For the purpose of this Circular:
- **ABN address** means the address for service of notices under the *A New Tax System (Australian Business Number) Act 1999* (Cwth), 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 reference eg *Jervis Bay Acceptance Act 1915* for the ACT, *Interpretations Act 1987* for NSW, *Coastal and Other Waters (Application of State Laws) Act 1982* for TAS etc).
  - **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.

SIGNED

David Read  
Commissioner for ACT Revenue

30 June 2011



**Establishing liability**

Are services performed wholly in 1 jurisdiction?

Yes

Taxable in that jurisdiction

No

Are services performed wholly in Australia in 2 or more jurisdictions?

No

Are services performed partly in 1 or more Australian jurisdictions & partly outside all Australian jurisdictions?

No

Are services performed in another country continuously for more than 6 months?

No

Were wages paid or payable in Australian jurisdiction?±

Yes

Taxable in that jurisdiction

Not taxable in any Australian jurisdiction

Yes

Does the employee have a PPR in an Australian jurisdiction?

Yes

Taxable in that jurisdiction

No

Does the employer have a registered ABN address in 1 Australian jurisdiction?

No

Does the employer have a PPB in 1 Australian jurisdiction?

No

Were wages paid or payable in Australian jurisdiction?±

No

Were the services performed mainly in 1 Australian jurisdiction during the month?

Yes

Taxable in that jurisdiction

No

Not taxable in any Australian jurisdiction