

TAX BULLETIN

AN UPDATE PUBLICATION
FOR OUR CLIENTS

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EMPLOYMENT TAXES OBLIGATIONS – EMPLOYEES WORKING IN AUSTRALIA OR OVERSEAS

Do you have employees who are working overseas or alternatively, employees from overseas working for you in Australia? If so, do you fully understand what Australian employment taxes obligations you have in relation to these workers?

The obligations for any or all employment taxes can be influenced by such matters as the tax residency of both the employer and the employee, as well as the duration and location of the assignment.

Although always a complex and often misunderstood area of taxation law, amendments made in 2009 to the income tax legislation affecting the taxation of foreign income derived by an Australian tax resident have further complicated matters.

This bulletin is a brief summary of the Australian employment taxes obligations for the following scenarios:

- Where an employee performs services outside Australia; and
- Where an employee performs services in Australia.

For the purposes of this bulletin, employment taxes are:

- PAYG Withholding on salaries and wages;
- Fringe Benefits Tax;
- Superannuation Guarantee;
- Payroll Tax; and
- Workers Compensation Insurance (WorkCover).

This bulletin is intended to be a general summary of employer obligations for employment taxes and is neither a detailed nor definitive guide to such obligations. Indeed, any advice in relation to a client's specific circumstances will require careful analysis. Consequently, we recommend that specialist advice be sought on any specific circumstances.



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Services Performed by an Employee Outside Australia

The following is a general summary of the liability of employers for Australian employment taxes where an employee performs services outside Australia.

	Australian Resident Employer	Non-Australian Resident Employer
Australian Tax Resident Employee	<p>PAYG Withholding ('PAYG') – Generally yes (net of any foreign tax required to be withheld)</p> <p>Fringe Benefits Tax ('FBT') – Yes if PAYG applies, otherwise no</p> <p>Superannuation Guarantee ('SG') - Yes</p> <p>Payroll Tax ('PRT') – Yes if wages received in Australia but only if service overseas is for a period of no more than 6 continuous months[^]</p> <p>WorkCover ('W/C') – Yes for short term assignment (e.g. no greater than 6 months)</p>	<p>PAYG – Yes if 'Sufficient Connection'* with Australia</p> <p>FBT – Yes if PAYG applies, otherwise no</p> <p>SG - No</p> <p>PRT – Yes if wages received in Australia but only if service overseas is for a continuous period of no more than 6 months[^]</p> <p>W/C – Yes if employee regularly works in Australia and assignment overseas is short term</p>
Non-Australian Tax Resident Employee	<p>PAYG – No</p> <p>FBT - No</p> <p>SG - No</p> <p>PRT – No</p> <p>W/C – No</p>	<p>PAYG – No</p> <p>FBT - No</p> <p>SG - No</p> <p>PRT – No</p> <p>W/C – No</p>

Notes:

*Sufficient Connection means that the employer carries on an enterprise or income producing activities in Australia including having a physical presence such as an office, business operations, a trading presence or employees in Australia. It does not include having ownership links with an Australian entity unless that entity carries on the business of the foreign resident in Australia.

[^]Any liability for payroll tax is also contingent on whether the level of taxable wages has exceeded the relevant State's threshold

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Services Performed by an Employee Within Australia

The following is a general summary of the liability of employers for Australian employment taxes where an employee performs services in Australia.

	Australian Resident Employer	Non-Australian Resident Employer
Australian Tax Resident Employee	PAYG – Yes	PAYG – Yes
	FBT – Yes	FBT – Yes
	SG – Yes	SG - Yes
	PRT – Yes [^]	PRT – Yes [^]
	W/C – Yes	W/C – Yes
Non-Australian Tax Resident Employee	PAYG – Yes	PAYG – Dependent on whether a Double Tax Agreement ('DTA') is in effect with the employee's home country and if so, whether it confers taxing rights on Australia If no DTA, Australia generally has a taxing right and PAYG will apply
	FBT - Yes	FBT – Yes if PAYG applies, otherwise no
	SG – Yes unless the employee qualifies as a senior foreign executive or a bilateral agreement exists with employee's home country	SG - Yes unless the employee qualifies as a senior foreign executive or a bilateral agreement exists with employee's home country
	PRT – Yes unless paid outside Australia and during the month worked mainly outside Australia [^]	PRT – Yes unless paid outside Australia and during the month worked mainly outside Australia [^]
	W/C – Yes	W/C – Yes

Notes:

[^]Any liability for payroll tax is also contingent on whether the level of taxable wages has exceeded the relevant State's threshold



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FURTHER INFORMATION

Please ask your regular Pitcher Partners tax contact for further details on the issues raised in this Tax Bulletin.

DISCLAIMER: Pitcher Partners is an association of independent firms. This bulletin is intended to provide a general summary only and should not be relied on as a substitute for professional advice.



Melbourne

Telephone +61 3 8610 5000
partners@pitcher.com.au

Sydney

Telephone +61 2 9221 2099
partners@pitcher-nsw.com.au

Perth

Telephone +61 8 9322 2022
partners@pitcher-wa.com.au

Adelaide

Telephone +61 8 8179 2800
partners@pitcher-sa.com.au

Brisbane

Telephone +61 7 3220 0355
partners@pitcher-qld.com.au

