

GMS Flash Alert

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Australia – Updated Taxation Ruling TR 2013/1: Interpretation of Employer for Short-Term Visitor Article

On 23 September 2026, the Australian Taxation Office (ATO) published the finalised Taxation Ruling TR 2013/1¹ that sets out the ATO's approach to determining the "employer" for the purposes of the Income from Employment Article, or short-term visit exception, under Australia's tax treaties.

The ruling aligns with TR 2023/4,² "Income tax and superannuation guarantee: who is an employee?" and recent court decisions on the meaning of "employee" and "employer." It places greater weight on the legal employment relationship, including the contractual rights and obligations between the parties as per the documented contractual arrangements, when identifying the employing entity.

The short-term visit exception can apply to both inbound and outbound employees. This GMS Flash Alert focuses on employees visiting Australia and whether their employment income may be exempt from Australian tax. Similar principles may be relevant when Australia is the home country, although the outcome will depend on the relevant treaty and the approach of the host-country tax authority.

WHY THIS MATTERS

The finalised approach has practical implications for multinational organisations managing cross-border employee movements. The outcome will depend heavily on how the relevant employment, assignment, and intercompany arrangements are contractually structured.

- The contracts are key: Treaty relief may be available where the contractual arrangements show that the home entity remains the legal employer.
- Assignment wording can affect the outcome: For example, wording that transfers the employment to the Australian entity, or suspends the home employment during the assignment, may prevent the short-term visit exception from applying.
- A recharge to the host country may not defeat the home employer position: A recharge to the Australian entity may be relevant but does not necessarily prevent the home entity from remaining the legal employer where this is supported by the contractual arrangements.

- The ruling does not address every common mobility arrangement: The examples provided in the ruling by the ATO focus largely on employees supplied under company-level service arrangements. Unfortunately, there are no examples that cover short parent-to-subsidiary secondments where the individual is assigned to work for the Australian entity or other typical business traveller or commuter arrangements.
- Permanent establishment analysis becomes more important: Even where the home entity is the employer, treaty relief generally also requires the remuneration not to be borne by an Australian permanent establishment. Organisations should consider whether repeated or connected visits by multiple employees may collectively create permanent establishment exposure.
- Other Australian obligations require separate analysis: If the employment income is exempt from Australian tax due to the treaty exemption, PAYG withholding and STP reporting may not be required. However, Superannuation Guarantee, payroll tax, and workers compensation do not automatically follow the treaty outcome and are required to be considered separately under the relevant rules. Australia's new Payday Super rules would also necessitate a shadow payroll to operate if Superannuation Guarantee obligations apply (even if the employment income is exempt under the treaty).

Key Highlights

Greater weight on the legal employment relationship

TR 2013/1 places greater weight on the legal rights and obligations that establish the employment relationship when determining the employer for the short-term visit exception. In practice, the contractual arrangements are central. This includes the employment contract, any assignment or secondment letter and relevant intercompany agreements, considered in the context, object, and purpose of the treaty exception.

Alignment with TR 2023/4 and recent case law

The ruling aligns with TR 2023/4 and recent High Court and Full Federal Court decisions on the meaning of "employee" and "employer". These authorities emphasise the contractual rights and obligations agreed between the parties when characterising an employment relationship. The courts have found that where there is a contract in place, there are limited circumstances where the court will look beyond that document to the day-to-day operation of the arrangement.

Practical impact for business travellers

The ruling may support treaty relief for some short-term visitors, but the result is not determined simply by the duration of the visit, payroll location or whether costs are recharged. Historically, a recharge was often treated as a very strong indicator that treaty relief would be difficult to sustain (effectively aligning with an 'economic employer' concept). However, under the finalised approach, a recharge does not necessarily determine the identity of the employer. There may be greater scope to rely on the contractual arrangements where:

- The employee remains employed by the home entity under the employment and assignment documentation;
- The employee's employment is not assigned or transferred to the Australian entity, including through wording that suspends the home employment during the Australian assignment; and
- The remuneration is not borne by an Australian permanent establishment.

The ruling's examples generally concern employees provided under contractual arrangements between companies. They do not specifically address the common situation of an employee seconded for a short period from a foreign parent to an Australian subsidiary. Where the individual's assignment documentation

makes the Australian entity the legal employer, treaty relief may remain unavailable despite the short duration of the visit.

Publication and application

- Date of publication: 23 September 2026.
- Application: Income years commencing before and after the ruling's date of issue.

KPMG INSIGHTS

The finalised ruling confirms a shift towards identifying the employer by reference to the legal rights and obligations created by the contractual arrangements. This may support treaty relief for one-off or short-term visits where the home employment remains in place and is not assigned to the Australian entity. It is less likely to assist where the assignment documentation makes the Australian entity the legal employer.

Organisations may wish to consider the following actions:

- **Review the full contractual framework**
Employment contracts, assignment or secondment letters and intercompany agreements should be read together to identify which entity holds the legal rights and obligations of the employer.
- **Distinguish service arrangements from employee assignments**
An intercompany contract for services does not itself transfer an individual's employment. By contrast, assignment wording that places the employee with the Australian entity or suspends the home employment may support the Australian entity being the legal employer.
- **Do not treat a recharge as determinative**
A recharge remains relevant to the broader treaty analysis, including whether remuneration is borne by an Australian permanent establishment. However, it may no longer, by itself, defeat the legal-employer position. Where the contractual documentation does not assign the employee's employment to the Australian entity, treaty relief may still be available despite a recharge, subject to the other treaty conditions.
- **Consider permanent establishment exposure**
Organisations should assess whether repeated or connected Australian activities by multiple employees may create a permanent establishment, even where each visit is brief and no individual creates sufficient temporal or geographic presence alone. The position will depend on the relevant treaty and the combined facts.
- **Assess other employer obligations separately**
Superannuation Guarantee, state-based payroll tax and state-based workers compensation insurance requirements should continue to be reviewed under their own rules. The ruling does not provide a general exemption from these obligations. Additionally, Australia's new Payday Super rules would also necessitate a shadow payroll to operate if Superannuation Guarantee obligations apply (even if the employment income is exempt under the treaty).
- **Apply the ruling to current and proposed visits**
One-off visits may qualify for treaty relief where the home entity remains the legal employer, there is no assignment of employment to the Australian entity and all other treaty conditions are met. Supporting documentation should be retained.

The ruling may provide a clearer basis for treaty relief in appropriately structured one-off visit arrangements. Organisations should avoid treating it as a broad exemption for short-term assignments and should test both the legal-employer and permanent establishment conditions for each workforce model. Readers may wish to contact their usual immigration adviser, tax services or employment law professional, or a member of the KPMG team in Australia (see Contacts).

ENDNOTES:

- 1 Australian Taxation Office, "[Taxation Ruling TR 2013/1](#)" (access may be restricted).
- 2 Australian Taxation Office, "[Taxation Ruling TR 2023/4](#)."

Also check the federal and high court cases in detail - Australian Taxation Office, "[Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd \[2022\]](#)" (access may be restricted); High Court of Australia, "[ZG Operations Australia Pty Ltd v Jamsek \[2022\]](#)."; Australian Taxation Office, "[Jamsek v ZG Operations Australia Pty Ltd \(No 3\) \[2023\]](#)."; Federal Court of Australia, "[Dental Corporation Pty Ltd v Moffet \[2020\]](#)"; Federal Court of Australia, "[JMC Pty Ltd v Commissioner of Taxation \[2023\]](#)."

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People Services in Australia

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Australia:

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