



Australian Capital Territory

# **Payroll Tax Act 1987      No 40**

**Republication No 13**

**Effective: 1 November 2003 – 11 August 2004**

Republication date: 1 November 2003

Last amendment made by A2003-37

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Payroll Tax Act 1987* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 November 2003. It also includes any amendment, repeal or expiry affecting the republished law to 1 November 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Payroll Tax Act 1987

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Australian Capital Territory

# Payroll Tax Act 1987

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An Act to impose payroll tax

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Payroll Tax Act 1987*.

### 2A Incorporation of Taxation Administration Act

The *Taxation Administration Act 1999* is incorporated and shall be read as one with this Act.

### 3 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***annual leave***, for section 3 (1), definition of ***wages***, paragraph (i)—see the *Income Tax Assessment Act 1936* (Cwlth), section 26AC (Amounts received on retirement or termination of employment in lieu of annual leave).

***charitable organisation*** means an organisation, society, institution or body carried on for a religious, educational, benevolent or charitable purpose, other than one carried on for the purpose of securing pecuniary benefit to its members.

***commencement day*** means the date fixed under section 2.

***company*** includes an unincorporated association and a partnership.

***corresponding law*** means a law of a State or another Territory relating to the imposition on employers of a tax on wages paid or payable by them and the assessment and collection of that tax.

***determined rate*** means the rate determined under the *Taxation Administration Act 1999*, section 139 for the provision in which the expression appears.

***eligible termination payment***, for section 3 (1), definition of ***wages***, paragraph (i)—see the *Income Tax Assessment Act 1936* (Cwlth), section 27A (Interpretation).

***employer*** means a person who pays or is liable to pay wages, and includes—

- (a) the Territory or a Territory authority; and
- (b) a body, whether incorporated or not, established under a law of a State or another Territory, being a body that is resident, or carries on business, in the ACT; and
- (c) a person who is an employment agent.

***employment agent*** means a person who by arrangement procures the services of another person for a client of the firstmentioned person as a result of which engagement the employment agent receives directly or indirectly payment, whether by way of a lump sum or ongoing fee, during or in respect of the period when the services are provided by that person to the client.

***exemption certificate*** means a certificate granted under section 18.

***group period***, in relation to a group, means a period of less than a financial year (being a period that falls wholly within a financial year) during which there was at all times at least 1 member of the group (not necessarily the same member) who was an employer in Australia.

***group year***, in relation to a group, means a financial year during which there was at all times at least 1 member of the group (not necessarily the same member) who was an employer in Australia.

***independent employer*** means an employer who is not a member of a group.

***interim tax*** means tax payable under section 12 or 13 in respect of a return.

***long service leave***, for section 3 (1), definition of ***wages***, paragraph (i)—see the *Income Tax Assessment Act 1936* (Cwlth), section 26AD (Amounts received on retirement or termination of employment in lieu of long service leave).

***new starter***—see section 9A (Exemption from tax—new starters).

***pay***, in relation to wages or remuneration, includes provide, confer and assign.

***return*** means a return lodged or required to be lodged under this Act.

***superannuation benefit*** means money paid or payable by an employer in respect of an employee—

- (a) to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or
- (b) as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cwlth); or
- (c) to or as any other form of superannuation, provident or retirement fund or scheme, including a wholly or partly unfunded fund or scheme.

***tax*** means tax payable under this Act.

***taxable wages*** means—

- (a) in relation to the Territory—wages to which this Act applies because of section 5; or



- (b) in relation to a State or another Territory—wages to which a corresponding law of that State or Territory applies.

**wages** means an amount paid or payable to a person in relation to his or her capacity as an employee or former employee, and includes—

- (a) a payment by way of remuneration, salary, commission, bonus, allowance or other benefit; and
- (b) a superannuation benefit; and
- (c) a payment made under a prescribed class of contracts, to the extent to which the payment is attributable to labour; and
- (d) a payment by a company by way of remuneration to a director or a member of the governing body of the company; and
- (e) wages, remuneration, salary, commission, bonuses, allowances or other benefits paid or payable whether in cash or in kind in relation to an employee by any person acting for or in concert or under an arrangement or understanding (whether formal or informal and whether expressed or implied) with the employer; and
- (f) any amount deemed to be wages under section 3B (2) (c); and
- (g) the value of any payments made in kind; and
- (h) any amount paid or payable by way of remuneration to a person who was engaged by an employment agent to provide services for a client of the employment agent, being services in respect of which the remuneration was paid or is payable; and

- (i) the following payments made in consequence of the retirement from, or termination of, any office or employment of an employee:
  - (i) a lump sum payment paid before or after the retirement or termination in relation to unused annual leave, or unused annual leave and a bonus, loading or other additional payment relating to that leave;
  - (ii) an amount paid in relation to unused long service leave;
  - (iii) so much of any eligible termination payment paid or payable by an employer (whether or not paid to the employee or to another entity) that would be included in the assessable income of an employee under the *Income Tax Assessment Act 1936* (Cwlth), Part 3, Division 2, Subdivision AA if the whole of the eligible termination payment had been paid to the employee.
- (2) A reference in subsection (1), definition of ***superannuation benefit*** to an employee includes a reference to any person to whom an amount is paid or payable as wages otherwise than as a superannuation benefit.
- (3) For this Act, a superannuation, provident or retirement fund or scheme is unfunded to the extent that money paid or payable by an employer in respect of an employee covered by the fund or scheme is not paid or payable during the employee's period of service with the employer.
- (4) For this Act—
  - (a) any wages paid or payable to an employee, in respect of the employee's services as an employee of an employer, by a person other than the employer; and

- (b) any wages paid or payable by an employer, in respect of an employee's services as an employee of the employer, to a person other than the employee;

shall be taken to be wages paid or payable by the employer to the employee.

- (5) A reference in this Act to a *benefit*—

- (a) is, subject to paragraph (b), a reference to a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth); and
- (b) is to be taken not to include a superannuation benefit.

### **3A Value of benefits**

For this Act, the value of any benefits provided by an employer during a financial year or a group year is the amount, in relation to that year, that would be the fringe benefits taxable amount for the *Fringe Benefits Tax Assessment Act 1986* (Cwlth).

### **3B Application of Act to certain contracts**

- (1) A reference in this section to a service contract is to be taken to be a reference to a contract under which a person (the *designated person*), in the course of a business carried on by the person—
  - (a) supplies services to another person in relation to the performance of work; or
  - (b) is supplied with the services of another person in relation to the performance of work; or
  - (c) gives out goods to natural persons for work to be performed by those persons in respect of the goods and for resupply of the goods to the designated person or, if the designated person is a member of a group, to another member of that group;

but is not to be taken to include a reference to a contract of service or a contract under which a designated person in the course of a business carried on by the designated person—

- (d) is supplied with services in relation to the performance of work that are ancillary to the supply of goods under the contract by the person by whom the services are supplied or to the use of the goods that are the property of that person; or
- (e) is supplied with services in relation to the performance of work if—
  - (i) those services are of a kind not ordinarily required by the designated person and are rendered by a person who ordinarily renders services of that kind to the public generally; or
  - (ii) the commissioner is satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally;

unless the commissioner determines that the contract under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

(2) For this section—

- (a) a person—
  - (i) to whom, under a service contract, the services of persons are supplied in relation to the performance of work; or
  - (ii) who, under a service contract, gives out goods to other persons;shall be deemed to be an employer; and
- (b) a person who—

- (i) performs work in relation to which services are supplied to another person under a service contract; or
    - (ii) being a natural person, under a service contract, resupplies goods to an employer;shall be deemed to be an employee; and
  - (c) amounts paid or payable by an employer in relation to—
    - (i) the performance of work relating to a service contract; or
    - (ii) the resupply of goods by an employee under a service contract;less any amount of GST payable for the performance or resupply, are taken to be wages; and
  - (d) if an amount referred to in paragraph (c) is included in a larger amount paid or payable by an employer under a service contract—that part of the larger amount that is not attributable to the performance of work relating to the service contract or the resupply of goods by an employee under the service contract may be determined by the commissioner.
- (3) If, in respect of a payment in relation to the performance of work that is to be deemed to be wages under subsection (2), payroll tax is paid by a person who is to be deemed under that subsection to be an employer—
- (a) no other person shall be liable to payroll tax in respect of that payment; and
  - (b) if another person is liable to make a payment in relation to that work—that person shall not be liable to payroll tax in respect of that payment unless it or the payment by the person who is to be deemed to be the employer is made

with an intention either directly or indirectly of avoiding or evading the payment of tax whether by that deemed employer or another person.

(4) In this section—

- (a) a reference to a **contract** is to be taken to include a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied; and
- (b) a reference to **supply** is to be taken to include a reference to supply by way of sale, exchange, lease, hire, credit contract or regulated contract and, in relation to services, includes a reference to the providing, granting or conferring of services; and
- (c) a reference (however expressed) to the **resupply of goods** acquired from a person is to be taken to include a reference to—
  - (i) a supply to the person of goods in an altered form or condition; and
  - (ii) a supply to the person of goods in which the firstmentioned goods have been incorporated; and
  - (iii) a supply to the person of an article manufactured or produced from any such goods; and
- (d) a reference to **services** is to be taken to include a reference to results (whether goods or services) of work performed.

(5) In this section:

**credit contract**—see the Consumer Credit (Australian Capital Territory) Code.

**GST**—see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), dictionary.

*regulated contract*—see the *Credit Act 1985*.

### **3C Contracts that are not service contracts**

A reference in section 3B to a service contract is not to be taken to be a reference to a contract under which a person is supplied with services ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them, unless the commissioner determines that the contract was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

## **4 Administration**

The commissioner has the general administration of this Act.

## **5 Wages to which this Act applies**

- (1) The following wages are wages to which this Act applies:
  - (a) wages that are paid or payable in the ACT, other than wages paid or payable in the ACT in respect of services performed or rendered wholly in a State or wholly in another Territory;
  - (b) wages that are paid or payable elsewhere than in the ACT in respect of services performed or rendered wholly in the ACT.
- (2) Wages that are payable to a person by his or her employer but have not been paid, other than wages that, under the terms of the person's employment, are payable in another Territory or in a State, shall be deemed—
  - (a) if the wages are payable in respect of services performed or rendered wholly in the ACT—to be wages payable to the employee in the ACT; or
  - (b) if—

- (i) the wages are not payable in respect of services performed or rendered wholly in the ACT, wholly in another Territory or wholly in a State; and
    - (ii) the wages last paid or payable to the person by that employer were included, or required to be included in a return under this Act;
  - to be wages payable to the person in the ACT; or
  - (c) if the wages are not deemed, by paragraph (a) or (b) or a provision of a corresponding law, to be wages payable to the person in the ACT, in a State or in another Territory—to be wages payable to the person by that employer at the place where that person last performed or rendered any services for that employer before those wages became payable.
- (3) If a bill of exchange, promissory note, money order, postal order or other instrument has been given or sent by an employer to a person or the person's agent in payment of the person's wages, the wages shall be deemed to have been paid—
- (a) at the place where the instrument is given or to which it is sent, as the case may be; and
  - (b) when the instrument was so given or sent.

**5A Agreement etc to reduce or avoid liability to payroll tax**

- (1) If any person enters into any agreement, transaction or arrangement, whether in writing or otherwise, under which a natural person performs or renders, for or on behalf of another person, services in respect of which any payment is made to some other person related or connected to the natural person performing or rendering the services and the effect of the agreement, transaction or arrangement is to reduce or avoid the



liability of any person to the assessment, imposition or payment of payroll tax, the commissioner may—

- (a) disregard the agreement, transaction or arrangement; and
- (b) determine that any party to the agreement, transaction or arrangement shall be deemed to be an employer for this Act; and
- (c) determine that any payment made in respect of the agreement, transaction or arrangement shall be deemed to be wages for this Act;

and a determination under paragraph (b) or (c) has effect accordingly.

- (2) This section has effect in relation to agreements, transactions and arrangements made before, on or after the commencement of this section.

## Part 2                      Liability to taxation

### 6                      Payroll tax liability

- (1) Tax is payable by an employer in respect of wages to which this Act applies because of section 5 that are paid or payable by the employer on or after the commencement date.
- (2) If, in respect of wages paid in relation to the performance of work, payroll tax is paid by an employment agent, no other person shall be liable to payroll tax in respect of that payment.

### 7                      Employment of transitional staff

For this Act—

- (a) the Territory or the appropriate Territory authority, as the case requires, shall be taken to be the employer of a member of the transitional staff within the meaning of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cwlth); and
- (b) the wages of that member shall be taken to be payable by the Territory or that authority, as the case requires.

### 9                      Exemption from tax

- (1) Section 6 does not apply to wages paid or payable—
  - (a) by the Governor-General; or
  - (b) by a charitable organisation (other than a charitable organisation carried on for an educational purpose); or
  - (c) by a charitable organisation that is a school or college (other than a technical school or college) carried on by a body corporate, society or association and providing

education at or below, but not above, the secondary level of education; or

- (d) by a hospital that is a recognised hospital under the *Health Insurance Act 1973* (Cwlth); or
- (e) to members of his or her official staff by a representative (other than a diplomatic or consular representative) in Australia of the government of another country; or
- (f) to a person who is a member of the Defence Force, being wages paid or payable by the employer from whose employment the person is on leave because of the person's being such a member; or
- (g) to a prescribed person, if the wages are in respect of the period of 2 years commencing on the first day of the person's employment by the employer by whom those wages were paid or are payable; or
- (h) from a bank account kept under the *Financial Management Act 1996*, part 5, unless—
  - (i) the bank account is nominated by the Minister in writing for this subparagraph; or
  - (ii) the wages are paid or payable by an entity prescribed for the *Taxation (Government Business Enterprises) Act 2003*, section 9; or
  - (iii) the wages are paid or payable by an entity to which a direction under the *Taxation (Government Business Enterprises) Act 2003*, section 10 applies to make the entity liable to tax under this Act; or
- (i) by a Territory authority funded solely by money appropriated from the public money of the Territory by an Act unless—

- (i) the wages are paid or payable by a Territory authority prescribed for the *Taxation (Government Business Enterprises) Act 2003*, section 9; or
  - (ii) the wages are paid or payable by a Territory authority to which a direction under the *Taxation (Government Business Enterprises) Act 2003*, section 10 applies to make the authority liable to tax under this Act.
- (2) A nomination under subsection (1) (h) (i) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) Section 6 does not apply to wages paid or payable by an employment agent to a person (the **subcontractor**) under a contract between the agent and the subcontractor for work performed by the subcontractor for a client of the agent in any of the following cases:
  - (a) the subcontractor also supplies goods to the client under the contract and the wages amount to less than 50% of the value of the consideration paid or payable by the agent to the subcontractor for services and goods supplied to that client;
  - (b) the services provided by the subcontractor to the client are of a kind not ordinarily required by the employment agent and the subcontractor ordinarily renders services of that kind to the public generally;
  - (c) the subcontractor is a body corporate and individuals of both the following kinds perform the work for which the wages are paid or payable:
    - (i) a director or shareholder of the body;
    - (ii) an employee of the body who is not a director or shareholder;

- (d) the subcontractor is a partnership and individuals of both the following kinds perform the work for which the wages are paid or payable:
    - (i) a partner;
    - (ii) an employee of the partnership;
  - (e) the subcontractor is a sole trader and individuals of both of the following kinds perform the work for which the wages are paid or payable:
    - (i) the subcontractor;
    - (ii) an employee of the subcontractor;
  - (f) the individuals who perform the work for which the wages are paid or payable together work for not more than 8 days in any month under a contract with the agent;
  - (g) the subcontractor is a genuine employer of the individuals who perform the work for which the wages are paid.
- (4) In subsection (3)—
- (a) a reference to a **contract** shall be taken to include a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied; and
  - (b) a reference to **supply** shall be taken to include a reference to supply by way of sale, exchange, lease or hire; and
  - (c) a reference to **services** shall be taken to include a reference to results (whether goods or services) of work performed.
- (5) In subsection (1) (g):

***prescribed person***, in relation to an employer, means a person who was, for longer than 12 months immediately before starting employment with the employer—

- (a) unemployed; and
  - (b) receiving an allowance under the *Social Security Act 1991* (Cwlth) for that unemployment.
- (6) For subsection (5), definition of ***prescribed person***, a period of not longer than 4 weeks, or periods totalling not longer than 4 weeks, when a person was employed, or was not receiving an allowance under the *Social Security Act 1991* (Cwlth) for unemployment, must be disregarded in working out whether a period is a period of longer than 12 months mentioned in the definition.

## **9A Exemption from tax—new starters**

- (1) This section applies to a person (the ***new starter***) who—
- (a) is employed for the first time in an industry or occupation; and
  - (b) is receiving eligible training for work in the industry or occupation.
- (2) For this section, ***eligible training*** is training that is—
- (a) recognised training; and
  - (b) takes place during a single continuous period (the ***training period***) that—
    - (i) starts within the first 12 months after the new starter is first employed in the industry or occupation; and
    - (ii) continues for no more than 12 months.

- (3) Section 6 does not apply to wages paid or payable to the new starter for employment in the industry or occupation during the training period.
- (4) Subsection (3) applies to the new starter only in relation to 1 single continuous period of training that is eligible training.
- (5) Subsection (3) applies even if—
  - (a) the new starter is employed at any time during the training period by an employer or employers different from the employer who first employed the new starter in the industry or occupation; or
  - (b) the new starter is not continuously employed in the industry or occupation during the training period; or
  - (c) the eligible training is a part of a course of training that began before the start of the training period, or continues after the end of the training period.
- (6) The Minister may, in writing, declare that approved training is not recognised training.
- (7) A declaration under subsection (6) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (8) In this section:

***approved training*** means training under an approved training contract.

***approved training contract***—see the *Vocational Education and Training Act 2003*, dictionary.

***recognised training*** means approved training other than training declared under subsection (6) not to be recognised training.

**10 Amount of tax payable—independent employers**

- (1) If an employer is an independent employer in Australia during the whole of a financial year (whether or not he or she was an employer in the ACT during the whole of that year), the amount of tax payable in respect of wages paid or payable in the ACT by the employer during that year is the amount calculated in accordance with the formula:

$$\frac{A \times ACTW}{AW}$$

where:

*A* means the amount calculated by applying the determined rate to the sum of all taxable wages paid or payable in Australia by the employer during that year.

*ACTW* means the sum of all taxable wages paid or payable in the ACT by the employer during that year.

*AW* means the sum of all taxable wages paid or payable in Australia by the employer during that year.

- (2) If an employer is an independent employer in Australia during a period of less than a whole financial year, being a period falling wholly within a financial year, (whether or not he or she was an employer in the ACT during the whole of that period), the amount of tax payable in respect of wages paid or payable in the ACT by the employer during that period is the amount calculated in accordance with the formula:

$$\frac{ACTWP \times DP \times EAT}{DFY \times AWP}$$

where:

*ACTWP* means the sum of all taxable wages paid or payable in the ACT by the employer during that period.



***DP*** means the number of days in that period.

***DFY*** means the number of days in the financial year in which that period falls.

***AWP*** means the sum of all taxable wages paid or payable in Australia by the employer during that period.

***EAT*** means the estimated Australian tax calculated by applying the determined rate to the amount calculated in accordance with the formula:

$$\frac{AWP \times DFY}{DP}$$

where:

***AWP*** means the sum of all taxable wages paid or payable in Australia during that period.

***DFY*** means the number of days in the financial year in which that period falls.

***DP*** means the number of days in that period.

## **11 Amount of tax payable—group members**

- (1) If an employer—
- (a) is a member of a group during part or all of a group year; and
  - (b) if the employer is a member of the group during part only of that year—he or she is not an independent employer at any time during that year;

the amount of tax payable in respect of wages paid or payable in the ACT by the employer during that year is the amount calculated in accordance with the formula:

$$\frac{A \times ACTW}{AGW}$$

where:

*A* means the amount calculated by applying the determined rate to the sum of all taxable wages paid or payable in Australia by the group during that year.

*ACTW* means the sum of all taxable wages paid or payable in the ACT by the employer during that year.

*AGW* means the sum of all taxable wages paid or payable in Australia by the group during that year.

(2) If—

- (a) an employer is a member of a group during part or all of a group period; and
- (b) if the employer is a member of the group during part only of the group period—he or she is not an independent employer at any time during the remainder of the group period;

the tax payable in respect of wages paid or payable in the ACT by the employer during the group period is the amount calculated in accordance with the formula:

$$\frac{ACTWP \times DGP \times EAT}{DFY \times AGWP}$$

where:

*ACTWP* means the sum of all taxable wages paid or payable in the ACT by the employer during the group period.

*DGP* means the number of days in the group period.

*DFY* means the number of days in the financial year within which the group period falls.

**AGWP** means the sum of all taxable wages paid or payable in Australia by the group during the group period.

**EAT** means the estimated Australian tax calculated by applying the determined rate to the amount calculated in accordance with the formula:

$$\frac{AGWP \times DFY}{DGP}$$

where:

**AGWP** means the sum of all taxable wages paid or payable in Australia by the group during the group period.

**DFY** means the number of days in the financial year in which the group period falls.

**DGP** means the number of days in the group period.

(3) If an employer—

- (a) is a member of a group during part of a group period or group year; and
- (b) is an independent employer during part or all of the remainder of the group period or group year;

the amount of tax payable in respect of wages paid or payable in the ACT by the employer during the group tax period is the amount calculated in accordance with the formula:

$$\frac{ACTW \times DGTP \times EAT}{DFY \times AGW}$$

where:

**ACTW** means the sum of all taxable wages paid or payable in the ACT by the employer during the group tax period.

**DGTP** means the number of days in the group tax period.

**DFY** means the number of days in the financial year in which the group period falls, or in the group year, as the case requires.

**AGW** means the sum of all taxable wages paid or payable in Australia by the group during the group tax period.

**EAT** means the estimated Australian tax calculated by applying the determined rate to the amount calculated in accordance with the formula:

$$\frac{AGW \times DFY}{DGTP}$$

where:

**AGW** means the sum of all taxable wages paid or payable in Australia by the group during the group tax period.

**DFY** means the number of day in the financial year in which the group period falls, or in the group year, as the case requires.

**DGTP** means the number of days in the group tax period.

- (4) In subsection (3):

**group tax period** means that part of the group period or group year, as the case requires, during which the employer was not an independent employer.

## 12 Interim tax—monthly returns

- (1) The amount of tax payable in respect of a monthly return by an employer who was an independent employer during the whole month to which the return relates is the amount calculated in accordance with the formula:

$$\frac{ACTWM \times EAT}{AWM \times 12}$$

where:

**ACTWM** means the sum of all taxable wages paid or payable in the ACT by the employer during that month.

**AWM** means the sum of all taxable wages paid or payable in Australia by the employer during that month.

**EAT** means the estimated Australian tax calculated by applying the determined rate to the amount equal to 12 times the sum of all taxable wages paid or payable by the employer in Australia during that month.

- (2) The amount of tax payable in respect of a monthly return by an employer who was a member of a group during the whole month to which the return relates is the amount calculated in accordance with the formula:

$$\frac{\text{ACTWM} \times \text{EAT}}{\text{AGWM} \times 12}$$

where:

**ACTWM** means the sum of all taxable wages paid or payable in the ACT by the employer during that month.

**AGWM** means the sum of all taxable wages paid or payable in Australia by the group during that month.

**EAT** means the estimated Australian tax calculated by applying the determined rate to the amount equal to 12 times the sum of all taxable wages paid or payable in Australia by the group during that month.

### **13 Interim tax—returns in respect of other periods**

- (1) The amount of tax payable in respect of a return in relation to a period other than a financial year or a month (being a period that falls wholly within a financial year) by an employer who was an independent employer during the whole of that period is the amount calculated in accordance with the formula:

$$\frac{ACTWP \times DP \times EAT}{AWP \times DFY}$$

where:

**ACTWP** means the sum of all taxable wages paid or payable in the ACT by the employer during that period.

**AWP** means the sum of all taxable wages paid or payable in Australia by the employer during that period.

**DP** means the number of days in the period.

**DFY** means the number of days in the financial year within which the period falls.

**EAT** means the estimated Australian tax calculated by applying the determined rate to the amount calculated in accordance with the formula:

$$\frac{AWP \times DFY}{DP}$$

where:

**AWP** means the sum of all taxable wages paid or payable in Australia by the employer during that period.

**DFY** means the number of days in the financial year within which that period falls.

**DP** means the number of days in that period.

- (2) The amount of tax payable in respect of a return in relation to a period other than a financial year or a month (being a period that falls wholly within a financial year) by an employer who was a member of a group during the whole of that period is the amount calculated in accordance with the formula:

$$\frac{ACTWP \times DP \times EAT}{AGWP \times DFY}$$

where:

**ACTWP** means the sum of all taxable wages paid or payable in the ACT by the employer during that period.

**AGWP** means the sum of all taxable wages paid or payable in Australia by the group during that period.

**DP** means the number of days in the period.

**DFY** means the number of days in the financial year within which that period falls.

**EAT** means the estimated Australian tax calculated by applying the determined rate to the amount calculated in accordance with the formula:

$$\frac{AGWP \times DFY}{DP}$$

where:

**AGWP** means the sum of all taxable wages paid or payable in Australia by the group during that period.

**DFY** means the number of days in the financial year within which that period falls.

**DP** means the number of days in that period.

## **14 Annual reconciliation**

(1) For the *Taxation Administration Act 1999*—

- (a) if the total amount of any interim tax paid by an employer in relation to wages paid or payable by the employer during any financial year exceeds the amount of tax payable by the employer under section 10 or 11 in respect of those wages, the employer has overpaid an amount of tax equal to the difference between the amount of interim tax paid and the amount of tax payable; and

- (b) if the total amount of any interim tax paid by an employer in relation to wages paid or payable by the employer during any financial year is less than the amount of tax payable by the employer under section 10 or 11 in respect of those wages, the employer has underpaid an amount of tax equal to the difference between the amount of interim tax paid and the amount of tax payable.
- (2) If, on assessing the amount of tax payable in respect of wages paid or payable by an employer in any financial year, it appears to the commissioner that the employer has underpaid an amount of tax because of subsection (1) (b)—
  - (a) the commissioner shall serve on the employer written notice specifying—
    - (i) the amount of tax payable; and
    - (ii) the amount of interim tax paid; and
    - (iii) the date the underpaid amount becomes due and payable, being a date not less than 30 days after the date of the notice; and
  - (b) interest is not payable on the underpaid amount on or before the date the amount becomes due and payable.



## Part 3 Returns

### 16 Returns

- (1) If the sum of all taxable wages paid or payable in Australia by an employer in any month exceeds the amount determined for this subsection under the *Taxation Administration Act 1999*, section 139 the employer shall—
  - (a) lodge a return in relation to that month; and
  - (b) lodge a return in relation to each subsequent month in the financial year in which the firstmentioned month falls; and
  - (c) pay any interim tax that is payable in respect of each return because of section 12 (1) or (2), as the case requires.
- (2) A return shall—
  - (a) be in writing; and
  - (b) be lodged within 7 days after the end of the month; and
  - (c) specify the taxable wages that were paid or payable by the employer during that month.

*Note* If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a return, the form must be used.

### 17 Returns—variation of time for lodging

- (1) An employer may apply to the commissioner for variation of the periods in relation to which, or the time within which, the employer is to lodge returns.
- (2) An application shall—
  - (a) be in writing, addressed to the commissioner; and
  - (b) specify—

- (i) the name and address of the applicant; and
  - (ii) the grounds on which the variation is sought.
- (3) If the commissioner is satisfied that it would be unduly onerous for the employer—
  - (a) to lodge a return in relation to each month; or
  - (b) to lodge a return within 7 days after the end of each month;the commissioner may, by written notice addressed to the employer vary the periods in relation to which, or the time within which, the employer is to lodge returns.
- (4) While a notice is in force in relation to an employer, the employer shall—
  - (a) lodge returns in accordance with the notice; and
  - (b) pay any interim tax payable in respect of each return because of section 13 (1) or (2), as the case requires.
- (5) If—
  - (a) a notice is in force in relation to an employer; and
  - (b) the commissioner is no longer satisfied that it would be unduly onerous for the employer to lodge returns in relation to each month, or within 7 days after the end of each month;the commissioner may, by written notice addressed to the employer, revoke the firstmentioned notice.

## **18 Monthly returns—exemptions**

- (1) An employer who is of the opinion that—
  - (a) the employer is not liable to pay tax; or
  - (b) tax the employer pays will be refunded;

may apply to the commissioner for an exemption from lodging returns under section 16.

- (2) An application shall—
  - (a) be in writing, addressed to the commissioner; and
  - (b) specify—
    - (i) the amount of wages payable by the employer; and
    - (ii) the amount of tax (if any) that, in the employer's opinion, the employer is liable to pay.
- (3) If the commissioner is satisfied that—
  - (a) tax will not be payable by the employer; or
  - (b) tax paid by the employer will be refunded;the commissioner may grant a certificate to the employer exempting the employer from lodging returns under section 16.
- (4) An exemption certificate may be granted subject to any conditions the commissioner determines.
- (5) While an exemption certificate is in force in respect of an employer—
  - (a) the employer need not lodge returns under section 16; and
  - (b) the employer shall lodge a return relating to each financial year or other period specified in the certificate within 21 days after the end of the financial year or within any other period specified in the certificate.
- (6) If—
  - (a) an exemption certificate is in force in respect of an employer; and

- (b) the commissioner is no longer satisfied that tax will not be payable by the employer or, if tax is payable, that it will be refunded;

the commissioner may, by written notice addressed to the employer, cancel the exemption certificate.

- (7) The commissioner may, if he or she considers it appropriate to do so, vary a condition subject to which an exemption certificate is issued.

## Part 4 Miscellaneous

### 19 Review of decisions

Applications may be made to the administrative appeals tribunal for a review of a decision of the commissioner—

- (a) under section 3B (1) or 3C, that a service contract was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax; or
- (b) under section 3B (2) (d); or
- (c) under section 5A, disregarding an agreement, transaction or arrangement; or
- (d) refusing to give, or revoking, a notice under section 17; or
- (e) under section 18 refusing to grant, or cancelling, an exemption certificate; or
- (f) under section 18 imposing or varying conditions in relation to an exemption certificate.

### 20 Notification of decisions

- (1) If the commissioner makes a decision of the kind referred to in section 19, he or she shall cause written notice of the decision to be given to the employer concerned.
- (2) A notice under subsection (1) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1) .

### 21 Regulation-making power

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Payroll Tax Act 1987* No 40 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Payroll Tax Act 1987 No 40**

notified 31 July 1987

commenced 1 August 1987 (Gaz 1987 No S193)

as amended by

##### **Payroll Tax (Amendment) Ordinance 1988 No 32**

notified 30 June 1988

commenced 1 July 1988

##### **Payroll Tax (Amendment) Ordinance 1989 No 15**

notified 22 March 1989

commenced 22 March 1989

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

## Endnotes

### **Legislation after becoming Territory enactment**

#### **Payroll Tax (Amendment) Act 1989 No 17**

notified 31 October 1989 (Gaz 1989 No S33)  
commenced 1 November 1989 (s 2)

#### **Payroll Tax (Amendment) Act 1993 No 6**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993 (s 3)

#### **Payroll Tax (Amendment) Act 1994 No 16**

notified 20 May 1994 (Gaz 1994 No S87)  
commenced 1 April 1994 (s 2)

#### **Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

#### **Payroll Tax (Amendment) Act 1995 No 10**

notified 30 June 1995 (Gaz 1995 No S135)  
ss 1-3 commenced 30 June 1995 (s 2 (1))  
remainder commenced 1 July 1995 (s 2 (2) and Gaz 1995 No S158)

#### **Consumer Credit (Consequential Provisions) Act 1995 No 19 s 8**

notified 5 September 1995 (Gaz 1995 No S212)  
s 1, s 2 commenced 5 September 1995 (s 2 (1))  
s 8 commenced 1 November 1996 (s 2 (2) and Gaz 1996 No S273)

#### **Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

#### **Payroll Tax (Amendment) Act 1997 No 101**

notified 24 December 1997 (Gaz 1997 No S420)  
s 4 commenced 1 July 1996 (s 2 (2))  
remainder commenced 24 December 1997 (s 2 (1))



**Taxation Administration (Consequential and Transitional Provisions) Act 1999 No 5 sch 2**

notified 1 March 1999 (Gaz 1999 No S8)

commenced 1 March 1999 (s 2)

**Payroll Tax (Amendment) Act 1999 No 26**

notified 6 May 1999 (Gaz 1999 No S22)

commenced 6 May 1999 (s 2)

**Payroll Tax (Amendment) Act (No 2) 1999 No 42**

notified 12 July 1999 (Gaz 1999 No S44)

commenced 6 May 1999 (s 2)

**Financial Relations Agreement Consequential Amendments Act 2000 No 34 pt 4**

notified 6 July 2000 (Gaz 2000 No S33)

s 1, s 2 commenced 6 July 2000 (IA s 10B)

pt 4 taken to have commenced 1 July 2000 (s 2 (1))

**Legislation (Consequential Amendments) Act 2001 No 44 pt 277**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 277 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Payroll Tax Amendment Act 2001 No 87**

notified 31 August 2001 (Gaz 2001 No S64)

s 1, s 2 commenced 31 August 2001 (IA s 10B)

remainder commenced 1 September 2001 (s 2)

**Treasury Legislation Amendment Act 2002 No 7 pt 5**

notified LR 17 April 2002

s 1, s 2 commenced 17 April 2002 (LA s 75)

pt 5 taken to have commenced 1 September 2001 (s 2 (4))

**Revenue Legislation Amendment Act 2002 No 28 pt 2**

notified LR 9 September 2002

s 1, s 2 commenced 1 July 2002 (LA s 75 (2))

pt 2 taken to have commenced 1 July 2002 (s 2 (1))

## Endnotes

### 4 Amendment history

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#### **Revenue Legislation Amendment Act 2002 (No 2) No 48 pt 3**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

pt 3 commenced 21 December 2002 (s 2 (2))

#### **Taxation (Government Business Enterprises) Act 2003 A2003-12 sch 1 pt 1.8**

notified LR 27 March 2003

s 1, s 2 taken to have commenced 1 July 2002 (LA s 75 (2))

sch 1 pt 1.8 commenced 28 March 2003 (s 2 (2))

#### **Vocational Education and Training Act 2003 A2003-37 sch 2 pt 2.6**

notified LR 8 September 2003

s 1, s 2 commenced 8 September 2003 (LA s 75 (1))

sch 2 pt 2.6 commenced 1 November 2003 (s 2)

## 4 Amendment history

### **Commencement**

s 2 om 2001 No 44 amdt 1.3105

### **Incorporation of Taxation Administration Act**

s 2A ins 1988 No 32

sub 1999 No 5

### **Interpretation for Act**

s 3 am 1988 No 32; ss renum R7 LA; 2002 No 28 s 7  
def **annual leave** ins 2002 No 28 s 6  
def **apprentice** om 2001 No 87 s 4  
def **determined rate** am 1999 No 5  
def **eligible termination payment** ins 2002 No 28 s 6  
def **employer** am 1989 No 17 s 4  
sub 1993 No 6 s 4  
def **employment agent** ins 1989 No 17 s 4  
def **long service leave** ins 2002 No 28 s 6  
def **new starter** ins 2001 No 87 s 5  
def **pay** ins 1989 No 17 s 4  
def **superannuation benefit** ins 1997 No 101 s 4  
def **tribunal** ins 1989 No 38  
om 1994 No 60  
def **wages** am 1989 No 17 s 4; 1997 No 101 s 4; pars  
renum R7 LA; 2002 No 28 s 4, s 5

**Value of benefit**

s 3A ins 1989 No 17  
sub 1994 No 16  
am 2002 No 28 s 8

**Application of Act to certain contracts**

s 3B ins 1989 No 17  
am 1995 No 19; 2000 No 34 s 33

**Contracts that are not service contracts**

s 3C ins 1989 No 17

**Agreement etc to reduce or avoid liability to payroll tax**

s 5A ins 1989 No 17

**Payroll tax liability**

s 6 sub 1988 No 32  
am 1989 No 17

**Employment of transitional staff**

s 7 om 1988 No 32  
ins 1993 No 6

**General deduction**

s 8 om 1988 No 32

**Exemption from tax**

s 9 am 1988 No 32; 1989 No 15; 1993 No 6; 1995 No 10;  
1996 No 26; 1999 No 26; 1999 No 42 s 4; 2001 No 44  
amdt 1.3106; 2001 No 87 s 6, s 8; pars renum R7 LA  
(see 2001 No 87 s 7); 2002 No 48 s 6; A2003-12 amdt  
1.10, amdt 1.11

**Exemption from tax—new starters**

s 9A ins 2001 No 87 s 9  
am 2002 No 7 ss 23-25  
(7)-(9) (ins 2001 No 87 s 9) exp 30 September 2001 (s  
9A (9))  
am A2003-37 amdt 2.15

**Amount of tax payable—independent employers**

s 10 sub 1988 No 32

**Amount of tax payable—group members**

s 11 sub 1988 No 32

**Interim tax—monthly returns**

s 12 sub 1988 No 32

**Interim tax—returns in respect of other periods**

s 13 sub 1988 No 32

## Endnotes

### 5 Earlier republications

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#### Annual reconciliation

s 14 sub 1988 No 32  
am 1999 No 5

#### Part-year adjustments

s 15 om 1988 No 32

#### Returns

s 16 am 1988 No 32; 1999 No 5; 2001 No 44 amdt 1.3107,  
amdt 1.3108

#### Returns—variation of time for lodging

s 17 am 1988 No 32

#### Monthly returns—exemptions

s 18 am 1988 No 32

#### Review of decisions

s 19 am 1988 No 32; 1989 No 38; 1989 No 17; 1994 No 60;  
pars renum R7 LA

#### Notification of decisions

s 20 am 1989 No 38; 1994 No 60

#### Regulation-making power

s 21 orig s 21 om 1999 No 26  
ins 2001 No 44 amdt 1.3109

#### Revenue Legislation Amendment Act 2002—Transitional effect

s 22 am 1989 No 38  
om 2001 No 44 amdt 1.3109  
ins 2002 No 28 s 9  
exp 1 July 2003 (s 22 (3))

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1989 No 17	31 March 1991

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
2	Act 1993 No 6	30 April 1993
3	Act 1994 No 60	28 February 1995
4	Act 1996 No 26	30 November 1996
5	Act 1997 No 101	31 January 1998
6	Act 1999 No 42	31 July 1999
7	Act 2002 No 7	18 April 2002
8	Act 2002 No 7	18 April 2002
9	Act 2002 No 28	9 September 2002
10	Act 2002 No 48	21 December 2002
11	A2003-12	28 March 2003
12	A2003-12	2 July 2003

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