



Australian Capital Territory

Payroll Tax Act 1987

A1987-40

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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 7 July 2010. It also includes any commencement, amendment, repeal or expiry affecting the republished law to 7 July 2010.

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):

- 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 includes 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

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Payroll Tax Act 1987

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Australian Capital Territory

Payroll Tax Act 1987

An Act to impose payroll tax

Part 1 Preliminary

1 Name of Act

This Act is the *Payroll Tax Act 1987*.

Note This Act is a **tax law** under the *Taxation Administration Act 1999*. As a tax law, this Act is subject to provisions of the Taxation Administration Act about the administration and enforcement of tax laws generally.

1A Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (**signpost definitions**) to other terms defined elsewhere in this Act.

For example, the signpost definition '**wages**—see section 2.' means that the term 'wages' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

1B Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 1A Important concepts

Division 1A.1 Wages

2 Meaning of *wages*

- (1) For this Act, *wages* means—
 - (a) an amount paid or payable to a person in relation to the person's capacity as an employee or former employee; or
 - (b) if the person is not an employee or a former employee—an amount mentioned in subsection (2) paid or payable for services performed by the person.
- (2) Without limiting subsection (1), *wages* includes the following:
 - (a) a payment by way of remuneration, salary, commission, bonus, allowance or other benefit;
 - (b) a superannuation benefit;
 - (c) a payment made under a contract prescribed by regulation, to the extent to which the payment is attributable to labour;
 - (d) a payment by a company by way of remuneration to a director or a member of the governing body of the company;
 - (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 someone acting for or in concert or under an arrangement or understanding (whether formal or informal and whether express or implied) with the employer;
 - (f) an amount taken to be wages under section 4 (4) (c);
 - (g) the value of any payments made in kind;
 - (h) an amount paid or payable by way of remuneration to a person engaged by an employment agent to provide services for a

client of the employment agent, if the amount is paid or payable in relation to the services;

- (i) the following payments made in consequence of the retirement from, or termination of, an 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 the leave;
 - (ii) an unused long service leave payment;
 - (iii) so much of any employment 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 (Liability to taxation), division 2 (Income), subdivision AA (Non-superannuation entities etc) if the whole of the employment termination payment had been paid to the employee;
- (j) the grant of any share or option that is wages under section 2A (Inclusion of grant of shares and options as wages) or section 2B (Inclusion of shares and options granted to directors and others as wages);
- (k) an amount paid or payable by a company in consequence of the termination of the services or office of a director or member of the governing body of the company, whether or not paid to the director or member or to another entity, if the amount would be an employment termination payment if it had been paid or payable in consequence of termination of any employment;

- (l) an amount paid or payable by a person who is an employer under a service contract in consequence of the termination of the services of an employee under the contract, whether or not paid to the employee or another entity, if the amount would be an employment termination payment if it had been paid or payable in consequence of termination of any employment.
- (3) An amount mentioned in subsection (2) (i) (iii), (k) or (l) that is not paid in relation to services provided in a particular month is liable to payroll tax under this Act as if it were paid or payable in relation to services provided in the month when it was paid or became payable.
- (4) In this section:

annual leave—see the *Income Tax Assessment Act 1997* (Cwlth), section 83-10 (1) (Unused annual leave payment is assessable).

director or member of the governing body, of a company, includes a former director or former member of the governing body of the company.

employment termination payment—see the *Income Tax Assessment Act 1997* (Cwlth), section 82-130 (What is an *employment termination payment*?).

unused long service leave payment—see the *Income Tax Assessment Act 1997* (Cwlth), section 83-75 (Meaning of *unused long service leave payment*).

2A Inclusion of grant of shares and options as wages

- (1) The grant of a share or option to an employee by an employer for services performed or provided by the employee is **wages** for this Act.
- (2) The wages are taken, for the imposition of payroll tax, to be paid or payable on the relevant day.

- (3) The amount paid or payable as wages is taken, for this Act, to be the value of the share, or option, on the relevant day, worked out in accordance with schedule 1.
- (4) If an employer grants an option to an employee and the value of the grant of the option is not included in the taxable wages of the employer for the financial year when the option was granted, the employer is taken to have elected to treat the wages that are the grant of the option as being paid or payable on the vesting day.
- (5) The grant of a share by an employer is not wages for this Act if the employer is required to grant the share because of the exercise of an option by a person and—
 - (a) the grant of the option to the person is wages for this Act; or
 - (b) the option was granted to the person before 1 July 2005.
- (6) To remove any doubt, the grant of a share or option is valuable consideration for section 2C (Inclusion of wages paid by or to third parties).
- (7) In this section:
 - granted***—a share or option is ***granted*** to a person if—
 - (a) for a share—the share is transferred or allotted to the person or the person otherwise acquires a legal interest in the share; or
 - (b) for an option—the option is granted to the person or the person otherwise acquires a legal interest in the option.
 - relevant day*** means—
 - (a) for wages that are the grant of a share—the day when the share is granted to the employee; or
 - (b) for wages that are the grant of an option—whichever of the following the employer elects to treat as the day when the wages are paid or payable:
 - (i) the day when the option is granted to the employee;

- (ii) the vesting day.

vesting day, for an option, is whichever of the following happens first:

- (a) the day when the share to which the option relates is granted to the employee;
- (b) the day when the employee acquires an actual right under the option to have the share to which the option relates transferred or allotted to the employee, whether or not the employee exercises the right.

2B Inclusion of shares and options granted to directors and others as wages

- (1) The grant of a share, or option, by a company to a director or member of the governing body of the company as remuneration for the appointment or services of the director or member that would be wages under section 2A if the director or member were an employee of the company is **wages** for this Act.
- (2) Section 2A and schedule 1 apply in relation to the grant as if—
 - (a) a reference to the **employer** were a reference to the company; and
 - (b) a reference to the **employee** were a reference to the director or member of the governing body of the company; and
 - (c) all other necessary changes, and any changes prescribed by regulation, were made.
- (3) In this section:
director or member of the governing body, of a company, includes—
 - (a) a person who, under a contract or other arrangement, is to be appointed as a director or member of the governing body of the company; and

- (b) a former director or former member of the governing body of the company.

2BA Place where wages payable

- (1) The wages made up of the grant of a share or option are taken to be paid or payable in the ACT if—
 - (a) for a share—the share is a share in a local company; or
 - (b) for an option—the option is an option to acquire shares in a local company.
- (2) In any other case, the wages made up of the grant of the share or option are taken to be paid or payable outside the ACT.

Note The place where wages are paid or payable is sometimes relevant to deciding if the wages are liable to payroll tax under this Act (see s 2E).

- (3) In this section:

local company means—

- (a) a company incorporated or taken to be incorporated under the Corporations Act that is taken to be registered in the ACT for that Act; or
- (b) any other body corporate that is incorporated under a Territory law.

2BB Inclusion of wages paid by group employers

A reference in this Act to wages paid or payable by a member of a group includes wages that would be taken to be paid or payable by a member of the group if the member were the employer of the employee to whom the wages were paid.

2C Inclusion of wages paid by or to third parties

- (1) If any of the following amounts of money or other valuable consideration would, if paid or given or to be paid or given directly by an employer to an employee, be regarded as wages paid or payable by the employer to the employee for this Act, they are taken to be wages paid or payable by the employer to the employee:
 - (a) any money or other valuable consideration paid or given, or to be paid or given, to an employee, for the employee's services as an employee of an employer, by a person other than the employer;
 - (b) any money or other valuable consideration paid or given, or to be paid or given, by an employer, for an employee's services as the employee of the employer, to a person other than the employee;
 - (c) any money or other valuable consideration paid or given, or to be paid or given, by a person other than an employer, for an employee's services as an employee of the employer, to a person other than the employee.
- (2) If any of the following amounts of money or other valuable consideration would, if paid or given or to be paid or given directly by a company to a director or member of the governing body of the company, be regarded as wages paid or payable by the company to the director or member for this Act, they are taken to be wages paid or payable by the company to the director or member:
 - (a) any money or other valuable consideration paid or given, or to be paid or given, to a director or member of the governing body of a company, as remuneration for the appointment or services of the director or member to the company, by a person other than the company;

- (b) any money or other valuable consideration paid or given, or to be paid or given, by a company, as remuneration for the appointment or services of a director or member of the governing body of the company to the company, to a person other than the director or member;
- (c) any money or other valuable consideration paid or given, or to be paid or given, by any person, as remuneration for the appointment or services of a director or member of the governing body of the company to the company, to a person other than the director or member.

- (3) In this section:

director or member of the governing body, of a company—see section 2B (3).

2D Wages to which this Act applies

This Act applies to wages that—

- (a) are taxable in the ACT because of section 2E; and
- (b) are not exempt wages under section 2F.

2E Wages taxable in the ACT

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

- (iii) if the employee and the employer are based outside an Australian jurisdiction—the wages are paid in the ACT; or
- (iv) if the employee and the employer are based outside an Australian jurisdiction, and the wages are paid or payable outside an Australian jurisdiction—the ACT is the Australian jurisdiction in which the higher or highest proportion of the services is performed; or
- (c) the wages are paid or payable by an employer for or in relation to services performed by an employee entirely outside all Australian jurisdictions and paid or payable in the ACT.

Note Section 2F (1) (a) provides an exemption for wages paid or payable for services provided entirely in another country for a continuous period of more than 6 months.

- (2) An assessment of whether wages are taxable in the ACT must—
 - (a) take into account only the services performed by an employee for an employer in the month in which the wages are paid or payable; and
 - (b) treat any wages paid or payable by an employer for or in relation to an employee in a particular month as paid or payable for or in relation to the services performed by the employee for the employer in the month.

Example

If wages paid in a month are paid to an employee for services performed over several months, an assessment of whether the wages for the month are taxable in the ACT must take into account only services performed by the employee in the month in which the wages are paid. Services performed in one of the previous months are disregarded, except in an assessment of whether wages paid in one of the previous months is taxable in the ACT.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, if no services are performed by an employee in a month in which wages are paid or payable—
 - (a) an assessment of whether the wages are taxable in the ACT is to be decided by taking into account only the services performed by the employee for the employer in the month in which the employee last performed services for the employer (the *last service month*); and
 - (b) the wages are taken to be paid or payable for or in relation to the services performed by the employee for the employer in the last service month.
- (4) However, if no services are performed by an employee for an employer in a month in which the wages are paid or payable or in any past 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 is reasonable to expect that the services will be performed by the employee for the employer.
- (5) An assessment of whether wages paid by an employer to an employee in a month are taxable in the ACT must be based on the total of all wages paid or payable by the employer for the employee in the month, and treated as if the wages were paid or payable for all services performed by the employee in the month in which the wages are paid or payable, or the month in which the employee last performed services for the employer, according to the circumstances.

Example

If in January an employer pays an amount of wages for an employee's services in the ACT, and the same employer pays another amount of wages for the same employee's services in another jurisdiction in the same month, the wages paid by the employer to the employee must be totalled and treated as if the total sum was

paid for all services performed by the employee in January. Subsection (1) (b) would be applied to work out whether the wages are taxable in the ACT.

- (6) In an assessment of whether wages are taxable in the ACT, if wages are paid in a different month from the month in which they are payable, the wages are taken to have been paid in whichever of the 2 months happens first.

2F Exempt wages

- (1) For this Act, the following are *exempt wages*:
- (a) wages that are paid or payable for or in relation to services performed by a person entirely in another country for a continuous period of more than 6 months beginning on the day when wages are first paid or payable to the person for the services;
 - (b) wages paid or payable in relation to any period when an employee takes part in activities under the *Emergencies Act 2004* as—
 - (i) a volunteer member of the rural fire service; or
 - (ii) a volunteer member of the SES; or
 - (iii) a volunteer member of a community fire unit; or
 - (iv) a casual volunteer; or
 - (v) an emergency services support volunteer;
 - (c) wages declared by the Minister to be exempt wages for section 2D.
- (2) However, wages mentioned in subsection (1) (b) that are paid or payable as annual leave, long service leave or sick leave are not exempt wages.

- (3) A declaration is a disallowable instrument.

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

2G 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 decided by taking into account the state of affairs for the month in which the relevant wages are paid or payable.
- (3) If more than 1 jurisdiction would qualify as the jurisdiction in which an employee is based in a month, the jurisdiction in which the employee is based must be decided by taking into account the state of affairs on the last day of that month.
- (4) For this Act, an employee who does not have a principal place of residence is taken to be an employee who is not based in an Australian jurisdiction.
- (5) For wages paid or payable to a corporate employee, the jurisdiction in which the employee is based is to be decided under section 2H as if a reference in that section to an employer were a reference to an employee.
- (6) In this section:

corporate employee means a company—

- (a) that—

- (i) performs work for or in relation to which services are supplied to another person under a contract, agreement or undertaking; or

- (ii) performs work for a client of an employment agent as part of the services provided by the agent to the client for which the agent receives payment; or
- (b) to which a payment is made that is taken to be wages payable to an employee under section 5 (1) (c).

2H Jurisdiction in which employer is based

- (1) For this Act, the jurisdiction in which an employer is based is—
 - (a) if the employer has an ABN—the jurisdiction in which the employer’s registered business address is located; or
 - (b) in any other case—the jurisdiction in which the employer’s principal place of business is located.
- (2) If an employer has a registered business address in more than 1 jurisdiction, the jurisdiction in which the employer is based is the jurisdiction in which the employer’s principal place of business is located.
- (3) 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—
 - (a) if the trust has an ABN—the registered business address of the trust; or
 - (b) if the trust does not have an ABN—the business address of the trustee of the trust.
- (4) The jurisdiction in which an employer is based is to be decided by taking into account the state of affairs for the month in which the relevant wages are paid or payable.
- (5) If more than 1 jurisdiction would qualify as the jurisdiction in which an employer is based in a month, the jurisdiction in which the employer is based must be decided by taking into account the state of affairs on the last day of the month.

- (6) For this Act, an employer is taken to be an employer who is not based in an Australian jurisdiction if the employer has neither a registered business address nor a principal place of business.

2I Place and date of payment of wages

- (1) For this Act, wages are taken to have been paid at a place if, for payment of the 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 the place; or
 - (b) an instruction is given by an employer for the crediting of an amount to the account of a person or the person's agent (*a payment instruction*) at the 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 payment instruction.
- (3) Wages are taken to be payable at the place at which they are paid.
- (4) However, 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 to the employee; or
 - (b) if wages have not been previously paid by the employer to the employee—the place where the employee last performed services for the employer before the wages became payable.
- (5) If wages paid by an employer for or in relation to services performed by a particular employee in a month are paid or payable at more than 1 place in Australia, the wages paid or payable for the month are taken to have been paid at the place where the higher or highest proportion of the wages is paid or payable.

Note Under s (5), only 1 jurisdiction may be considered to be the jurisdiction in which the wages are paid or payable.

Division 1A.2 Benefits

3 Meaning of *benefit*

A reference in this Act to a *benefit*—

- (a) is a reference to a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth); but
- (b) does not include a reference to a superannuation benefit.

3A Value of benefit

- (1) For this Act, the *value* of a benefit provided by an employer during a financial year is calculated as follows:

$$TV \times \frac{1}{1 - \text{FBT rate}}$$

- (2) In this Act, a reference to wages paid or payable as a benefit in a month is—
 - (a) a reference to the value of the benefit paid in the month; or
 - (b) if an election by the employer is in force under section 3B—a reference to an amount calculated in accordance with section 3B.
- (3) In this Act, a reference to wages paid or payable as a benefit in a year is a reference to an amount calculated by adding the amounts under subsection (2) for the months of the year.
- (4) In this section:

FBT rate means the rate of fringe benefits tax imposed by the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) that applies when the liability to payroll tax under this Act arises.

TV means the value that would be the taxable value of the benefit as a fringe benefit for the *Fringe Benefits Tax Assessment Act 1986* (Cwlth).

3B Employer election for taxable value of benefits

- (1) An employer who has paid or is liable to pay fringe benefits tax under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) in relation to a period of not less than 15 months before 30 June in any year may elect to include as the value of the benefits paid or payable by the employer during a month—
- (a) in a return lodged in relation to each of the first 11 months after 30 June in the year—¹/12th of the amount determined in accordance with subsection (2), or the part of that amount that under section 2D (Wages to which this Act applies) consists of wages for the year of tax (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth)) ending on 31 March before the start of the current financial year; and
- (b) in the return lodged in relation to the 12th month—the amount determined in accordance with subsection (2), or the part of that amount that under section 2D consists of wages for the year of tax (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth)) ending on 31 March before the month, less the total amounts of fringe benefits included in the returns for each of the earlier 11 months.
- (2) An amount is determined in accordance with this subsection as follows:

$$\text{AFBA} \times \frac{1}{1 - \text{FBT rate}}$$

- (3) An election under subsection (1) takes effect when it is notified to the commissioner.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C for this section, the form must be used.

- (4) If an employer makes an election under subsection (1), the employer must lodge returns containing amounts calculated in accordance with the election unless the commissioner approves, by written

notice given to the employer, the termination of the election and allows the employer to include the value mentioned in section 3A (2) (a) (Value of benefit).

- (5) If an employer ceases to be liable to pay payroll tax, the value of taxable wages consisting of fringe benefits to be included in the employer's final return is (whether or not the employer has made an election under subsection (1)) the value of the benefits paid or payable by the employer for the period starting on the previous 1 July until the date on which the employer ceases to be liable to payroll tax, less the value of the benefits paid or payable by the employer during the period for which payroll tax has been paid.

- (6) In this section:

AFBA means the aggregate fringe benefits amount within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth), section 136.

FBT rate means the rate of fringe benefits tax imposed by the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) that applies when the liability to payroll tax under this Act arises.

Division 1A.3 Allowances as wages

3C Wages to which this Act applies—exempt component of motor vehicle allowances not included

- (1) For this Act, **wages**, for a financial year, does not include the exempt component of a motor vehicle allowance paid or payable for the year.
- (2) If the total motor vehicle allowance paid or payable to an employee for a financial year does not exceed the exempt component, the motor vehicle allowance is not **wages** for this Act.

- (3) If the total motor vehicle allowance paid or payable to an employee for a financial year exceeds the exempt component (if any), only the amount that exceeds the exempt component of the motor vehicle allowance is included as *wages* for this Act.
- (4) The *exempt component* of a motor vehicle allowance paid or payable for a financial year is calculated as follows:

$$E = K \times R$$

- (5) In this section:

E means the exempt component.

K means the number of business kilometres travelled during the financial year.

R is the exempt rate.

- (6) *K* is calculated using the continuous recording method, or the averaging method, selected and used by the employer in accordance with schedule 2 (Motor vehicle allowances).
- (7) The commissioner may, in writing, approve the use by an employer of another method of determining *K* (including the use of an estimate).

Note Power to make a statutory instrument includes power to make different provision for different categories (see Legislation Act, s 48).

- (8) If the commissioner approves the use of a method under subsection (7) for an employer for a financial year, the employer must use the method to calculate *K*.
- (9) The Minister may determine the exempt rate for a financial year.
- (10) If the Minister does not determine the exempt rate for a financial year, the exempt rate for the financial year is the rate prescribed by regulation under the *Income Tax Assessment Act 1997* (Cwlth), section 28-25 for calculating a deduction for car expenses for a large car using the ‘cents per kilometre method’ in the financial year

immediately before the financial year in which the allowance is paid or payable.

- (11) A determination under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

3D Wages to which this Act applies—accommodation allowances not included

- (1) For this Act, *wages*, for a financial year, does not include an accommodation allowance paid or payable to an employee for a night's absence from the person's usual place of residence that does not exceed the exempt rate.
- (2) If the accommodation allowance paid or payable to an employee for a night's absence from the person's usual place of residence exceeds the exempt rate, *wages* includes the allowance only to the extent that it exceeds the exempt rate.
- (3) The Minister may determine the exempt rate for a financial year.
- (4) If the Minister does not determine the exempt rate for a financial year, the exempt rate for the financial year is the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the financial year determined by the Commissioner of Taxation of the Commonwealth.
- (5) A determination under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Division 1A.4 Grouping of employers

Subdivision 1A.4.1 Interpretation

3E Definitions—div 1A.4

In this division:

associated person means a person who is associated with another person in accordance with any of the following:

- (a) people are associated people if they are related people;
- (b) individuals are associated people if they are partners in a partnership to which the *Partnership Act 1963* applies;
- (c) private companies are associated people if common shareholders have a majority interest in each private company;
- (d) trustees are associated people if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
- (e) a private company and a trustee are associated people if a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee.

business includes any of the following, whether carried on by 1 person or 2 or more people together:

- (a) a profession or trade;
- (b) any other activity carried on for fee or reward;
- (c) the activity of employing people to perform duties in connection with another business;
- (d) the carrying on of a trust (including a dormant trust);
- (e) the activity of holding any money or property used in connection with another business.

entity means—

- (a) a person; or
- (b) 2 or more people who are associated people.

group means a group under this division but does not include any member of the group for whom a determination under section 3Q (Exclusion from groups) is in force.

private company means a company that is not limited by shares, or whose shares are not quoted on the Australian Stock Exchange or any other exchange of the World Federation of Exchanges.

related person means a person who is related to another person in accordance with any of the following provisions:

- (a) individuals are related people if—
 - (i) they are domestic partners, or they have been domestic partners and the partnership has ended (whether the partnership ended in Australia or elsewhere); or

Note The Legislation Act, s 169 defines **domestic partner** and **domestic partnership**.

 - (ii) the relationship between them is that of parent and child, brothers, sisters or brother and sister;
- (b) private companies are related people if they are related bodies corporate under the Corporations Act;
- (c) an individual and a private company are related people if the individual is a majority shareholder or director of the company or of another private company that is a related body corporate of the company under the Corporations Act;
- (d) an individual and a trustee are related people if the individual is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee;

- (e) a private company and a trustee are related people if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee.

3F Grouping provisions to operate independently

The fact that a person is not a member of a group under a provision of this division does not prevent the person from being a member of a group under another provision of this division.

Subdivision 1A.4.2 Business groups

3G Make up of groups

A *group* is made up of all the people or bodies forming a group that is not part of a larger group.

3H Groups of corporations

- (1) Corporations make up a group if they are related bodies corporate under the Corporations Act.
- (2) In assessing whether corporations are related bodies corporate under the Corporations Act, a corporation that is a trustee company is taken to carry on a business.

Note Section 3Q allows the commissioner to exclude people from a group, but not if the person is a body corporate that, under the Corporations Act, s 50 is related to another body corporate that is a member of the group.

3I Groups arising from the use of common employees

- (1) If 1 or more employees of an employer perform duties in connection with 1 or more businesses carried on by the employer and 1 or more other people, the employer and each of the other people make up a group.

- (2) If 1 or more employees of an employer are employed solely or mainly to perform duties in connection with 1 or more businesses carried on by 1 or more other people, the employer and each of the other people make up a group.
- (3) If 1 or more employees of an employer perform duties in connection with 1 or more businesses carried on by 1 or more other people, and the duties are performed in connection with, or in fulfilment of the employer's obligation under, an agreement, arrangement or undertaking for the provision of services to any 1 or more of the other people in connection with the business or businesses, the employer and each of the other people make up a group.
- (4) Subsection (3) applies to an agreement, arrangement or undertaking—
 - (a) whether the agreement, arrangement or undertaking is formal or informal, express or implied; and
 - (b) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the employees or states the duties to be performed by them.

Note Section 3Q allows the commissioner to exclude people from a group in certain circumstances.

3J Groups of commonly controlled businesses

- (1) If a person or set of people has a controlling interest in each of 2 businesses, the people who carry on the businesses make up a group.

Note Section 3Q allows the commissioner to exclude people from a group in certain circumstances.
- (2) For this section, a person or set of people has a controlling interest in a business if 1 or more of the following applies:
 - (a) for 1 person—the person is the sole owner (whether or not as trustee) of the business;

- (b) for a set of people—the people are together as trustees the sole owners of the business;
- (c) for a business carried on by a corporation—
 - (i) the person or each of the set of people is a director of the corporation and the person or set of people is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or
 - (ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of the person or set of people;
- (d) for a business carried on by a body corporate or unincorporated body—the person or set of people make up more than 50% of the board of management (however named) of the body or control the composition of the board;
- (e) for a business carried on by a corporation that has a share capital—the person or set of people can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or any class of voting shares, issued by the corporation;
- (f) for a business carried on by a partnership—the person or set of people—
 - (i) own (whether beneficially or not) more than 50% of the capital of the partnership; or
 - (ii) is entitled (whether beneficially or not) to more than 50% of the profits of the partnership;

- (g) for a business carried on under a trust (the *1st trust*)—the person or set of people (whether or not as a trustee of, or beneficiary under, another trust) is the beneficiary of more than 50% of the value of the interests in the first trust.
- (3) If—
 - (a) 2 corporations are related bodies corporate under the Corporations Act; and
 - (b) 1 of the corporations has a controlling interest in a business; the other corporation has a controlling interest in the business.
- (4) If—
 - (a) a person or set of people has a controlling interest in a business; and
 - (b) a person or set of people who carry on the business has a controlling interest in another business (the *2nd business*); the person or set of people mentioned in paragraph (a) has a controlling interest in the 2nd business.
- (5) If—
 - (a) a person or set of people is the beneficiary of a trust of more than 50% of the value of the interests in the trust; and
 - (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of another trust; the person or set of people has a controlling interest in the business of the other trust.
- (6) A person who may benefit from a discretionary trust because the trustee or another person, or the trustee and another person, exercises or fails to exercise a power or discretion, is taken, for this division, to be a beneficiary of more than 50% of the value of the interest in the trust.

(7) If—

- (a) a person or set of people has a controlling interest in the business of a trust; and
- (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a corporation;

the person or set of people is taken to have a controlling interest in the business of the corporation.

(8) If—

- (a) a person or set of people has a controlling interest in the business of a trust; and
- (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a partnership;

the person or set of people is taken to have a controlling interest in the business of the partnership.

3K Groups arising from tracing interests in corporations

- (1) An entity and a corporation form part of a group if the entity has a controlling interest in the corporation.

Note Section 3Q allows the commissioner to exclude people from a group, but not if the person is a body corporate that, under the Corporations Act, s 50 is related to another body corporate that is a member of the group.

- (2) For this section, an entity has a ***controlling interest*** in a corporation if the corporation has share capital and—

- (a) the entity has a direct interest in the corporation and the value of the direct interest exceeds 50%; or
- (b) the entity has an indirect interest in the corporation and the value of the indirect interest exceeds 50%; or

- (c) the entity has an aggregate interest in the corporation and the value of the aggregate interest exceeds 50%.

- (3) Subdivision 1A.4.3 applies to this section.

3L Smaller groups included in larger groups

If a person is a member of 2 or more groups, the members of all the groups together make up a group.

Note See also s 3G (Make up of groups).

Subdivision 1A.4.3 Business groups—tracing interests

3M Application—sdiv 1A.4.3

This subdivision applies to section 3K.

3N Direct interest

- (1) An entity has a *direct interest* in a corporation if—
 - (a) for an entity that is a person—the person can directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting share issued by the corporation; or
 - (b) for an entity that is 2 or more people who are associated people—each of the associated people can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting share issued by the corporation.
- (2) The value of the direct interest of the entity in the corporation is the proportion (expressed as a percentage) of the voting power of all voting shares issued by the corporation that—
 - (a) for an entity that is a person—the person can directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as mentioned in subsection (1); or

- (b) for an entity that is 2 or more people who are associated people—the associated people can, if acting together, directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as mentioned in subsection (1).

3O Indirect interest

- (1) An entity has an *indirect interest* in a corporation if the corporation is linked to another corporation (the *directly controlled corporation*) in which the entity has a direct interest.
- (2) A corporation is *linked* to a directly controlled corporation if the corporation is part of a chain of corporations—
 - (a) that starts with the directly controlled corporation; and
 - (b) in which a link in the chain is formed if a corporation has a direct interest in the next corporation in the chain.

Example

Corporation A (a directly controlled corporation) has a direct interest in corporation B. Corporations A and B form part of a chain of corporations, and corporation B is linked to corporation A. Accordingly, an entity that has a direct interest in corporation A also has an indirect interest in corporation B.

Corporation B also has a direct interest in corporation C. In this case, corporations A, B and C form part of a chain of corporations. Both corporations B and C are linked to corporation A. The entity that has a direct interest in corporation A has an indirect interest in both corporations B and C.

Corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, one consisting of A, B and C, and one consisting of A, B and D. Corporations B, C and D are all linked to corporation A and an entity that has a direct interest in corporation A would have an indirect interest in corporations B, C and D. An entity that has a direct interest in corporation B would have an indirect interest in corporations C and D. However, an entity that has a direct interest in corporation C only would not have an indirect interest in corporation D, as corporation D is not linked to corporation C.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The value of the indirect interest of an entity in a corporation (an *indirectly controlled corporation*) that is linked to a directly controlled corporation is calculated by multiplying together the following:
- (a) the value of the direct interest of the entity in the directly controlled corporation;
 - (b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.

Example

An entity has a direct interest (with a value of 80%) in corporation A. Corporation A has a direct interest (with a value of 70%) in corporation B. The value of the indirect interest of the entity in corporation B is $80\% \times 70\%$ (that is, 56%). Accordingly, in this example, the entity has a controlling interest under section 3K in corporation B.

Corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the indirect interest of the entity in corporation C is $80\% \times 70\% \times 40\%$ (that is, 22.4%). Accordingly, in this example, the entity does not have a controlling interest in corporation C.

- (4) It is possible for an entity to have more than 1 indirect interest in a corporation.

Examples

- 1 An entity may have more than 1 indirect interest in a corporation if the corporation is linked to more than 1 corporation in which the entity has a direct interest.
- 2 An entity may have more than 1 indirect interest in a corporation if the corporation is linked to only 1 corporation in which the entity has a direct interest, but is linked through more than 1 chain of corporations. In this case, the entity has an aggregate interest in the corporation (see s 3P).

3P Aggregation of interests

- (1) An entity has an *aggregate interest* in a corporation if the entity—
- (a) has a direct interest and 1 or more indirect interests in the corporation; or

- (b) has more than 1 indirect interest in the corporation.
- (2) The value of the aggregate interest of an entity in a corporation is calculated by adding together the following:
 - (a) the value of the direct interest (if any) of the entity in the corporation;
 - (b) the value of each indirect interest of the entity in the corporation.

Example

An entity has a direct interest (with a value of 40%) in corporation B.

The entity also has a direct interest (with a value of 25%) in corporation A, which in turn has a direct interest (with a value of 60%) in corporation B. Accordingly, the entity also has an indirect interest in corporation B with a value of 15% (that is, $25\% \times 60\%$).

The value of the entity's aggregate interest in corporation B is the total of the direct interest (40%) and the indirect interest (15%), which is 55%.

Accordingly, in this example, the entity has a controlling interest in corporation B under s 3K.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Subdivision 1A.4.4 Groups—miscellaneous

3Q Exclusion from groups

- (1) The commissioner may determine that a person who would, but for the determination, be a member of a group is not a member of the group.
- (2) The commissioner may make a determination under subsection (1) only if satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the commissioner considers relevant, that a business carried on by the person is carried on independently of, and

is not connected with the carrying on of, a business carried on by any other member of the group.

- (3) The commissioner must not exclude a person from a group if the person is a corporation that, because of the Corporations Act, section 50 (Related bodies corporate) is related to another corporation that is a member of the group.
- (4) This section extends to a group made up because of section 3L (Smaller groups included in larger groups).
- (5) The commissioner may revoke a determination that applies to a person if satisfied that the circumstances in which the determination was made do not apply to the person.
- (6) A determination under this section may provide for its commencement on or before the determination's notification day.

Note This subsection provides express authority for a determination to commence on or before its notification day (see Legislation Act, s 73 (2) (d)).

- (7) A determination under this section is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 Power to make a statutory instrument includes power to amend or repeal the instrument (see Legislation Act, s 46).

3R Designated group employers

- (1) The members of a group may, with the commissioner's approval, designate a qualified member of the group to be the ***designated group employer*** for the group for this Act.
- (2) A member of a group is a ***qualified member*** if the member—
 - (a) has during the previous financial year paid wages exceeding the amount determined for the year for section 7 (Registration of employers); or

- (b) is likely during the current financial year to pay wages exceeding the amount determined for section 7.
- (3) The members of a group may, with the commissioner's approval, designate any member of the group to be the designated group employer for the group for the Act if none of the members of a group is a qualified member but the members together—
 - (a) have during the previous financial year paid wages exceeding the amount determined for the year for section 7; or
 - (b) are, in the commissioner's opinion, likely during the current financial year to pay wages exceeding the amount determined for section 7.
- (4) If the members of a group do not designate a member as the designated group employer within 7 days after the last day of the month in which the group is established, the commissioner may (but is not obliged to) designate a member of the group as the designated group employer.
- (5) The designated group employer of a group stops being the designated group employer on the earlier of—
 - (a) the first day of a return period when there is a change in the membership of the group; or
 - (b) the first day of a return period when the members of the group revoke the designation.
- (6) The designation of a designated group employer under subsection (1) or (3) must be—
 - (a) by written notice; and
 - (b) executed by or on behalf of each member of the group; and
 - (c) served on the commissioner.

4 Application of Act to certain contracts

- (1) A reference in this Act to a *service contract* is 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 someone else in relation to the performance of work; or
 - (b) is supplied with the services of someone else in relation to the performance of work; or
 - (c) gives out goods to individuals for work to be performed by them in relation to 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 the group.
- (2) However, a reference in this Act to a *service contract* does not include a reference to a contract of service or a contract under which the designated person, in the course of a business carried on by the person—
- (a) 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 supplying the services or to the use of the goods that are the property of that person; or
 - (b) is supplied with services in relation to the performance of work if—
 - (i) the services are of a kind not ordinarily required by the designated person and are provided by someone who ordinarily provides services of that kind to the public generally; or
 - (ii) the commissioner is satisfied that the services are provided by a person who ordinarily provides services of that kind to the public generally.

- (3) Subsection (2) does not apply if the commissioner determines that the contract under which the services are supplied was entered into with an intention of, directly or indirectly, avoiding or evading the payment of tax by anyone.
- (4) For this section—
 - (a) a person is taken to be an employer if the person is someone—
 - (i) to whom, under a service contract, the services of people are supplied in relation to the performance of work; or
 - (ii) who, under a service contract, gives out goods to other people; and
 - (b) a person is taken to be an employee if the person is—
 - (i) someone who performs work in relation to which services are supplied to someone else under a service contract; or
 - (ii) an individual who resupplies goods to an employer under a service contract; and
 - (c) the following amounts are taken to be wages:
 - (i) an amount paid or payable by an employer in relation to the performance of work relating to a service contract (less any amount of GST payable for the performance of work);
 - (ii) an amount paid or payable by an employer in relation to the resupply of goods by an employee under a service contract (less any amount of GST payable for the resupply); and
 - (d) if an amount mentioned in paragraph (c) is included in a larger amount paid or payable by an employer under a service contract—the commissioner may determine the 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 contract; and

- (e) an amount paid or payable by an employer in relation to the performance of work under a service contract is taken to include the grant of a share or option (not otherwise included as wages under this Act) provided or liable to be provided by the employer if the amount is wages under section 2A (Inclusion of grant of shares and options as wages).
- (5) If, in relation to a payment in relation to the performance of work that is taken to be wages under subsection (4), payroll tax is paid by someone who is taken to be an employer under the subsection (the *relevant person*)—
 - (a) no-one else is liable to payroll tax in relation to the payment; and
 - (b) if someone else is liable to make a payment in relation to the work—that person is not liable to payroll tax in relation to the payment unless it, or the payment by the relevant person, is made with an intention of, directly or indirectly, avoiding or evading the payment of tax by anyone.
- (6) This section does not apply to a contract under which a person is supplied with services ancillary to the transport of goods by a vehicle provided by the person transporting them, unless the commissioner determines that the contract was entered into with an intention of, directly or indirectly, avoiding or evading the payment of tax by anyone.
- (7) In this section, a reference (however expressed) to the *resupply* of goods acquired from a person includes—
 - (a) a supply to the person of goods in an altered form or condition; and
 - (b) a supply to the person of something in which the goods have been incorporated; and
 - (c) a supply to the person of something manufactured or produced from the goods.

(8) In this section:

contract includes an agreement, arrangement or undertaking, whether formal or informal and whether express or implied.

credit contract—see the Consumer Credit (Australian Capital Territory) Code, section 5.

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

services includes results (whether goods or services) of work performed.

supply includes supply by sale, exchange, lease, hire, credit contract or regulated contract and, in relation to services, includes the providing, granting or conferring of, services.

5 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 an individual performs, for or on behalf of another person, services in relation to which any payment is made to someone else related or connected to the individual performing 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 are taken to be an employer for this Act; and
- (c) determine that any payment made in relation to the agreement, transaction or arrangement are taken to be wages paid or payable to an employee 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

Division 2.1 Liability to taxation—general concepts

6 Payroll tax liability

- (1) Tax is payable by an employer in relation to wages to which this Act applies because of section 2D.
- (2) If, in relation to wages paid in relation to the performance of work, payroll tax is paid by an employment agent, no-one else is liable to payroll tax in relation to the payment.
- (3) The amount of payroll tax payable by an employer is calculated under division 2.3 (Liability to taxation—calculation of monthly payroll tax) and division 2.4 (Liability to taxation—calculation of payroll tax for financial year).

7 Registration of employers

- (1) This section applies to an employer if—
 - (a) the total of all taxable wages paid or payable anywhere by the employer in a month exceeds the amount determined for this section under the *Taxation Administration Act 1999*, section 139; or
 - (b) the employer is a member of a group and the total of all taxable wages paid or payable anywhere by the members of the group together in a month exceeds the amount determined for this section under the *Taxation Administration Act 1999*, section 139.

- (2) If this section applies to an employer in relation to a month, the employer must apply to be registered under this part.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C for an application, the form must be used.

- (3) If an employer applies to be registered under this part, the commissioner must register the employer.
- (4) The commissioner may, by written notice given to an employer who is registered under this part, cancel the employer's registration if satisfied that this section has never applied, or no longer applies, to the employer in relation to a month.
- (5) The cancellation of an employer's registration under subsection (4) does not prevent the employer from again applying for registration or being registered under this part.
- (6) An employer commits an offence if—
- (a) the employer is not already registered under this part; and
 - (b) the total of all taxable wages paid or payable in Australia by the employer in the month exceeds the amount determined for this section under the *Taxation Administration Act 1999*, section 139; and
 - (c) the employer does not apply to be registered under this part within 7 days after the end of the month.

Maximum penalty: 250 penalty units.

8 Joint and several liability of group members

- (1) If a member of a group fails to pay an amount that the member is required to pay under this Act in relation to any period, every member of the group is liable jointly and severally to pay the amount to the commissioner.

- (2) If 2 or more people are jointly or severally liable to pay an amount under this section, the commissioner may recover the whole of the amount from them, any of them or any 1 of them.
- (3) If, under this section, 2 or more people are jointly and severally liable to pay an amount that is payable by any 1 of them, each person is also jointly and severally liable to pay—
 - (a) any amount payable to the commissioner under this Act or another law in relation to the amount, including interest and penalty tax; and
 - (b) any costs and expenses incurred in relation to the recovery of the amount that the commissioner is entitled to recover from the person.
- (4) Nothing in this Act prevents a person who is jointly and severally liable to pay an amount of tax and who pays the amount to the commissioner from recovering a contribution from any other person who is liable to pay the whole or part of the amount.
- (5) This section applies whether or not the member was an employer during the relevant period.

Division 2.2 Liability to taxation—exemption from tax

Note Wages mentioned in s 2F are also exempt wages.

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 relation to 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 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 provides 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** is 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 taken to include a reference to supply by way of sale, exchange, lease or hire; and
 - (c) a reference to **services** is 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 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.

(8) In this section:

approved training means training under an approved training contract.

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

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

9AB Exemption from tax—trainees under approved training contracts

- (1) This section applies to a trainee if an approved group training organisation employs the trainee under an approved training contract.
- (2) Section 6 does not apply to wages paid or payable to the trainee by the approved group training organisation.

- (3) On application by an entity, the commissioner may approve the entity as a **group training organisation** if satisfied that the entity—
- (a) is a not-for-profit entity; and
 - (b) provides training to trainees under approved training contracts; and
 - (c) makes trainees available to work for other people.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C for an application, the form must be used.

- (4) In this section:

approved group training organisation means an organisation that is approved by the commissioner under subsection (3).

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

trainee—see the *Training and Tertiary Education Act 2003*, dictionary.

Note **Trainee** is defined as a person who undertakes training under a training contract, and includes an apprentice.

9B Exemption from tax—maternity, adoption and primary carer leave

- (1) Section 6 does not apply to wages paid or payable to an employee for maternity leave, adoption leave or primary carer leave.
- (2) Subsection (1) applies—
- (a) only in relation to wages paid or payable for a maximum of 14 weeks leave for any 1 pregnancy, birth or adoption; and
 - (b) only in relation to leave taken before the relevant day for the pregnancy, birth or adoption; and
 - (c) only if, in relation to the leave, the employee has given the employer any required document for the leave.

(3) To remove any doubt—

- (a) the reference in subsection (2) (a) to wages paid or payable for 14 weeks leave is taken to be a reference to—
 - (i) for a full-time employee who takes the leave on less than full pay—wages paid or payable for a period equivalent to 14 weeks leave on full pay; and
 - (ii) for a part-time employee who takes the leave at less than the employee's average rate of pay over the 6 weeks immediately before the leave is taken—wages paid or payable for a period equivalent to 14 weeks leave at that average rate of pay; and
 - (iii) for any other part-time employee—wages paid or payable for a period equivalent to 14 weeks leave at the rate of pay of the employee immediately before the leave was taken; and
- (b) a reference to 1 birth includes a reference to a multiple birth; and
- (c) a reference to 1 adoption includes a reference to the adoption of more than 1 child at the same time.

(4) In this section:

adoption leave, for an employee, means leave given to the employee in relation to the adoption of a child by the employee (whether the leave is taken before or after the adoption), but does not include leave given to the employee as leave of another kind.

Examples for this section of leave of another kind

- 1 sick leave
- 2 annual leave
- 3 long service leave

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

maternity leave, for an employee, means leave given to a female employee in relation to her pregnancy or the birth of her child (whether the leave is taken during the pregnancy or after the birth of the child), but does not include leave given to the employee as leave of another kind.

primary carer leave, for an employee, means leave given to the employee as the primary carer of a child in relation to the birth or adoption of the child (whether the leave is taken before or after the birth or adoption), but does not include leave given to the employee as leave of another kind.

Examples of primary carers

- 1 a parent of the child
- 2 the domestic partner of a parent of the child
- 3 a grandparent of the child

Note For the meaning of ***domestic partner***, see the Legislation Act, s 169.

relevant day means—

- (a) for a birth—the day 6 months after the day of the birth; and
- (b) for a pregnancy that ends other than by a birth—the day 6 months after the day the pregnancy ends; and
- (c) for an adoption—the day 6 months after the day that the child is placed, for the purpose of adoption, in the care of the adoptive parent.

required document means—

- (a) for maternity leave—
 - (i) a birth certificate for the child; or
 - (ii) a medical certificate stating that the employee was pregnant and the date of the end of the pregnancy; and

- (b) for adoption leave—a statutory declaration stating—
 - (i) that a child has been placed, for the purpose of adoption, in the care of the employee as the adoptive parent; and
 - (ii) the date of the placement; and
- (c) for primary carer leave in relation to a newly born child—
 - (i) a birth certificate for the child; and
 - (ii) a statutory declaration stating that the employee is the primary carer for the child; and
- (d) for primary carer leave in relation to a child placed for adoption—a statutory declaration stating—
 - (i) that the child has been placed, for adoption, in the care of the adoptive parent; and
 - (ii) the date of the placement; and
 - (iii) that the employee is the primary carer for the child; and
- (e) any other document prescribed by regulation.

Note A certificate, statutory declaration or other document must be kept for at least 5 years (unless the commissioner authorises earlier destruction) and produced if the commissioner requires its production (see the *Taxation Administration Act 1999*, s 57 (Requirement to keep proper records), s 62 (Accessibility) and s 64 (Period record to be kept)).

Division 2.3 Liability to taxation—calculation of monthly payroll tax

Subdivision 2.3.1 Employer not member of group

9C Application—sdiv 2.3.1

This subdivision applies only to an employer who is not a member of a group.

9D Employer not member of group—amount of tax payable each month

- (1) The amount of payroll tax payable by an employer on taxable wages paid or payable by the employer in a month is the amount calculated as follows:

$$(TW - D) \times R$$

- (2) If *D* is equal to or more than *TW* for a month, the employer is not required to pay payroll tax for the month.
- (3) In this section:

D means the deductible amount mentioned in section 9E or section 9F for the employer;

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (otherwise than as a member of a group) during the month.

9E Employer not member of group—deductible amount for employer not paying interstate wages

- (1) For an employer who pays or is liable to pay taxable wages in a month but does not pay and is not liable to pay interstate wages in the month, the **deductible amount** for the month is the amount determined for section 7 (Registration of employers).
- (2) Subsection (1) applies whether the employer pays or is liable to pay wages for the whole of the month or only part of the month.

9F Employer not member of group—deductible amount for employer who pays taxable and interstate wages

- (1) The *deductible amount* for an employer who pays or is liable to pay taxable wages and interstate wages in a month is—
 - (a) if notice has been given under subsection (2) and no determination under subsection (6) is in force—the amount stated in the most recent notice given under subsection (2); or
 - (b) if a determination is in force under subsection (6)—the amount stated in the determination.
- (2) From time to time, the employer may give a notice to the commissioner, containing the information required by the commissioner, of an amount, calculated in accordance with subsection (3), that the employer claims to be the employer's deductible amount for the month and subsequent months.
- (3) The amount is to be calculated as follows:

$$D = \frac{A \times T}{(T + I)}$$

- (4) In subsection (3):

A means the amount determined for section 7 (Registration of employers).

D means the deductible amount for the month.

I means the estimated interstate wages in the financial year in which *D* occurs.

T means the estimated taxable wages in the financial year in which *D* occurs.

- (5) The deductible amount claimed must not be more than the amount mentioned in section 9E (1).

- (6) At any time, the commissioner may, by notice in writing to the employer, determine an amount, not more than the amount mentioned in section 9E (1), as the deductible amount for the employer for 1 or more months stated in the determination.
- (7) A determination under subsection (6) may be made on application by the employer or on the commissioner's own initiative.
- (8) At any time, the commissioner may, by notice in writing to the employer, revoke a determination made under subsection (6).

Subdivision 2.3.2 Group with designated group employer

9G Application—sdiv 2.3.2

This subdivision applies only to an employer who is a member of a group for which there is a designated group employer.

9H Group with designated group employer—amount of tax payable each month if approval in force

- (1) If an approval is in force under section 16 (4) (Payroll tax returns) for the designated group employer to lodge a joint return—
 - (a) the amount of payroll tax payable by the designated group employer on taxable wages paid or payable in a month by the employers covered by the return is the amount calculated as follows:

$$(JTW - D) \times R$$

- (b) the amount of payroll tax payable by each employer who is a member of the group but is not covered by the return on taxable wages paid or payable by the employer in a month is the amount calculated as follows:

$$TW \times R$$

- (2) If *D* is equal to or more than *JTW* for a month, the designated group employer is not required to pay payroll tax for the month.

- (3) In this section:

D means the deductible amount mentioned in section 9J (Group with designated group employer—deductible amount for groups not paying interstate wages) or section 9K (Group with designated group employer—deductible amount for groups paying taxable and interstate wages) for the group.

JTW means the total taxable wages paid or payable during the month by the employers covered by the return (as members of a group).

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) during the month.

9I Group with designated group employer—amount of tax payable each month if approval not in force

- (1) If an approval under section 16 (4) (Payroll tax returns) is not in force for the designated group employer to lodge a group return—
- (a) the amount of payroll tax payable by the designated group employer on taxable wages paid or payable by the designated group employer in a month is the amount calculated as follows:

$$(GTW - D) \times R$$

- (b) the amount of payroll tax payable by each employer who is a member of the group on taxable wages paid or payable by the employer in a month is the amount calculated as follows:

$$TW \times R$$

- (2) If *D* is equal to or more than *GTW* for a month, the designated group employer is not required to pay payroll tax for the month.

- (3) In this section:

D means the deductible amount mentioned in section 9J (Group with designated group employer—deductible amount for groups not paying interstate wages) or section 9K (Group with designated group employer—deductible amount for groups paying taxable and interstate wages) for the group.

GTW means the total taxable wages paid or payable during the month by the designated group employer (as a member of a group).

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) during the month.

9J Group with designated group employer—deductible amount for groups not paying interstate wages

- (1) For a group in which 1 or more members pay or are liable to pay taxable wages in a month but no members pay or are liable to pay interstate wages in the month, the *deductible amount* for the month is the amount determined for section 7 (Registration of employers).
- (2) Subsection (1) applies whether group members pay or are liable to pay wages for the whole of the month or only part of the month.

9K Group with designated group employer—deductible amount for groups paying taxable and interstate wages

- (1) The *deductible amount* for a group in which 1 or more members pay or are liable to pay taxable wages or interstate wages in a month is—

- (a) if notice has been given under subsection (2) and no determination under subsection (6) is in force—the amount stated in the most recent notice given under subsection (2); or
 - (b) if a determination is in force under subsection (6)—the amount stated in the determination.
- (2) From time to time, the designated group employer may give a notice to the commissioner, containing the information required by the commissioner, of an amount, calculated in accordance with subsection (3), that the employer claims to be the group's deductible amount for the month and subsequent months.
- (3) The amount is to be calculated as follows:

$$D = \frac{A \times T}{(T + I)}$$

- (4) In subsection (3):

A means the amount determined for section 7 (Registration of employers).

D means the deductible amount for the month.

I means the estimated interstate wages payable by the group in the financial year in which D occurs.

T means the estimated taxable wages payable by the group in the financial year in which D occurs.

- (5) The deductible amount claimed must not be more than the amount mentioned in section 9J (1).
- (6) At any time, the commissioner may, by notice in writing to the designated group employer, determine an amount, not more than the amount mentioned in section 9J (1), as the deductible amount for the group for 1 or more months stated in the determination.

- (7) A determination under subsection (6) may be made on application by the designated group employer or on the commissioner's own initiative.
- (8) At any time, the commissioner may, by notice in writing to the designated group employer, revoke a determination made under subsection (6).

Subdivision 2.3.3 Group with no designated group employer

9L Application—sdiv 2.3.3

This subdivision applies only to an employer who is a member of a group for which there is no designated group employer.

9M Group with no designated group employer—amount of tax payable each month

- (1) The amount of payroll tax payable by each member of the group on taxable wages paid or payable by the member in a month is the amount calculated as follows:

$$TW \times R$$

- (2) In this section:

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) during the month.

Division 2.4 Liability to taxation—calculation of payroll tax for financial year

Note to div 2.4

This division may apply to a period other than a financial year or a month (see s 17 (4) (b)).

10 Amount of tax payable—employer not member of group

- (1) This section applies only to an employer who is not a member of a group.
- (2) The employer is not liable to pay payroll tax for a financial year if the total taxable wages and interstate wages paid or payable by the employer (otherwise than as a member of a group) during the year is not more than the ***employer's threshold amount*** calculated as follows:

$$TA \times \frac{C}{DFY}$$

- (3) If the total taxable wages and interstate wages paid or payable by an employer (otherwise than as a member of a group) during a financial year is more than the employer's threshold amount, the employer is liable to pay as payroll tax for the year the amount calculated as follows:

$$\left[TW - \left[\frac{TW}{TW + IW} \times TA \times \frac{C}{DFY} \right] \right] \times R$$

- (4) In this section:

C means the number of days in the financial year for which the employer paid or was liable to pay taxable wages or interstate wages (otherwise than as a member of a group).

DFY means the number of days in the financial year.

IW means the total interstate wages paid or payable by the employer (otherwise than as a member of a group) during the financial year.

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TA means the amount determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (otherwise than as a member of a group) during the financial year.

11 Amount of tax payable—group with a designated group employer

- (1) This section applies only to an employer who is a member of a group for which there is a designated group employer.
- (2) None of the members of a group is liable to pay payroll tax for a financial year if the total taxable wages and interstate wages paid or payable by the group during the year is not more than the ***group threshold amount***, calculated as follows:

$$TA \times \frac{C}{DFY}$$

- (3) If the total taxable wages and interstate wages paid or payable by a group during the financial year is more than the group threshold amount, payroll tax is payable in accordance with subsection (4) and subsection (5).
- (4) The designated group employer for the group is liable to pay as payroll tax for the financial year the amount calculated as follows:

$$\left[TW - \left[\frac{GTW}{GTW + GIW} \times TA \times \frac{C}{DFY} \right] \right] \times R$$

- (5) Each member of the group (other than the designated group employer) is liable to pay as payroll tax for the financial year the amount calculated as follows:

$$TW \times R$$

- (6) In this section:

C means the number of days in the financial year for which at least 1 member of the group paid or was liable to pay (as a member of the group) taxable wages or interstate wages.

DFY means the number of days in the financial year.

GIW means the total interstate wages paid or payable by the group during the financial year.

GTW means the total taxable wages paid or payable by the group during the financial year.

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TA means the amount determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) during the financial year.

12 Amount of tax payable—group with no designated group employer

- (1) This section applies only to an employer who is a member of a group for which there is no designated group employer.
- (2) Each member of the group is liable to pay as payroll tax for the financial year the amount calculated as follows:

$$TW \times R$$

- (3) In this section:

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) during the financial year.

Division 2.5 Adjustments of tax

13 Definitions—div 2.5

In this division:

group employer means an employer who is a member of a group.

individual employer means an employer who is not a member of a group.

14 Determination of correct amount of payroll tax

- (1) For this division, the *correct amount of payroll tax* payable by an employer for a financial year is the amount determined in accordance with section 10 (Amount of tax payable—employer not member of group), section 11 (Amount of tax payable—group with a designated group employer) or section 12 (Amount of tax payable—group with no designated group employer) for the year.
- (2) This division applies to payroll tax paid or payable by an employer whether as an individual employer or a group employer.
- (3) If an employer is liable for payroll tax both as an individual employer and a group employer (for different periods in the same financial year) separate adjustments must be made under this division for any period as an individual employer and any period as a group employer (and separate determinations of the correct amount of payroll tax payable by the employer must be made).

15 Annual adjustment of payroll tax

- (1) If the amount of payroll tax paid or payable by an employer when the employer lodges the returns for a financial year exceeds the correct amount of payroll tax payable by the employer for the financial year, the commissioner (on application by the employer) must refund to the employer an amount equal to the difference.
- (2) If the amount of payroll tax paid or payable by an employer when the employer lodges the returns for a financial year is less than the correct amount of payroll tax payable by the employer for the financial year, the employer must pay the commissioner as payroll tax an amount equal to the difference.
- (3) Any amount payable by an employer under this section for a financial year must be paid within the period during which the employer is required to lodge a return under this Act for the return period that is or includes the month of June in the financial year.
- (4) The amount of any refund payable to an employer for a financial year under this section must be reduced by the amount of any other refund of payroll tax made for the financial year to the employer (whether under this section or otherwise) before the time of the refund under this section.

15A Adjustment of payroll tax if employer changes circumstances

- (1) This section applies if an employer's circumstances change during a financial year.
- (2) The employer must, if the amount of payroll tax paid or payable by the employer when the employer lodges returns for the relevant period before the change of circumstances is less than the correct amount of payroll tax payable by the employer for the financial year, pay the commissioner as payroll tax an amount equal to the difference.

- (3) A *change of circumstances* occurs if the employer—
- (a) ceases to pay or be liable to pay taxable wages and interstate wages; or
 - (b) becomes a group employer following a period as an individual employer; or
 - (c) ceases to be a group employer and becomes an individual employer.
- (4) The *relevant period* before a change of circumstances is the period before the change (during the financial year and after any earlier change of circumstances) for which the employer paid or was liable to pay taxable wages or interstate wages.
- (5) In calculating the correct amount of payroll tax payable by the employer, the wages paid or payable by the employer during the relevant period are taken to be the only wages paid or payable by the employer during the financial year.
- (6) Any amount payable by an employer under this section for a relevant period must be paid within the period during which the employer is required to lodge a return under this Act for the relevant period or the last return under this Act for the relevant period.
- (7) Any payroll tax paid or payable by an employer under this section must be included as payroll tax paid or payable by the employer for the annual adjustment of payroll tax under this division.

Example

If an employer ceases to be a group employer during a financial year an adjustment will be made under this section. If later in that financial year the employer ceases to pay wages there will be a further adjustment under this section. The first adjustment will adjust payroll tax paid for the period as a group employer against the correct amount of tax that should have been paid (based on the assumption that the period as a group employer is the only period for which the employer paid wages throughout the year). The second adjustment will adjust payroll tax paid for the period as an individual employer against the correct amount of tax that should have been paid (based on the assumption that the period as an individual employer is the only period for which the employer paid wages

throughout the year). Any amount of payroll tax paid under this section is taken into account for the purposes of the annual adjustment of payroll tax.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

15B Special provision if wages fluctuate

If a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the commissioner that, because of the nature of the person's trade or business, the taxable wages and interstate wages, if any, paid or payable by the person fluctuate with different periods of the financial year, the commissioner may determine that the person is to be treated for this division—

- (a) if the person has conducted the trade or business in Australia during the whole of the financial year—as an employer who pays or is liable to pay taxable wages throughout the financial year; or
- (b) if the person has conducted the trade or business in Australia during part only of the financial year—as an employer who pays or is liable to pay taxable wages throughout the part of the financial year.

Example

The effect of a determination under this section is that when the correct amount of payroll tax is calculated (for a tax adjustment provided for by this division) the employer may receive the benefit of the payroll tax threshold for the period for which the employer is to be treated as paying wages, and not just for the period for which the employer actually pays wages. Without the determination, an employer may only receive the benefit of a proportion of the threshold amount that is equivalent to the proportion of the whole financial year for which the employer actually pays wages.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 3 Returns

16 Payroll tax returns

- (1) This section applies to an employer if section 7 (Registration of employers) applies to the employer in relation to a month.
- (2) The employer must—
 - (a) lodge a return for the month; and
 - (b) lodge a return for each subsequent month in the financial year; and
 - (c) pay any tax that is payable in relation to the return because of division 2.3 (Liability to taxation—calculation of monthly payroll tax).

Note The employer must also be registered under s 7.

- (3) A return for a month must—
 - (a) be in writing; and
 - (b) be lodged no later than 7 days after the end of the month; and
 - (c) state the taxable wages that were paid or payable by the employer during the month.

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

- (4) The designated group employer for a group may, with the commissioner's approval, lodge a joint return under this section covering stated members of the group, including the designated group employer.
- (5) If a joint return is lodged and the return would, if lodged by a single employer, comply with this section, each of the employers covered by the return is taken to have complied with this section.

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 must—
 - (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 must—
 - (a) lodge returns in accordance with the notice; and
 - (b) pay any tax that is payable in relation to each return calculated in accordance with division 2.4 (Liability to taxation—calculation of payroll tax for financial year)—
 - (i) as if a reference in division 2.4 to a ***financial year*** (other than the reference in the definition of ***DFY***) or ***year*** were a reference to the period as varied by the commissioner; and
 - (ii) with any necessary changes and any changes prescribed by regulation.

- (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 must—
- (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 relation to an employer—
- (a) the employer need not lodge returns under section 16; and
 - (b) the employer must 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 relation to 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 Notification and review of decisions

19 Meaning of *reviewable decision*—pt 4

In this part:

reviewable decision means a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

20 Reviewable decision notices

If the commissioner makes a reviewable decision, the commissioner must give a reviewable decision notice to each entity mentioned in schedule 3, column 4 in relation to the decision.

Note 1 The commissioner must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

20A Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 3, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 5 Miscellaneous

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.

100 Transitional

- (1) This section applies to a liability to pay tax under the pre-amendment Acts.

- (2) The pre-amendment Acts continue to apply to—

- (a) the liability; and
- (b) anything done to satisfy the liability.

- (3) In this section:

pre-amendment Acts means each of the following Acts as in force at any time before the commencement of the *Payroll Tax Amendment Act 2008*:

- (a) the *Payroll Tax Act 1987*;
- (b) the *Taxation Administration Act 1999*.

- (4) Subsection (1) and subsection (2) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

- (5) This section expires 5 years after the day it commences.

101 Transitional—Payroll Tax Amendment Act 2009

- (1) The amendments made to this Act by the *Payroll Tax Amendment Act 2009* (the ***amendments***) apply in relation to taxable wages that are paid or payable on or after 1 July 2009.

- (2) If an employer to whom section 7 (Registration of employers) did not apply in an expired month becomes, as a result of the amendments, an employer to whom section 7 does apply for an expired month, section 7 (6) (c) applies to the employer as if a reference to 7 days after the end of the month were a reference to 7 days after the day the *Payroll Tax Amendment Act 2009* is notified.

Note This subsection extends the usual period an employer, to whom s 7 applies, is required to be registered under pt 2 to avoid committing an offence to take account of the retrospective commencement of the amendments.

- (3) If an employer to whom section 16 (Payroll tax returns) did not apply in an expired month becomes, as a result of the amendments, an employer to whom section 16 does apply for an expired month, section 16 (3) (b) applies to any payroll tax return the employer is required to lodge for an expired month as if a reference to 7 days after the end of the month were a reference to 7 days after the day the *Payroll Tax Amendment Act 2009* is notified.

Note This subsection extends the usual period for lodging a payroll tax return to take account of the retrospective commencement of the amendments.

- (4) If an employer to whom section 16 applied in an expired month becomes, as a result of the amendments, an employer to whom section 16 does not apply and the employer paid tax in accordance with section 16 (2) (c) for an expired month, the commissioner must refund the amount of tax that the employer is not liable to pay if the employer applies for a refund of that amount.

- (5) In this section:

expired month means a month that—

- (a) happens after June 2009; and
- (b) ends before the day the *Payroll Tax Amendment Act 2009* is notified.

Schedule 1 Calculation of market value of grant of share or option

(see s 2A and s 2B)

1.1 Definitions—sch 1

In this schedule:

granted—see section 2A (7) (Inclusion of grant of shares and options as wages).

qualified person, in relation to valuing a share in a company, means a person who is a registered company auditor under the Corporations Act other than—

- (a) a director, member of the governing body, secretary or employee of the company; or
- (b) a partner, employer or employee of a person mentioned in paragraph (a); or
- (c) a partner or employee of a person mentioned in paragraph (b).

relevant day—see section 2A (7).

vesting day—see section 2A (7).

1.2 Market value of shares or options quoted on stock exchange

- (1) The market value of a share or option that is quoted on a stock exchange on the relevant day is—
 - (a) if there was at least 1 transaction on that stock exchange in shares or options of that class in the 1-week period before the relevant day—the weighted average of the prices at which the shares or options were traded on the stock exchange during that period; or

- (b) if there were no transactions on that stock exchange in shares or options of that class in that 1-week period—the last price at which an offer was made on the stock exchange in that period to buy a share or option of that kind.
- (2) If a share or option is quoted on a relevant day on 2 or more stock exchanges, the price on that day is the price on whichever of the stock exchanges is nominated by the employer.
- (3) However, if 1 or more of the stock exchanges on which the share or option is quoted is an Australian stock exchange, the employer must nominate an Australian stock exchange.

1.3 Market value of shares or options not quoted on stock exchange

- (1) The market value of a share not quoted on a stock exchange on the relevant day is the arm's length value of the share—
 - (a) as stated in a written report given to the employer by a person who is a qualified person in relation to valuing the share; or
 - (b) as worked out in accordance with any other method approved by the commissioner, either generally or in a particular case, as a reasonable method of working out the arm's length value of unlisted shares.
- (2) An approval of a general method for subsection (1) (b) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (3) The market value of an option not quoted on a stock exchange on the relevant day is the market value on that day of the share that may be acquired by exercising the option, worked out in accordance with this schedule, less the lowest amount that must be paid to exercise the option to acquire the share.

- (4) In working out the market value of a share or an option under this section, the share or any share that may be acquired because of the exercise or operation of the option is taken not to be subject to any condition or restriction.
- (5) If the lowest amount that must be paid to exercise an option is nil or cannot be worked out, the market value of the option on a particular day is the same as the market value of the share on that day (worked out in accordance with this schedule).

1.4 Value to be expressed in Australian currency

The market value of a share or option must be expressed in Australian currency.

Schedule 2 Motor vehicle allowances

(s 3C (5))

2.1 Meaning of *business journey*—sch 2

In this schedule:

business journey means—

- (a) a journey undertaken in a motor vehicle by a person otherwise than in the application of the vehicle to a private use, that is an application that, if the person is paid a motor vehicle allowance for the use, results in the provision of a fringe benefit (under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth)) by the employer; or
- (b) a journey undertaken in a motor vehicle by a person in the course of producing assessable income of the person (under the *Income Tax Assessment Act 1936* (Cwlth)).

2.2 Continuous recording method

If an employer selects the continuous recording method for calculating the number of business kilometres travelled during a financial year, the following details are required to be recorded by the employer:

- (a) the odometer readings at the beginning and end of each business journey (*relevant business journey*) undertaken by the person during the financial year by means of a motor vehicle provided or maintained by the person;
- (b) the specific purpose for which each relevant business journey was taken;

- (c) the distance travelled by the person during the financial year in the course of all relevant business journeys (which is taken to be the *number of business kilometres travelled during the financial year*), calculated on the basis of the odometer readings mentioned in paragraph (a).

2.3 Averaging method

- (1) If an employer selects the averaging method for calculating the number of business kilometres travelled during a financial year, the following details are required to be recorded by the employer:

- (a) the odometer readings at the beginning and end of each business journey (*relevant business journey*) undertaken by the person during the relevant 12-week period by means of a motor vehicle provided or maintained by the person;

Note Section 2.4 defines the relevant 12-week period.

- (b) the specific purpose for which each relevant business journey was taken;
- (c) the distance travelled by the person during the relevant 12-week period in the course of all relevant business journeys, calculated on the basis of the odometer readings mentioned in paragraph (a);
- (d) the odometer readings at the beginning and end of the relevant 12-week period for each motor vehicle (*relevant motor vehicle*) provided or maintained by the person for the purpose of undertaking business journeys;
- (e) the distance travelled by each relevant vehicle during the relevant 12-week period, calculated on the basis of the odometer readings mentioned in paragraph (d);

- (f) the distance travelled by the person in the course of business journeys undertaken by means of each relevant vehicle during the relevant 12-week period, calculated as a percentage of the distance travelled by the vehicle during the period (the ***relevant percentage***);
 - (g) the odometer readings at the beginning and end of the financial year for each motor vehicle (***relevant vehicle***) provided or maintained by the person for the purpose of undertaking business journeys;
 - (h) the distance travelled by each relevant vehicle during the financial year, calculated on the basis of the odometer readings mentioned in paragraph (g);
 - (i) the distance travelled by the person in the course of business journeys undertaken by means of each relevant vehicle during the financial year (which is taken to be the ***number of business kilometres travelled during the financial year***), calculated on the basis that the percentage of the distance that was travelled by the person in the course of business journeys undertaken by means of each relevant vehicle during the financial year is the same as the relevant percentage.
- (2) For the next 4 financial years after the first financial year in which odometer details are recorded in accordance with subsection (1), an employer is not required to calculate the relevant percentage, or record the details mentioned in subsection (1) (a) to (f), for the person but is required to record the other details mentioned in subsection (1).
- (3) Accordingly, for the next 4 financial years after the first financial year in which odometer details are recorded in accordance with subsection (1), the number of business kilometres travelled during the financial year is to be calculated (as mentioned in subsection (1) (i)) on the basis of the relevant percentage calculated for the first financial year.

- (4) Despite subsection (2) and subsection (3), an employer is required to calculate the relevant percentage for a financial year, and record the details mentioned in subsection (1) (a) to (f), if—
- (a) the commissioner serves a written notice on the employer before the commencement of a financial year during the 4-year period directing the employer to keep the details referred to in subsection (1) (a) to (f) for the financial year; or
 - (b) the employer wishes to use the recording method mentioned in this section for 1 or more additional motor vehicles used by the person in any financial year or for any other reason.
- (5) In a situation mentioned in subsection (4), the new record for the financial year replaces the relevant percentage details previously recorded and subsections (2) and (3) apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.
- (6) An employer who has adopted and employed the method of recording mentioned in subsection (2) and subsection (3) for a person for 4 successive financial years must, in the next succeeding financial year, make a fresh recording of all the details stated in subsection (1) if the employer intends to continue to use the same method of recording for the person.
- (7) Subsection (2) and subsection (3) apply in relation to the new record under subsection (6) for the financial year as if it were the first financial year in which odometer details were recorded.
- (8) If the odometer of a motor vehicle is replaced or recalibrated during any period for which its readings are relevant for the purposes of this clause, the odometer readings immediately before and after the replacement or recalibration are to be recorded.

2.4 Meaning of relevant 12-week period—s 2.3

- (1) For section 2.3, *relevant 12-week period* means a continuous period of at least 12 weeks, selected by the employer, throughout which a motor vehicle is provided or maintained by a person.
- (2) If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.
- (3) The period may overlap the start or end of the financial year, as long as it includes part of the year.
- (4) If the averaging method is used for 2 or more motor vehicles for the same financial year, the odometer readings for those motor vehicles must cover periods that are concurrent.

2.5 Replacing one motor vehicle with another motor vehicle

- (1) In using the averaging method, an employer may nominate one motor vehicle as having replaced another motor vehicle with effect from a day stated in the nomination.
- (2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle.
- (3) An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.
- (4) An employer must record the nomination in writing in the financial year when the nomination takes effect.
- (5) However, the commissioner may allow an employer to record the nomination at a later time.

2.6 Changing method of recording

- (1) An employer may change from using the averaging method to using the continuous recording method with effect from the beginning of a financial year if the employer complies with section 2.2 for the financial year.
- (2) An employer may change from using the continuous recording method to using the averaging method with effect from the beginning of a financial year if the employer complies with section 2.3 for the financial year.

Schedule 3 Reviewable decisions

(see pt 4)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	3Q (1)	refuse to determine that person is not member of group	person who seeks determination
2	3Q (5)	revoke determination that person is not member of group	person who has determination revoked
3	4 (3) or (6)	determine that service contract was entered into with intention either directly or indirectly of avoiding or evading payment of tax	party to contract
4	4 (4) (d)	determine part of amount not attributable to performance of work	party to contract
5	5	disregard agreement, transaction or arrangement	party to agreement, transaction or arrangement
6	9AB	refuse to approve entity as group training organisation	applicant for approval
7	17	refuse to give, or revoke, notice about time within which return to be lodged	applicant for variation

column 1 item	column 2 section	column 3 decision	column 4 entity
8	18	refuse to grant, or cancel, exemption certificate	applicant for exemption certificate
9	18	impose or vary conditions in relation to exemption certificate	employer that has conditions imposed or varied in relation to exemption certificate

Dictionary

(see s 1A)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- ACT
- Consumer Credit (Australian Capital Territory) Code
- Corporations Act
- domestic partner (see s 169 (1))
- domestic partnership (see s 169 (2))
- financial year
- GST
- individual
- in relation to
- liability
- month
- person
- reviewable decision notice
- rural fire service
- SES
- State
- territory authority
- under.

ABN—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

associated person, for division 1A.4 (Grouping of employers)—see section 3E.

Australian Business Register—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

Australian jurisdiction means the ACT, another Territory or a State.

business, for division 1A.4 (Grouping of employers)—see section 3E.

business journey, for schedule 2 (Motor vehicle allowances)—see section 2.1.

benefit—see section 3.

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 securing financial benefit to its members.

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.

designated group employer means a member designated for a group under section 3R.

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

employment agent means a person (the ***agent***) who by arrangement procures the services of someone else for a client of the agent and as a result of the engagement receives payment, whether directly or indirectly and whether by way of a lump sum or ongoing fee, during or for the period the services are provided by the agent to the client.

entity, for division 1A.4 (Grouping of employers)—see section 3E.

exemption certificate means a certificate granted under section 18.

exempt wages—see section 2F.

granted, for schedule 1 (Calculation of market value of grant of share or option)—see section 2A (7) (Inclusion of grant of shares and options as wages).

group, for division 1A.4 (Grouping of employers)—see section 3E.

group employer, for division 2.5 (Adjustments of tax)—see section 13.

individual employer, for division 2.5 (Adjustments of tax)—see section 13.

instrument includes a cheque, bill of exchange, promissory note, money order or a postal order issued by a post office.

interstate wages means wages that are taxable wages under a corresponding law.

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

option means an option or right, whether actual, prospective or contingent, of a person to acquire a share or to have a share transferred or allotted to the person.

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

perform, in relation to services, includes render.

private company, for division 1A.4 (Grouping of employers)—see section 3E.

qualified person, for schedule 1 (Calculation of market value of grant of share or option)—see schedule 1, section 1.1.

registered business address, for an entity that has an ABN, means the address entered in the Australian Business Register as the entity's address for service under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth).

related person, for division 1A.4 (Grouping of employers)—see section 3E.

relevant day, for schedule 1—see section 2A (7) (Inclusion of grant of shares and options as wages).

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

return period, in relation to an employer, means a period for which the employer must lodge a return under this Act.

reviewable decision, for part 4 (Notification and review of decisions)—see section 19.

service contract—see section 4 (Application of Act to certain contracts).

share means a share in a company.

M

stock exchange—see the *Duties Act 1999*, dictionary.

superannuation benefit means an amount paid or payable by an employer in relation to an employee (including anyone to whom an amount is paid or payable as wages other than as a superannuation benefit)—

- (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 completely 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 2D; or
- (b) in relation to a State or another Territory—wages to which a corresponding law of that State or Territory applies.

unfunded—a superannuation, provident or retirement fund or scheme is ***unfunded*** to the extent that an amount paid or payable by an employer in relation to an employee covered by the fund or scheme is not paid or payable during the employee's period of service with the employer.

value, of a benefit—see section 3A.

vesting day, for an option, for schedule 1 (Calculation of market value of grant of share or option)—see section 2A (7).

wages—see section 2.

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.

2 Abbreviation key

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

Endnotes

3 Legislation history

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)

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))

Endnotes

3 Legislation history

**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))

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)

Revenue Legislation Amendment Act 2004 (No 2) A2004-43 pt 2

notified LR 11 August 2004

s 1, s 2 commenced 11 August 2004 (LA s 75 (1))

pt 2 commenced 12 August 2004 (s 2)

Payroll Tax Amendment Act 2004 A2004-52

notified LR 16 August 2004

s 1, s 2 commenced 16 August 2004 (LA s 75 (1))

remainder commenced 1 July 2005 (s 2)

Revenue Legislation Amendment Act 2005 A2005-29 pt 4

notified LR 28 June 2005

s 1, s 2 commenced 28 June 2005 (LA s 75 (1))

pt 4 commenced 1 July 2005 (s 2 (1))

Revenue Legislation Amendment Act 2006 A2006-19 pt 4

notified LR 17 May 2006

s 1, s 2 commenced 17 May 2006 (LA s 75 (1))

s 23, s 25 commenced 1 July 2006 (s 2 (1) and CN2006-10)

s 24, s 26, s 27 commenced 1 June 2006 (s 2 (2))

pt 4 remainder commenced 18 May 2006 (s 2 (3))

Revenue Legislation Amendment Act 2006 (No 2) A2006-32 pt 3

notified LR 30 August 2006

s 1, s 2 commenced 30 August 2006 (LA s 75 (1))

pt 3 commenced 31 August 2006 (s 2)

Endnotes

3 Legislation history

Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.17

notified LR 26 October 2006

s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))

sch 3 pt 3.17 commenced 16 November 2006 (s 2 (1))

**Training and Tertiary Education Legislation Amendment Act 2007
A2007-12 sch 1 pt 1.10**

notified LR 13 June 2007

s 1, s 2 commenced 13 June 2007 (LA s 75 (1))

sch 1 pt 1.10 commenced 1 July 2007 (s 2 and CN2007-3)

Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.30

notified LR 20 June 2007

s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))

sch 3 pt 3.30 commenced 11 July 2007 (s 2 (1))

Revenue Legislation Amendment Act 2007 A2007-21 pt 4

notified LR 19 June 2007

s 1, s 2 commenced 19 June 2007 (LA s 75 (1))

pt 4 commenced 20 June 2007 (s 2)

Statute Law Amendment Act 2007 (No 3) A2007-39 sch 3 pt 3.25

notified LR 6 December 2007

s 1, s 2 commenced 6 December 2007 (LA s 75 (1))

sch 3 pt 3.25 commenced 27 December 2007 (s 2)

Payroll Tax Amendment Act 2008 A2008-2

notified LR 17 March 2008

s 1, s 2 commenced 17 March 2008 (LA s 75 (1))

remainder commenced 1 July 2008 (s 2 and CN2008-9)

**ACT Civil and Administrative Tribunal Legislation Amendment
Act 2008 (No 2) A2008-37 sch 1 pt 1.80**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.80 commenced 2 February 2009 (s 2 (1) and see ACT Civil
and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

as modified by

Duties (Transitional Provisions) Regulation 2008 SL2008-38

notified LR 11 September 2008

s 1, s 2 commenced 11 September 2008 (LA s 75 (1))

remainder commenced 12 September 2008 (s 2)

as amended by

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.57

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.57 commenced 22 September 2009 (s 2)

Payroll Tax Amendment Act 2009 A2009-43

notified LR 23 November 2009

s 1, s 2 taken to have commenced 1 July 2009 (LA s 75 (2))

remainder taken to have commenced 1 July 2009 (s 2)

Revenue Legislation Amendment Act 2010 (No 2) A2010-20 pt 3

notified LR 6 July 2010

s 1, s 2 commenced 6 July 2010 (LA s 75 (1))

pt 3 commenced 7 July 2010 (s 2)

4

Amendment history

Name of Act

s 1 sub A2005-29 s 18

Dictionary

s 1A ins A2005-29 s 18
am A2008-2 s 4

Notes

s 1B ins A2005-29 s 18

Important concepts

pt 1A hdg ins A2008-2 s 5

Wages

div 1A.1 hdg ins A2008-2 s 5

Endnotes

4 Amendment history

Meaning of wages

s 2 om 2001 No 44 amdt 1.3105
ins A2005-29 s 18
am A2009-20 amdts 3.153-3.158; A2009-43 s 4

Inclusion of grant of shares and options as wages

s 2A ins 1988 No 32
sub 1999 No 5; A2005-29 s 18

Inclusion of shares and options granted to directors and others as wages

s 2B ins A2005-29 s 18

Place where wages payable

s 2BA ins A2008-2 s 6
am A2009-43 s 5

Inclusion of wages paid by group employers

s 2BB ins A2008-2 s 6

Inclusion of wages paid by or to third parties

s 2C ins A2005-29 s 18

Wages to which this Act applies

s 2D (prev s 5) reloc by A2005-29 s 19
am A2006-32 s 6; A2006-42 amdt 3.145, amdt 3.149;
A2007-21 s 11; A2007-39 amdt 3.114; A2008-2 s 7, s 8
sub A2009-43 s 6

Wages taxable in the ACT

s 2E ins A2009-43 s 6

Exempt wages

s 2F ins A2009-43 s 6
am A2010-20 s 6, s 7; pars renum R29 LA

Jurisdiction in which employee is based

s 2G ins A2009-43 s 6

Jurisdiction in which employer is based

s 2H ins A2009-43 s 6

Place and date of payment of wages

s 2I ins A2009-43 s 6

Benefits

div 1A.2 hdg ins A2008-2 s 9

Meaning of *benefit*

- s 3 hdg sub A2006-42 amdt 3.146
s 3 am 1988 No 32; ss renum R7 LA; 2002 No 28 s 7
sub A2005-29 s 18
am A2006-42 amdt 3.147
sub A2008-2 s 9
def **annual leave** ins 2002 No 28 s 6
om A2005-29 s 18
def **apprentice** om 2001 No 87 s 4
def **determined rate** am 1999 No 5
om A2005-29 s 18
def **eligible termination payment** ins 2002 No 28 s 6
om A2005-29 s 18
def **employer** am 1989 No 17 s 4
sub 1993 No 6 s 4
om A2005-29 s 18
def **employment agent** ins 1989 No 17 s 4
om A2005-29 s 18
def **long service leave** ins 2002 No 28 s 6
om A2005-29 s 18
def **new starter** ins 2001 No 87 s 5
om A2005-29 s 18
def **pay** ins 1989 No 17 s 4
om A2005-29 s 18
def **superannuation benefit** ins 1997 No 101 s 4
om A2005-29 s 18
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
om A2005-29 s 18

Value of benefit

- s 3A ins 1989 No 17
sub 1994 No 16
am 2002 No 28 s 8
om A2005-29 s 18
ins A2008-2 s 9

Employer election for taxable value of benefits

- s 3B ins 1989 No 17
am 1995 No 19; 2000 No 34 s 33
om A2005-29 s 18
ins A2008-2 s 9

Allowances as wages

- div 1A.3 hdg ins A2008-2 s 9

Endnotes

4 Amendment history

Wages to which this Act applies—exempt component of motor vehicle allowances not included

s 3C ins 1989 No 17
om A2005-29 s 18
ins A2008-2 s 9

Wages to which this Act applies—accommodation allowances not included

s 3D ins A2008-2 s 9

Grouping of employers

div 1A.4 hdg ins A2008-2 s 9

Interpretation

sdiv 1A.4.1 hdg ins A2008-2 s 9

Definitions—div 1A.4

s 3E ins A2008-2 s 9
def **associated person** ins A2008-2 s 9
def **business** ins A2008-2 s 9
def **entity** ins A2008-2 s 9
def **group** ins A2008-2 s 9
def **private company** ins A2008-2 s 9
def **related person** ins A2008-2 s 9

Grouping provisions to operate independently

s 3F ins A2008-2 s 9

Business groups

sdiv 1A.4.2 hdg ins A2008-2 s 9

Make up of groups

s 3G ins A2008-2 s 9

Groups of corporations

s 3H ins A2008-2 s 9

Groups arising from the use of common employees

s 3I ins A2008-2 s 9

Groups of commonly controlled businesses

s 3J ins A2008-2 s 9

Groups arising from tracing interests in corporations

s 3K ins A2008-2 s 9

Smaller groups included in larger groups

s 3L ins A2008-2 s 9

Business groups—tracing interests

sdiv 1A.4.3 hdg ins A2008-2 s 9

Application—sdiv 1A.4.3

s 3M ins A2008-2 s 9

Direct interest	
s 3N	ins A2008-2 s 9
Indirect interest	
s 3O	ins A2008-2 s 9
Aggregation of interests	
s 3P	ins A2008-2 s 9
Groups—miscellaneous	
sdiv 1A.4.4 hdg	ins A2008-2 s 9
Exclusion from groups	
s 3Q	ins A2008-2 s 9
Designated group employers	
s 3R	ins A2008-2 s 9
Application of Act to certain contracts	
s 4	sub A2005-29 s 18 am A2007-16 amdt 3.131
Agreement etc to reduce or avoid liability to payroll tax	
s 5	orig s 5 reloc as s 2D by A2005-29 s 19 (prev s 5A) ins 1989 No 17 renum A2005-29 s 20 am A2006-42 amdt 3.149; A2008-2 s 10, s 11; A2009-43 s 7
Agreement etc to reduce or avoid liability to payroll tax	
s 5A	renum as s 5
Liability to taxation—general concepts	
div 2.1 hdg	ins A2008-2 s 12
Payroll tax liability	
s 6	sub 1988 No 32 am 1989 No 17 sub A2005-29 s 21 am A2008-2 s 13
Registration of employers	
s 7	om 1988 No 32 ins 1993 No 6 om A2005-29 s 22 ins A2006-19 s 23 am A2008-2 s 14; A2009-43 s 8
Joint and several liability of group members	
s 8	om 1988 No 32 ins A2006-19 s 23 exp 1 July 2007 (s 8 (2)) ins A2008-2 s 15

Endnotes

4 Amendment history

Liability to taxation—exemption from tax

div 2.2 hdg ins A2008-2 s 16
note ins A2009-43 s 9

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;
A2007-39 amdt 3.115; A2008-2 s 17

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; A2007-12 amdt 1.15; A2007-39
amdt 3.116

Exemption from tax—trainees under approved training contracts

s 9AB ins A2006-19 s 24
am A2007-12 amdt 1.16

Exemption from tax—maternity, adoption and primary carer leave

s 9B ins A2004-52 s 4

Liability to taxation—calculation of monthly payroll tax

div 2.3 hdg ins A2008-2 s 18

Employer not member of group

sdiv 2.3.1 hdg ins A2008-2 s 18

Application—sdiv 2.3.1

s 9C ins A2008-2 s 18

Employer not member of group—amount of tax payable each month

s 9D ins A2008-2 s 18

Employer not member of group—deductible amount for employer not paying interstate wages

s 9E ins A2008-2 s 18

Employer not member of group—deductible amount for employer who pays taxable and interstate wages

s 9F ins A2008-2 s 18

Group with designated group employer

sdiv 2.3.2 hdg ins A2008-2 s 18

Application—sdiv 2.3.2

s 9G ins A2008-2 s 18

Group with designated group employer—amount of tax payable each month if approval in force

s 9H ins A2008-2 s 18

Group with designated group employer—amount of tax payable each month if approval not in force

s 9I ins A2008-2 s 18

Group with designated group employer—deductible amount for groups not paying interstate wages

s 9J ins A2008-2 s 18

Group with designated group employer—deductible amount for groups paying taxable and interstate wages

s 9K ins A2008-2 s 18

Group with no designated group employer

sdiv 2.3.3 hdg ins A2008-2 s 18

Application—sdiv 2.3.3

s 9L ins A2008-2 s 18

Group with no designated group employer—amount of tax payable each month

s 9M ins A2008-2 s 18

Liability to taxation—calculation of payroll tax for financial year

div 2.4 hdg ins A2008-2 s 19

Amount of tax payable—employer not member of group

s 10 sub 1988 No 32; A2008-2 s 19

Amount of tax payable—group with a designated group employers 11 sub 1988 No 32
am A2007-39 amdts 3.117-3.119
sub A2008-2 s 19**Joint and several liability of group members**s 11A ins A2004-43 s 4
om A2008-2 s 19**Amount of tax payable—group with no designated group employer**

s 12 sub 1988 No 32; A2008-2 s 19

Adjustments of tax

div 2.5 hdg ins A2008-2 s 19

Definitions—div 2.5s 13 sub 1988 No 32; A2008-2 s 19
def **group employer** ins A2008-2 s 19
def **individual employer** ins A2008-2 s 19

Endnotes

4 Amendment history

Determination of correct amount of payroll tax

s 14 sub 1988 No 32
am 1999 No 5
sub A2008-2 s 19

Annual adjustment of payroll tax

s 15 om 1988 No 32
ins A2008-2 s 19

Adjustment of payroll tax if employer changes circumstances

s 15A ins A2008-2 s 19

Special provision if wages fluctuate

s 15B ins A2008-2 s 19

Payroll tax returns

s 16 am 1988 No 32; 1999 No 5; 2001 No 44 amdt 1.3107,
amdt 1.3108
sub A2006-19 s 25
am A2008-2 s 20, s 21

Returns—variation of time for lodging

s 17 am 1988 No 32; A2007-39 amdt 3.120; A2008-2 s 22

Monthly returns—exemptions

s 18 am 1988 No 32

Notification and review of decisions

pt 4 hdg sub A2008-37 amdt 1.345

Meaning of *reviewable decision*—pt 4

s 19 am 1988 No 32; 1989 No 38; 1989 No 17; 1994 No 60; pars
renum R7 LA
am A2005-29 ss 23-25; A2006-19 s 26; pars renum A2006-19
s 27; A2008-2 s 23; pars renum R25 LA
sub A2008-37 amdt 1.345

Reviewable decision notices

s 20 am 1989 No 38; 1994 No 60
sub A2008-37 amdt 1.345

Applications for review

s 20A ins A2008-37 amdt 1.345

Miscellaneous

pt 5 hdg ins A2008-37 amdt 1.345

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))

Transitional

s 100 ins A2008-2 s 24
exp 1 July 2013 (s 100 (5) (LA s 88 declaration applies))

Transitional—Payroll Tax Amendment Act 2009

s 101 ins A2009-43 s 10

Calculation of market value of grant of share or option

sch 1 ins A2005-29 s 26
am A2007-39 amdt 3.121

Motor vehicle allowances

sch 2 hdg ins A2008-2 s 25

Meaning of *business journey*—sch 2

s 2.1 ins A2008-2 s 25

Continuous recording method

s 2.2 ins A2008-2 s 25

Averaging method

s 2.3 ins A2008-2 s 25

Meaning of relevant 12-week period—s 2.3

s 2.4 ins A2008-2 s 25

Replacing one motor vehicle with another motor vehicle

s 2.5 ins A2008-2 s 25

Changing method of recording

s 2.6 ins A2008-2 s 25

Reviewable decisions

sch 3 ins A2008-37 amdt 1.346

Dictionary

dict ins A2005-29 s 27
am A2008-2 s 26; A2008-37 amdt 1.347; A2009-20
amdt 3.159; A2009-43 s 11; A2010-20 s 8
def **ABN** ins A2009-43 s 12
def **associated person** ins A2008-2 s 27
def **Australian Business Register** ins A2009-43 s 12
def **Australian jurisdiction** ins A2009-43 s 12
def **benefit** ins A2005-29 s 27
def **business** ins A2008-2 s 27
def **business journey** ins A2008-2 s 27

Endnotes

4 Amendment history

def **charitable organisation** ins A2005-29 s 27
def **company** ins A2005-29 s 27
def **corresponding law** ins A2005-29 s 27
def **designated group employer** ins A2008-2 s 27
def **determined rate** ins A2005-29 s 27
om A2008-2 s 28
def **employer** ins A2005-29 s 27
def **employment agent** ins A2005-29 s 27
def **entity** ins A2008-2 s 29
def **exemption certificate** ins A2005-29 s 27
def **exempt wages** ins A2009-43 s 12
def **granted** ins A2005-29 s 27
def **group** ins A2008-2 s 29
def **group employer** ins A2008-2 s 29
def **group period** ins A2005-29 s 27
om A2008-2 s 30
def **group year** ins A2005-29 s 27
om A2008-2 s 30
def **independent employer** ins A2005-29 s 27
om A2008-2 s 30
def **individual employer** ins A2008-2 s 31
def **instrument** ins A2009-43 s 12
def **interim tax** ins A2005-29 s 27
om A2008-2 s 32
def **interstate wages** ins A2008-2 s 33
def **new starter** ins A2005-29 s 27
def **option** ins A2005-29 s 27
def **pay** ins A2005-29 s 27
def **perform** ins A2008-2 s 33
def **private company** ins A2008-2 s 33
def **qualified person** ins A2005-29 s 27
def **registered business address** ins A2009-43 s 12
def **related person** ins A2008-2 s 33
def **relevant day** ins A2005-29 s 27
def **return** ins A2005-29 s 27
def **return period** ins A2008-2 s 33
def **reviewable decision** ins A2008-37 amdt 1.348
def **service contract** ins A2005-29 s 27
def **share** ins A2005-29 s 27
def **stock exchange** ins A2005-29 s 27
mod by SL2008-38 s 3
mod exp 1 September 2010 (see A1999-7 s 451A (2))
def **superannuation benefit** ins A2005-29 s 27
def **tax** ins A2005-29 s 27
def **taxable wages** ins A2005-29 s 27
def **unfunded** ins A2005-29 s 27

def **value** ins A2006-42 amdt 3.148
 sub A2008-2 s 34
 def **vesting day** ins A2005-29 s 27
 def **wages** ins A2005-29 s 27

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. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1989 No 17	31 March 1991
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
13*	A2003-37	1 November 2003
14	A2004-43	12 August 2004
15	A2005-29	1 July 2005
16	A2006-19	1 June 2006
17	A2006-19	1 July 2006
18	A2006-32	31 August 2006

Endnotes

6 Modifications of republished law with temporary effect

Republication No	Amendments to	Republication date
19	A2006-42	16 November 2006
20	A2007-21	20 June 2007
21	A2007-21	1 July 2007
22	A2007-21	2 July 2007
23	A2007-21	11 July 2007
24	A2007-39	27 December 2007
25	A2008-2	1 July 2008
26	SL2008-38	12 September 2008
27*	SL2008-38	2 February 2009
27A	A2009-43 ‡	23 November 2009
28	A2009-20	22 September 2009
28 (RI)	A2009-20 ‡	23 November 2009

‡ includes retrospective amendments by A2009-43

6 Modifications of republished law with temporary effect

The following modifications have not been included in this republication:

Duties (Transitional Provisions) Regulation 2008 SL2008-38 s 3 and sch 1 mod 1.1

3 Transitional—modification of Act, ch 17, s 451 (2)

The Act, chapter 17 applies as if the following section were inserted:

‘451A Modification—Payroll Tax Act 1987

- (1) The *Payroll Tax Act 1987* is modified as set out in the *Duties (Transitional Provisions) Regulation 2008*, schedule 1.
- (2) This section expires on the day the *Duties (Transitional Provisions) Regulation 2008* expires.’

Schedule 1 **Modification—Payroll Tax Act 1987**

[1.1] Dictionary, definition of *stock exchange*

substitute

stock exchange—see the *Duties Act 1999*, dictionary, definition of *recognised stock exchange*.

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