



AUSTRALIAN CAPITAL TERRITORY

Payroll Tax (Amendment) Act 1989

No. 17 of 1989

An Act to amend the *Payroll Tax Act 1987*

[Notified in ACT Gazette S 33: 31 October 1989]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Payroll Tax (Amendment) Act 1989*.

Commencement

2. This Act commences on 1 November 1989.

Principal Act

3. In this Act, “Principal Act” means the *Payroll Tax Act 1987*.¹

Interpretation

4. Section 3 of the Principal Act is amended—
 - (a) by adding at the end of the definition of “employer” in subsection (1) “, and a person who is an employment agent”;

- (b) by omitting from the definition of “wages” in subsection (1) “a payment made to an employee in” and substituting “an amount paid or payable to a person in relation to”;
- (c) by inserting in the definition of “wages” in subsection (1) “or former employee” after “employee” (first occurring);
- (d) by omitting from paragraph (a) of the definition of “wages” in subsection (1) “commission, bonus or allowance” and substituting “remuneration, salary, commission, bonus, allowance or other benefit”;
- (e) by inserting after paragraph (c) of the definition of “wages” in subsection (1) the following paragraphs:
 - “(ca) wages, remuneration, salary, commission, bonuses, allowances or other benefits paid or payable whether in cash or in kind in relation to an employee by any person acting for or in concert or under an arrangement or understanding (whether formal or informal and whether expressed or implied) with the employer;
 - (cb) any amount deemed to be wages under paragraph 3B (2) (c);”;
- (f) by omitting paragraph (e) of the definition of “wages” in subsection (1) and substituting the following paragraph:
 - “(e) any amount paid or payable by way of remuneration to a person who was engaged by an employment agent to provide services for a client of the employment agent, being services in respect of which the remuneration was paid or is payable.”;
- (g) by inserting in subsection (1) the following definitions:
 - “ ‘employment agent’ means a person who by arrangement procures the services of another person for a client of the first-mentioned person as a result of which engagement the employment agent receives directly or indirectly payment, whether by way of a lump sum or ongoing fee, during or in respect of the period when the services are provided by that person to the client;
 - ‘pay’, in relation to wages or remuneration, includes provide, confer and assign;”;

- (h) by omitting subsection (2) and substituting the following subsections:

“(2) For the purposes of this Act—

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

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

“(3) A reference in this Act to a benefit is to be taken to include a reference to a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.”.

Insertion

5. After section 3 of the Principal Act the following sections are inserted:

Value of benefits

“3A. Where a benefit is provided by an employer, the value of the benefit for the purposes of this Act is the amount that would be the taxable value of that benefit as a fringe benefit for the purposes of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

Application of Act to certain contracts

“3B. (1) A reference in this section to a service contract is to be taken to be a reference to a contract under which a person (in this subsection called the ‘designated person’), in the course of a business carried on by the person—

- (a) supplies services to another person in relation to the performance of work;
- (b) is supplied with the services of another person in relation to the performance of work; or

- (c) gives out goods to natural persons for work to be performed by those persons in respect of the goods and for re-supply of the goods to the designated person or, where the designated person is a member of a group, to another member of that group;

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

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

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

“(2) For the purposes of this section—

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

- (c) amounts paid or payable by an employer in relation to the performance of work relating to a service contract or the re-supply of goods by an employee under a service contract shall be deemed to be wages; and
- (d) where an amount referred to in paragraph (c) is included in a larger amount paid or payable by an employer under a service contract, that part of the larger amount which is not attributable to the performance of work relating to the service contract or the re-supply of goods by an employee under the service contract may be determined by the Commissioner.

“(3) Where, in respect of a payment in relation to the performance of work that is to be deemed to be wages under subsection (2), payroll tax is paid by a person who is to be deemed under that subsection to be an employer—

- (a) no other person shall be liable to payroll tax in respect of that payment; and
- (b) where another person is liable to make a payment in relation to that work, that person shall not be liable to payroll tax in respect of that payment unless it or the payment by the person who is to be deemed to be the employer is made with an intention either directly or indirectly of avoiding or evading the payment of tax whether by that deemed employer or another person.

“(4) In this section—

- (a) a reference to a contract is to be taken to include a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied;
- (b) a reference to supply is to be taken to include a reference to supply by way of sale, exchange, lease, hire or regulated contract and, in relation to services, includes a reference to the providing, granting or conferring of services;
- (c) a reference (however expressed) to the re-supply of goods acquired from a person is to be taken to include a reference to—
 - (i) a supply to the person of goods in an altered form or condition;
 - (ii) a supply to the person of goods in which the first-mentioned goods have been incorporated; and

- (iii) a supply to the person of an article manufactured or produced from any such goods; and
- (d) a reference to services is to be taken to include a reference to results (whether goods or services) of work performed.

“(5) In paragraph (4) (b), ‘regulated contract’ has the same meaning as in the *Credit Act 1985*.”.

Contracts that are not service contracts

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

Insertion

6. After section 5 of the Principal Act the following section is inserted in Part I:

Agreement etc. to reduce or avoid liability to payroll tax

“5A. (1) Where any person enters into any agreement, transaction or arrangement, whether in writing or otherwise, under which a natural person performs or renders, for or on behalf of another person, services in respect of which any payment is made to some other person related or connected to the natural person performing or rendering the services and the effect of the agreement, transaction or arrangement is to reduce or avoid the liability of any person to the assessment, imposition or payment of payroll tax, the Commissioner may—

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

Payroll tax liability

7. Section 6 of the Principal Act is amended by adding at the end the following subsection:

“(2) Where, in respect of wages paid in relation to the performance of work, payroll tax is paid by an employment agent, no other person shall be liable to payroll tax in respect of that payment.”.

Review of decisions

8. Section 19 of the Principal Act is amended by inserting before paragraph (b) the following paragraphs:

- “(a) under subsection 3B (1) or section 3C, that a service contract was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax;
- (ab) under paragraph 3B (2) (d);
- (ac) under section 5A, disregarding an agreement, transaction or arrangement;”.

NOTE

1. Ordinance No. 40, 1987 as amended by No. 32, 1988; Nos. 15 and 21, 1989.

[Presentation speech made in Assembly on 28 September 1989.]