

2013

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Payroll Tax Amendment Bill 2013

EXPLANATORY STATEMENT

**Presented by
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Payroll Tax Amendment Bill 2013

Overview

The Payroll Tax Amendment Bill 2013 introduces amendments to the Payroll Tax Act 2011.

The key objective of the Bill is to bring the operation of the Act into greater harmonization with other jurisdictions.

Detail

Clauses 1 - 3

These clauses set out the name of the Act, the commencement date and the legislation amended by the Act. Specifically, this Act commences on the day after its notification day.

Clause 4

This clause brings the exceptions to the ‘service contract’ deeming provisions into line with NSW legislation.

Clause 5

This clause provides for retrospective effect to the disclaimer by a beneficiary of the beneficiary’s interest in the trust, in circumstances where according to common law principles the disclaimer is validly made. This will ameliorate unjust circumstances that might otherwise arise, for instance where a person is a beneficiary and therefore grouped, without that person’s knowledge.

Clause 6

This clause provides reference to ‘corresponding earlier provisions’ mentioned in clause 5.

Clause 7

Consistent with the decision of the NSW Supreme Court in *Baxter v Chief Commissioner of Payroll Tax* (1986) 7 NSWLR 122, this provision allows for a degrouping power to be exercised in respect of more than one person, where each of the applicant people meet the degrouping test in respect of the entities from which they seek to be degrouped. In the unamended legislation, this result may already be achieved by the *Legislation Act 2001* provision to the effect that the singular includes the plural, but express provision to that effect clarifies the question.

Clause 8

This clause includes language in the plural so as to expressly provide for the exercise of the degrouping power in respect of multiple applicants.

Clause 9

The aim of the amendment is to clarify that bodies corporate that are related bodies corporate cannot be degrouped from one another, but that the existence of related bodies corporate in a group does not sterilise the ability of a body corporate to be degrouped from unrelated entities in appropriate circumstances.

Put alternatively, if A and B are related bodies corporate, but C is not related to either A or B, by the operation of this subsection A cannot be degrouped from B, but either A or B can theoretically be degrouped from C.

Clause 10

Prior to 1 July 2008, the Commissioner's degrouping power was limited to circumstances where grouping arose by common employment. The ACT was unique in providing for such a limited power. Harmonisation amendments to the *Payroll Tax Act 1987* (ACT) (repealed) that took effect on 1 July 2008 permitted the exercise of the degrouping power no matter how the grouping arose (except in the case of related bodies corporate). The amended provision provided for retrospective degroupings, which is desirable so as to ameliorate unfair and otherwise-irrevocable groupings that arose prior to 1 July 2008.

This clause clarifies that the retrospective degrouping power is available in respect of groupings arising prior to 1 July 2008 (under either the *Payroll Tax Act 1987* (ACT) (repealed) or the *Taxation Administration Act 1999* (ACT)).

Clause 11

This clause makes clear that a group member is liable for the tax debt of grouped companies only during the period when the group member was part of the group.