

# AUSTRALIAN CAPITAL TERRITORY

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## Payroll Tax Ordinance 1987

No. 40 of 1987

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# AUSTRALIAN CAPITAL TERRITORY

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## Payroll Tax Ordinance 1987

No. 40 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 29 July 1987.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

JOHN BROWN  
Minister of State for the Arts, Sport, the Environment,  
Tourism and Territories

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An Ordinance to impose payroll tax

### PART I—PRELIMINARY

#### Short title

1. This Ordinance may be cited as the *Payroll Tax Ordinance 1987*.<sup>1</sup>

#### Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister by notice in the *Gazette*.

#### Interpretation

3. In this Ordinance, unless the contrary intention appears:  
“apprentice” means:

- (a) an apprentice within the meaning of the *Apprenticeship Ordinance 1936*;
- (b) a person who is an applicant for apprenticeship within the meaning of that Ordinance and is employed on probation; or
- (c) a person whose employment is of a kind that, under the regulations, is to be treated as apprenticeship for the purposes of this Ordinance, being employment principally for either of the following purposes:
  - (i) training the person in a trade or other occupation;
  - (ii) assessing the person's suitability for training in a trade or other occupation;

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

“commencement day” means the date fixed under section 2;

“Commissioner” has the same meaning as in the *Taxation (Administration) Ordinance 1987*;

“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;

“deductible amount”, in relation to a group in relation to a financial year, means the amount calculated in accordance with the formula:

$$\frac{A}{B} \left( CD - \frac{2H}{3} \right)$$

where:

- A** is the number of whole dollars in the total amount of the taxable wages paid or payable during the financial year by members of the group;
- B** is the number of whole dollars in the total amount of the taxable wages and the interstate wages paid or payable during the financial year by the members of the group;

**C** is the relevant annual amount:

**D** is the factor calculated in accordance with the formula:

$$\frac{E-F}{G}$$

where:

**E** is the number of whole days in the financial year during which there was a designated group employer in respect of the group;

**F** is the number of days in the financial year in respect of which either no taxable or no interstate wages were paid or payable by any member of the group; and

**G** is the number of days in the financial year; and

**H** is so much of the total amount of taxable wages and interstate wages paid or payable during the financial year by the members of the group as exceeds the amount calculated by multiplying the amount represented by component **C** by the factor represented by component **D**;

“designated group employer”, in relation to a group, means the member of the group who is for the time being the designated group employer in respect of the group under section 12;

“employer” means a person who pays or is liable to pay wages and includes a public authority, constituted by or under an Act or a law of the Territory, the wages paid by which are not paid out of the Consolidated Revenue Fund;

“exemption certificate” means a certificate granted under section 18;

“group” has the same meaning as in the *Taxation (Administration) Ordinance 1987*;

“interstate wages” means wages that are taxable wages within the meaning of a corresponding law;

“relevant annual amount” means the amount determined by the Minister for the purposes of section 10;

“relevant monthly amount” means the amount determined by the Minister for the purposes of section 8;

“return period”, in relation to an employer, means the period in relation to which the employer is required to furnish a return under this Ordinance;

“tax” means tax payable under this Ordinance;

“taxable wages” means:

- (a) wages in respect of which tax is payable; and
- (b) wages in respect of which, but for section 8, tax would be payable;

“wages” means a payment made to an employee in his or her capacity as an employee, and includes:

- (a) a payment by way of commission, bonus or allowance;
- (b) a payment made under a prescribed class of contracts, to the extent to which the payment is attributable to labour;
- (c) a payment by a company by way of remuneration to a director or a member of the governing body of the company;
- (d) the value of any payments made in kind; and
- (e) where meals or other sustenance, or premises, are provided by an employer for an employee as consideration or part consideration for the employee’s services—the value of the meals or sustenance, or of the use of the premises, ascertained in accordance with subsection (2).

(2) Where meals or other sustenance, or premises, are provided by an employer, the value of the meals or sustenance, and of the use of the premises, is the amount determined by the Minister.

### **Administration**

4. The Commissioner has the general administration of this Ordinance.

### **Wages to which this Ordinance applies**

5. (1) The following wages are wages to which this Ordinance applies:

- (a) wages that are paid or payable in the Territory, not being wages so paid or payable in respect of services performed or rendered wholly in a State or wholly in another Territory;

- (b) wages that are paid or payable elsewhere than in the Territory in respect of services performed or rendered wholly in the Territory.

(2) Wages that are payable to a person by his or her employer but have not been paid, other than wages that, under the terms of the person's employment, are payable in another Territory or in a State, shall be deemed:

- (a) where the wages are payable in respect of services performed or rendered wholly in the Territory—to be wages payable to the employee in the Territory;
- (b) where:
  - (i) the wages are not payable in respect of services performed or rendered wholly in the Territory, wholly in another Territory or wholly in a State; and
  - (ii) the wages last paid or payable to the person by that employer were included, or required to be included in a return under this Ordinance;

to be wages payable to the person in the Territory; or

- (c) where the wages are not deemed, by paragraph (a) or (b) or a provision of a corresponding law, to be wages payable to the person in the Territory, in a State or in another Territory—to be wages payable to the person by that employer at the place where that person last performed or rendered any services for that employer before those wages became payable.

(3) Where a bill of exchange, promissory note, money order, postal order or other instrument has been given or sent by an employer to a person or the person's agent in payment of the person's wages, the wages shall be deemed to have been paid:

- (a) at the place where the instrument is given or to which it is sent, as the case may be; and
- (b) when the instrument was so given or sent.

## **PART II—LIABILITY TO TAXATION**

### **Payroll tax: imposition**

6. (1) Subject to this Ordinance, tax is payable in respect of all wages that are paid or payable by an employer on or after the commencement day.

- (2) Tax is payable at the rate determined by the Minister.

**Liability**

7. Tax shall be paid by the employer who pays or is liable to pay the wages in respect of which the tax is payable.

**General deduction**

8. (1) For the purpose of ascertaining the tax payable by an employer, an amount ascertained in accordance with this section shall be deducted from the wages included in a return or in an assessment by the Commissioner.

- (2) Subject to subsection (4), the amount of the deduction is:

- (a) where the return or assessment relates to a period of one month—the prescribed amount;
- (b) where the return or assessment relates to part of a month—an amount that bears to the prescribed amount the same proportion as that part of the month bears to the whole of the month; or
- (c) where the return or assessment relates to a period of more than a month:
  - (i) for each month in that period—the prescribed amount; and
  - (ii) for each part of a month in that period—the amount that bears to the prescribed amount the same proportion as that part of the month bears to the whole of the month.

- (3) In this section, the prescribed amount is:

- (a) where an employer is not entitled to claim another amount—the relevant monthly amount; or
- (b) where an employer is so entitled—that other amount.

(4) Where the prescribed amount in respect of an employer is the relevant monthly amount, the deduction shall be reduced by two-thirds of the difference between the amount of the wages and the amount ascertained under subsection (2).

- (5) Where:

- (a) an employer is required by a corresponding law to include wages in a return furnished under that law in respect of a period; and



- (b) the employer is also required to include wages in a return under this Ordinance in respect of that period or part of that period;

a deduction shall not be made from those wages unless the employer has served a notice on the Commissioner.

(6) A notice shall:

- (a) be in writing ; and
- (b) specify, as the amount of the deduction the employer claims to be entitled to make for the period or part of the period, an amount, not exceeding the relevant monthly amount, calculated as follows:
  - (i) where the total of the estimated annual wages required to be included in returns under this Ordinance and a corresponding law does not exceed the relevant annual amount—in accordance with the formula:

$$\frac{WR}{T};$$

- (ii) where the total of the estimated annual wages required to be included in returns under this Ordinance and a corresponding law exceeds the relevant annual amount—in accordance with the formula:

$$\frac{W}{T} \left[ R - \frac{2}{3} \left( \frac{T}{12} - R \right) \right]$$

where:

- W** is the total of the estimated annual wages to be included in returns under this Ordinance;
- T** is the total of the estimated annual wages to be included in returns under this Ordinance and a corresponding law; and
- R** is the relevant monthly amount.

(7) Subject to subsection (8), where an employer has served on the Commissioner a notice in accordance with subsection (6), the amount specified in the notice is the prescribed amount in respect of any return relating to the period next preceding the day on which the notice was served or to a subsequent period.

(8) The Commissioner may, at any time, in writing determine that no amount is the prescribed amount in respect of an employer.

(9) Where the Commissioner makes a determination under subsection (8), the prescribed amount is zero in respect of the employer in respect of a return relating to:

- (a) a month or period specified in the determination, being a month or period ending not later than the end of the financial year in which the determination is made; and
- (b) a subsequent month or period.

(10) The Commissioner shall serve notice of a determination under this section on the employer to whom the determination relates as soon as practicable after making the determination.

(11) In this section, “tax” means tax payable under section 6.

(12) The Minister may determine an amount to be the relevant monthly amount for the purposes of this section.

(13) Nothing in this section applies in relation to an employer who is a member of a group.

### **Exemption from tax**

9. Section 6 does not apply to wages paid or payable:

- (a) by the Governor-General;
- (b) by a charitable organisation;
- (c) by a hospital that is a recognised hospital under the *Health Insurance Act 1973*;
- (d) 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;
- (e) 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 by reason of the person’s being such a member;
- (f) to a person employed as an apprentice, where the wages are in respect of the period of 12 months commencing on the first day of the person’s employment as an apprentice; or

- (g) to a trainee employed under a training agreement as part of the scheme known as the Australian Traineeship Scheme.

**Refund or rebate of tax on annual adjustment**

**10. (1)** Where the wages included or required to be included in returns relating to a financial year furnished by an employer under this Ordinance or under this Ordinance and a corresponding law:

- (a) in the case of an employer who was an employer in Australia during the whole of the financial year—do not exceed the prescribed amount ascertained in accordance with subsection (4); or
- (b) in the case of an employer who was an employer in Australia during part only of the financial year—do not exceed the prescribed amount ascertained in accordance with subsection (5);

the Commissioner shall, on application made by the employer in accordance with subsection (3), refund or rebate to the employer the amount of tax paid or payable by the employer in respect of that financial year or part of that financial year, as the case may be.

**(2)** Where the total deductions made, in accordance with section 8 or a corresponding provision of a corresponding law, from the wages included or required to be included in returns relating to a financial year furnished by an employer under this Ordinance or under this Ordinance and a corresponding law:

- (a) in the case of an employer who was an employer in Australia during the whole of that financial year—are less than the prescribed amount ascertained in accordance with subsection (4); or
- (b) in the case of an employer who was an employer in Australia during part only of that financial year—are less than the prescribed amount ascertained in accordance with subsection (5);

the Commissioner shall, on application made by the employer in accordance with subsection (3), refund or rebate to the employer:

- (c) where the employer has not included, and is not required to include, wages paid or payable in respect of that financial year or part, as the case may be, in a return furnished under a corresponding law—an amount equal to the tax paid or payable by the employer on the amount of the relevant deficiency; or

- (d) where the employer has included, or is required to include, wages paid or payable in respect of that financial year or part, as the case may be, in a return furnished under a corresponding law, and in a return furnished under this Ordinance—an amount equal to the tax paid or payable by the employer on:
  - (i) the relevant deficiency; or
  - (ii) the amount, if any, by which the calculated deductions applicable to the employer under subsection (9) in respect of the financial year exceed the total deductions made in relation to the employer under section 8 in respect of that financial year or part;

whichever amount is the lesser.

**(3)** An application under subsection (1) or (2) shall be made in the financial year next following the financial year to which the application relates.

**(4)** Where an employer was an employer in Australia during the whole of a financial year, the prescribed amount is:

- (a) where there is only one relevant annual amount in relation to the financial year—the amount ascertained by deducting from the relevant annual amount two-thirds of the difference between the total wages paid by the employer in respect of the financial year and that relevant annual amount;
- (b) where there are 2 or more relevant annual amounts applicable to periods in the financial year—the amount ascertained by:
  - (i) calculating, in respect of each period, the amount ascertained in accordance with the formula:

$$\frac{\mathbf{MR}}{12}$$

where:

**M** is the number of months during the period; and

**R** is the relevant annual amount applicable in respect of the period; and

- (ii) deducting from the sum of the amounts so calculated two-thirds of the difference between that sum and the total wages paid by the employer in respect of the financial year.

**(5)** Where an employer was an employer in Australia during part only of a financial year, the prescribed amount is:

- (a) where there is only one relevant annual amount in relation to the financial year—the prescribed amount that would be ascertained in accordance with subsection (4) if:
  - (i) the employer had been an employer in Australia during the whole of the financial year; and
  - (ii) each reference in paragraph (4) (a) to the relevant annual amount were a reference to the amount that bears to that relevant annual amount the same proportion as the part of the year during which the employer was an employer in Australia bears to the whole of the financial year; and
- (b) where there are 2 or more relevant annual amounts applicable to a period in the financial year—the amount ascertained in accordance with subparagraph (4) (b) (i) and:
  - (i) by calculating, in respect of each of those periods (in this subparagraph referred to, in each case, as the “relevant period”) during the whole or part of which the employer was an employer in Australia, the amount that bears to the amount so ascertained in relation to that period the same proportion as the period in the relevant period during which the employer was an employer in Australia bears to the relevant period; and
  - (ii) deducting from the sum of the amounts so calculated two-thirds of the difference between that sum and the total amount of wages paid by the employer in respect of the financial year.

**(6)** The Minister may determine an amount to be the relevant annual amount for the purposes of this section.

**(7)** In making a determination, the Minister may declare that the determined amount is applicable to a specified period in that financial year, being a period that commences on the first day of a month.

**(8)** Where the Minister makes a determination and:

- (a) the determination includes a declaration that the determined amount is applicable to a specified period:
  - (i) the determined amount is the relevant annual amount applicable to the period; and

- (ii) the amount previously determined is the relevant annual amount in respect of any period in that year in respect of which the determined amount is not applicable; or
- (b) the determination does not include such a declaration—the determined amount is the relevant annual amount in respect of that year.

**(9)** For the purposes of subparagraph (2) (d) (ii), the calculated deductions applicable to an employer in respect of a financial year shall be calculated in accordance with the formula:

$$\frac{WP}{T}$$

where:

- W** is the total of the wages included or required to be included in returns under this Ordinance;
- T** is the total of the wages included or required to be included in returns under this Ordinance and a corresponding law; and
- P** is the prescribed amount.

**(10)** Where a person who, during a part of a financial year, did not pay and was not liable to pay any wages that, under this Ordinance or under any corresponding law, were required to be included in a return satisfies the Commissioner that, by reason of the nature of the person's trade or business, the wages paid or payable to him or her during that financial year that are so required to be included in a return fluctuate with different periods of the financial year, the Commissioner may treat the person:

- (a) if the person has conducted that trade or business during the whole of the financial year—as an employer in Australia during the whole of that financial year; or
- (b) if the person has conducted that trade or business during part only of that financial year—as an employer in Australia during that part of that financial year.

**(11)** Notwithstanding anything contained in this section, the total amount refunded or rebated to any employer in pursuance of this section in respect of a financial year shall not exceed the amount of tax paid or payable by the employer in respect of that financial year.

**(12)** A reference in subsection (4) to the total wages paid by an employer in respect of a financial year or a period shall be read as a reference to the

wages included or required to be included in returns relating to the financial year or period furnished or required to be furnished by the employer under this Ordinance, or under this Ordinance and under a corresponding law.

(13) In this section, “tax” means tax payable under section 6.

(14) Nothing in this section applies in relation to an employer who is a member of a group.

**Tax payable on annual basis**

11. (1) This section applies to an employer in respect of a financial year unless the employer has furnished, or is required to furnish, a return in respect of the whole of the financial year.

(2) Where:

- (a) this section applies to an employer in respect of a financial year; and
- (b) the tax applicable on an annual basis to an employer to whom this section applies in respect of that financial year exceeds the tax applicable otherwise than on an annual basis to the employer in respect of that year;

tax equal to the amount of the excess is payable in respect of taxable wages paid or payable by the employer during the financial year.

(3) Tax payable under this section is in addition to tax payable under section 10.

(4) In this section, in relation to an employer to whom this section applies in respect of a financial year:

“calculated deductions” means the amount of the calculated deductions applicable to the employer under subsection 10 (9);

“return” means a return furnished, or required to be furnished, under this Ordinance;

“tax applicable on an annual basis” means the amount of tax that would be payable by the employer in respect of taxable wages paid or payable by the employer during that year if:

- (a) the return period in respect of the employer were the whole of the financial year; and
- (b) in accordance with section 8 there were deducted, from the wages that would be required to be included in the return:

- (i) where the employer has not included, and is not required by a corresponding law to include, wages in a return furnished under a corresponding law—the prescribed amount under section 10 applicable to the employer in respect of the year; or
- (ii) where the employer has included, or is required by a corresponding law to include, wages in a return furnished under a corresponding law—the calculated deductions in relation to the employer in respect of the year;

“tax applicable otherwise than on an annual basis” means the tax payable under section 6 by the employer in respect of taxable wages paid or payable by the employer during the year.

### **Designated group employer**

**12. (1)** The members of a group may lodge with the Commissioner a notice in writing, in a form approved by the Commissioner, signed by or on behalf of each member of the group, designating one of the members of the group to be the designated group employer in respect of the group for the purposes of this Ordinance.

**(2)** The designated member of the group commences to be the designated group employer in respect of the group on the first day of:

- (a) the return period that last commenced before the date of lodgment of the notice; or
- (b) such later return period as is specified in the notice.

**(3)** The designated group employer in respect of a group ceases to be the designated group employer in respect of that group on and from the first day of the return period relating to the designated group employer during which:

- (a) the composition of the group alters; or
- (b) the members of the group lodge with the Commissioner a notice in writing, signed by or on behalf of each of them who is known to the Commissioner to be a member of the group, revoking the designation;

whichever first occurs.

**(4)** A notice under paragraph (3) (b) lodged by the members of a group has no effect unless:



- (a) before the notice is lodged, the Commissioner gives a written consent to the lodgment; or
- (b) the members of the group, at the time the notice is lodged, lodge a further notice under subsection (1) designating another of the members of the group to be the designated group employer.

### **Nominated deduction**

**13. (1)** For the purpose of ascertaining the tax payable by a designated group employer, there shall, subject to this section, be deducted, from the amount of wages included in a return, or from the amount of wages assessed by the Commissioner, being an amount of wages payable during the return period that last commenced before the date of lodgment of the notice under subsection 12 (1) designating the employer:

- (a) where the return or assessment relates to a period of one month—the statutory amount;
- (b) where the return or assessment relates to a part of a month—the amount calculated in accordance with the formula  $\frac{A B}{C}$ , where:

**A** is the statutory amount;

**B** is the number of whole days in that part of the month; and

**C** is the whole number of days in the month; and

- (c) where the return or assessment relates to a period of more than a month—the amount calculated in accordance with the formula  $A B + \frac{A C}{D}$ , where:

**A** is the statutory amount;

**B** is the number of whole months in the period;

**C** is the number of whole days in any part of a month included in the period; and

**D** is the number of days in the last-mentioned month.

**(2)** For the purposes of subsection (1), the statutory amount in relation to a designated group employer is the amount specified in a nomination referred to in subsection (3) or, if there is no such nomination, zero.

- (3)** A notice under subsection 12 (1):

- (a) shall be in writing, in accordance with a form approved by the Commissioner;
- (b) may specify, as the amount of the deduction the employer claims to be entitled to make for the period or part of the period, an amount, not exceeding the relevant monthly amount, calculated as follows:
  - (i) where the total of the estimated annual wages of all the members of the group required to be included in returns under this Ordinance and a corresponding law does not exceed the relevant annual amount—in accordance with the formula:

$$\frac{WR}{T};$$

- (ii) where the total of the estimated annual wages of all the members of the group required to be included in returns under this Ordinance and a corresponding law exceeds the relevant annual amount—in accordance with the formula:

$$\frac{W}{T} \left[ R - \frac{2}{3} \left( \frac{T}{12} - R \right) \right]$$

where:

- W** is the total of the estimated annual wages of all the members of the groups to be included in returns under this Ordinance;
- T** is the total of the estimated annual wages of all the members of the group to be included in returns under this Ordinance and a corresponding law; and
- R** is the relevant monthly amount.

### **Annual adjustments**

**14. (1)** This section applies in relation to a group at least one member of which paid or was liable to pay taxable wages or interstate wages for the whole of a financial year.

**(2)** A reference in this section to the annual amount of tax paid or payable by the members of a group in respect of a financial year is a reference to the amount ascertained by applying the appropriate rate of tax determined under subsection 6 (2) to the amount calculated in accordance with the formula **A—D**, where:

- A** is the total amount of the taxable wages paid or payable by the members of the group during the financial year; and
- D** is so much of the deductible amount (if any) in relation to the groups in relation to the financial year as does not exceed the total amount of taxable wages paid or payable by the members of the groups during the financial year.

**(3)** A reference in this section to the actual amount of tax paid or payable in respect of a financial year by the members of a group is a reference to the amount of tax referred to in section 6 that is payable by members of the group in respect of taxable wages paid or payable during that year.

**(4)** Where the actual amount of tax paid or payable in respect of a financial year by the members of a group exceeds the annual amount of tax paid or payable by the members of that group in respect of that year, the Commissioner shall, upon application made before the end of the next succeeding financial year by the person who is the designated group employer in respect of the group on 30 June in the first-mentioned financial year:

- (a) refund to the person the amount of the excess; or
- (b) apply the amount of the excess against any liability of the person to the Commonwealth, being a liability arising under, or by virtue of, this Ordinance or any other Ordinance of which the Commissioner has the general administration, and refund any part of the amount not so applied.

**(5)** Where the annual amount of tax paid or payable in respect of a financial year by the members of a group exceeds the actual amount of tax paid or payable in respect of that year by the members of the group:

- (a) the person who is the designated group employer in respect of that group on 30 June in that year; and
- (b) the members of the group who paid or were liable to pay taxable wages during that year;

are jointly and severally liable to pay, in addition to tax referred to in section 6, tax equal to the amount of the excess, being tax in respect of those wages.

### **Part-year adjustments**

**15. (1)** This section applies in relation to a group at least one member of which paid or was liable to pay taxable wages or interstate wages for a

continuous part of a financial year and no member of which paid or was liable to pay any such wages during the whole of that year.

(2) In this section, “group period”, in relation to a group, in relation to a financial year, means a continuous part of a financial year for which at least one member of the group paid or was liable to pay taxable wages or interstate wages.

(3) A reference in this section to the total amount of tax paid or payable by the members of a group in respect of a group period in a financial year is a reference to the amount ascertained by applying the appropriate rate of tax determined under subsection 6 (2) to the amount calculated in accordance with the formula **A—D**, where:

- A** is the total amount of taxable wages paid or payable by the members of the group during that period; and
- D** is so much of the deductible amount in relation to the group in relation to the financial year as does not exceed the total amount of taxable wages paid or payable by the members of the group during the group period.

(4) A reference in this section to the actual amount of tax paid or payable in respect of a group period by the members of a group is a reference to the amount of tax referred to in section 6 that is payable by members of the group in respect of that period.

(5) Where the actual amount of tax paid or payable in respect of a group period in a financial year by the members of a group exceeds the total amount of tax paid or payable by the members of that group in respect of that period, the Commissioner shall, upon application made before the end of the next succeeding financial year by the person who is the designated group employer in respect of the group at the end of the group period:

- (a) refund to the person the amount of the excess; or
- (b) apply the amount of the excess against any liability of the person to the Commonwealth, being a liability arising under, or by virtue of, this Ordinance or any other Ordinance of which the Commissioner has the general administration, and refund any part of the amount not so applied.

(6) Where the total amount of tax paid or payable in respect of a group period in a financial year by the members of a group exceeds the actual amount of tax paid or payable in respect of that period by the members of the group:

- (a) the person who is the designated group employer in respect of that group at the end of the group period; and
- (b) the members of the group who paid, or were liable to pay, taxable wages during the group period;

are jointly and severally liable to pay, in addition to tax referred to in section 6, tax equal to the amount of the excess, being tax in respect of those wages.

### **PART III—RETURNS**

#### **Returns**

**16. (1)** An employer who, during a month, pays or is liable to pay wages at a rate per week in excess of the determined rate, being wages that in whole or in part are taxable wages, shall furnish to the Commissioner a return relating to that month.

**(2)** A return shall:

- (a) be in writing, in a form approved by the Commissioner;
- (b) be furnished to the Commissioner within 7 days after the end of the month; and
- (c) specify the taxable wages that were paid or payable by the employer during that month.

#### **Returns: variation of time for lodging**

**17. (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 furnish returns.

**(2)** An application shall:

- (a) be in writing, addressed to the Commissioner; and
- (b) specify:
  - (i) the name and address of the applicant; and
  - (ii) the grounds on which the variation is sought.

**(3)** Where the Commissioner is satisfied that it would be unduly onerous for the employer:

- (a) to furnish a return in relation to each month; or

(b) to furnish a return within 7 days after the end of each month;  
the Commissioner may, by notice in writing addressed to the employer vary the periods in relation to which, or the time within which, the employer is to furnish returns.

(4) While a notice is in force in relation to an employer, the employer shall furnish returns in accordance with the notice.

(5) Where:

- (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 furnish returns in relation to each month, or within 7 days after the end of each month;

the Commissioner may, by notice in writing addressed to the employer, revoke the firstmentioned notice.

#### **Monthly returns: exemptions**

**18. (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 furnishing returns under section 16.

(2) An application shall:

- (a) be in writing, addressed to the Commissioner;
- (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) Where 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 such conditions as the Commissioner determines.

(5) While an exemption certificate is in force in respect of an employer:

- (a) the employer need not furnish returns under section 16; and
- (b) the employer shall furnish 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 such other period as is specified in the certificate.

(6) Where:

- (a) an exemption certificate is in force in respect of an employer; and
- (b) the Commissioner is no longer satisfied that tax will not be payable by the employer or, if tax is payable, that it will be refunded;

the Commissioner may, by notice in writing 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 IV—MISCELLANEOUS**

### **Review by Administrative Appeals Tribunal**

19. Applications may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner:

- (a) making a determination under section 8;
- (b) refusing to give, or revoking, a notice under section 17;
- (c) refusing to grant, or cancelling, an exemption certificate; or
- (d) imposing or varying conditions in relation to an exemption certificate.

### **Notification of decisions**

20. (1) Where the Commissioner makes a decision of the kind referred to in section 19, he or she shall, within 28 days of the date of the decision, cause notice in writing of the decision to be given to the employer concerned.

(2) A notice under subsection (1) shall:

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
  - (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.
- (3) The validity of a decision referred to in subsection (1) shall not be taken to have been affected by a failure to comply with subsection (2).

### **Transitional provisions**

**21. (1)** Where, immediately before the commencement day, a notice under subsection 17 (2) of the Act was in force in relation to an employer, the notice shall, on and after that date, be deemed to be a notice given under section 17.

(2) Where, immediately before the commencement day, a certificate under subsection 18 (1) of the Act was in force in relation to an employer, the certificate shall, on and after that date, be deemed to be a certificate given under section 18.

(3) For the purposes of the operation of this Ordinance in respect of the period that commences on the commencement day and ends on 30 June 1988:

- (a) a reference in section 10, other than subsection 10 (9), to a corresponding law shall be read as including a reference to the Act;
- (b) a reference in subsection 10 (9) to wages included or required to be included in returns under this Ordinance shall be read as including a reference to wages included or required to be included in returns under the Act;
- (c) section 11 applies to an employer as if any returns furnished or required to be furnished, wages paid or payable, and tax payable, under the Act during the initial period were furnished, paid or payable, as the case requires, under this Ordinance; and
- (d) sections 14 and 15 apply in relation to a group as if:
  - (i) any taxable wages paid or payable by a member of the group under the Act during the initial period were paid or payable under this Ordinance; and
  - (ii) tax paid or payable by the members of the group in respect of the initial period were paid or payable under this Ordinance.



**(4)** In this section:

“initial period” means the period commencing on 1 July 1987 and ending on the commencement day;

“the Act” means the *Pay-roll Tax (Territories) Assessment Act 1971* as in force from time to time before the commencement day.

### **Regulations**

**22.** The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

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### **NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 31 July 1987.