



Australian Capital Territory

# **Payroll Tax Act 1987**

**A1987-40**

**Republication No 21**

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Last amendment made by A2007-21  
(republication for amendments by A2007-12)

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Payroll Tax Act 1987* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2007. It also includes any amendment, repeal or expiry affecting the republished law to 1 July 2007.

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

### Kinds of republications

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

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

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

### Editorial changes

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

This republication 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

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

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



Australian Capital Territory

# Payroll Tax Act 1987

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Australian Capital Territory

# Payroll Tax Act 1987

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An Act to impose payroll tax

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## Part 1 Preliminary

### 1 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.

For example, the signpost definition ‘*stock exchange*—see the *Duties Act 1999*, dictionary.’ means that the term ‘stock exchange’ is defined in that dictionary and the definition applies to this Act.

*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.

### 2 Meaning of *wages*

- (1) For this Act, *wages* means an amount paid or payable to a person in relation to the person’s capacity as an employee or former employee.
- (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 amount paid in relation to unused long service leave;
  - (iii) so much of any eligible termination payment paid or payable by an employer (whether or not paid to the employee or to another entity) that would be included in the assessable income of an employee under the *Income*

*Tax Assessment Act 1936* (Cwlth), part 3 (Liability to taxation), division 2 (Income), subdivision AA (Superannuation, termination of employment and kindred payments) if the whole of the eligible 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 eligible 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 eligible 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 1936* (Cwlth), section 26AC (4) (Amounts received on retirement or termination of employment in lieu of annual leave).

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

*eligible termination payment*—see the *Income Tax Assessment Act 1936* (Cwlth), section 27A (Interpretation).

*long service leave*—see the *Income Tax Assessment Act 1936* (Cwlth), section 26AD (8) (Amounts received on retirement or termination of employment in lieu of long service leave).

## **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.

## **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**

- (1) The following wages are wages to which this Act applies:
  - (a) wages that are paid or payable in the ACT in a month or part of a month in relation to services performed or rendered in—
    - (i) the ACT or another country; or
    - (ii) more than 1 State or Territory;
  - (b) wages that are paid or payable elsewhere than in the ACT in a month or part of a month in relation to services performed or rendered wholly in the ACT.
- (2) Wages that are payable to a person by his or her employer but have not been paid, other than wages that, under the terms of the person's employment, are payable in another Territory or in a State, are taken—
  - (a) if the wages are payable in relation to services performed or rendered wholly in the ACT—to be wages payable to the employee in the ACT; or
  - (b) if—
    - (i) the wages are not payable in respect of services performed or rendered wholly in the ACT, wholly in another Territory or wholly in a State; and
    - (ii) the wages last paid or payable to the person by that employer were included, or required to be included in a return under this Act;to be wages payable to the person in the ACT; or
  - (c) if the wages are not taken, by paragraph (a) or (b) or a provision of a corresponding law, to be wages payable to the person in the ACT, in a State or in another Territory—to be wages payable to the person by that employer at the place

where that person last performed or rendered any services for that employer before those wages became payable.

- (3) If a bill of exchange, promissory note, money order, postal order or other instrument has been given or sent by an employer to a person or the person's agent in payment of the person's wages, the wages are taken 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.
- (4) If an employer gives an instruction to credit an account at a place in payment of wages, the wages are taken to have been paid—
  - (a) at the place; and
  - (b) when the account is credited in accordance with the instructions.

### **3 Meaning of *benefit* and *value* of benefits**

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

### **U 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

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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*, section 5 (1).

*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 or renders, 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 or rendering the services and the effect of the agreement, transaction or arrangement is to reduce or avoid the liability of any person to the assessment, imposition or payment of payroll tax, the commissioner may—
  - (a) disregard the agreement, transaction or arrangement; and
  - (b) determine that any party to the agreement, transaction or arrangement 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 for this Act;and a determination under paragraph (b) or (c) has effect accordingly.
- (2) This section has effect in relation to agreements, transactions and arrangements made before, on or after the commencement of this section.

## Part 2 Liability to taxation

### 6 Payroll tax liability

- (1) Tax is payable by an employer in 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.

### 7 Registration of employers

- (1) This section applies to an employer if 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.
- (2) If this section applies to an employer in relation to a month, the employer may 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 Transitional—registration of existing employers**

- (1) The commissioner must, on the commissioner's own initiative, register under this part an employer who, in relation to the month immediately before the commencement of this section, lodged a return under section 16.
- (2) This section expires 1 year after the day it commences.

## **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 in writing for this subparagraph; or
  - (ii) the wages are paid or payable by an entity prescribed for the *Taxation (Government Business Enterprises) Act 2003*, section 9; or
  - (iii) the wages are paid or payable by an entity to which a direction under the *Taxation (Government Business Enterprises) Act 2003*, section 10 applies to make the entity liable to tax under this Act; or
- (i) by a Territory authority funded solely by money appropriated from the public money of the Territory by an Act unless—
  - (i) the wages are paid or payable by a Territory authority prescribed for the *Taxation (Government Business Enterprises) Act 2003*, section 9; or
  - (ii) the wages are paid or payable by a Territory authority to which a direction under the *Taxation (Government Business Enterprises) Act 2003*, section 10 applies to make the authority liable to tax under this Act.

- (2) A nomination under subsection (1) (h) (i) is a disallowable instrument.

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

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



- (i) the subcontractor;
  - (ii) an employee of the subcontractor;
  - (f) the individuals who perform the work for which the wages are paid or payable together work for not more than 8 days in any month under a contract with the agent;
  - (g) the subcontractor is a genuine employer of the individuals who perform the work for which the wages are paid.
- (4) In subsection (3)—
- (a) a reference to a **contract** 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, in writing, declare that approved training is not recognised training.

(7) A declaration under subsection (6) is a disallowable instrument.

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

(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)).

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

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

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

where:

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

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

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

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

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

where:

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

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

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

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

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

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

where:

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

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



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

## 11 Amount of tax payable—group members

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

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

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

where:

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

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

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

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

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

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

where:

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

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

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

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

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

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

where:

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

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

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

- (3) If an employer—
- (a) is a member of a group during part of a group period or group year; and

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

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

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

where:

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

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

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

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

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

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

where:

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

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

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

- (4) In subsection (3):

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

### 11A Joint and several liability of group members

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.

*Note* The commissioner may recover the amount from the members of the group, any of them or any 1 of them (see the *Taxation Administration Act 1999*, s 50 (1)).

### 12 Interim tax—monthly returns

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

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

where:

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

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

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

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

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

where:

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

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

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

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

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

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

where:

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

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

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

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

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

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

where:

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

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

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

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

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

where:

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

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

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

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

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

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

where:

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

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

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

## 14 Annual reconciliation

- (1) For the *Taxation Administration Act 1999*—
- (a) if the total amount of any interim tax paid by an employer in relation to wages paid or payable by the employer during any financial year exceeds the amount of tax payable by the employer under section 10 or section 11 in relation to those wages, the employer has overpaid an amount of tax equal to the difference between the amount of interim tax paid and the amount of tax payable; and
  - (b) if the total amount of any interim tax paid by an employer in relation to wages paid or payable by the employer during any financial year is less than the amount of tax payable by the employer under section 10 or section 11 in relation to those wages, the employer has underpaid an amount of tax equal to the difference between the amount of interim tax paid and the amount of tax payable.

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



## Part 3 Returns

### 16 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 interim tax that is payable in relation to the return because of section 12 (1) or (2).

*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.

### 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 interim tax payable in relation to each return because of section 13 (1) or (2), as the case requires.
- (5) If—
  - (a) a notice is in force in relation to an employer; and
  - (b) the commissioner is no longer satisfied that it would be unduly onerous for the employer to lodge returns in relation to each month, or within 7 days after the end of each month;the commissioner may, by written notice addressed to the employer, revoke the firstmentioned notice.

## **18 Monthly returns—exemptions**

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

- (b) tax the employer pays will be refunded;  
may apply to the commissioner for an exemption from lodging returns under section 16.
- (2) An application 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                      Miscellaneous

### 19                      Review of decisions

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

- (a) under section 4 (3) or section 4 (6), that a service contract was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax; or
- (b) under section 4 (4) (d); or
- (c) under section 5, disregarding an agreement, transaction or arrangement; or
- (d) under section 9AB refusing to approve an entity as a group training organisation; or
- (e) refusing to give, or revoking, a notice under section 17; or
- (f) under section 18 refusing to grant, or cancelling, an exemption certificate; or
- (g) under section 18 imposing or varying conditions in relation to an exemption certificate.

### 20                      Notification of decisions

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

**21            Regulation-making power**

The Executive may make regulations for this Act.

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

## 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 in writing 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.

## 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:

- administrative appeals tribunal
- Consumer Credit (Australian Capital Territory) Code
- financial year
- GST
- individual
- in relation to
- liability
- month
- person
- territory authority
- under.

*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.

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

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**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.

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

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

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

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

**interim tax** means tax payable under section 12 or section 13 in relation to a return.

**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.

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

**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.

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

**share** means a share in a company.

**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 benefits—see section 3.

**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

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## Endnotes

### 1 About the endnotes

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

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

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

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

The endnotes also include a table of earlier republications.

### 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<br>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<br>or to be expired |

### 3 Legislation history

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

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

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

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

#### Legislation before becoming Territory enactment

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

notified 31 July 1987

commenced 1 August 1987 (Gaz 1987 No S193)

as amended by

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

notified 30 June 1988

commenced 1 July 1988

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

notified 22 March 1989

commenced 22 March 1989

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

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

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

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

**Legislation after becoming Territory enactment**

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

notified 31 October 1989 (Gaz 1989 No S33)

commenced 1 November 1989 (s 2)

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

notified 1 March 1993 (Gaz 1993 No S23)

commenced 1 March 1993 (s 3)

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

notified 20 May 1994 (Gaz 1994 No S87)

commenced 1 April 1994 (s 2)

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

notified 11 October 1994 (Gaz 1994 No S197)

s 1, s 2 commenced 11 October 1994 (s 2 (1))

sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

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

notified 30 June 1995 (Gaz 1995 No S135)

ss 1-3 commenced 30 June 1995 (s 2 (1))

remainder commenced 1 July 1995 (s 2 (2) and Gaz 1995 No S158)

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

notified 5 September 1995 (Gaz 1995 No S212)

s 1, s 2 commenced 5 September 1995 (s 2 (1))

s 8 commenced 1 November 1996 (s 2 (2) and Gaz 1996 No S273)

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

notified 1 July 1996 (Gaz 1996 No S130)

commenced 1 July 1996 (s 2)

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

notified 24 December 1997 (Gaz 1997 No S420)

s 4 commenced 1 July 1996 (s 2 (2))

remainder commenced 24 December 1997 (s 2 (1))



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

notified 1 March 1999 (Gaz 1999 No S8)  
commenced 1 March 1999 (s 2)

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

notified 6 May 1999 (Gaz 1999 No S22)  
commenced 6 May 1999 (s 2)

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

notified 12 July 1999 (Gaz 1999 No S44)  
commenced 6 May 1999 (s 2)

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

notified 6 July 2000 (Gaz 2000 No S33)  
s 1, s 2 commenced 6 July 2000 (IA s 10B)  
pt 4 taken to have commenced 1 July 2000 (s 2 (1))

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

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 277 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Payroll Tax Amendment Act 2001 No 87**

notified 31 August 2001 (Gaz 2001 No S64)  
s 1, s 2 commenced 31 August 2001 (IA s 10B)  
remainder commenced 1 September 2001 (s 2)

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

notified LR 17 April 2002  
s 1, s 2 commenced 17 April 2002 (LA s 75)  
pt 5 taken to have commenced 1 September 2001 (s 2 (4))

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

notified LR 9 September 2002  
s 1, s 2 commenced 1 July 2002 (LA s 75 (2))  
pt 2 taken to have commenced 1 July 2002 (s 2 (1))

## Endnotes

3 Legislation history

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

notified LR 20 December 2002

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

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

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

notified LR 27 March 2003

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

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

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

notified LR 8 September 2003

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

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

**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)

**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 commences 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)

**4 Amendment history****Name of Act**

s 1 sub A2005-29 s 18

**Dictionary**

s 1A ins A2005-29 s 18

**Notes**

s 1B ins A2005-29 s 18

**Meaning of wages**

s 2 om 2001 No 44 amdt 1.3105  
ins A2005-29 s 18

**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

**Inclusion of wages paid by or to third parties**

s 2C ins A2005-29 s 18

## Endnotes

### 4 Amendment history

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#### **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

#### **Meaning of *benefit* and *value of benefits***

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  
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

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

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

**Contracts that are not service contracts**

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

**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

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

s 5A renum as s 5

**Payroll tax liability**

s 6 sub 1988 No 32  
am 1989 No 17  
sub A2005-29 s 21

**Registration of employers**

s 7 om 1988 No 32  
ins 1993 No 6  
om A2005-29 s 22  
ins A2006-19 s 23

**Transitional—registration of existing employers**

s 8 om 1988 No 32  
ins A2006-19 s 23  
exp 1 July 2007 (s 8 (2))

**Exemption from tax**

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

**Exemption from tax—new starters**

s 9A ins 2001 No 87 s 9  
am 2002 No 7 ss 23-25  
(7)-(9) (ins 2001 No 87 s 9) exp 30 September 2001 (s 9A (9))  
am A2003-37 amdt 2.15; A2007-12 amdt 1.15

**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

## Endnotes

4 Amendment history

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

s 10 sub 1988 No 32

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

s 11 sub 1988 No 32

### **Joint and several liability of group members**

s 11A ins A2004-43 s 4

### **Interim tax—monthly returns**

s 12 sub 1988 No 32

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

s 13 sub 1988 No 32

### **Annual reconciliation**

s 14 sub 1988 No 32  
am 1999 No 5

### **Part-year adjustments**

s 15 om 1988 No 32

### **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

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

s 17 am 1988 No 32

### **Monthly returns—exemptions**

s 18 am 1988 No 32

### **Review of decisions**

s 19 am 1988 No 32; 1989 No 38; 1989 No 17; 1994 No 60; pars  
renum R7 LA  
am A2005-29 ss 23-25; A2006-19 s 26; pars renum A2006-19  
s 27

### **Notification of decisions**

s 20 am 1989 No 38; 1994 No 60

### **Regulation-making power**

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

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

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

**Calculation of market value of grant of share or option**

sch 1 ins A2005-29 s 26

**Dictionary**

dict

ins A2005-29 s 27

def **benefit** ins A2005-29 s 27def **charitable organisation** ins A2005-29 s 27def **company** ins A2005-29 s 27def **corresponding law** ins A2005-29 s 27def **determined rate** ins A2005-29 s 27def **employer** ins A2005-29 s 27def **employment agent** ins A2005-29 s 27def **exemption certificate** ins A2005-29 s 27def **granted** ins A2005-29 s 27def **group period** ins A2005-29 s 27def **group year** ins A2005-29 s 27def **independent employer** ins A2005-29 s 27def **interim tax** ins A2005-29 s 27def **new starter** ins A2005-29 s 27def **option** ins A2005-29 s 27def **pay** ins A2005-29 s 27def **qualified person** ins A2005-29 s 27def **relevant day** ins A2005-29 s 27def **return** ins A2005-29 s 27def **service contract** ins A2005-29 s 27def **share** ins A2005-29 s 27def **stock exchange** ins A2005-29 s 27def **superannuation benefit** ins A2005-29 s 27def **tax** ins A2005-29 s 27def **taxable wages** ins A2005-29 s 27def **unfunded** ins A2005-29 s 27def **value** ins A2006-42 amdt 3.148def **vesting day** ins A2005-29 s 27def **wages** ins A2005-29 s 27

## Endnotes

5 Earlier republications

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### 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     |
| 19               | A2006-42        | 16 November 2006   |
| 20               | A2007-21        | 20 June 2007       |



## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

|   |
|---|
| <b>Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3<br/>pt 3.30</b> |
|---|

## Part 3.30 Payroll Tax Act 1987

### [3.131] Section 4 (8), definition of *regulated contract*

*substitute*

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

#### Explanatory note

This amendment is consequential on the insertion of a new dictionary into the *Credit Act 1985* by another amendment.

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