

AUSTRALIAN CAPITAL TERRITORY

Payroll Tax (Amendment) Ordinance 1988

No. 32 of 1988

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 30 June 1988.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARY PUNCH
Minister of State for the Arts
and Territories

An Ordinance to amend the *Payroll Tax Ordinance 1987*

Short title

1. This Ordinance may be cited as the *Payroll Tax (Amendment) Ordinance 1988*.¹

Commencement

2. This Ordinance shall come into operation on 1 July 1988.

Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Payroll Tax Ordinance 1987*.²

Insertion

(Ord. 37/88)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

4. After section 2 of the Principal Ordinance the following section is inserted:

Incorporation of *Taxation (Administration) Ordinance 1987*

“2A. The *Taxation (Administration) Ordinance 1987* is incorporated and shall be read as one with this Ordinance.”

Interpretation

5. Section 3 of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) the definition of “Commissioner”;
- (b) by omitting from subsection (1) the definitions of “deductible amount” and “designated group employer” and substituting the following definition:

“ ‘determined rate’ means the rate determined under section 99 of the *Taxation (Administration) Ordinance 1987* for the purposes of the provision in which the expression appears;”;

- (c) by omitting from subsection (1) the definitions of “group”, “interstate wages”, “relevant annual amount”, “relevant monthly amount” and “return period” and substituting the following definitions:

“ ‘group period’, in relation to a group, means a period of less than a financial year (being a period that falls wholly within a financial year) during which there was at all times at least one 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 one 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 13 in respect of a return;

‘return’ means a return lodged or required to be lodged under this Ordinance;”;

- (d) by omitting from subsection (1) the definition of “taxable wages” and substituting the following definition:

“ ‘taxable wages’ means—

- (a) in relation to the Territory—wages to which this Ordinance applies by virtue of section 5; or
- (b) in relation to a State or another Territory—wages to which a corresponding law of that State or Territory applies;” and
- (e) by omitting from subsection (2) “by the Minister” and substituting “for the purposes of this subsection under section 99 of the *Taxation (Administration) Ordinance 1987*”.

Substitution

6. Sections 6, 7 and 8 of the Principal Ordinance are repealed and the following section is substituted:

Payroll tax liability

“6. Tax is payable by an employer in respect of wages to which this Ordinance applies by virtue of section 5 that are paid or payable by the employer on or after the commencement date.”.

Exemption from tax

7. Section 9 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (f) “or”; and
- (b) by adding at the end the following word and paragraph:
 - “; or (h) to a person employed under a scheme for the employment of apprentices that has been approved as a group apprenticeship scheme by the Department of State of the Commonwealth of Employment, Education and Training.”.

Substitution

8. Sections 10, 11, 12, 13, 14 and 15 of the Principal Ordinance are repealed and the following sections substituted:

Amount of tax payable—~~independent employers~~

“10. (1) Where 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 Territory during the whole of that year), the amount of tax payable in respect of wages paid or payable in the Territory by the employer during that year is the amount calculated in accordance with the formula

$$\frac{\mathbf{A} \times \mathbf{ACTW}}{\mathbf{AW}}, \text{ where—}$$

A is 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 is the sum of all taxable wages paid or payable in the Territory by the employer during that year; and

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

“(2) Where 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 Territory during the whole of that period), the amount of tax payable in respect of wages paid or payable in the Territory by the employer during that period is the amount calculated in accordance with the formula

$$\frac{\mathbf{ACTWP} \times \mathbf{DP} \times \mathbf{EAT}}{\mathbf{DFY} \times \mathbf{AWP}}, \text{ where—}$$

ACTWP is the sum of all taxable wages paid or payable in the Territory by the employer during that period;

DP is the number of days in that period;

DFY is the number of days in the financial year in which that period falls;

AWP is the sum of all taxable wages paid or payable in Australia by the employer during that period; and

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

$$\frac{\mathbf{AWP} \times \mathbf{DFY}}{\mathbf{DP}}, \text{ where—}$$

AWP is the sum of all taxable wages paid or payable in Australia during that period;

DFY is the number of days in the financial year in which that period falls; and

DP is the number of days in that period.

Amount of tax payable—group members

“11. (1) Where 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 respect of wages paid or payable in the Territory by the employer during that year is the amount calculated in accordance with the formula

$$\frac{A \times \text{ACTW}}{\text{AGW}}, \text{ where—}$$

A is 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 is the sum of all taxable wages paid or payable in the Territory by the employer during that year; and

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

“(2) Where—

- (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 respect of wages paid or payable in the Territory by the employer during the group period is the amount calculated in accordance with the formula

$$\frac{\text{ACTWP} \times \text{DGP} \times \text{EAT}}{\text{DFY} \times \text{AGWP}}, \text{ where—}$$

ACTWP is the sum of all taxable wages paid or payable in the Territory by the employer during the group period;

- DGP** is the number of days in the group period;
- DFY** is the number of days in the financial year within which the group period falls;
- AGWP** is the sum of all taxable wages paid or payable in Australia by the group during the group period; and
- EAT** is the estimated Australian tax calculated by applying the determined rate to the amount calculated in accordance with the formula

$$\frac{\text{AGWP} \times \text{DFY}}{\text{DGP}}, \text{ where—}$$

- AGWP** is the sum of all taxable wages paid or payable in Australia by the group during the group period;
- DFY** is the number of days in the financial year in which the group period falls; and
- DGP** is the number of days in the group period.

“(3) Where 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 respect of wages paid or payable in the Territory by the employer during the group tax period is the amount calculated in accordance with the formula

$$\frac{\text{ACTW} \times \text{DGTP} \times \text{EAT}}{\text{DFY} \times \text{AGW}}, \text{ where—}$$

- ACTW** is the sum of all taxable wages paid or payable in the Territory by the employer during the group tax period;
- DGTP** is the number of days in the group tax period;
- DFY** is the number of days in the financial year in which the group period falls, or in the group year, as the case requires;
- AGW** is the sum of all taxable wages paid or payable in Australia by the group during the group tax period; and

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

$$\frac{\mathbf{AGW} \times \mathbf{DFY}}{\mathbf{DGTP}}, \text{ where—}$$

AGW is the sum of all taxable wages paid or payable in Australia by the group during the group tax period;

DFY is the number of day in the financial year in which the group period falls, or in the group year, as the case requires; and

DGTP is 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.

Interim tax—monthly returns

“12. (1) The amount of tax payable in respect of 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

$$\frac{\mathbf{ACTWM} \times \mathbf{EAT}}{\mathbf{AWM} \times 12}, \text{ where—}$$

ACTWM is the sum of all taxable wages paid or payable in the Territory by the employer during that month;

AWM is the sum of all taxable wages paid or payable in Australia by the employer during that month; and

EAT is 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 respect of 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

$$\frac{\mathbf{ACTWM} \times \mathbf{EAT}}{\mathbf{AGWM} \times 12}, \text{ where—}$$

- ACTWM** is the sum of all taxable wages paid or payable in the Territory by the employer during that month;
- AGWM** is the sum of all taxable wages paid or payable in Australia by the group during that month; and
- EAT** is 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.

Interim tax—returns in respect of other periods

“13. (1) 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 an independent employer during the whole of that period is the amount calculated in accordance with the formula

$$\frac{\text{ACTWP} \times \text{DP} \times \text{EAT}}{\text{AWP} \times \text{DFY}}, \text{ where—}$$

- ACTWP** is the sum of all taxable wages paid or payable in the Territory by the employer during that period;
- AWP** is the sum of all taxable wages paid or payable in Australia by the employer during that period;
- DP** is the number of days in the period;
- DFY** is the number of days in the financial year within which the period falls; and
- EAT** is the estimated Australian tax calculated by applying the determined rate to the amount calculated in accordance with the formula

$$\frac{\text{AWP} \times \text{DFY}}{\text{DP}}, \text{ where—}$$

- AWP** is the sum of all taxable wages paid or payable in Australia by the employer during that period;
- DFY** is the number of days in the financial year within which that period falls; and
- DP** is 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

$$\frac{\text{ACTWP} \times \text{DP} \times \text{EAT}}{\text{AWP} \times \text{DFY}}, \text{ where—}$$

ACTWP is the sum of all taxable wages paid or payable in the Territory by the employer during that period;

AGWP is the sum of all taxable wages paid or payable in Australia by the group during that period;

DP is the number of days in the period;

DFY is the number of days in the financial year within which that period falls; and

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

$$\frac{\text{AGWP} \times \text{DFY}}{\text{DP}}, \text{ where—}$$

AGWP is the sum of all taxable wages paid or payable in Australia by the group during that period;

DFY is the number of days in the financial year within which that period falls; and

DP is the number of days in that period.

Annual reconciliation

“14. (1) For the purposes of the *Taxation (Administration) Ordinance 1987*—

- (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 11 in respect of 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 11 in respect of 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) Where, on assessing the amount of tax payable in respect of 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 by virtue of paragraph (1) (b)—

- (a) the Commissioner shall serve on the employer notice in writing specifying—
 - (i) the amount of tax payable;
 - (ii) the amount of interim tax payable; and
 - (iii) the date on which 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 on which the amount becomes due and payable.”.

Returns

9. Section 16 of the Principal Ordinance is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) If the sum of all taxable wages paid or payable in Australia by an employer in any month exceeds the amount determined for the purposes of this subsection under section 99 of the *Taxation (Administration) Ordinance 1987*, the employer shall—

 - (a) lodge a return in relation to that month;
 - (b) lodge a return in relation to each subsequent month in the financial year in which the first-mentioned month falls; and
 - (c) pay any interim tax that is payable in respect of each return by virtue of subsection 12 (1) or (2), as the case requires.”;
- (b) by omitting from paragraph (b) “furnished to the Commissioner” and substituting “lodged”.

Returns: variation of time for lodging

10. Section 17 of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) “furnish” and substituting “lodge”;
- (b) by omitting from subsection (3) “furnish” (wherever occurring) and substituting “lodge”;
- (c) by omitting subsection (4) and substituting the following subsection:
 - “(4) While a notice is in force in relation to an employer, the employer shall—
 - (a) lodge returns in accordance with the notice; and
 - (b) pay any interim tax payable in respect of each return by virtue of subsection 13 (1) or (2), as the case requires.”; and
- (d) by omitting from subsection (5) “furnish” (wherever occurring) and substituting “lodge”.

Monthly returns: exemptions

11. Section 18 of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) “furnishing” and substituting “lodging”;
- (b) by omitting from subsection (3) “furnishing” and substituting “lodging”; and
- (c) by omitting from subsection (5) “furnish” (wherever occurring) and substituting “lodge”.

Review by Administrative Appeals Tribunal

12. Section 19 of the Principal Ordinance is amended—

- (a) by omitting paragraph (a);
- (b) by inserting before “refusing” in paragraph (c) “under section 18”; and
- (c) by inserting before “imposing” in paragraph (d) “under section 18”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 30 June 1988.
2. No. 40, 1987.