



Australian Capital Territory

Revenue Legislation Amendment Act 2005

A2005-29

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2004 153B

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

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Australian Capital Territory

Revenue Legislation Amendment Act 2005

A2005-29

*An Act to amend the *Duties Act 1999*, the *Land Tax Act 2004*, the *Payroll Tax Act 1987* and the *Rates Act 2004**

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

2004 153B

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

Part 1 Preliminary

1 Name of Act

This Act is the *Revenue Legislation Amendment Act 2005*.

2 Commencement

- (1) Part 2 (Duties Act 1999) and part 4 (Payroll Tax Act 1987) commence on 1 July 2005.
- (2) The remaining provisions commence on the day after this Act's notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Part 2 Duties Act 1999

3 Legislation amended—pt 2

This part amends the *Duties Act 1999*.

4 New section 209B

insert

209B International organisations and diplomats

Duty under this chapter is not chargeable on an application to register a motor vehicle if the application is exempt from duty under the *International Organisations (Privileges and Immunities) Act 1963* (Cwlth) or the *Diplomatic Privileges and Immunities Act 1967* (Cwlth).

5 Section 210

substitute

210 Hospitals and schools

Duty under this chapter is not chargeable on an application to register a motor vehicle if the applicant is—

- (a) a hospital or school; or
- (b) a person who is to hold the vehicle on behalf of, or as a trustee for, a hospital or school.

210A Charitable organisations

Duty under this chapter is not chargeable on an application to register a motor vehicle if the applicant is—

- (a) a charitable organisation; or

- (b) a person who is to hold the vehicle on behalf of, or as a trustee for, a charitable organisation.

**6 Prerequisites for registration
Section 221 (1) (b)**

substitute

- (b) for an application for registration that is claimed to be exempt from duty under part 9.2 (Exemptions)—the commissioner is satisfied that the application is exempt; or

7 Section 221 (3)

substitute

- (3) A person claiming exemption of an application for the registration of a motor vehicle from duty under part 9.2 must give the road transport authority any relevant information the authority requires.

**8 Certificates of exemption
Section 222**

omit

9 Section 223

substitute

223 Returns by road transport authority

- (1) As soon as practicable after the end of each month, the road transport authority must report to the commissioner about applications mentioned in section 221 decided in the month.
- (2) If required by the commissioner, the road transport authority must give the commissioner particulars of all certificates, statements and other information given for section 221 during the month.

Part 3 Land Tax Act 2004

10 Legislation amended—pt 3

This part amends the *Land Tax Act 2004*.

11 Imposition of land tax Section 9 (2)

omit

by the commissioner

12 Multiple dwellings Section 15 (3)

omit

by the commissioner

13 Land partly owned by corporation or trustee Section 16 (2)

omit

by the commissioner

14 Land tax for part of quarter Section 18 (2)

omit

by the commissioner

15 Imposition of land tax—qualifying parcels of land Section 30 (2)

omit

by the commissioner

**16 Interest on refund
Section 37 (1) (a)**

omit

by the commissioner

Part 4 Payroll Tax Act 1987

17 Legislation amended—pt 4

This part amends the *Payroll Tax Act 1987*.

18 Sections 1, 2A, 3, 3A, 3B, 3C and 4

substitute

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).

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).

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 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.

**19 Wages to which this Act applies
Section 5**

relocate as section 2D

**20 Agreement etc to reduce or avoid liability to payroll tax
Section 5A**

renumber as section 5

21 Section 6

substitute

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.

**22 Employment of transitional staff
Section 7**

omit

23 **Review of decisions**
Section 19 (a)

omit

3B (1) or 3C

substitute

4 (3) or 4 (6)

24 **Section 19 (b)**

omit

3B (2) (d)

substitute

4 (4) (d)

25 **Section 19 (c)**

omit

section 5A

substitute

section 5

26 New schedule 1

insert

Schedule 1 Calculation of market value of grant of share or option

(see s 2A and s 2B)

1.1 Definitions for 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.

27 New dictionary

insert

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 the purpose of 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.

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.

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.

Part 5 Rates Act 2004

28 Legislation amended—pt 5

This part amends the *Rates Act 2004*.

29 Interest on refund Section 44 (1) (a)

omit

by the commissioner

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 5 May 2005.

2 Notification

Notified under the Legislation Act on 28 June 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Revenue Legislation Amendment Bill 2005, which was passed by the Legislative Assembly on 23 June 2005.

Clerk of the Legislative Assembly

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