



Australian Capital Territory

Payroll Tax Act 2011

A2011-18

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
3A	Numbering 3
4	Notes 3
5	Offences against Act—application of Criminal Code etc 4
Part 2	Imposition of payroll tax
Division 2.1	Imposition of tax
6	Imposition of payroll tax 5

J2008-767

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

	Page
7	5
8	5
9	5
Division 2.2	Taxable wages
10	6
11	6
11A	9
11B	10
11C	11
Part 3	Wages
Division 3.1	General concept of wages
13	13
Division 3.2	Fringe benefits
14	14
15	15
16	16
Division 3.3	Superannuation contributions
17	17
Division 3.4	Shares and options
18	19
19	20
20	21
21	21
22	22
23	22
24	24
26	25
Division 3.5	Termination payments
27	26
28	27

	Page	
Division 3.6	Allowances	
29	Motor vehicle allowances	28
30	Accommodation allowances	29
Division 3.7	Contractor provisions	
31	Definitions—div 3.7	30
32	Meaning of <i>relevant contract</i> —div 3.7	31
33	Contractors—people taken to be employers	32
34	Contractors—people taken to be employees	33
35	Amounts under relevant contracts taken to be wages	33
36	Contractors—liability provisions	34
Division 3.8	Employment agents	
37	Definitions—Act	34
38	Employment agents—people taken to be employers	35
39	Employment agents—people taken to be employees	35
40	Amounts taken to be wages	35
41	Employment agents—liability	35
42	Employment agents—agreement to reduce or avoid liability to payroll tax	36
Division 3.9	Wages—other	
43	Value of wages paid in kind	36
44	GST excluded from wages	36
45	Wages paid by group employers	37
46	Wages paid by or to third parties	37
47	Agreement etc to reduce or avoid liability to payroll tax	38
Part 4	Exemptions	
Division 4.1	Charitable organisations	
48	Charitable organisations	40
Division 4.1A	Employment agents	
48A	Employments agents and subcontractors	40

	Page	
Division 4.2	Education and training	
49	Educational services and training	40
Division 4.3	Hospitals	
51	Hospitals	40
Division 4.4	Maternity, adoption and primary carer leave	
53	Maternity and adoption leave	41
53A	Primary carer leave	43
Division 4.5	Volunteer firefighters, emergency service volunteers and other volunteers under the Emergencies Act	
55	Volunteer firefighters	44
56	Emergency service volunteers	44
56A	Other volunteers under Emergencies Act	44
57	Limitation of exemption	44
Division 4.7	Governor-General and defence	
61	Governor-General	45
62	Defence personnel	45
Division 4.8	Foreign government representatives	
64	Consular and non-diplomatic representatives	45
Division 4.9	Services outside Australia	
66A	Wages paid or payable in relation to services performed in other countries	45
Division 4.10	Exemptions—other	
66B	Wages paid or payable to certain unemployed people	46
66C	Wages paid or payable from certain bank accounts	46
66D	Wages paid or payable by territory authority	46
Part 5	Grouping of employers	
Division 5.1	Interpretation—pt 5	
67	Definitions—pt 5	47
68	Grouping provisions to operate independently	49

	Page	
Division 5.2	Business groups	
69	Make up of groups	49
70	Groups of corporations	49
71	Groups arising from the use of common employees	49
72	Groups of commonly controlled businesses	50
73	Groups arising from tracing of interests in corporations	53
74	Smaller groups subsumed by larger groups	54
Division 5.3	Business groups—tracing of interests in corporations	
75	Application—div 5.3	54
76	Direct interest	55
77	Indirect interest	55
78	Aggregation of interests	57
Division 5.4	Groups—miscellaneous	
79	Exclusion of people from groups	58
80	Designated group employers	59
81	Joint and several liability	61
Part 6	Adjustments of tax	
81A	Definitions—pt 6	62
82	Calculation of correct amount of payroll tax	62
83	Annual adjustment of payroll tax	63
84	Adjustment of payroll tax if employer changes circumstances	63
85	Special provision if wages fluctuate	65
Part 7	Registration and returns	
86	Registration	67
87	Returns	68
87A	Monthly returns—lodgement variation	69
87B	Monthly returns—exemptions	70
Part 8A	Notification and review of decisions	
87C	Meaning of <i>reviewable decision</i> —pt 8A	72
87D	Reviewable decision notices	72

	Page
87E Applications for review	72
Part 9	Miscellaneous
101 Regulation-making power	73
103 Legislation amended—sch 4	73
104 Legislation repealed	73
Part 10	Transitional
200 Meaning of <i>old Act</i> —pt 10	74
201 Application of this Act and old Act	74
202 General saving	74
203 Fringe benefits—employer election	74
204 Superannuation contributions relating to pre-1 July 1996 service	75
205 Approval relating to motor vehicle allowance	75
206 Designated group employer	76
207 Registration of employers	76
208 Approval relating to group training organisation	76
209 Variation of time for lodging returns	76
210 Exemption from lodging returns	76
211 Transitional regulations	77
212 Expiry—pt 10	77
Schedule 1	Calculation of payroll tax liability
Part 1.1	Interpretation—sch 1
1.1 Definitions—sch 1	78
Part 1.2	Employers who are not members of a group
1.2 Application—pt 1.2	79
1.3 Definitions—pt 1.2	79
1.4 Payroll of employer not more than threshold	79
1.5 Payroll of employer over threshold	80
Part 1.3	Groups with a designated group employer
1.6 Application—pt 1.3	81

	Page	
1.7	Definitions—pt 1.3	81
1.8	Payroll of group not more than threshold	81
1.9	Payroll of group over threshold	82
Part 1.4	Groups with no designated group employer	83
1.10	Application—pt 1.4	83
1.11	Meaning of <i>TW</i> —pt 1.4	83
1.12	Calculation of payroll tax	83
Part 1.5	Motor vehicle allowances	84
1.12A	Meaning of <i>business journey</i> —pt 1.5	84
1.13	Continuous recording method	84
1.14	Averaging method	85
1.15	Meaning of <i>relevant 12-week period</i> —s 1.16	88
1.16	Replacing one motor vehicle with another motor vehicle	88
1.17	Changing method of recording	89
Schedule 2	Other ACT provisions	90
Part 2.1	Calculation of monthly payroll tax	90
Division 2.1.1	Employer not member of group	90
2.1	Application—div 2.1.1	90
2.2	Employer not member of group—amount of tax payable each month	90
2.3	Employer not member of group—deductible amount for employer not paying interstate wages	91
2.4	Employer not member of group—deductible amount for employer who pays taxable and interstate wages	91
Division 2.1.2	Group with designated group employer	92
2.5	Application—div 2.1.2	92
2.6	Group with designated group employer—amount of tax payable each month if approval in force	92
2.7	Group with designated group employer—amount of tax payable each month if approval not in force	93
2.8	Group with designated group employer—deductible amount for groups not paying interstate wages	94

	Page
2.9 Group with designated group employer—deductible amount for groups paying taxable and interstate wages	95
Division 2.1.3 Group with no designated group employer	96
2.10 Application—div 2.1.3	96
2.11 Group with no designated group employer—amount of tax payable each month	96
Part 2.2 Charitable organisations	97
2.12 Meaning of <i>charitable organisation</i> —pt 2.2	97
2.13 Exemption from payroll tax—charitable organisations	97
Part 2.3 Employment agents	98
2.14 Employment agents and subcontractors	98
Part 2.4 Education and training	100
2.15 Exemption from tax—new starters	100
2.16 Exemption from tax—trainees under approved training contracts	101
Part 2.5 Hospitals	103
2.17 Hospitals	103
Part 2.6 Primary carer leave	104
2.18 Primary carer leave	104
Part 2.7 Certain unemployed people	107
2.19 Certain unemployed people	107
Part 2.8 Certain bank accounts	108
2.20 Certain bank accounts	108
Part 2.9 Territory authorities	109
2.21 Territory authorities	109
Schedule 3 Reviewable decisions	110
Schedule 4 Consequential amendments	111
Part 4.1 Administrative Decisions (Judicial Review) Act 1989	111

Contents

	Page
Part 4.2 Taxation Administration Act 1999	111
Dictionary	112



Australian Capital Territory

Payroll Tax Act 2011

A2011-18

An Act to impose payroll tax, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Payroll Tax Act 2011*.

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.

2 Commencement

This Act commences on 1 July 2011.

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

3 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 ‘**corporation**—see the Corporations Act, section 9.’ means that the term ‘corporation’ is defined in that section 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)).

3A Numbering

This Act (other than the schedules) is numbered to maintain consistent part, division and section numbering with the *Payroll Tax Act 2007* (NSW) (the *NSW Act*), including—

- (a) having a gap in part numbering if there is no equivalent in this Act of a part of the NSW Act; and
- (b) having a gap in section numbering if there is no equivalent in this Act of a section of the NSW Act; and
- (c) for a section that does not have an equivalent in the NSW Act—using a section number that is not used in the NSW Act.

Examples

- 1 There is no pt 8 or s 12 in this Act.
- 2 There is no s 53A in the NSW Act.

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).

4 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.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Imposition of payroll tax

Division 2.1 Imposition of tax

6 Imposition of payroll tax

Payroll tax is imposed on all taxable wages.

7 Who is liable for payroll tax?

The employer by whom taxable wages are paid or payable is liable to pay payroll tax on the wages.

8 Amount of payroll tax

The amount of payroll tax payable by an employer must be worked out in accordance with schedules 1 and 2.

9 When must payroll tax be paid?

- (1) A person who is liable to pay payroll tax on taxable wages must pay the tax—
 - (a) within 7 days after the end of the month in which the wages were paid or payable, other than June; and
 - (b) within 21 days after the end of June in relation to taxable wages paid or payable in June.
- (2) However, if the commissioner believes on reasonable grounds that a person may leave Australia before any payroll tax becomes payable by the person, the tax is payable on the day fixed by the commissioner by notice served on the person.

Division 2.2 Taxable wages

10 Meaning of *taxable wages*

- (1) For this Act, *taxable wages* are wages that are taxable in the ACT.
- (2) However, exempt wages are not taxable wages.

11 Wages taxable in the ACT

- (1) For this Act, wages are taxable in the ACT if—
 - (a) the wages are paid or payable by an employer in relation to services performed by an employee entirely in the ACT; or
 - (b) the wages are paid or payable by an employer in relation to services performed by an employee in 2 or more Australian jurisdictions, or partly in 1 or more Australian jurisdictions and partly outside all Australian jurisdictions, and—
 - (i) the employee is based in the ACT; or
 - (ii) if the employee is not based in an Australian jurisdiction—the employer is based in the ACT; or
 - (iii) if both the employee and employer are not based in an Australian jurisdiction—the wages are paid or payable in the ACT; or
 - (iv) if both the employee and employer are not based in an Australian jurisdiction and the wages are not paid or payable in an Australian jurisdiction—the wages are paid or payable in relation to services performed mainly in the ACT; or

- (c) the wages are paid or payable by an employer in relation to services performed by an employee entirely outside all Australian jurisdictions and are paid or payable in the ACT.

Note Section 66A (Wages paid or payable in relation to services performed in other countries) provides an exemption for wages paid or payable in relation to services performed entirely in 1 or more other countries for a continuous period of more than 6 months.

- (2) The question of whether wages are taxable in the ACT must be decided by taking into account only the services performed by the employee in relation to the employer in the month in which the wages are paid or payable.
- (3) Any wages paid or payable by an employer in relation to an employee in a month are taken to be paid or payable in relation to the services performed by the employee in relation to the employer in that month.

Example

If wages paid in a month are paid to an employee in relation to services performed over several months, the question of whether the wages are taxable in the ACT must be decided by taking into account only services performed by the employee in the month in which the wages are paid. Services performed in previous months are disregarded (services performed in previous months will be relevant to the question of whether wages paid in the previous months are taxable in the ACT).

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).

- (4) However, if no services are performed by an employee in relation to an employer in the month in which wages are paid or payable in relation to the employee—
- (a) the question of whether the wages are taxable in the ACT must be decided by taking into account only the services performed by the employee in relation to the employer in the most recent prior month in which the employee performed services in relation to the employer; and

- (b) the wages are taken to be paid or payable in relation to the services performed by the employee in relation to the employer in that most recent prior month.
- (5) Also, if no services were performed by an employee in relation to an employer in the month in which wages are paid or payable in relation to the employee or in any prior month—
- (a) the wages are taken to be paid or payable in relation to services performed by the employee in the month in which the wages are paid or payable; and
 - (b) the services are taken to have been performed at a place or places where it may be reasonably expected that the services of the employee in relation to the employer will be performed.
- (6) All amounts of wages paid or payable in the same month by the same employer in relation to the same employee must be aggregated for the purpose of deciding whether they are taxable in the ACT (as if they were paid or payable for all services performed by the employee in the month in which the wages are paid or payable, or the most recent prior month).

Example

If 1 amount of wages is paid by an employer in a particular month for services performed in the ACT, and another amount of wages is paid by the same employer in the same month for services performed by the same employee in another Australian jurisdiction, the wages paid must be aggregated (as if they were paid for all services performed by the employee in that month). Accordingly, s (1)(b) would be applied for the purpose of deciding whether the wages are taxable in the ACT.

- (7) If wages are paid in a different month from the month in which they are payable, the question of whether the wages are taxable in the ACT must be decided by taking into account the earlier of the relevant months.

11A Jurisdiction in which employee is based

- (1) For this Act, the jurisdiction in which an employee is based is the jurisdiction in which the employee's principal place of residence is located.
- (2) The jurisdiction in which an employee is based must be decided by taking into account the state of affairs in the month in which the relevant wages are paid or payable.
- (3) If more than 1 jurisdiction would qualify as the jurisdiction in which an employee is based in a month, the jurisdiction in which the employee is based must be decided by taking into account the state of affairs on the last day of that month.
- (4) For this Act, an employee who does not have a principal place of residence is taken to be an employee who is not based in an Australian jurisdiction.
- (5) For wages paid or payable to a corporate employee, the jurisdiction in which the employee is based must be worked out under section 11B instead of this section (as if a reference in section 11B to an employer were a reference to an employee).
- (6) For this section, a *corporate employee* is a company—
 - (a) that is taken to be an employee under section 34 (Contractors—people taken to be employees) or section 39 (Employment agents—people taken to be employees); or
 - (b) to which a payment is made that is taken to be wages payable to an employee under section 42 (Employment agents—agreement to reduce or avoid liability to payroll tax) or section 47 (Agreement etc to reduce or avoid liability to payroll tax).

11B Jurisdiction in which employer is based

- (1) For this Act, the jurisdiction in which an employer is based is—
 - (a) if the employer has an ABN—the jurisdiction in which the employer’s registered business address is located; or
 - (b) in any other case—the jurisdiction in which the employer’s principal place of business is located.
- (2) If wages are paid or payable in connection with a business carried on by an employer under a trust, the employer’s registered business address is—
 - (a) if the trust has an ABN—the registered business address of the trust; or
 - (b) if the trust does not have an ABN—the registered business address of the trustee of the trust.
- (3) If an employer has registered business addresses in different jurisdictions at the same time, the jurisdiction in which the employer is based at that time is the jurisdiction in which the employer’s principal place of business is located.
- (4) The jurisdiction in which an employer is based must be decided by taking into account the state of affairs in the month in which the relevant wages are paid or payable.
- (5) If more than 1 jurisdiction would qualify as the jurisdiction in which an employer is based in a month, the jurisdiction in which the employer is based must be decided by taking into account the state of affairs on the last day of that month.
- (6) For this Act, an employer is taken to be an employer who is not based in an Australian jurisdiction if the employer has neither a registered business address nor a principal place of business.

11C Place and date of payment of wages

- (1) For this Act, wages are taken to have been paid at a place if, for the purpose of the payment of the wages—
 - (a) an instrument is sent or given or an amount is transferred by an employer to a person or a person's agent at the place; or
 - (b) an instruction is given by an employer for the crediting of an amount to the account of a person or a person's agent at the place.
- (2) The wages are taken to have been paid on the date that the instrument was sent or given, the amount was transferred or the account credited in accordance with the instruction.
- (3) Wages are taken to be payable at the place at which they are paid.
- (4) However, wages that are not paid by the end of the month in which they are payable are taken to be payable at—
 - (a) the place where wages were last paid by the employer to the employee; or
 - (b) if wages have not previously been paid by the employer to the employee—the place where the employee last performed services in relation to the employer before the wages became payable.

- (5) Also, if wages paid or payable in the same month by the same employer in relation to the same employee are paid or payable in more than 1 Australian jurisdiction, the wages paid or payable in that month are taken to be paid or payable in the Australian jurisdiction in which the highest proportion of the wages is paid or payable.

Note Section 11 (Wages taxable in the ACT) requires all wages paid or payable in the same month by the same employer in relation to the same employee to be aggregated for the purpose of deciding whether the wages are taxable in the ACT. Section 11C ensures only 1 Australian jurisdiction can be considered to be the jurisdiction in which the wages are paid or payable.

Part 3 **Wages**

Division 3.1 **General concept of wages**

13 **Meaning of *wages***

- (1) For this Act, *wages* means wages, remuneration, salary, commission, bonuses or allowances paid or payable to an employee, including—
- (a) an amount paid or payable as remuneration to a person by the Territory or a territory authority; and
 - (b) an amount paid or payable under a contract prescribed by regulation, to the extent to which the payment is attributable to labour; and
 - (c) an amount paid or payable by a company as remuneration in relation to a director of the company; and
 - (d) an amount that is included as or taken to be wages by any other provision of this Act.

- Note* Other provisions that define *wages* for this Act include the following:
- a fringe benefit (see s 14);
 - a superannuation contribution (see s 17);
 - the grant of a share or option to an employee by an employer in relation to services performed by the employee in certain circumstances (see s 18);
 - the grant of a share, or option, by a company to a director of the company who is not an employee in certain circumstances (see s 24);
 - a termination payment (see s 28);
 - an amount that exceeds the exempt component of a motor vehicle allowance (see s 29);
 - an amount of accommodation allowance that exceeds the exempt rate (see s 30);

- certain amounts paid or payable by an employment agent under an employment agency contract (see s 40).
- (2) For this Act, wages, remuneration, salary, commission, bonuses or allowances are **wages**—
- (a) whether paid or payable at piece work rates or otherwise; and
 - (b) whether paid or payable in cash or in kind.
- (3) This Act applies in relation to wages mentioned in subsection (1) (a) to (d) that are paid or payable in relation to a person who is not an employee in the same way as it applies to wages paid or payable to an employee (as if a reference in this Act to an employee includes a reference to the person).

Division 3.2 Fringe benefits

14 Wages includes fringe benefits

- (1) For this Act, **wages** includes a fringe benefit.
- (2) Subsection (1) does not apply to benefits that are exempt benefits for the FBTA Act (other than deposits to the Superannuation Holding Accounts Special Account under the *Small Superannuation Accounts Act 1995* (Cwlth)).
- (3) In this Act:
- fringe benefit** has the same meaning as in the FBTA Act but does not include—
- (a) a tax-exempt body entertainment fringe benefit under that Act, or
 - (b) anything determined by the Minister to not be a fringe benefit.
- (4) A determination is a disallowable instrument.

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

15 Value of wages that are fringe benefits

- (1) For this Act, the value of wages that are a fringe benefit is worked out as follows:

$$TV \times \frac{1}{1 - \text{FBT rate}}$$

- (2) In this Act, a reference to taxable wages that were paid or payable by an employer in a month is, in relation to taxable wages that are fringe benefits—
- (a) a reference to the value of the fringe benefits paid or payable by the employer in the month; or
 - (b) if an election by the employer is in force under section 16—a reference to an amount worked out under the section.
- (3) In this Act, a reference to taxable wages that were paid or payable by an employer in a year is, in relation to taxable wages that are fringe benefits, a reference to an amount worked out by adding together the amounts under subsection (2) (a) or (b) (or subsection (2) (a) and (b)), for the months of that year.
- (4) In this section:

FBT rate means the rate of fringe benefits tax imposed by the FBTA Act that applies when the liability to payroll tax under this Act arises.

TV means the value that would be the taxable value of the benefit as a fringe benefit for the FBTA Act.

16 Employer election for taxable value of fringe benefits

- (1) An employer who has paid or is liable to pay fringe benefits tax imposed by the FBTA Act in relation to a period of not less than 15 months before 30 June in any year may elect to include as the value of the fringe benefits paid or payable by the employer in a month—
- (a) in a return lodged in relation to each of the first 11 months after 30 June in the year—¹/12th of the amount worked out under subsection (2), or the part of that amount that, under section 10 (Meaning of *taxable wages*), consists of taxable wages for the year of tax (under the FBTA Act) ending on 31 March before the beginning of the current financial year; and
- (b) in the return lodged in relation to the 12th month—the amount worked out under subsection (2), or the part of that amount that, under section 10, consists of taxable wages for the year of tax (under the FBTA Act) ending on 31 March before the month, less the total of the amounts of fringe benefits included in the returns for each of the earlier 11 months.
- (2) An amount is worked out under this subsection as follows:

$$AFBA \times \frac{1}{1 - \text{FBT rate}}$$

- (3) An election under subsection (1) takes effect when it is notified to the commissioner.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C for this section, the form must be used.

- (4) After an employer has made an election under subsection (1), the employer must lodge returns containing amounts worked out in accordance with the election unless the commissioner approves, by written notice given to the employer, the termination of the election and allows the employer to include the value mentioned in section 15 (2) (a) (Value of wages that are fringe benefits).

(5) If an employer ceases to be liable to pay payroll tax, the value of taxable wages that are fringe benefits to be included in the employer's final return is (whether or not the employer has made an election under subsection (1)) the value of the fringe benefits paid or payable by the employer for the period beginning on the previous 1 July until the date when the employer ceases to be liable to payroll tax, less the value of the fringe benefits paid or payable by the employer in that period when payroll tax has been paid.

(6) In this section:

AFBA means the aggregate fringe benefits amount under the FBTA Act, section 136 (Interpretation).

FBT rate means the rate of fringe benefits tax imposed by the FBTA Act that applies when the liability to payroll tax under this Act arises.

Division 3.3 Superannuation contributions

17 Wages includes superannuation contribution

- (1) For this Act, **wages** includes a superannuation contribution.
- (2) For this Act, a **superannuation contribution** is a contribution paid or payable by an employer in relation to an employee—
 - (a) to or as a superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or
 - (b) as a superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth); or
 - (c) to or as any other form of superannuation, provident or retirement fund or scheme including—
 - (i) the Superannuation Holding Accounts Special Account under the *Small Superannuation Accounts Act 1995* (Cwlth); and

- (ii) a retirement savings account under the *Retirement Savings Accounts Act 1997* (Cwlth); and
 - (iii) an entirely or partly unfunded fund or scheme.
- (3) Setting aside any money or anything that is worth money as, or as part of, a superannuation fund, superannuation guarantee charge or any other form of superannuation, provident or retirement fund or scheme is taken to be paying a superannuation contribution.
- (4) Making a superannuation contribution of anything that is worth money is taken to be paying a superannuation contribution of the amount equal to its value, and its value must be worked out under section 43 (Value of wages paid in kind) as if the section mentioned the contribution instead of wages.
- (5) A superannuation, provident or retirement fund or scheme is unfunded to the extent that money paid or payable by an employer in relation to an employee covered by the fund or scheme is not paid or payable in the employee's period of service with the employer.
- (6) In this section:
employee includes anyone to whom, because of a paragraph of the definition of *wages* in section 13 (1), an amount paid or payable in the circumstances mentioned in the paragraph is wages.

Division 3.4 Shares and options

18 Inclusion of grant of shares and options as wages

- (1) For this Act, *wages* includes the grant of a share or option to an employee by an employer in relation to services performed by the employee if the share or option is an ESS interest and is granted to the employee under an employee share scheme.

Note A grant of a share or option to an employee by an employer that is not an ESS interest will be taxable as a fringe benefit under div 3.2 (Fringe benefits).

- (2) The wages are taken, for the purpose of the imposition of payroll tax, to be paid or payable on the relevant day.
- (3) For this division, the *relevant day* is the day that the employer elects in accordance with this division to treat as the day when the wages are paid or payable.
- (4) To remove any doubt, the grant of a share or option is valuable consideration for section 46 (Wages paid by or to third parties).
- (5) In this section:

employee share scheme—see the *Income Tax Assessment Act 1997* (Cwlth), section 83A-10 (Meaning of *ESS interest* and *employee share scheme*).

ESS interest—see the *Income Tax Assessment Act 1997* (Cwlth), section 83A-10.

19 Choice of relevant day

- (1) The employer can elect to treat as the relevant day either the date when the share or option is granted to the employee or the vesting date.
- (2) For this division, a share or option is *granted* to a person if—
 - (a) someone else transfers the share or option to the person (other than, for a share, by issuing the share to that person); or
 - (b) for a share—someone else allots the share to the person; or
 - (c) for an option—someone else confers the option on, or otherwise creates the option in, the person; or
 - (d) the person otherwise acquires a legal interest in the share or option from someone else; or
 - (e) the person acquires a beneficial interest in the share or option from someone else.
- (3) To remove any doubt, if an employee acquires a right to be granted a share or option, or another material benefit, at the employer's election, the share or option is not granted until the employer elects to grant the share or option.
- (4) For this division, the *vesting date* in relation to a share is whichever of the following happens first:
 - (a) the date when the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded);
 - (b) the date at the end of the period of 7 years from the date when the share is granted to the employee.

- (5) For this division, the *vesting date* in relation to an option is whichever of the following happens first:
- (a) the date when the share to which the option relates is granted to the employee;
 - (b) the date when the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vested in the employee;
 - (c) the date at the end of the period of 7 years from the date when the option is granted to the employee.

20 Deemed choice of relevant day in special cases

- (1) If an employer grants a share or option to an employee and the value of the grant of the share or option is not included in the taxable wages of the employer for the financial year when the share or option was granted, the employer is taken to have elected to treat the wages that are the grant of that share or option as being paid or payable on the vesting date.
- (2) If an employer grants a share or option to an employee and the value of the grant of the share or option is nil or, if the employer were to elect to treat the date of grant as the relevant day, the wages that are the grant would not be liable to payroll tax, the employer is taken to have elected to treat the wages that are the grant of that share or option as being paid or payable on the date when the share or option was granted.

21 Effect of rescission, cancellation of share or option

- (1) If the grant of a share or option is withdrawn, cancelled or exchanged before the vesting date for any valuable consideration (other than the grant of other shares or options)—
 - (a) the date of withdrawal, cancellation or exchange is taken to be the vesting date of the share or option; and

- (b) the market value of the share or option, on the vesting date, is taken to be the amount of the valuable consideration (and, accordingly, that amount is the amount paid or payable as wages on that date).
- (2) If an employer includes the value of a grant of a share or option in the taxable wages of the employer for a financial year and the grant is rescinded because the conditions attaching to the grant were not met, the taxable wages of the employer, in the financial year in which the grant is rescinded, must be reduced by the value of the grant as previously included in the taxable wages of the employer.
- (3) Subsection (2) does not apply just because an employee fails to exercise an option or to otherwise exercise the employee's rights in relation to a share or option.

22 Grant of share as result of exercise of option

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.

23 Value of shares and options

- (1) If the grant of a share or option is wages under this division, the amount paid or payable as wages is taken, for this Act, to be the value of the share or option (expressed in Australian currency) on the relevant day, less the consideration (if any) paid or given by the employee in relation to the share or option (other than consideration in the form of services performed).

- (2) The value of a share or option is—
- (a) the market value; or
 - (b) the amount worked out as provided for by the Commonwealth income tax provisions.
- (3) The employer may elect the method by which the value of a share or option is worked out in any return lodged under this Act.
- (4) However, the commissioner may determine the method by which the value of a share or option is worked out if the grant of the share or option is not included as wages in a return lodged by an employer as required under this Act.
- (5) In working out the market value of a share or option, anything that would prevent or restrict conversion of the share or option to money must be disregarded.
- (6) The Commonwealth income tax provisions apply with the following changes, and any other necessary changes:
- (a) the value of an option must be worked out as if it were a right to acquire a beneficial interest in a share;
 - (b) as if a reference to the acquisition of a beneficial interest in a share or right were a reference to the grant of a share or option.
- (7) In this section:

Commonwealth income tax provisions means the *Income Tax Assessment Act 1997* (Cwlth), section 83A-315 (Market value of ESS interest).

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 See the *Income Tax Assessment Regulations 1997* (Cwlth), div 83A (Employee share schemes).

24 Inclusion of shares and options granted to directors as wages

- (1) For this Act, *wages* includes the grant of a share or option by a company to a director of the company who is not an employee of the company as remuneration for the director's appointment or services.
- (2) Also, the other provisions of this division 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 of the company; and
 - (c) any other necessary changes, and any changes prescribed by regulation, were made.
- (3) However, if wages mentioned in this section are fringe benefits, the value of the wages must be worked out under division 3.2 (Fringe benefits), not this division.
- (4) In this section:

director, of a company, includes—

 - (a) a person who, under a contract or other arrangement, is to be appointed as a director of the company; and
 - (b) a former director of the company.

Note Section 13 (Meaning of *wages*) provides that a reference to an employee in this Act includes a reference to anyone to whom an amount that is treated as wages under this Act is paid or payable. See also s 11 (Wages taxable in the ACT), that deems the wages to be paid or payable in relation to services performed.

26 Place where wages are payable

- (1) Wages that are the grant of a share or option are taken to be paid or payable in the ACT if—
 - (a) for a share—the share is a share in a local company; or
 - (b) for an option—the option is an option to acquire shares in a local company.
- (2) In any other case, wages that are the grant of a share or option are taken to be paid or payable outside the ACT.

Note The place where wages are paid or payable is sometimes relevant to deciding whether the wages are liable to payroll tax under this Act (see s 11 (Wages taxable in the ACT)).

- (3) In this section:

local company means—

- (a) a company incorporated or taken to be incorporated under the Corporations Act that is taken to be registered in the ACT for that Act; or
- (b) any other body corporate that is incorporated under a territory law.

Division 3.5 Termination payments

27 Definitions—div 3.5

In this division:

employment termination payment means—

- (a) an employment termination payment under the ITAA, section 82-130 (What is an *employment termination payment*?); or
- (b) a payment that would be an employment termination payment under the ITAA, section 82-130 but for the fact that it was received later than 12 months after the termination of a person's employment; or
- (c) a transitional termination payment under the *Income Tax (Transitional Provisions) Act 1997* (Cwlth), section 82-10 (Pre-10 May 2006 entitlements—*transitional termination payments*).

relevant contract—see section 32 (Meaning of *relevant contract*—div 3.7).

termination payment means—

- (a) a payment made because of the retirement from, or termination of, an office or employment of an employee, being—
 - (i) an unused annual leave payment; or
 - (ii) an unused long service leave payment; or

- (iii) so much of an employment 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 ITAA, part 2-40 (Rules affecting employees and other taxpayers receiving PAYG withholding payments) if all of the employment termination payment had been paid to the employee; or
- (b) an amount paid or payable by a company because of the termination of the services or office of a director of the company, whether or not paid to the director or to another entity, that would be an employment termination payment if that amount had been paid or payable because of termination of employment; or
- (c) an amount paid or payable by a person who is an employer under a relevant contract because of the termination of the supply of the services of an employee under the contract, whether or not paid to the employee or to anyone else, if the amount would be an employment termination payment if that amount had been paid or payable because of termination of employment.

unused annual leave payment—see the ITAA, section 83-10 (Unused annual leave payment is assessable).

unused long service leave payment—see the ITAA, section 83-75 (Meaning of *unused long service leave payment*).

28 Termination payments

For this Act, *wages* includes a termination payment.

Division 3.6 Allowances

29 Motor vehicle allowances

- (1) For this Act, *wages*, for a financial year, does not include the exempt component of a motor vehicle allowance paid or payable for the year.
- (2) Accordingly, if the total motor vehicle allowance paid or payable to an employee for a financial year does not exceed the exempt component, the motor vehicle allowance is not *wages* for this Act.
- (3) If the total motor vehicle allowance paid or payable to an employee for a financial year exceeds the exempt component (if any), only the amount that exceeds the exempt component of the motor vehicle allowance is included as *wages* for this Act.
- (4) The *exempt component* of a motor vehicle allowance paid or payable for a financial year is worked out as follows:

$$E = K \times R$$

- (5) In this section:
 - E* means the exempt component.
 - K* means the number of business kilometres travelled in the financial year.
 - R* means the exempt rate for the financial year.
- (6) *K* is worked out using the continuous recording method, or the averaging method, whichever method is selected and used by the employer under schedule 1, part 1.5 (Motor vehicle allowances).
- (7) The commissioner may, in writing, approve the use by an employer of another method of working out *K* (including the use of an estimate).

Note Power to make a statutory instrument includes power to make different provision for different categories (see Legislation Act, s 48).

- (8) If the commissioner approves the use of a method under subsection (7) for an employer for a financial year, the employer must use the method to work out K.
- (9) The Minister may determine the exempt rate for a financial year.
- (10) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (11) For this section, the *exempt rate* for a financial year is—
 - (a) the rate prescribed by regulation under the ITAA, section 28-25 (How to calculate your deduction) for working out a deduction for car expenses for a large car using the ‘cents per kilometre’ method in the financial year immediately before the financial year in which the allowance is paid or payable; or
 - (b) if no rate mentioned in paragraph (a) is prescribed—the rate determined by the Minister under subsection (9).

30 Accommodation allowances

- (1) For this Act, *wages*, for a financial year, does not include an accommodation allowance paid or payable to an employee for a night’s absence from the person’s usual place of residence that does not exceed the exempt rate.
- (2) If the accommodation allowance paid or payable to an employee for a night’s absence from the person’s usual place of residence exceeds the exempt rate, *wages* includes the allowance only to the extent that it exceeds the exempt rate.
- (3) The Minister may determine the exempt rate for a financial year.
- (4) For this section, the *exempt rate* for a financial year is—
 - (a) the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the financial year determined by the Commissioner of Taxation of the Commonwealth; or

(b) if no determination mentioned in paragraph (a) is in force—the rate determined by the Minister under subsection (3).

(5) A determination under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Division 3.7 Contractor provisions

31 Definitions—div 3.7

In this division:

contract includes an agreement, arrangement or undertaking, whether formal or informal and whether express or implied.

resupply of goods (the *relevant 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 goods in which the relevant goods have been incorporated; and
- (c) a supply to the person of something manufactured or produced from the goods.

services includes results (whether goods or services) of work performed.

supply includes supply by sale, exchange, lease, hire or hire-purchase, and in relation to services includes the providing, granting or conferring of services.

32 **Meaning of *relevant contract*—div 3.7**

- (1) For this division, a *relevant contract* for a financial year is a contract under which a person (the *designated person*) in the financial year, in the course of a business carried on by the designated person—
- (a) supplies services to someone else in relation to the performance of work; or
 - (b) has supplied to the designated person the services of people 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 *relevant contract* does not include a contract of service or a contract under which a person (the *designated person*) in a financial year in the course of a business carried on by the designated 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 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 performed by a person who ordinarily performs services of that kind to the public generally; or

- (ii) the services are supplied under a contract to which subparagraph (i) does not apply and the commissioner is satisfied that the services are performed by a person who ordinarily performs services of that kind to the public generally in the financial year; or
 - (c) is supplied with services ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them.
- (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, an employment agency contract under which services are supplied by an employment agent, or a service provider is procured by an employment agent, is not a relevant contract.

33 Contractors—people taken to be employers

- (1) For this Act, a person is taken to be an employer for a financial year if the person is someone, in the financial year—
 - (a) who supplies services to someone else under a relevant contract; or
 - (b) to whom, under a relevant contract, the services of people are supplied in relation to the performance of work; or
 - (c) who, under a relevant contract, gives out goods to other people.
- (2) If a contract is a relevant contract under both section 32 (1) (a) and (b)—
 - (a) the person to whom, under the contract, the services of people are supplied in relation to the performance of work is taken to be an employer; and
 - (b) despite subsection (1) (a), the person who under the contract supplies the services is taken not to be an employer.

34 Contractors—people taken to be employees

For this Act, a person is taken to be an employee for a financial year if the person, in the financial year—

- (a) performs work in relation to which services are supplied to someone else under a relevant contract; or
- (b) if the person is an individual—resupplies goods to an employer under a relevant contract.

35 Amounts under relevant contracts taken to be wages

- (1) For this Act, amounts paid or payable by an employer in a financial year in relation to the performance of work relating to a relevant contract or the resupply of goods by an employee under a relevant contract are taken to be wages paid or payable in the financial year.
- (2) If an amount mentioned in subsection (1) is included in a larger amount paid or payable by an employer under a relevant contract in a financial year, the commissioner may determine the part of the larger amount that is not attributable to the performance of work relating to the relevant contract or the resupply of goods by an employee under the relevant contract.
- (3) An amount paid or payable in relation to the performance of work under a relevant contract is taken to include—
 - (a) any payment made by a person who is taken to be an employer under a relevant contract in relation to a person who is taken to be an employee under the relevant contract that would be a superannuation contribution if made in relation to a person in the capacity of an employee; and

- (b) the value of any share or option (not otherwise included as wages under this Act) provided or liable to be provided by a person who is taken to be an employer under a relevant contract in relation to a person who is taken to be an employee under the relevant contract that would be included as wages under division 3.4 (Shares and options) if provided to a person in the capacity of an employee.

36 Contractors—liability provisions

If, in relation to a payment in relation to the performance of work that is taken to be wages under this division, payroll tax is paid by a person who is taken to be an employer under this division (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.

Division 3.8 Employment agents

37 Definitions—Act

- (1) For this Act, an *employment agency contract* is a contract, whether formal or informal and whether express or implied, under which a person (an *employment agent*) procures the services of someone else (a *service provider*) for a client of the employment agent.
- (2) However, a contract is not an employment agency contract for this Act if it is, or results in the creation of, a contract of employment between the service provider and the client.

(3) In this section:

contract includes agreement, arrangement and undertaking.

38 Employment agents—people taken to be employers

For this Act, the employment agent under an employment agency contract is taken to be an employer.

39 Employment agents—people taken to be employees

For this Act, the person who performs work in relation to which services are supplied to the client under an employment agency contract is taken to be an employee of the employment agent.

40 Amounts taken to be wages

For this Act, the following are taken to be *wages* paid or payable by the employment agent under an employment agency contract:

- (a) any amount paid or payable in relation to the service provider in relation to the provision of services in relation to the employment agency contract;
- (b) the value of any benefit provided in relation to the provision of services in relation to the employment agency contract that would be a fringe benefit if provided to a person in the capacity of an employee;
- (c) any payment made in relation to the service provider that would be a superannuation contribution if made in relation to a person in the capacity of an employee.

41 Employment agents—liability

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.

42 Employment agents—agreement to reduce or avoid liability to payroll tax

If the effect of an employment agency contract is to reduce or avoid the liability of any party to the contract to the assessment, imposition or payment of payroll tax, the commissioner may—

- (a) disregard the contract; and
- (b) determine that any party to the contract is taken to be an employer for this Act; and
- (c) determine that any payment made in relation to the contract is taken to be wages for this Act.

Division 3.9 Wages—other

43 Value of wages paid in kind

The value of wages (except fringe benefits and shares and options) that are paid or payable in kind is the greater of—

- (a) the value agreed or attributed to the wages in, or able to be worked out for the wages from, arrangements between the employer and the employee, whichever is the greater; and
- (b) if a regulation prescribes how the value of the wages must be worked out—the value worked out under the regulation.

44 GST excluded from wages

- (1) If a person is liable to pay GST on the supply to which wages paid or payable to the person relate, the amount or value of the wages on which payroll tax is payable is the amount or value of the wages paid or payable to the person minus the relevant proportion of the amount of GST payable by the person on the supply to which the wages relate.
- (2) Subsection (1) does not apply in relation to the value of wages that are a fringe benefit.

(3) In this section:

consideration has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

relevant proportion, in relation to GST payable on a supply to which wages relate, means the proportion that the amount or value of the wages bears to the consideration for the supply to which the wages relate.

45 Wages paid by group employers

A reference in this Act to wages paid or payable by a member of a group includes wages that would be taken to be paid or payable by a member of a group if the member were the employer of the employee to whom the wages were paid.

46 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 or be included 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 of the company, be or be included as wages paid or payable by the company to the director for this Act, they are taken to be wages paid or payable by the company to the director:
- (a) any money or other valuable consideration paid or given, or to be paid or given, to a director of a company, as remuneration for the appointment or services of the director 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 to the company, to a person other than the director;
 - (c) any money or other valuable consideration paid or given, or to be paid or given, by anyone, as remuneration for the appointment or services of a director to the company, to a person other than the director.
- (3) In this section:
- director*, of a company—see section 24 (4).

47 Agreement etc to reduce or avoid liability to payroll tax

If anyone enters into any agreement, transaction or arrangement, whether in writing or otherwise, under which an individual performs, on behalf of another person, services in relation to which any payment is made to someone else related or connected to the individual performing the services and the effect of the agreement, transaction or arrangement is to reduce or avoid the liability of anyone 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 is taken to be an employer for this Act; and
- (c) determine that any payment made in relation to the agreement, transaction or arrangement is taken to be wages for this Act.

Part 4 Exemptions

Division 4.1 Charitable organisations

48 Charitable organisations

Wages mentioned in schedule 2, part 2.2 are exempt wages.

Division 4.1A Employment agents

48A Employments agents and subcontractors

Wages mentioned in schedule 2, part 2.3 are exempt wages.

Division 4.2 Education and training

49 Educational services and training

Wages mentioned in schedule 2, part 2.4 are exempt wages.

Division 4.3 Hospitals

51 Hospitals

Wages mentioned in schedule 2, part 2.5 are exempt wages.

Division 4.4 Maternity, adoption and primary carer leave

53 Maternity and adoption leave

- (1) Wages are exempt wages if they are paid or payable to an employee in relation to maternity leave or adoption 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 a 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) The exemption does not apply to any part of wages paid or payable in relation to maternity or adoption leave that consists of fringe benefits.
- (5) 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 or after the pregnancy), but does not include leave given to the employee as leave of another kind.

relevant day means—

- (a) for a birth—the day 6 months after the day of the birth; or
- (b) for a pregnancy that ends other than by a birth—the day 6 months after the day the pregnancy ends; or
- (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; or
- (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; or
- (c) 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 *Taxation Administration Act 1999*, s 57 (Requirement to keep proper records), s 62 (Accessibility) and s 64 (Period record to be kept)).

53A Primary carer leave

Wages mentioned in schedule 2, part 2.6 are exempt wages.

Division 4.5 **Volunteer firefighters, emergency service volunteers and other volunteers under the Emergencies Act**

55 **Volunteer firefighters**

Wages are exempt wages if they are paid or payable to an employee in relation to any period when the employee takes part in activities under the *Emergencies Act 2004* as—

- (a) a volunteer member of the rural fire service; or
- (b) a volunteer member of a community fire unit.

56 **Emergency service volunteers**

Wages are exempt wages if they are paid or payable to an employee in relation to any period when the employee takes part in activities under the *Emergencies Act 2004* as a volunteer member of the SES.

56A **Other volunteers under Emergencies Act**

Wages are exempt wages if they are paid or payable to an employee in relation to any period when the employee takes part in activities under the *Emergencies Act 2004* as—

- (a) a casual volunteer; or
- (b) an emergency services support volunteer.

57 **Limitation of exemption**

An exemption under this division does not apply to wages paid or payable as recreation leave, annual leave, long service leave or sick leave.

Division 4.7 Governor-General and defence

61 Governor-General

Wages paid or payable by the Governor-General are exempt wages.

62 Defence personnel

Wages are exempt wages if they are paid or payable to an employee in relation to any period when the employee was on leave from employment because of being a member of—

- (a) the Defence Force; or
- (b) an armed force of a Commonwealth country.

Division 4.8 Foreign government representatives

64 Consular and non-diplomatic representatives

Wages paid or payable to members of his or her official staff by a consular or other representative of any country in Australia (other than a diplomatic representative) are exempt wages.

Division 4.9 Services outside Australia

66A Wages paid or payable in relation to services performed in other countries

Wages are exempt wages if they are paid or payable in relation to services performed by an employee entirely in 1 or more other countries for a continuous period of more than 6 months beginning on the day when wages were first paid or payable to the employee for the services.

Division 4.10 Exemptions—other

66B Wages paid or payable to certain unemployed people

Wages mentioned in schedule 2, part 2.7 are exempt wages.

66C Wages paid or payable from certain bank accounts

Wages mentioned in schedule 2, part 2.8 are exempt wages.

66D Wages paid or payable by territory authority

Wages mentioned in schedule 2, part 2.9 are exempt wages.

Part 5 **Grouping of employers**

Division 5.1 **Interpretation—pt 5**

67 **Definitions—pt 5**

In this part:

associated person means a person who is associated with someone else in accordance with any of the following:

- (a) people are associated people if they are related people;
- (b) individuals are associated people if they are partners in a partnership to which the *Partnership Act 1963* applies;
- (c) private companies are associated people if common shareholders have a majority interest in each private company;
- (d) trustees are associated people if anyone is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
- (e) a private company and a trustee are associated people if a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee.

business includes the following, whether carried on by 1 person or 2 or more people together:

- (a) a profession or trade;
- (b) any other activity carried on for fee, gain or reward;
- (c) the activity of employing 1 or more people who perform duties in connection with another business;
- (d) the carrying on of a trust (including a dormant trust);

- (e) the activity of holding any money or property used in connection with another business.

entity means—

- (a) a person; or
- (b) 2 or more people who are associated people.

group means a group under this part, but does not include any member of the group in relation to whom a determination under division 5.4 (Groups—miscellaneous) is in force.

private company means a company that is not limited by shares, or whose shares are not quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

related body corporate—see the Corporations Act, section 9 (Dictionary).

related person means a person who is related to someone else in accordance with any of the following:

- (a) individuals are related people if—
 - (i) they are domestic partners; or
Note The Legislation Act, s 169 defines **domestic partner**.
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;
- (b) private companies are related people if they are related bodies corporate;
- (c) an individual and a private company are related people if the individual is a majority shareholder or director of the company or of another private company that is a related body corporate of the company;

- (d) an individual and a trustee are related people if the individual is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;
- (e) a private company and a trustee are related people if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.

68 Grouping provisions to operate independently

The fact that a person is not a member of a group under a provision of this part does not prevent the person from being a member of a group under another provision of this part.

Division 5.2 Business groups

69 Make up of groups

A *group* is made up of all the people or bodies forming a group that is not part of a larger group.

70 Groups of corporations

Corporations make up a group if they are related bodies corporate.

71 Groups arising from the use of common employees

- (1) If 1 or more employees of an employer perform duties in connection with 1 or more businesses carried on by the employer and 1 or more other people, the employer and each of the other people make up a group.
- (2) If 1 or more employees of an employer are employed solely or mainly to perform duties in connection with 1 or more businesses carried on by 1 or more other people, the employer and each of the other people make up a group.

- (3) If 1 or more employees of an employer perform duties in connection with 1 or more businesses carried on by 1 or more other people, and the duties are performed in connection with, or in fulfilment of the employer's obligation under, an agreement, arrangement or undertaking for the provision of services to any 1 or more of the other people in connection with the business or businesses, the employer and each of the other people make up a group.
- (4) Subsection (3) applies to an agreement, arrangement or undertaking—
- (a) whether the agreement, arrangement or undertaking is formal or informal, express or implied; and
 - (b) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the employees or states the duties to be performed by them.

Note Section 79 (Exclusion of people from groups) allows the commissioner to exclude people from a group in certain circumstances.

72 **Groups of commonly controlled businesses**

- (1) If a person or set of people has a controlling interest in each of 2 businesses, the people who carry on the businesses make up a group.

Note Section 79 (Exclusion of people from groups) allows the commissioner to exclude people from a group in certain circumstances.

- (2) For this section, a person or set of people has a ***controlling interest*** in a business if—
- (a) for 1 person—the person is the sole owner (whether or not as trustee) of the business; or
 - (b) for a set of people—the people are together as trustees the sole owners of the business; or

- (c) for a business carried on by a corporation—
 - (i) the person or each of the set of people is a director of the corporation and the person or set of people is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or
 - (ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of the person or set of people; or
- (d) for a business carried on by a body corporate or unincorporated body—the person or set of people make up more than 50% of the board of management (however described) of the body or control the composition of the board; or
- (e) for a business carried on by a corporation that has a share capital—the person or set of people can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or any class of voting shares, issued by the corporation; or
- (f) for a business carried on by a partnership—the person or set of people—
 - (i) own (whether beneficially or not) more than 50% of the capital of the partnership; or
 - (ii) is entitled (whether beneficially or not) to more than 50% of the profits of the partnership; or
- (g) for a business carried on under a trust (the *first trust*)—the person or set of people (whether or not as a trustee of, or beneficiary under, another trust) is the beneficiary in relation to more than 50% of the value of the interests in the first trust.

- (3) If—
- (a) 2 corporations are related bodies corporate; and
 - (b) 1 of the corporations has a controlling interest in a business;
the other corporation has a controlling interest in the business.
- (4) If—
- (a) a person or set of people has a controlling interest in a business; and
 - (b) a person or set of people who carry on the business has a controlling interest in another business;
- the person or set of people mentioned in paragraph (a) has a controlling interest in the other business.
- (5) If—
- (a) a person or set of people is the beneficiary of a trust in relation to more than 50% of the value of the interests in the trust; and
 - (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of another trust;
- the person or set of people has a controlling interest in the business.
- (6) A person who may benefit from a discretionary trust because the trustee or someone else, or the trustee and someone else, exercises or fails to exercise a power or discretion, is taken, for this part, to be a beneficiary in relation to more than 50% of the value of the interests in the trust.

- (7) If—
- (a) a person or set of people has a controlling interest in the business of a trust; and
 - (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a corporation;

the person or set of people is taken to have a controlling interest in the business of the corporation.

- (8) If—
- (a) a person or set of people has a controlling interest in the business of a trust; and
 - (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a partnership;

the person or set of people is taken to have a controlling interest in the business of the partnership.

73 Groups arising from tracing of interests in corporations

- (1) An entity and a corporation form part of a group if the entity has a controlling interest in the corporation.

Note Section 79 (Exclusion of people from groups) allows the commissioner to exclude people from a group in certain circumstances.

- (2) For this section, an entity has a ***controlling interest*** in a corporation if the corporation has share capital and—
- (a) the entity has a direct interest in the corporation and the value of the direct interest exceeds 50%; or
 - (b) the entity has an indirect interest in the corporation and the value of the indirect interest exceeds 50%; or

(c) the entity has an aggregate interest in the corporation and the value of the aggregate interest exceeds 50%.

- (3) Division 5.3 (Business groups—tracing of interests in corporations) applies to this section.

Note Division 5.3 sets out the way of working out if an entity has a direct interest, indirect interest or aggregate interest in a corporation, and the value of the interest.

74 Smaller groups subsumed by larger groups

- (1) If a person is a member of 2 or more groups, the members of all the groups together make up a group.
- (2) If 2 or more members of a group have together a controlling interest in a business, all the members of the group and the person or people who carry on the business together make up a group.
- (3) In this section:

controlling interest, in a business—see section 72 (Groups of commonly controlled businesses).

Note Section 79 (Exclusion of people from groups) allows the commissioner to exclude people from a group in certain circumstances.

Division 5.3 Business groups—tracing of interests in corporations

75 Application—div 5.3

This division applies to section 73 (Groups arising from tracing of interests in corporations).

76 Direct interest

- (1) An entity has a *direct interest* in a corporation if—
 - (a) for an entity that is a person—the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation; or
 - (b) for an entity that is 2 or more people who are associated people—each of the associated people can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation.
- (2) The value of the direct interest of the entity in the corporation is the proportion (expressed as a percentage) of the voting power of all voting shares issued by the corporation that—
 - (a) for an entity that is a person—the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, as mentioned in subsection (1); or
 - (b) for an entity that is 2 or more people who are associated people—the associated people can, if acting together, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, as mentioned in subsection (1).

77 Indirect interest

- (1) An entity has an *indirect interest* in a corporation if the corporation is linked to another corporation (the *directly controlled corporation*) in which the entity has a direct interest.
- (2) A corporation is *linked* to a directly controlled corporation if the corporation is part of a chain of corporations—
 - (a) that starts with the directly controlled corporation; and

- (b) in which a link in the chain is formed if a corporation has a direct interest in the next corporation in the chain.

Example

Corporation A (a directly controlled corporation) has a direct interest in corporation B. Corporations A and B form part of a chain of corporations, and corporation B is linked to corporation A. Accordingly, an entity that has a direct interest in corporation A also has an indirect interest in corporation B.

Corporation B also has a direct interest in corporation C. In this case, corporations A, B and C form part of a chain of corporations. Both corporations B and C are linked to corporation A. The entity that has a direct interest in corporation A has an indirect interest in both corporations B and C.

Corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, 1 consisting of A, B and C, and 1 consisting of A, B and D. Corporations B, C and D are all linked to corporation A and an entity that has a direct interest in corporation A would have an indirect interest in corporations B, C and D. An entity that has a direct interest in corporation B would have an indirect interest in corporations C and D. However, an entity that has a direct interest in corporation C only would not have an indirect interest in corporation D, as corporation D is not linked to corporation C.

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).

- (3) The value of the indirect interest of an entity in a corporation (an *indirectly controlled corporation*) that is linked to a directly controlled corporation is worked out by multiplying together the following:
- (a) the value of the direct interest of the entity in the directly controlled corporation;

- (b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.

Example

An entity has a direct interest (with a value of 80%) in corporation A. Corporation A has a direct interest (with a value of 70%) in corporation B. The value of the indirect interest of the entity in corporation B is $80\% \times 70\%$ (that is, 56%). Accordingly, the entity has a controlling interest in corporation B under s 73 (Groups arising from tracing of interests in corporations).

Corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the indirect interest of the entity in corporation C is $80\% \times 70\% \times 40\%$ (that is, 22.4%). Accordingly, the entity does not have a controlling interest in corporation C.

- (4) It is possible for an entity to have more than 1 indirect interest in a corporation.

Examples

- 1 An entity may have more than 1 indirect interest in a corporation if the corporation is linked to more than 1 corporation in which the entity has a direct interest.
- 2 An entity may have more than 1 indirect interest in a corporation if the corporation is linked to only 1 corporation in which the entity has a direct interest, but is linked through more than 1 chain of corporations. In this case, the entity has an aggregate interest in the corporation (see s 78).

78 Aggregation of interests

- (1) An entity has an *aggregate interest* in a corporation if the entity has—
- (a) a direct interest and 1 or more indirect interests in the corporation; or
 - (b) more than 1 indirect interest in the corporation.

- (2) The value of the aggregate interest of an entity in a corporation is worked out by adding together the following:
- (a) the value of the direct interest (if any) of the entity in the corporation;
 - (b) the value of each indirect interest of the entity in the corporation.

Example

An entity has a direct interest (with a value of 40%) in corporation B.

The entity also has a direct interest (with a value of 25%) in corporation A, which in turn has a direct interest (with a value of 60%) in corporation B. Accordingly, the entity also has an indirect interest in corporation B with a value of 15% (that is, $25\% \times 60\%$).

The value of the entity's aggregate interest in corporation B is the total of the direct interest (40%) and the indirect interest (15%), which is 55%.

Accordingly, the entity has a controlling interest in corporation B under s 73 (Groups arising from tracing of interests in corporations).

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).

Division 5.4 Groups—miscellaneous

79 Exclusion of people from groups

- (1) The commissioner may determine that a person who would, but for the determination, be a member of a group is not a member of the group.
- (2) The commissioner may make a determination only if satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the commissioner considers relevant, that a business carried on by the person is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of the group.

- (3) The commissioner must not exclude a person from a group if the person is a body corporate that, because of the Corporations Act, section 50 (Related bodies corporate), is related to another body corporate that is a member of the group.
- (4) This section extends to a group made up because of section 74 (Smaller groups subsumed by larger groups).
- (5) The commissioner may revoke a determination that applies to a person if satisfied that the circumstances in which the determination was made do not apply to the person.
- (6) A determination may provide for its commencement on or before the determination's notification day.

Note This subsection provides express authority for a determination to commence on or before its notification day (see Legislation Act, s 73 (2) (d)).

- (7) A determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 Power to make a statutory instrument includes power to amend or repeal the instrument (see Legislation Act, s 46).

80 Designated group employers

- (1) The members of a group may, with the commissioner's approval, designate a qualified member of the group to be the ***designated group employer*** for the group for this Act.
- (2) A member of a group is a ***qualified member*** if the member—
 - (a) has in the previous financial year paid wages exceeding the threshold amount for the financial year; or
 - (b) is likely in the current financial year to pay wages that are likely to exceed that amount.

- (3) The members of a group may, with the commissioner’s approval, designate a member of the group to be the designated group employer for the group for this Act if none of the members of the group is a qualified member but the members together—
 - (a) have in the previous financial year paid wages exceeding the threshold amount for the financial year; or
 - (b) are, in the commissioner’s opinion, likely in the current financial year to pay wages that will exceed that amount.
- (4) If the members of a group do not designate a member as the designated group employer within 7 days after the end of the month in which the group is established, the commissioner may (but is not obliged to) designate a member of the group as the designated group employer.
- (5) The designated group employer of a group stops being the designated group employer on the earlier of the following days:
 - (a) the first day of a return period when there is a change in the membership of the group;
 - (b) the first day of a return period when the members of the group revoke the designation.
- (6) The designation of a designated group employer under subsection (1) or (3) must be—
 - (a) by written notice; and
 - (b) executed by or on behalf of each member of the group; and
 - (c) served on the commissioner.
- (7) In this section:
threshold amount—see schedule 1, section 1.1, definition of ***TA*** (or ***threshold amount***).

81 Joint and several liability

- (1) 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.
- (2) If 2 or more people are jointly or severally liable to pay an amount under this section, the commissioner may recover all of the amount from them, or any of them, or any 1 of them.
- (3) If, under this section, 2 or more people are jointly and severally liable to pay an amount that is payable by any 1 of them, each person is also jointly and severally liable to pay—
 - (a) any amount payable to the commissioner under this Act or another law in relation to the amount, including any interest and penalty tax; and
 - (b) any costs and expenses incurred in relation to the recovery of the amount that the commissioner is entitled to recover from the person.
- (4) This Act does not prevent a person who is jointly and severally liable to pay an amount of tax and who pays the amount to the commissioner from recovering a contribution from anyone else who is liable to pay all or part of the amount.
- (5) This section applies whether or not the person was an employer in the relevant period.

Part 6 Adjustments of tax

81A Definitions—pt 6

In this part:

group employer means an employer who is a member of a group.

individual employer means an employer who is not a member of a group.

82 Calculation of correct amount of payroll tax

- (1) For this part, the *correct amount of payroll tax* payable by an employer for a financial year is the amount worked out under the following parts of schedule 1 for the financial year:
 - (a) part 1.2 (Employers who are not members of a group);
 - (b) part 1.3 (Groups with a designated group employer);
 - (c) part 1.4 (Groups with no designated group employer).
- (2) This part applies in relation to payroll tax paid or payable by an employer whether as a group employer or individual employer.
- (3) If an employer is liable for payroll tax both as an individual employer and group employer (for different periods in the same financial year), separate adjustments must be made under this part for any period as a group employer and any period as an individual employer (and separate calculations of the correct amount of payroll tax payable by the employer must be made).

83 Annual adjustment of payroll tax

- (1) If the amount of payroll tax paid or payable by an employer when the employer lodges the returns for a financial year is greater than the correct amount of payroll tax payable by the employer for the financial year, the commissioner (on application by the employer) must refund to the employer an amount equal to the difference.
- (2) If the amount of payroll tax paid or payable by an employer when the employer lodges the returns for a financial year is less than the correct amount of payroll tax payable by the employer for the financial year, the employer must pay to the commissioner as payroll tax an amount equal to the difference.
- (3) Any amount payable by an employer under this section for a financial year must be paid within the period in which the employer is required to lodge a return under this Act for the return period that is or includes June in the financial year.
- (4) The amount of any refund payable to an employer for a financial year under this section must be reduced by the amount of any other refund of payroll tax made for the financial year to the employer (under this section or otherwise) before the time of the refund under this section.

84 Adjustment of payroll tax if employer changes circumstances

- (1) This section applies if an employer's circumstances change in a financial year.

- (2) The employer must, if the amount of payroll tax paid or payable by the employer when the employer lodges returns for the relevant period before the change of circumstances is less than the correct amount of payroll tax payable by the employer for the financial year, pay to the commissioner as payroll tax an amount equal to the difference.
- (3) A *change of circumstances* happens if the employer—
 - (a) ceases to pay or be liable to pay taxable wages and interstate wages; or
 - (b) becomes a group employer following a period as an individual employer; or
 - (c) ceases to be a group employer and becomes an individual employer.
- (4) The *relevant period* before a change of circumstances is the period before the change (in the financial year and after any earlier change of circumstances) for which the employer paid or was liable to pay taxable wages or interstate wages.
- (5) In working out for this section the correct amount of payroll tax payable by the employer, the wages paid or payable by the employer in the relevant period are taken to be the only wages paid or payable by the employer in the financial year.
- (6) Any amount payable by an employer under this section for a relevant period must be paid within the period in which the employer is required to lodge a return under this Act for the relevant period or the last return under this Act for the relevant period.

- (7) Any payroll tax paid or payable by an employer under this section must be included as payroll tax paid or payable by the employer for the purpose of the annual adjustment of payroll tax under this part.

Example

If an employer ceases to be a group employer in a financial year an adjustment will be made under this section. If later in that financial year the employer ceases to pay wages there will be a further adjustment under this section. The first adjustment will adjust payroll tax paid for the period as a group employer against the correct amount of tax that should have been paid (based on the assumption that the period as a group employer is the only period for which the employer paid wages throughout the year). The second adjustment will adjust payroll tax paid for the period as an individual employer against the correct amount of tax that should have been paid (based on the assumption that the period as an individual employer is the only period for which the employer paid wages throughout the year). Any amount of payroll tax paid under this section is taken into account for the purpose of the annual adjustment of payroll tax.

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).

85 Special provision if wages fluctuate

- (1) This section applies if a person did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year.
- (2) If the person satisfies the commissioner that, because of the nature of the person's trade or business, the taxable wages and interstate wages, if any, paid or payable by the person fluctuate with different periods of the financial year, the commissioner may decide that the person must be treated for this part—
- (a) if the person has conducted the trade or business in Australia in all of the financial year—as an employer who pays or is liable to pay taxable wages throughout that financial year; or

- (b) if the person has conducted the trade or business in Australia in part only of the financial year—as an employer who pays or is liable to pay taxable wages throughout that part of the financial year.

Example

The effect of a decision under this section is that when the correct amount of payroll tax is worked out (for a tax adjustment provided for by this part) the employer may receive the benefit of the payroll tax threshold for the period for which the employer must be treated as paying wages, and not just for the period for which the employer actually pays wages. Without the decision, an employer may only receive the benefit of a proportion of the threshold amount that is equivalent to the proportion of the whole financial year for which the employer actually pays wages.

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).

Part 7 Registration and returns

86 Registration

- (1) This section applies to an employer if—
 - (a) the employer is not already registered; and
 - (b) either—
 - (i) the total of all taxable wages paid or payable anywhere by the employer in a month exceeds the amount determined for this section under the *Taxation Administration Act 1999*, section 139; or
 - (ii) the employer is a member of a group and the total of all taxable wages paid or payable anywhere by the members of the group together in a month exceeds the amount determined for this section under the *Taxation Administration Act 1999*, section 139.
- (2) The employer must apply for registration as an employer under this Act.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C for an application, the form must be used.
- (3) The application for registration must be made to the commissioner within 7 days after the end of the month.
- (4) The commissioner must register the applicant as an employer under this Act.
- (5) The commissioner may cancel the registration of a person as an employer if satisfied that the person has ceased to pay or to have a liability to pay wages mentioned in subsection (1).

- (6) If the commissioner cancels the registration of a person as an employer in a financial year and the person later pays or is liable to pay taxable wages in the financial year, the person may, despite the fact that the person is not required to apply for registration, apply to the commissioner for registration as an employer, and the commissioner must then register the person as an employer under this Act.
- (7) 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.

87 Returns

- (1) This section applies to an employer if the employer is registered or required to apply for registration as an employer under this Act.
- (2) The employer must—
- (a) within 7 days after the end of each month except June, lodge with the commissioner a return relating to the month; and
 - (b) within 21 days after the end of June in each year, lodge with the commissioner a return relating to June and to the adjustment of payroll tax paid or payable by the employer in the financial year ending at the end of June.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C for a return, the form must be used.

- (3) The designated group employer for a group may, with the commissioner's approval, lodge a joint return for this section covering stated members of the group, including the designated group employer.
- (4) If a joint return is lodged and the return would, if lodged by a single employer, comply with this section, each of the employers covered by the return is taken to have complied with this section.

87A Monthly returns—lodgement variation

- (1) An employer may apply to the commissioner for variation of the periods in relation to which, or the time within which, the employer must lodge returns.
- (2) An application must—
 - (a) be in writing, addressed to the commissioner; and
 - (b) state—
 - (i) the applicant's name and address; and
 - (ii) the grounds on which the variation is sought.
- (3) The commissioner may, by written notice given to the employer (a *variation notice*), vary the periods in relation to which, or the time within which, the employer must lodge returns if the commissioner is satisfied on reasonable grounds that it would be unduly onerous for the employer to lodge a return—
 - (a) in relation to each month; or
 - (b) within 7 days after the end of each month.
- (4) If a variation notice is in force for an employer, the employer must—
 - (a) lodge returns in accordance with the notice; and

- (b) pay any tax that is payable in relation to each return worked out in accordance with schedule 1, parts 1.2 to 1.4 as if—
 - (i) a reference in the parts to a financial year (other than the reference in the definition of *FY*) were a reference to the period as varied by the commissioner; and
 - (ii) any other necessary changes, and any changes prescribed by regulation, were made.
- (5) The commissioner may, by written notice given to the employer, revoke a variation notice for the employer if 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.

87B Monthly returns—exemptions

- (1) An employer may apply to the commissioner for an exemption from lodging returns under section 87 (Returns) if the employer considers that—
 - (a) the employer is not liable to pay tax; or
 - (b) tax the employer pays will be refunded.
- (2) An application must—
 - (a) be in writing, addressed to the commissioner; and
 - (b) state—
 - (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) The commissioner may give a certificate (an *exemption certificate*) to the employer exempting the employer from lodging returns under section 87 if the commissioner is satisfied on reasonable grounds that—
- (a) tax will not be payable by the employer; or
 - (b) tax paid by the employer will be refunded.
- (4) If an exemption certificate is in force in relation to an employer, the employer—
- (a) need not lodge returns under section 87; and
 - (b) must lodge a return relating to each financial year or other period stated in the certificate within 21 days after the end of the financial year or within any other period stated in the certificate.
- (5) The commissioner may, by written notice given to the employer, cancel an employer's exemption certificate if 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.

Part 8A Notification and review of decisions

87C Meaning of *reviewable decision*—pt 8A

In this part:

reviewable decision means a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

87D Reviewable decision notices

If the commissioner makes a reviewable decision, the commissioner must give a reviewable decision notice to each entity mentioned in schedule 3, column 4 in relation to the decision.

Note 1 The commissioner must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

87E Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 3, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 9 Miscellaneous

101 Regulation-making power

The Executive may make regulations for this Act.

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

103 Legislation amended—sch 4

This Act amends the legislation mentioned in schedule 4.

104 Legislation repealed

- (1) The *Payroll Tax Act 1987* (A1987-40) is repealed.
- (2) All legislative instruments under the *Payroll Tax Act 1987* (A1987-40) are repealed.

Note Some instruments are saved under pt 10 (Transitional).

Part 10 Transitional

200 Meaning of *old Act*—pt 10

In this part:

old Act means the *Payroll Tax Act 1987* as in force immediately before 1 July 2011.

201 Application of this Act and old Act

- (1) This Act applies to payroll tax on taxable wages that are paid or payable on or after 1 July 2011.
- (2) Despite its repeal, the old Act continues to apply to payroll tax on taxable wages (within the meaning of the old Act) paid or payable before 1 July 2011.

202 General saving

Any act, matter or thing that had effect under a provision of the old Act immediately before 1 July 2011 continues to have effect under the corresponding provision of this Act, subject to this part or any regulation under this part.

203 Fringe benefits—employer election

An election by an employer under the old Act, section 3B (1) that was in force immediately before 1 July 2011 is taken, on and after that day, to be an election under this Act, section 16 (1).

204 Superannuation contributions relating to pre-1 July 1996 service

- (1) Despite section 11 or section 17, *wages* does not include a superannuation contribution paid or payable in relation to services performed by an employee before 1 July 1996.
- (2) A superannuation contribution that is alleged by an employer to be paid in relation to services performed by an employee before 1 July 1996 must be evidenced to the commissioner's satisfaction in the employer's records for payroll tax purposes.
- (3) In particular, the employer's records must show the way the contribution is worked out and any actuarial basis for it.
- (4) For subsection (3), and any assessment of payroll tax to which the subsection is material, the certificate of a fellow or accredited member of the Institute of Actuaries of Australia to the effect that the actuarial basis on which an amount is worked out is justified is evidence and, in the absence of evidence to the contrary, proof of that fact.
- (5) If records are not kept as required by this section, the commissioner may assume that a payment by an employer as a superannuation contribution on or after 1 July 1996 is an amount payable in relation to services performed by an employee on or after that day.

205 Approval relating to motor vehicle allowance

An approval given to an employer by the commissioner under the old Act, section 3C (7) that was in force immediately before 1 July 2011 is taken, on and after that day, to be an approval given under this Act, section 29 (7).

206 Designated group employer

The designation of an employer as a designated group employer that had effect under the old Act immediately before 1 July 2011 has effect as if it were the designation of a designated group employer under this Act.

207 Registration of employers

An employer who was registered under the old Act, section 7 immediately before 1 July 2011 is taken, on and after that day, to be registered under this Act, section 86.

208 Approval relating to group training organisation

An approval given to an entity by the commissioner under the old Act, section 9AB (3) that was in force immediately before 1 July 2011 is taken, on and after that day, to be an approval given under this Act, schedule 2, section 2.16 (3).

209 Variation of time for lodging returns

A notice given to an employer by the commissioner under the old Act, section 17 (3) that was in force immediately before 1 July 2011 is taken, on and after that day, to be a variation notice given under this Act, section 87A (3).

210 Exemption from lodging returns

A certificate granted to an employer by the commissioner under the old Act, section 18 (3) that was in force immediately before 1 July 2011 is taken, on and after that day, to be an exemption certificate given under this Act, section 87B (3).

211 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) This section expires 2 years after the day it commences.

212 Expiry—pt 10

This part (other than section 211) expires 5 years after the day it commences.

Schedule 1 Calculation of payroll tax liability

(see s 8, s 29 (6) and s 82)

Part 1.1 Interpretation—sch 1

1.1 Definitions—sch 1

In this schedule:

financial year means the financial year beginning on 1 July 2011 or 1 July in any later financial year.

FY means the number of days in the financial year.

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this schedule.

TA (or *threshold amount*) means the amount determined under the *Taxation Administration Act 1999*, section 139 for this schedule.

Part 1.2 Employers who are not members of a group

Note This part may apply to a period other than a financial year or a month (see s 87A (4) (b)).

1.2 Application—pt 1.2

This part applies only to an employer who is not a member of a group.

1.3 Definitions—pt 1.2

In this part:

C, for a financial year, means the number of days in the financial year for which the employer paid or was liable to pay taxable wages or interstate wages (otherwise than as a member of a group).

IW, for a financial year, means the total interstate wages paid or payable by the employer (otherwise than as a member of a group) in the financial year.

TW, for a financial year, means the total taxable wages paid or payable by the employer (otherwise than as a member of a group) in the financial year.

1.4 Payroll of employer not more than threshold

The employer is not liable to pay payroll tax for a financial year if the total taxable wages and interstate wages paid or payable by the employer (otherwise than as a member of a group) in that year is not more than the *employer's threshold amount* worked out as follows:

$$TA \times \frac{C}{FY}$$

1.5 Payroll of employer over threshold

If the total taxable wages and interstate wages paid or payable by an employer (otherwise than as a member of a group) in a financial year is more than the employer's threshold amount, the employer is liable to pay as payroll tax for that year the amount worked out as follows:

$$\left[\text{TW} - \left[\frac{\text{TW}}{\text{TW} + \text{IW}} \times \text{TA} \times \frac{\text{C}}{\text{FY}} \right] \right] \times \text{R}$$

Part 1.3 Groups with a designated group employer

Note This part may apply to a period other than a financial year or a month (see s 87A (4) (b)).

1.6 Application—pt 1.3

This part applies only to an employer who is a member of a group for which there is a designated group employer.

1.7 Definitions—pt 1.3

In this part:

C, for a financial year, means the number of days in the financial year in relation to which at least 1 member of the group paid or was liable to pay (as a member of the group) taxable wages or interstate wages.

GIW, for a financial year, means the total interstate wages paid or payable by the group in the financial year.

GTW, for a financial year, means the total taxable wages paid or payable by the group in the financial year.

TW, for a financial year, means the total taxable wages paid or payable by the employer (as a member of the group) in the financial year.

1.8 Payroll of group not more than threshold

None of the members of a group is liable to pay payroll tax for a financial year if the total taxable wages and interstate wages paid or payable by the group in that year is not more than the **group threshold amount** worked out as follows:

$$TA \times \frac{C}{FY}$$

1.9 Payroll of group over threshold

- (1) If the total taxable wages and interstate wages paid or payable by a group in a financial year is more than the group threshold amount, payroll tax is payable in accordance with subsections (2) and (3).
- (2) The designated group employer for the group is liable to pay as payroll tax for the financial year the amount worked out as follows:

$$\left[TW - \left[\frac{GTW}{GTW + GIW} \times TA \times \frac{C}{FY} \right] \right] \times R$$

- (3) Each member of the group (other than the designated group employer) is liable to pay as payroll tax for the financial year the amount worked out as follows:

$$TW \times R$$

Part 1.4 **Groups with no designated group employer**

Note This part may apply to a period other than a financial year or a month
(see s 87A (4) (b)).

1.10 **Application—pt 1.4**

This part applies only to an employer who is a member of a group for which there is no designated group employer.

1.11 **Meaning of *TW*—pt 1.4**

In this part:

TW, for a financial year, means the total taxable wages paid or payable by the employer (as a member of the group) in the financial year.

1.12 **Calculation of payroll tax**

Each member of the group is liable to pay as payroll tax for the financial year the amount worked out as follows:

$$TW \times R$$

Part 1.5 Motor vehicle allowances

1.12A Meaning of *business journey*—pt 1.5

In this part:

business journey means—

- (a) a journey undertaken in a motor vehicle by a person otherwise than in the application of the vehicle to a private use, that is an application that, if the person is paid a motor vehicle allowance for the use, results in the provision of a fringe benefit (under the FBTA Act) by the employer; or
- (b) a journey undertaken in a motor vehicle by a person in the course of producing assessable income of the person (under the *Income Tax Assessment Act 1936* (Cwlth)).

1.13 Continuous recording method

If an employer selects the continuous recording method for the purpose of working out the number of business kilometres travelled in a financial year, the following details are required to be recorded by the employer:

- (a) the odometer readings at the beginning and end of each business journey (a *relevant business journey*) undertaken by the person in the financial year by means of a motor vehicle provided or maintained by the person;
- (b) the specific purpose for which each relevant business journey was taken;
- (c) the distance travelled by the person in the financial year in the course of all relevant business journeys (which is taken to be the *number of business kilometres travelled in the financial year*), worked out on the basis of the odometer readings mentioned in paragraph (a).

1.14 Averaging method

- (1) If an employer selects the averaging method for the purpose of working out the number of business kilometres travelled in a financial year, the following details are required to be recorded by the employer:
- (a) the odometer readings at the beginning and end of each business journey (a ***relevant business journey***) undertaken by the person in the relevant 12-week period by means of a motor vehicle provided or maintained by the person;
- Note* ***Relevant 12-week period*** is defined in s 1.15.
- (b) the specific purpose for which each relevant business journey was taken;
 - (c) the distance travelled by the person in the relevant 12-week period in the course of all relevant business journeys, worked out on the basis of the odometer readings mentioned in paragraph (a);
 - (d) the odometer readings at the beginning and end of the relevant 12-week period for each motor vehicle (a ***relevant motor vehicle***) provided or maintained by the person for the purpose of undertaking business journeys;
 - (e) the distance travelled by each relevant motor vehicle in the relevant 12-week period, worked out on the basis of the odometer readings mentioned in paragraph (d);
 - (f) the distance travelled by the person in the course of business journeys undertaken by means of each relevant motor vehicle in the relevant 12-week period, worked out as a percentage of the distance travelled by the vehicle in the period (the ***relevant percentage***);

- (g) the odometer readings at the beginning and end of the financial year for each motor vehicle (a *relevant vehicle*) provided or maintained by the person for the purpose of undertaking business journeys;
 - (h) the distance travelled by each relevant vehicle in the financial year, worked out on the basis of the odometer readings mentioned in paragraph (g);
 - (i) the distance travelled by the person in the course of business journeys undertaken by means of each relevant vehicle in the financial year (which is taken to be the *number of business kilometres travelled in the financial year*), worked out on the basis that the percentage of the distance that was travelled by the person in the course of business journeys undertaken by means of each relevant vehicle in the financial year is the same as the relevant percentage.
- (2) For the next 4 financial years after the first financial year in which odometer details are recorded in accordance with subsection (1), an employer is not required to work out the relevant percentage, or record the details mentioned in subsection (1) (a) to (f), for the person but is required to record the other details mentioned in subsection (1).
- (3) Accordingly, for the next 4 financial years after the first financial year in which odometer details are recorded in accordance with subsection (1), the number of business kilometres travelled in the financial year must be worked out (as mentioned in subsection (1) (i)) on the basis of the relevant percentage worked out for the first financial year.

- (4) Despite subsections (2) and (3), an employer is required to work out the relevant percentage for a financial year, and record the details mentioned in subsection (1) (a) to (f), if—
 - (a) the commissioner serves a notice on the employer before the beginning of a financial year in the 4-year period directing the employer to keep the details mentioned in subsection (1) (a) to (f) for the financial year; or
 - (b) the employer wishes to use the recording method mentioned in this section for 1 or more additional motor vehicles used by the person in any financial year or for any other reason.
- (5) In a situation mentioned in subsection (4), the new record for the financial year replaces the relevant percentage details previously recorded and subsections (2) and (3) apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.
- (6) An employer who has adopted and employed the method of recording mentioned in subsections (2) and (3) for a person for 4 successive financial years must, in the next succeeding financial year, make a fresh recording of all the details stated in subsection (1) if the employer intends to continue to use the same method of recording for the person.
- (7) Subsections (2) and (3) apply in relation to the new record under subsection (6) for the financial year as if it were the first financial year in which odometer details were recorded.
- (8) If the odometer of a motor vehicle is replaced or recalibrated in any period for which its readings are relevant for this section, the odometer readings immediately before and after the replacement or recalibration must be recorded.

1.15 Meaning of *relevant 12-week period*—s 1.16

- (1) For section 1.14, *relevant 12-week period* means a continuous period of at least 12 weeks, selected by the employer, throughout which a motor vehicle is provided or maintained by a person.
- (2) If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.
- (3) The period may overlap the beginning or end of the financial year, so long as it includes part of the year.
- (4) If the averaging method is used for 2 or more motor vehicles for the same financial year, the odometer readings for those motor vehicles must cover periods that are concurrent.

1.16 Replacing one motor vehicle with another motor vehicle

- (1) For the purpose of using the averaging method, an employer may nominate 1 motor vehicle as having replaced another motor vehicle with effect from a day stated in the nomination.
- (2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle.
- (3) An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.
- (4) An employer must record the nomination in writing in the financial year when the nomination takes effect.
- (5) However, the commissioner may allow an employer to record the nomination at a later time.

1.17 Changing method of recording

- (1) An employer may change from using the averaging method to using the continuous recording method with effect from the beginning of a financial year if the employer complies with section 1.13 (Continuous recording method) for the financial year.
- (2) An employer may change from using the continuous recording method to using the averaging method with effect from the beginning of a financial year if the employer complies with section 1.14 (Averaging method) for the financial year.

Schedule 2	Other ACT provisions
Part 2.1	Calculation of monthly payroll tax
Division 2.1.1	Employer not member of group
Section 2.1	

Schedule 2 Other ACT provisions

(see s 8, ss 48 to 51 and s 53A)

Part 2.1 Calculation of monthly payroll tax

Division 2.1.1 Employer not member of group

2.1 Application—div 2.1.1

This division applies only to an employer who is not a member of a group.

2.2 Employer not member of group—amount of tax payable each month

- (1) The amount of payroll tax payable by an employer on taxable wages paid or payable by the employer in a month is the amount worked out as follows:

$$(TW - D) \times R$$

- (2) If *D* is equal to or more than *TW* for a month, the employer is not required to pay payroll tax for the month.
- (3) In this section:

D means the deductible amount mentioned in section 2.3 or section 2.4 for the employer.

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (otherwise than as a member of a group) in the month.

2.3 Employer not member of group—deductible amount for employer not paying interstate wages

- (1) For an employer who pays or is liable to pay taxable wages in a month but does not pay and is not liable to pay interstate wages in the month, the *deductible amount* for the month is the amount determined for section 86 (Registration).
- (2) Subsection (1) applies whether the employer pays or is liable to pay wages for all of the month or only part of the month.

2.4 Employer not member of group—deductible amount for employer who pays taxable and interstate wages

- (1) The *deductible amount* for an employer who pays or is liable to pay taxable wages and interstate wages in a month is—
 - (a) if notice has been given under subsection (2) and no determination under subsection (6) is in force—the amount stated in the most recent notice given under subsection (2); or
 - (b) if a determination is in force under subsection (6)—the amount stated in the determination.
- (2) From time to time, the employer may give a notice to the commissioner, containing the information required by the commissioner, of an amount, worked out in accordance with subsection (3), that the employer claims to be the employer's deductible amount for the month and later months.

- (3) The amount must be worked out as follows:

$$D = \frac{A \times T}{(T + D)}$$

- (4) In subsection (3):

A means the amount determined for section 86 (Registration).

D means the deductible amount for the month.

I means the estimated interstate wages in the financial year in which D occurs.

T means the estimated taxable wages in the financial year in which D occurs.

- (5) The deductible amount claimed must not be more than the amount mentioned in section 2.3 (1).
- (6) At any time, the commissioner may, by written notice to the employer, determine an amount, not more than the amount mentioned in section 2.3 (1), as the deductible amount for the employer for 1 or more months stated in the determination.
- (7) A determination under subsection (6) may be made on application by the employer or on the commissioner's own initiative.
- (8) At any time, the commissioner may, by written notice to the employer, revoke a determination made under subsection (6).

Division 2.1.2 Group with designated group employer

2.5 Application—div 2.1.2

This division applies only to an employer who is a member of a group for which there is a designated group employer.

2.6 Group with designated group employer—amount of tax payable each month if approval in force

- (1) If an approval is in force under section 87 (3) (Returns) for the designated group employer to lodge a joint return—
 - (a) the amount of payroll tax payable by the designated group employer on taxable wages paid or payable in a month by the employers covered by the return is the amount worked out as follows:

$$(JTW - D) \times R$$

- (b) the amount of payroll tax payable by each employer who is a member of the group but is not covered by the return on taxable wages paid or payable by the employer in a month is the amount worked out as follows:

$$TW \times R$$

- (2) If *D* is equal to or more than *JTW* for a month, the designated group employer is not required to pay payroll tax for the month.
- (3) In this section:

D means the deductible amount mentioned in section 2.8 (Group with designated group employer—deductible amount for groups not paying interstate wages) or section 2.9 (Group with designated group employer—deductible amount for groups paying taxable and interstate wages) for the group.

JTW means the total taxable wages paid or payable in the month by the employers covered by the return (as members of a group).

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) in the month.

2.7 Group with designated group employer—amount of tax payable each month if approval not in force

- (1) If an approval under section 87 (3) (Returns) is not in force for the designated group employer to lodge a group return—
- (a) the amount of payroll tax payable by the designated group employer on taxable wages paid or payable by the designated group employer in a month is the amount worked out as follows:

$$(GTW - D) \times R$$

- (b) the amount of payroll tax payable by each employer who is a member of the group on taxable wages paid or payable by the employer in a month is the amount worked out as follows:

$$TW \times R$$

- (2) If *D* is equal to or more than *GTW* for a month, the designated group employer is not required to pay payroll tax for the month.
- (3) In this section:

D means the deductible amount mentioned in section 2.8 (Group with designated group employer—deductible amount for groups not paying interstate wages) or section 2.9 (Group with designated group employer—deductible amount for groups paying taxable and interstate wages) for the group.

GTW means the total taxable wages paid or payable in the month by the designated group employer (as a member of a group).

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) in the month.

2.8 Group with designated group employer—deductible amount for groups not paying interstate wages

- (1) For a group in which 1 or more members pay or are liable to pay taxable wages in a month but no members pay or are liable to pay interstate wages in the month, the **deductible amount** for the month is the amount determined for section 86 (Registration).
- (2) Subsection (1) applies whether group members pay or are liable to pay wages for all of the month or only part of the month.

2.9 Group with designated group employer—deductible amount for groups paying taxable and interstate wages

- (1) The *deductible amount* for a group in which 1 or more members pay or are liable to pay taxable wages or interstate wages in a month is—
- (a) if notice has been given under subsection (2) and no determination under subsection (6) is in force—the amount stated in the most recent notice given under subsection (2); or
 - (b) if a determination is in force under subsection (6)—the amount stated in the determination.
- (2) From time to time, the designated group employer may give a notice to the commissioner, containing the information required by the commissioner, of an amount, worked out in accordance with subsection (3), that the employer claims to be the group’s deductible amount for the month and later months.
- (3) The amount must be worked out as follows:

$$D = \frac{A \times T}{(T + I)}$$

- (4) In subsection (3):
- A* means the amount determined for section 86 (Registration).
- D* means the deductible amount for the month.
- I* means the estimated interstate wages payable by the group in the financial year in which *D* occurs.
- T* means the estimated taxable wages payable by the group in the financial year in which *D* occurs.
- (5) The deductible amount claimed must not be more than the amount mentioned in section 2.8 (1).

- (6) At any time, the commissioner may, by written notice to the designated group employer, determine an amount, not more than the amount mentioned in section 2.8 (1), as the deductible amount for the group for 1 or more months stated in the determination.
- (7) A determination under subsection (6) may be made on application by the designated group employer or on the commissioner's own initiative.
- (8) At any time, the commissioner may, by written notice to the designated group employer, revoke a determination made under subsection (6).

Division 2.1.3 Group with no designated group employer

2.10 Application—div 2.1.3

This division applies only to an employer who is a member of a group for which there is no designated group employer.

2.11 Group with no designated group employer—amount of tax payable each month

- (1) The amount of payroll tax payable by each member of the group on taxable wages paid or payable by the member in a month is the amount worked out as follows:

$$TW \times R$$

- (2) In this section:

R means the rate determined under the *Taxation Administration Act 1999*, section 139 for this section.

TW means the total taxable wages paid or payable by the employer (as a member of the group) in the month.

Part 2.2 Charitable organisations

2.12 Meaning of *charitable organisation*—pt 2.2

In this part:

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.

2.13 Exemption from payroll tax—charitable organisations

Wages are exempt wages if they are paid or payable—

- (a) by a charitable organisation (other than a charitable organisation carried on for an educational purpose); or
- (b) 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.

Part 2.3 Employment agents

2.14 Employment agents and subcontractors

- (1) Wages are exempt wages if they are 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 provides 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.
- (2) For this section—
- (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 sale, exchange, lease, hire or hire-purchase, and in relation to services includes the providing, granting or conferring of services; and
 - (c) a reference to *services* is taken to include a reference to results (whether goods or services) of work performed.

Part 2.4 Education and training

2.15 Exemption from tax—new starters

- (1) This section applies to a person (the *new starter*) if the new starter is—
 - (a) employed for the first time in an industry or occupation; and
 - (b) receiving eligible training for work in the industry or occupation.
- (2) For this section, *eligible training* is training that—
 - (a) is recognised training; and
 - (b) takes place in 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 not more than 12 months.
- (3) Wages are exempt wages if they are paid or payable to the new starter for employment in the industry or occupation in 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 in 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 in 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 declare that approved training is not recognised training.
- (7) A declaration 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.

2.16 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) Wages are exempt wages if they are 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.

Part 2.5 **Hospitals**

2.17 **Hospitals**

Wages are exempt wages if they are paid or payable by a hospital that is a recognised hospital under the *Health Insurance Act 1973* (Cwlth).

Part 2.6 Primary carer leave

2.18 Primary carer leave

- (1) Wages are exempt wages if they are paid or payable to an employee in relation to 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 birth or adoption; and
 - (b) only in relation to leave taken before the relevant day for the birth or adoption; and
 - (c) only if, in relation to the leave, the employee has given the employer a 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) The exemption does not apply to any part of wages paid or payable
in relation to primary carer leave that consists of fringe benefits.
- (5) In this section:

primary carer leave, for an employee—

- (a) 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
- (b) does not include leave given to the employee as leave of
another kind.

Examples—primary carers

- 1 a parent of the child
- 2 the domestic partner of a parent of the child
- 3 a grandparent of the child

Examples—leave of another kind

- 1 sick leave
- 2 annual leave
- 3 long service leave

Note 1 For the meaning of ***domestic partner***, see the Legislation Act, s 169.

Note 2 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).

relevant day means—

- (a) for a birth—the day 6 months after the day of the birth; or
- (b) 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, for primary carer leave in relation to—

- (a) 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; or
- (b) 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; or
- (c) 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 *Taxation Administration Act 1999*, s 57 (Requirement to keep proper records), s 62 (Accessibility) and s 64 (Period record to be kept)).

Part 2.7 **Certain unemployed people**

2.19 **Certain unemployed people**

- (1) Wages are exempt wages if they are paid or payable to a prescribed person, if the wages are in relation to the period of 2 years beginning on the first day of the person's employment by the employer by whom those wages were paid or are payable.

- (2) In this section:

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.

- (3) For subsection (2), 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.

Part 2.8 **Certain bank accounts**

2.20 **Certain bank accounts**

- (1) Wages are exempt wages if they are paid or payable from a bank account kept under the *Financial Management Act 1996*, part 5, unless—
 - (a) the bank account is nominated by the Minister for this paragraph; or
 - (b) the wages are paid or payable by an entity prescribed for the *Taxation (Government Business Enterprises) Act 2003*, section 9; or
 - (c) 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.
- (2) A nomination under subsection (1) (a) is a disallowable instrument.

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

Part 2.9 **Territory authorities**

2.21 **Territory authorities**

Wages are exempt wages if they are paid or payable by a territory authority funded solely by money appropriated from the public money of the Territory by an Act unless—

- (a) the wages are paid or payable by a territory authority prescribed for the *Taxation (Government Business Enterprises) Act 2003*, section 9; or
- (b) 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.

Schedule 3 Reviewable decisions

(see pt 8A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	32 (3)	contract entered into with intention either directly or indirectly of avoiding or evading payment of tax	party to contract
2	35 (2)	determine part of amount not attributable to performance of work	party to contract
3	42	disregard contract etc	person taken to be employer
4	47	disregard agreement, transaction or arrangement etc	person taken to be employer
5	79 (1)	refuse to determine that person is not member of group	person who seeks determination
6	79 (5)	revoke determination that person is not member of group	person who has determination revoked
7	87A (3)	refuse to give variation notice	applicant for variation
8	87A (5)	revoke employer's variation notice	employer
9	87B (3)	refuse to give exemption certificate	applicant for certificate
10	87B (5)	cancel employer's exemption certificate	employer
11	sch 2, s 2.16 (3)	refuse to approve entity as group training organisation	applicant for approval

Schedule 4 Consequential amendments

(see s 103)

Part 4.1 Administrative Decisions (Judicial Review) Act 1989

[4.1] Schedule 1, item 14, column 2

substitute

Payroll Tax Act 2011

Part 4.2 Taxation Administration Act 1999

[4.2] Section 4, paragraph (i)

substitute

(i) the *Payroll Tax Act 2011*;

[4.3] Section 40 (7)

substitute

(7) This section does not apply to returns the lodging of which may be varied under the *Payroll Tax Act 2011*, section 87A.

Dictionary

(see s 3)

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:

- ACAT
- ACT
- Corporations Act
- domestic partner (see s 169 (1))
- domestic partnership (see s 169 (2))
- exercise (a function)
- financial year
- function
- GST
- individual
- in relation to
- liability
- person
- reviewable decision notice
- rural fire service
- SES
- State
- territory authority
- the Territory
- under.

ABN means the ABN (Australian Business Number) for an entity under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth).

agent includes—

- (a) a person who, in the ACT, on behalf of someone else outside the ACT, holds or has the management or control of the business of the other person, and
- (b) a person who, by an order of the commissioner, is declared to be an agent or the sole agent for anyone else for this Act and on whom notice of that order has been served.

associated person, for part 5 (Grouping of employers)—see section 67.

Australian jurisdiction means the ACT, another Territory or a State.

business, for part 5 (Grouping of employers)—see section 67.

company includes all bodies and associations (corporate and unincorporate) and partnerships.

contract, for division 3.7 (Contractor provisions)—see section 31.

corporation—see the Corporations Act, section 9.

correct amount of payroll tax, for part 6 (Adjustments of tax)—see section 82.

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.

designated group employer means a member designated for a group under section 80.

director of a company includes a member of the governing body of the company.

employer means a person who pays or is liable to pay wages, and includes—

- (a) the Territory or a territory authority; and
- (b) a person taken to be an employer under this Act; and
- (c) a public, local or municipal body or authority constituted under the law of the Commonwealth, a State or Territory unless, being an authority constituted under the law of the Commonwealth, it is immune from the operation of this Act.

employment agency contract—see section 37.

employment agent—see section 37.

employment termination payment, for division 3.5 (Termination payments)—see section 27.

entity, for part 5 (Grouping of employers)—see section 67.

exempt wages mean wages that are declared under this Act to be exempt wages.

FBTA Act means the *Fringe Benefits Tax Assessment Act 1986* (Cwlth).

fringe benefit—see section 14 (3).

granted, for a share or option, for division 3.4 (Shares and options)—see section 19 (2).

group, for part 5 (Grouping of employers)—see section 67.

group employer, for part 6 (Adjustments of tax)—see section 81A.

individual employer, for part 6 (Adjustments of tax)—see section 81A.

instrument includes a cheque, bill of exchange, promissory note, money order or a postal order issued by a post office.

interstate wages means wages that are taxable wages under a corresponding law.

ITAA means the *Income Tax Assessment Act 1997* (Cwlth).

month means the month of January, February, March, April, May, June, July, August, September, October, November and December.

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.

paid, in relation to wages, includes provided, conferred and assigned.

payroll tax means tax imposed by section 6.

perform, in relation to services, includes render.

private company for part 5 (Grouping of employers)—see section 67.

registered business address, for an entity that has an ABN, means the address shown in the Australian Business Register as the entity's address for service under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth).

related body corporate, for part 5 (Grouping of employers)—see section 67.

related person, for part 5 (Grouping of employers)—see section 67.

relevant contract—

(a) for division 3.5 (Termination payments)—see section 27; and

(b) for division 3.7 (Contractor provisions)—see section 32.

relevant day, for division 3.4 (Shares and options)—see section 18 (3).

resupply, of goods, for division 3.7 (Contractor provisions)—see section 31.

return period, in relation to an employer, means a period for which the employer must lodge a return under this Act.

reviewable decision, for part 8A (Notification and review of decisions)—see section 87C.

service provider—see section 37.

services, for division 3.7 (Contractor provisions)—see section 31.

share means a share in a company, and includes a stapled security.

superannuation contribution—see section 17 (2).

supply, for division 3.7 (Contractor provisions)—see section 31.

taxable wages—see section 10.

termination payment, for division 3.5 (Termination payments)—see section 27.

unused annual leave payment, for division 3.5 (Termination payments)—see section 27.

unused long service leave payment, for division 3.5 (Termination payments)—see section 27.

vesting date, for division 3.4 (Shares and options)—

(a) in relation to a share—see section 19 (4); and

(b) in relation to an option—see section 19 (5).

voting share—see the Corporations Act, section 9.

wages—see part 3.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 5 May 2011.

2 Notification

Notified under the Legislation Act on 30 June 2011.

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 Payroll Tax Bill 2011, which was passed by the Legislative Assembly on 21 June 2011.

Clerk of the Legislative Assembly

© Australian Capital Territory 2011