

2007

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Treasurer)

## Payroll Tax Amendment Bill 2007

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## Payroll Tax Amendment Bill 2007

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### A Bill for

An Act to amend the *Payroll Tax Act 1987*, and for other purposes

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

1 **1 Name of Act**

2 This Act is the *Payroll Tax Amendment Act 2007*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written  
5 notice.

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

8 *Note 2* A single day or time may be fixed, or different days or times may be  
9 fixed, for the commencement of different provisions (see Legislation  
10 Act, s 77 (1)).

11 *Note 3* If a provision has not commenced within 6 months beginning on the  
12 notification day, it automatically commences on the first day after that  
13 period (see Legislation Act, s 79).

14 **3 Legislation amended**

15 This Act amends the *Payroll Tax Act 1987*.

16 *Note* This Act also amends the *Taxation Administration Act 1999* (see sch 1).

17 **4 Dictionary**  
18 **Section 1A, note 1**

19 *substitute*

20 *Note 1* The dictionary at the end of this Act defines certain terms used in this  
21 Act, and includes references (*signpost definitions*) to other terms  
22 defined elsewhere in this Act.

23 For example, the signpost definition '*wages*—see section 2.' means that  
24 the term '*wages*' is defined in that section.

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1 **5 New part 1A and division 1A.1 headings**

2 *after section 1B, insert*

3 **Part 1A Important concepts**

4 **Division 1A.1 Wages**

5 **6 New sections 2BA and 2BB**

6 *after section 2B, insert*

7 **2BA Place where wages payable**

8 (1) The wages made up of the grant of a share or option are taken to be  
9 paid or payable in the ACT if—

10 (a) for a share—the share is a share in a local company; or

11 (b) for an option—the option is an option to acquire shares in a  
12 local company.

13 (2) In any other case, the wages made up of the grant of the share or  
14 option are taken to be paid or payable outside the ACT.

15 *Note* If wages made up of the grant of a share or option to acquire a share are  
16 taken to be payable outside the ACT because the share is a share in a  
17 company that is not a local company, the grant of the share or option  
18 may still be liable to payroll tax under this Act if the grant is made in  
19 relation to services performed wholly in the ACT (see s 2D (1)).

20 (3) In this section:

21 *local company* means—

22 (a) a company incorporated or taken to be incorporated under the  
23 Corporations Act that is taken to be registered in the ACT for  
24 that Act; or

25 (b) any other body corporate that is incorporated under a Territory  
26 law.

1    **2BB       Inclusion of wages paid by group employers**

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

6    **7           Wages to which this Act applies**  
7    **Section 2D (1) (a)**

8           *substitute*

9           (a) wages that are paid or payable in the ACT in a month or part of  
10          a month, other than wages paid or payable in relation to  
11          services performed—

12               (i) wholly in another Territory or a State; or

13               (ii) by a person wholly in another country for a continuous  
14               period of more than 6 months beginning on the day when  
15               wages are first paid or payable to the person for the  
16               services;

17    **8           Section 2D (1) (b), (2) (a), (b) (i) and (c)**

18           *omit*

19           or rendered

20    **9           Section 3**

21           *substitute*

22    **Division 1A.2       Benefits**

23    **3           Meaning of *benefit***

24           A reference in this Act to a *benefit*—

25               (a) is a reference to a fringe benefit within the meaning of the  
26               *Fringe Benefits Tax Assessment Act 1986 (Cwlth)*; but

(b) does not include a reference to a superannuation benefit.

**3A Value of benefit**

(1) For this Act, the *value* of a benefit provided by an employer during a financial year is calculated as follows:

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

(2) In this Act, a reference to wages paid or payable as a benefit in a month is—

(a) a reference to the value of the benefit paid in the month; or

(b) if an election by the employer is in force under section 3B—a reference to an amount calculated in accordance with section 3B.

(3) In this Act, a reference to wages paid or payable as a benefit in a year is a reference to an amount calculated by adding the amounts under subsection (2) for the months of the year.

(4) In this section:

*FBT rate* means the rate of fringe benefits tax imposed by the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) 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 *Fringe Benefits Tax Assessment Act 1986* (Cwlth).



- 1 (4) If an employer makes an election under subsection (1), the employer  
2 must lodge returns containing amounts calculated in accordance  
3 with the election unless the commissioner approves, by written  
4 notice given to the employer, the termination of the election and  
5 allows the employer to include the value mentioned in  
6 section 3A (2) (a) (Value of benefit).
- 7 (5) If an employer ceases to be liable to pay payroll tax, the value of  
8 taxable wages consisting of fringe benefits to be included in the  
9 employer's final return is (whether or not the employer has made an  
10 election under subsection (1)) the value of the benefits paid or  
11 payable by the employer for the period starting on the previous  
12 1 July until the date on which the employer ceases to be liable to  
13 payroll tax, less the value of the benefits paid or payable by the  
14 employer during the period for which payroll tax has been paid.
- 15 (6) In this section:
- 16 *AFBA* means the aggregate fringe benefits amount within the  
17 meaning of the *Fringe Benefits Tax Assessment Act 1986* (Cwlth),  
18 section 136.
- 19 *FBT rate* means the rate of fringe benefits tax imposed by the  
20 *Fringe Benefits Tax Assessment Act 1986* (Cwlth) that applies when  
21 the liability to payroll tax under this Act arises.

## 22 **Division 1A.3 Allowances as wages**

### 23 **3C Wages to which this Act applies—exempt component of** 24 **motor vehicle allowances not included**

- 25 (1) For this Act, *wages*, for a financial year, does not include the  
26 exempt component of a motor vehicle allowance paid or payable for  
27 the year.
- 28 (2) If the total motor vehicle allowance paid or payable to an employee  
29 for a financial year does not exceed the exempt component, the  
30 motor vehicle allowance is not *wages* for this Act.

- 1 (3) If the total motor vehicle allowance paid or payable to an employee  
2 for a financial year exceeds the exempt component (if any), only the  
3 amount that exceeds the exempt component of the motor vehicle  
4 allowance is included as *wages* for this Act.
- 5 (4) The *exempt component* of a motor vehicle allowance paid or  
6 payable for a financial year is calculated as follows:
- 7 
$$E = K \times R$$
- 8 (5) In this section:
- 9 *E* means the exempt component.
- 10 *K* means the number of business kilometres travelled during the  
11 financial year.
- 12 *R* is the exempt rate.
- 13 (6) *K* is calculated using the continuous recording method, or the  
14 averaging method, selected and used by the employer in accordance  
15 with schedule 2 (Motor vehicle allowances).
- 16 (7) The commissioner may, in writing, approve the use by an employer  
17 of another method of determining *K* (including the use of an  
18 estimate).
- 19 *Note* Power to make a statutory instrument includes power to make different  
20 provision for different categories (see Legislation Act, s 48).
- 21 (8) If the commissioner approves the use of a method under  
22 subsection (7) for an employer for a financial year, the employer  
23 must use the method to calculate *K*.
- 24 (9) The Minister may determine the exempt rate for a financial year.

1 (10) If the Minister does not determine the exempt rate for a financial  
2 year, the exempt rate for the financial year is the rate prescribed by  
3 regulation under the *Income Tax Assessment Act 1997* (Cwlth),  
4 section 28-25 for calculating a deduction for car expenses for a large  
5 car using the ‘cents per kilometre method’ in the financial year  
6 immediately before the financial year in which the allowance is paid  
7 or payable.

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

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

10 **3D Wages to which this Act applies—accommodation**  
11 **allowances not included**

12 (1) For this Act, *wages*, for a financial year, does not include an  
13 accommodation allowance paid or payable to an employee for a  
14 night’s absence from the person’s usual place of residence that does  
15 not exceed the exempt rate.

16 (2) If the accommodation allowance paid or payable to an employee for  
17 a night’s absence from the person’s usual place of residence exceeds  
18 the exempt rate, *wages* includes the allowance only to the extent that  
19 it exceeds the exempt rate.

20 (3) The Minister may determine the exempt rate for a financial year.

21 (4) If the Minister does not determine the exempt rate for a financial  
22 year, the exempt rate for the financial year is the total reasonable  
23 amount for daily travel allowance expenses using the lowest capital  
24 city for the lowest salary band for the financial year determined by  
25 the Commissioner of Taxation of the Commonwealth.

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

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

1     **Division 1A.4            Grouping of employers**

2     **Subdivision 1A.4.1    Interpretation**

3     **3E            Definitions—div 1A.4**

4            In this division:

5            *associated person* means a person who is associated with another  
6            person in accordance with any of the following:

- 7            (a) people are associated people if they are related people;
- 8            (b) individuals are associated people if they are partners in a  
9            partnership to which the *Partnership Act 1963* applies;
- 10           (c) private companies are associated people if common  
11           shareholders have a majority interest in each private company;
- 12           (d) trustees are associated people if any person is a beneficiary  
13           common to the trusts (not including a public unit trust scheme)  
14           of which they are trustees;
- 15           (e) a private company and a trustee are associated people if a  
16           related body corporate of the company is a beneficiary of the  
17           trust (not including a public unit trust scheme) of which the  
18           trustee is a trustee.

19           *business* includes any of the following, whether carried on by  
20           1 person or 2 or more people together:

- 21           (a) a profession or trade;
- 22           (b) any other activity carried on for fee or reward;
- 23           (c) the activity of employing people to perform duties in  
24           connection with another business;
- 25           (d) the carrying on of a trust (including a dormant trust);
- 26           (e) the activity of holding any money or property used in  
27           connection with another business.

1           **entity** means—

2           (a) a person; or

3           (b) 2 or more people who are associated people.

4           **group** means a group under this division but does not include any  
5 member of the group for whom a determination under section 3Q  
6 (Exclusion from groups) is in force.

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

10          **related person** means a person who is related to another person in  
11 accordance with any of the following provisions:

12          (a) individuals are related people if—

13               (i) they are domestic partners, or they have been domestic  
14 partners and the partnership has ended (whether the  
15 partnership ended in Australia or elsewhere); or

16                       *Note*     The Legislation Act, s 169 defines **domestic partner** and  
17 **domestic partnership**.

18               (ii) the relationship between them is that of parent and child,  
19 brothers, sisters or brother and sister;

20          (b) private companies are related people if they are related bodies  
21 corporate under the Corporations Act;

22          (c) an individual and a private company are related people if the  
23 individual is a majority shareholder or director of the company  
24 or of another private company that is a related body corporate  
25 of the company under the Corporations Act;

26          (d) an individual and a trustee are related people if the individual  
27 is a beneficiary of the trust (other than a public unit trust  
28 scheme) of which the trustee is a trustee;

- 1 (e) a private company and a trustee are related people if the  
2 company, or a majority shareholder or director of the company,  
3 is a beneficiary of the trust (other than a public unit trust  
4 scheme) of which the trustee is a trustee.

5 **3F Grouping provisions to operate independently**

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

9 **Subdivision 1A.4.2 Business groups**

10 **3G Make up of groups**

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

13 **3H Groups of corporations**

14 (1) Corporations make up a group if they are related bodies corporate  
15 under the Corporations Act.

16 (2) In assessing whether corporations are related bodies corporate under  
17 the Corporations Act, a corporation that is a trustee company is  
18 taken to carry on a business.

19 *Note* Section 3Q allows the commissioner to exclude people from a group,  
20 but not if the person is a body corporate that, under the Corporations  
21 Act, s 50 is related to another body corporate that is a member of the  
22 group.

23 **3I Groups arising from the use of common employees**

24 (1) If 1 or more employees of an employer perform duties in connection  
25 with 1 or more businesses carried on by the employer and 1 or more  
26 other people, the employer and each of the other people make up a  
27 group.

- 1 (2) If 1 or more employees of an employer are employed solely or  
2 mainly to perform duties in connection with 1 or more businesses  
3 carried on by 1 or more other people, the employer and each of the  
4 other people make up a group.
- 5 (3) If 1 or more employees of an employer perform duties in connection  
6 with 1 or more businesses carried on by 1 or more other people, and  
7 the duties are performed in connection with, or in fulfilment of the  
8 employer's obligation under, an agreement, arrangement or  
9 undertaking for the provision of services to any 1 or more of the  
10 other people in connection with the business or businesses, the  
11 employer and each of the other people make up a group.
- 12 (4) Subsection (3) applies to an agreement, arrangement or  
13 undertaking—
- 14 (a) whether the agreement, arrangement or undertaking is formal  
15 or informal, express or implied; and
- 16 (b) whether or not the agreement, arrangement or undertaking  
17 provides for duties to be performed by the employees or states  
18 the duties to be performed by them.
- 19 *Note* Section 3Q allows the commissioner to exclude people from a group in  
20 certain circumstances.

### 21 **3J Groups of commonly controlled businesses**

- 22 (1) If a person or set of people has a controlling interest in each of  
23 2 businesses, the people who carry on the businesses make up a  
24 group.
- 25 *Note* Section 3Q allows the commissioner to exclude people from a group in  
26 certain circumstances.
- 27 (2) For this section, a person or set of people has a controlling interest  
28 in a business if 1 or more of the following applies:
- 29 (a) for 1 person—the person is the sole owner (whether or not as  
30 trustee) of the business;

- 1 (b) for a set of people—the people are together as trustees the sole  
2 owners of the business;
- 3 (c) for a business carried on by a corporation—
- 4 (i) the person or each of the set of people is a director of the  
5 corporation and the person or set of people is entitled to  
6 exercise more than 50% of the voting power at meetings  
7 of the directors of the corporation; or
- 8 (ii) a director or set of directors of the corporation that is  
9 entitled to exercise more than 50% of the voting power at  
10 meetings of the directors of the corporation is under an  
11 obligation, whether formal or informal, to act in  
12 accordance with the direction, instructions or wishes of  
13 the person or set of people;
- 14 (d) for a business carried on by a body corporate or unincorporated  
15 body—the person or set of people make up more than 50% of  
16 the board of management (however named) of the body or  
17 control the composition of the board;
- 18 (e) for a business carried on by a corporation that has a share  
19 capital—the person or set of people can, directly or indirectly,  
20 exercise, control the exercise of, or substantially influence the  
21 exercise of, more than 50% of the voting power attached to the  
22 voting shares, or any class of voting shares, issued by the  
23 corporation;
- 24 (f) for a business carried on by a partnership—the person or set of  
25 people—
- 26 (i) own (whether beneficially or not) more than 50% of the  
27 capital of the partnership; or
- 28 (ii) is entitled (whether beneficially or not) to more than 50%  
29 of the profits of the partnership;

- 1 (g) for a business carried on under a trust (the *1st trust*)—the  
2 person or set of people (whether or not as a trustee of, or  
3 beneficiary under, another trust) is the beneficiary of more than  
4 50% of the value of the interests in the first trust.
- 5 (3) If—
- 6 (a) 2 corporations are related bodies corporate under the  
7 Corporations Act; and
- 8 (b) 1 of the corporations has a controlling interest in a business;  
9 the other corporation has a controlling interest in the business.
- 10 (4) If—
- 11 (a) a person or set of people has a controlling interest in a  
12 business; and
- 13 (b) a person or set of people who carry on the business has a  
14 controlling interest in another business (the *2nd business*);
- 15 the person or set of people mentioned in paragraph (a) has a  
16 controlling interest in the 2nd business.
- 17 (5) If—
- 18 (a) a person or set of people is the beneficiary of a trust of more  
19 than 50% of the value of the interests in the trust; and
- 20 (b) the trustee of the trust (whether alone or together with another  
21 trustee or trustees) has a controlling interest in the business of  
22 another trust;
- 23 the person or set of people has a controlling interest in the business  
24 of the other trust.
- 25 (6) A person who may benefit from a discretionary trust because the  
26 trustee or another person, or the trustee and another person,  
27 exercises or fails to exercise a power or discretion, is taken, for this  
28 division, to be a beneficiary of more than 50% of the value of the  
29 interest in the trust.

- 1           (7) If—
- 2               (a) a person or set of people has a controlling interest in the
- 3               business of a trust; and
- 4               (b) the trustee of the trust (whether alone or together with another
- 5               trustee or trustees) has a controlling interest in the business of a
- 6               corporation;
- 7           the person or set of people is taken to have a controlling interest in
- 8           the business of the corporation.
- 9           (8) If—
- 10               (a) a person or set of people has a controlling interest in the
- 11               business of a trust; and
- 12               (b) the trustee of the trust (whether alone or together with another
- 13               trustee or trustees) has a controlling interest in the business of a
- 14               partnership;
- 15           the person or set of people is taken to have a controlling interest in
- 16           the business of the partnership.

17   **3K           Groups arising from tracing interests in corporations**

- 18           (1) An entity and a corporation form part of a group if the entity has a
- 19           controlling interest in the corporation.
- 20           *Note*       Section 3Q allows the commissioner to exclude people from a group,
- 21                   but not if the person is a body corporate that, under the Corporations
- 22                   Act, s 50 is related to another body corporate that is a member of the
- 23                   group.
- 24           (2) For this section, an entity has a ***controlling interest*** in a corporation
- 25           if the corporation has share capital and—
- 26               (a) the entity has a direct interest in the corporation and the value
- 27               of the direct interest exceeds 50%; or
- 28               (b) the entity has an indirect interest in the corporation and the
- 29               value of the indirect interest exceeds 50%; or

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

3 (3) Subdivision 1A.4.3 applies to this section.

4 **3L Smaller groups included in larger groups**

5 If a person is a member of 2 or more groups, the members of all the  
6 groups together make up a group.

7 *Note* See also s 3G (Make up of groups).

8 **Subdivision 1A.4.3 Business groups—tracing interests**

9 **3M Application—sdiv 1A.4.3**

10 This subdivision applies to section 3K.

11 **3N Direct interest**

12 (1) An entity has a *direct interest* in a corporation if—

13 (a) for an entity that is a person—the person can directly or  
14 indirectly, exercise, control the exercise of, or substantially  
15 influence the exercise of, the voting power attached to any  
16 voting share issued by the corporation; or

17 (b) for an entity that is 2 or more people who are associated  
18 people—each of the associated people can, directly or  
19 indirectly, exercise, control the exercise of, or substantially  
20 influence the exercise of, the voting power attached to any  
21 voting share issued by the corporation.

22 (2) The value of the direct interest of the entity in the corporation is the  
23 proportion (expressed as a percentage) of the voting power of all  
24 voting shares issued by the corporation that—

25 (a) for an entity that is a person—the person can directly or  
26 indirectly exercise, control the exercise of, or substantially  
27 influence the exercise of, as mentioned in subsection (1); or

- 1 (b) for an entity that is 2 or more people who are associated  
2 people—the associated people can, if acting together, directly  
3 or indirectly exercise, control the exercise of, or substantially  
4 influence the exercise of, as mentioned in subsection (1).

5 **30 Indirect interest**

- 6 (1) An entity has an *indirect interest* in a corporation if the corporation  
7 is linked to another corporation (the *directly controlled corporation*)  
8 in which the entity has a direct interest.
- 9 (2) A corporation is *linked* to a directly controlled corporation if the  
10 corporation is part of a chain of corporations—  
11 (a) that starts with the directly controlled corporation; and  
12 (b) in which a link in the chain is formed if a corporation has a  
13 direct interest in the next corporation in the chain.

14 **Example**

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

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

23 Corporation B also has a direct interest in corporation D. There are now 2 chains  
24 of corporations, one consisting of A, B and C, and one consisting of A, B and D.  
25 Corporations B, C and D are all linked to corporation A and an entity that has a  
26 direct interest in corporation A would have an indirect interest in corporations B,  
27 C and D. An entity that has a direct interest in corporation B would have an  
28 indirect interest in corporations C and D. However, an entity that has a direct  
29 interest in corporation C only would not have an indirect interest in corporation D,  
30 as corporation D is not linked to corporation C.

31 *Note* An example is part of the Act, is not exhaustive and may extend, but  
32 does not limit, the meaning of the provision in which it appears (see  
33 Legislation Act, s 126 and s 132).

1 (3) The value of the indirect interest of an entity in a corporation (an  
 2 *indirectly controlled corporation*) that is linked to a directly  
 3 controlled corporation is calculated by multiplying together the  
 4 following:

- 5 (a) the value of the direct interest of the entity in the directly  
 6 controlled corporation;
- 7 (b) the value of each direct interest that forms a link in the chain of  
 8 corporations by which the indirectly controlled corporation is  
 9 linked to the directly controlled corporation.

10 **Example**

11 An entity has a direct interest (with a value of 80%) in corporation A.  
 12 Corporation A has a direct interest (with a value of 70%) in corporation B.  
 13 The value of the indirect interest of the entity in corporation B is  $80\% \times$   
 14  $70\%$  (that is, 56%). Accordingly, in this example, the entity has a  
 15 controlling interest under section 3K in corporation B.

16 Corporation B also has a direct interest (with a value of 40%) in corporation  
 17 C. The value of the indirect interest of the entity in corporation C is  $80\% \times$   
 18  $70\% \times 40\%$  (that is, 22.4%). Accordingly, in this example, the entity does  
 19 not have a controlling interest in corporation C.

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

22 **Examples**

- 23 1 An entity may have more than 1 indirect interest in a corporation if the  
 24 corporation is linked to more than 1 corporation in which the entity has a  
 25 direct interest.
- 26 2 An entity may have more than 1 indirect interest in a corporation if the  
 27 corporation is linked to only 1 corporation in which the entity has a direct  
 28 interest, but is linked through more than 1 chain of corporations. In this case,  
 29 the entity has an aggregate interest in the corporation (see s 3P).

30 **3P Aggregation of interests**

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

- 1 (b) has more than 1 indirect interest in the corporation.
- 2 (2) The value of the aggregate interest of an entity in a corporation is  
3 calculated by adding together the following:
- 4 (a) the value of the direct interest (if any) of the entity in the  
5 corporation;
- 6 (b) the value of each indirect interest of the entity in the  
7 corporation.

8 **Example**

9 An entity has a direct interest (with a value of 40%) in corporation B.  
10 The entity also has a direct interest (with a value of 25%) in corporation A, which  
11 in turn has a direct interest (with a value of 60%) in corporation B. Accordingly,  
12 the entity also has an indirect interest in corporation B with a value of 15% (that  
13 is,  $25\% \times 60\%$ ).

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

16 Accordingly, in this example, the entity has a controlling interest in corporation B  
17 under s 3K.

18 *Note* An example is part of the Act, is not exhaustive and may extend, but  
19 does not limit, the meaning of the provision in which it appears (see  
20 Legislation Act, s 126 and s 132).

21 **Subdivision 1A.4.4 Groups—miscellaneous**

22 **3Q Exclusion from groups**

- 23 (1) The commissioner may determine that a person who would, but for  
24 the determination, be a member of a group is not a member of the  
25 group.

- 1 (2) The commissioner may make a determination under subsection (1)  
2 only if satisfied, having regard to the nature and degree of  
3 ownership and control of the businesses, the nature of the businesses  
4 and any other matters the commissioner considers relevant, that a  
5 business carried on by the person is carried on independently of, and  
6 is not connected with the carrying on of, a business carried on by  
7 any other member of the group.
- 8 (3) The commissioner must not exclude a person from a group if the  
9 person is a corporation that, because of the Corporations Act,  
10 section 50 (Related bodies corporate) is related to another  
11 corporation that is a member of the group.
- 12 (4) This section extends to a group made up because of section 3L  
13 (Smaller groups included in larger groups).
- 14 (5) The commissioner may revoke a determination that applies to a  
15 person if satisfied that the circumstances in which the determination  
16 was made do not apply to the person.
- 17 (6) A determination under this section may provide for its  
18 commencement on or before the determination's notification day.
- 19 *Note* This subsection provides express authority for a determination to  
20 commence on or before its notification day (see Legislation Act,  
21 s 73 (2) (d)).
- 22 (7) A determination under this section is a notifiable instrument.
- 23 *Note 1* A notifiable instrument must be notified under the Legislation Act.
- 24 *Note 2* Power to make a statutory instrument includes power to amend or repeal  
25 the instrument (see Legislation Act, s 46).

### 26 **3R Designated group employers**

- 27 (1) The members of a group may, with the commissioner's approval,  
28 designate a qualified member of the group to be the *designated*  
29 *group employer* for the group for this Act.

- 1           (2) A member of a group is a *qualified member* if the member—
- 2               (a) has during the previous financial year paid wages exceeding
- 3               the amount determined for the year for section 7 (Registration
- 4               of employers); or
- 5               (b) is likely during the current financial year to pay wages
- 6               exceeding the amount determined for section 7.
- 7           (3) The members of a group may, with the commissioner’s approval,
- 8           designate any member of the group to be the designated group
- 9           employer for the group for the Act if none of the members of a
- 10           group is a qualified member but the members together—
- 11               (a) have during the previous financial year paid wages exceeding
- 12               the amount determined for the year for section 7; or
- 13               (b) are, in the commissioner’s opinion, likely during the current
- 14               financial year to pay wages exceeding the amount determined
- 15               for section 7.
- 16           (4) If the members of a group do not designate a member as the
- 17           designated group employer within 7 days after the last day of the
- 18           month in which the group is established, the commissioner may (but
- 19           is not obliged to) designate a member of the group as the designated
- 20           group employer.
- 21           (5) The designated group employer of a group stops being the
- 22           designated group employer on the earlier of—
- 23               (a) the first day of a return period when there is a change in the
- 24               membership of the group; or
- 25               (b) the first day of a return period when the members of the group
- 26               revoke the designation.
- 27           (6) The designation of a designated group employer under
- 28           subsection (1) or (3) must be—
- 29               (a) by written notice; and

- 1 (b) executed by or on behalf of each member of the group; and  
2 (c) served on the commissioner.

3 **10 Agreement etc to reduce or avoid liability to payroll tax**  
4 **Section 5 (1)**

- 5 *omit*  
6 or renders

7 **11 Section 5 (1)**

- 8 *omit*  
9 or rendering

10 **12 New division 2.1 heading**

- 11 *before section 6, insert*

12 **Division 2.1 Liability to taxation—general**  
13 **concepts**

14 **13 Payroll tax liability**  
15 **New section 6 (3)**

- 16 *insert*  
17 (3) The amount of payroll tax payable by an employer is calculated  
18 under division 2.3 (Liability to taxation—calculation of monthly  
19 payroll tax) and division 2.4 (Liability to taxation—calculation of  
20 payroll tax for financial year).

1 **14 Registration of employers**  
2 **Section 7 (1)**

3 *substitute*

- 4 (1) This section applies to an employer if—
- 5 (a) the total of all taxable wages paid or payable anywhere by the  
6 employer in a month exceeds the amount determined for this  
7 section under the *Taxation Administration Act 1999*,  
8 section 139; or
- 9 (b) the employer is a member of a group and the total of all taxable  
10 wages paid or payable anywhere by the members of the group  
11 together in a month exceeds the amount determined for this  
12 section under the *Taxation Administration Act 1999*,  
13 section 139.

14 **15 New section 8**

15 *insert*

16 **8 Joint and several liability of group members**

- 17 (1) If a member of a group fails to pay an amount that the member is  
18 required to pay under this Act in relation to any period, every  
19 member of the group is liable jointly and severally to pay the  
20 amount to the commissioner.
- 21 (2) If 2 or more people are jointly or severally liable to pay an amount  
22 under this section, the commissioner may recover the whole of the  
23 amount from them, any of them or any 1 of them.
- 24 (3) If, under this section, 2 or more people are jointly and severally  
25 liable to pay an amount that is payable by any 1 of them, each  
26 person is also jointly and severally liable to pay—
- 27 (a) any amount payable to the commissioner under this Act or  
28 another law in relation to the amount, including interest and  
29 penalty tax; and

- 1 (b) any costs and expenses incurred in relation to the recovery of  
2 the amount that the commissioner is entitled to recover from  
3 the person.
- 4 (4) Nothing in this Act prevents a person who is jointly and severally  
5 liable to pay an amount of tax and who pays the amount to the  
6 commissioner from recovering a contribution from any other person  
7 who is liable to pay the whole or part of the amount.
- 8 (5) This section applies whether or not the member was an employer  
9 during the relevant period.

10 **16 New division 2.2 heading**

11 *before section 9, insert*

12 **Division 2.2 Liability to taxation—exemption from**  
13 **tax**

14 **17 Exemption from tax**  
15 **Section 9 (3) (b)**

16 *omit*

17 *renders*

18 *substitute*

19 *provides*

1 **18 New division 2.3**

2 *before section 10, insert*

3 **Division 2.3 Liability to taxation—calculation of**  
4 **monthly payroll tax**

5 **Subdivision 2.3.1 Employer not member of group**

6 **9C Application—sdiv 2.3.1**

7 This subdivision applies only to an employer who is not a member  
8 of a group.

9 **9D Employer not member of group—amount of tax payable**  
10 **each month**

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

$$14 \quad (TW - D) \times R$$

- 15 (2) If *D* is equal to or more than *TW* for a month, the employer is not  
16 required to pay payroll tax for the month.

- 17 (3) In this section:

18 *D* means the deductible amount mentioned in section 9E or  
19 section 9F for the employer;

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

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

1 **9E Employer not member of group—deductible amount for**  
2 **employer not paying interstate wages**

- 3 (1) For an employer who pays or is liable to pay taxable wages in a  
4 month but does not pay and is not liable to pay interstate wages in  
5 the month, the *deductible amount* for the month is the amount  
6 determined for section 7 (Registration of employers).
- 7 (2) Subsection (1) applies whether the employer pays or is liable to pay  
8 wages for the whole of the month or only part of the month.

9 **9F Employer not member of group—deductible amount for**  
10 **employer who pays taxable and interstate wages**

- 11 (1) The *deductible amount* for an employer who pays or is liable to pay  
12 taxable wages and interstate wages in a month is—
- 13 (a) if notice has been given under subsection (2) and no  
14 determination under subsection (6) is in force—the amount  
15 stated in the most recent notice given under subsection (2); or
- 16 (b) if a determination is in force under subsection (6)—the amount  
17 stated in the determination.
- 18 (2) From time to time, the employer may give a notice to the  
19 commissioner, containing the information required by the  
20 commissioner, of an amount, calculated in accordance with  
21 subsection (3), that the employer claims to be the employer's  
22 deductible amount for the month and subsequent months.
- 23 (3) The amount is to be calculated as follows:

24 
$$D = \frac{A \times T}{(T + I)}$$

- 25 (4) In subsection (3):

26 *A* means the amount determined for section 7 (Registration of  
27 employers).

- 1            ***D*** means the deductible amount for the month.
- 2            ***I*** means the estimated interstate wages in the financial year in  
3            which ***D*** occurs.
- 4            ***T*** means the estimated taxable wages in the financial year in  
5            which ***D*** occurs.
- 6            (5) The deductible amount claimed must not be more than the amount  
7            mentioned in section 9E (1).
- 8            (6) At any time, the commissioner may, by notice in writing to the  
9            employer, determine an amount, not more than the amount  
10           mentioned in section 9E (1), as the deductible amount for the  
11           employer for 1 or more months stated in the determination.
- 12           (7) A determination under subsection (6) may be made on application  
13           by the employer or on the commissioner's own initiative.
- 14           (8) At any time, the commissioner may, by notice in writing to the  
15           employer, revoke a determination made under subsection (6).

16           **Subdivision 2.3.2      Group with designated group employer**

17           **9G            Application—sdiv 2.3.2**

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

1 **9H Group with designated group employer—amount of tax**  
 2 **payable each month if approval in force**

3 (1) If an approval is in force under section 16 (4) (Payroll tax returns)  
 4 for the designated group employer to lodge a joint return—

5 (a) the amount of payroll tax payable by the designated group  
 6 employer on taxable wages paid or payable in a month by the  
 7 employers covered by the return is the amount calculated as  
 8 follows:

$$9 \quad (JTW - D) \times R$$

10 (b) the amount of payroll tax payable by each employer who is a  
 11 member of the group but is not covered by the return on  
 12 taxable wages paid or payable by the employer in a month is  
 13 the amount calculated as follows:

$$14 \quad TW \times R$$

15 (2) If *D* is equal to or more than *JTW* for a month, the designated group  
 16 employer is not required to pay payroll tax for the month.

17 (3) In this section:

18 *D* means the deductible amount mentioned in section 9J (Group  
 19 with designated group employer—deductible amount for groups not  
 20 paying interstate wages) or section 9K (Group with designated  
 21 group employer—deductible amount for groups paying taxable and  
 22 interstate wages) for the group.

23 *JTW* means the total taxable wages paid or payable during the  
 24 month by the employers covered by the return (as members of a  
 25 group).

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

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

- 1 **9I Group with designated group employer—amount of tax**  
2 **payable each month if approval not in force**
- 3 (1) If an approval under section 16 (4) (Payroll tax returns) is not in  
4 force for the designated group employer to lodge a group return—
- 5 (a) the amount of payroll tax payable by the designated group  
6 employer on taxable wages paid or payable by the designated  
7 group employer in a month is the amount calculated as follows:
- 8 
$$(GTW - D) \times R$$
- 9 (b) the amount of payroll tax payable by each employer who is a  
10 member of the group on taxable wages paid or payable by the  
11 employer in a month is the amount calculated as follows:
- 12 
$$TW \times R$$
- 13 (2) If *D* is equal to or more than *GTW* for a month, the designated  
14 group employer is not required to pay payroll tax for the month.
- 15 (3) In this section:
- 16 *D* means the deductible amount mentioned in section 9J (Group  
17 with designated group employer—deductible amount for groups not  
18 paying interstate wages) or section 9K (Group with designated  
19 group employer—deductible amount for groups paying taxable and  
20 interstate wages) for the group.
- 21 *GTW* means the total taxable wages paid or payable during the  
22 month by the designated group employer (as a member of a group).
- 23 *R* means the rate determined under the *Taxation Administration*  
24 *Act 1999*, section 139 for this section.
- 25 *TW* means the total taxable wages paid or payable by the employer  
26 (as a member of the group) during the month.

1 **9J Group with designated group employer—deductible**  
 2 **amount for groups not paying interstate wages**

- 3 (1) For a group in which 1 or more members pay or are liable to pay  
 4 taxable wages in a month but no members pay or are liable to pay  
 5 interstate wages in the month, the *deductible amount* for the month  
 6 is the amount determined for section 7 (Registration of employers).  
 7 (2) Subsection (1) applies whether group members pay or are liable to  
 8 pay wages for the whole of the month or only part of the month.

9 **9K Group with designated group employer—deductible**  
 10 **amount for groups paying taxable and interstate wages**

- 11 (1) The *deductible amount* for a group in which 1 or more members  
 12 pay or are liable to pay taxable wages or interstate wages in a month  
 13 is—  
 14 (a) if notice has been given under subsection (2) and no  
 15 determination under subsection (6) is in force—the amount  
 16 stated in the most recent notice given under subsection (2); or  
 17 (b) if a determination is in force under subsection (6)—the amount  
 18 stated in the determination.  
 19 (2) From time to time, the designated group employer may give a notice  
 20 to the commissioner, containing the information required by the  
 21 commissioner, of an amount, calculated in accordance with  
 22 subsection (3), that the employer claims to be the group's deductible  
 23 amount for the month and subsequent months.  
 24 (3) The amount is to be calculated as follows:

25 
$$D = \frac{A \times T}{(T + I)}$$

- 26 (4) In subsection (3):

27 *A* means the amount determined for section 7 (Registration of  
 28 employers).



1 (2) In this section:

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

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

## 6 **19 Sections 10 to 14**

7 *substitute*

### 8 **Division 2.4 Liability to taxation—calculation of** 9 **payroll tax for financial year**

10 *Note to div 2.4*

11 This division may apply to a period other than a financial year or a month (see  
12 s 17 (4) (b)).

### 13 **10 Amount of tax payable—employer not member of group**

14 (1) This section applies only to an employer who is not a member of a  
15 group.

16 (2) The employer is not liable to pay payroll tax for a financial year if  
17 the total taxable wages and interstate wages paid or payable by the  
18 employer (otherwise than as a member of a group) during the year is  
19 not more than the ***employer's threshold amount*** calculated as  
20 follows:

$$21 \quad TA \quad x \quad \frac{C}{DFY}$$

- 1 (3) If the total taxable wages and interstate wages paid or payable by an  
 2 employer (otherwise than as a member of a group) during a financial  
 3 year is more than the employer's threshold amount, the employer is  
 4 liable to pay as payroll tax for the year the amount calculated as  
 5 follows:

6 
$$\left[ TW - \left[ \frac{TW}{TW + IW} \times TA \times \frac{C}{DFY} \right] \right] \times R$$

- 7 (4) In this section:

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

11 **DFY** means the number of days in the financial year.

12 **IW** means the total interstate wages paid or payable by the employer  
 13 (otherwise than as a member of a group) during the financial year.

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

16 **TA** means the amount determined under the *Taxation*  
 17 *Administration Act 1999*, section 139 for this section.

18 **TW** means the total taxable wages paid or payable by the employer  
 19 (otherwise than as a member of a group) during the financial year.

20 **11 Amount of tax payable—group with a designated group**  
 21 **employer**

- 22 (1) This section applies only to an employer who is a member of a  
 23 group for which there is a designated group employer.

- 1 (2) None of the members of a group is liable to pay payroll tax for a  
 2 financial year if the total taxable wages and interstate wages paid or  
 3 payable by the group during the year is not more than the **group**  
 4 **threshold amount**, calculated as follows:

$$5 \quad TA \times \frac{C}{DFY}$$

- 6 (3) If the total taxable wages and interstate wages paid or payable by a  
 7 group during the financial year is more than the group threshold  
 8 amount, payroll tax is payable in accordance with subsection (4) and  
 9 subsection (5).
- 10 (4) The designated group employer for the group is liable to pay as  
 11 payroll tax for the financial year the amount calculated as follows:

$$12 \quad \left[ TW - \left[ \frac{GTW}{GTW + GIW} \times TA \times \frac{C}{DFY} \right] \right] \times R$$

- 13 (5) Each member of the group (other than the designated group  
 14 employer) is liable to pay as payroll tax for the financial year the  
 15 amount calculated as follows:

$$16 \quad TW \times R$$

- 17 (6) In this section:

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

21 **DFY** means the number of days in the financial year.

22 **GIW** means the total interstate wages paid or payable by the group  
 23 during the financial year.

24 **GTW** means the total taxable wages paid or payable by the group  
 25 during the financial year.



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1     **14           Determination of correct amount of payroll tax**

- 2           (1) For this division, the *correct amount of payroll tax* payable by an  
3           employer for a financial year is the amount determined in  
4           accordance with section 10 (Amount of tax payable—employer not  
5           member of group), section 11 (Amount of tax payable—group with  
6           a designated group employer) or section 12 (Amount of tax  
7           payable—group with no designated group employer) for the year.
- 8           (2) This division applies to payroll tax paid or payable by an employer  
9           whether as an individual employer or a group employer.
- 10          (3) If an employer is liable for payroll tax both as an individual  
11          employer and a group employer (for different periods in the same  
12          financial year) separate adjustments must be made under this  
13          division for any period as an individual employer and any period as  
14          a group employer (and separate determinations of the correct  
15          amount of payroll tax payable by the employer must be made).

16     **15           Annual adjustment of payroll tax**

- 17          (1) If the amount of payroll tax paid or payable by an employer when  
18          the employer lodges the returns for a financial year exceeds the  
19          correct amount of payroll tax payable by the employer for the  
20          financial year, the commissioner (on application by the employer)  
21          must refund to the employer an amount equal to the difference.
- 22          (2) If the amount of payroll tax paid or payable by an employer when  
23          the employer lodges the returns for a financial year is less than the  
24          correct amount of payroll tax payable by the employer for the  
25          financial year, the employer must pay the commissioner as payroll  
26          tax an amount equal to the difference.
- 27          (3) Any amount payable by an employer under this section for a  
28          financial year must be paid within the period during which the  
29          employer is required to lodge a return under this Act for the return  
30          period that is or includes the month of June in the financial year.

- 1           (4) The amount of any refund payable to an employer for a financial  
2           year under this section must be reduced by the amount of any other  
3           refund of payroll tax made for the financial year to the employer  
4           (whether under this section or otherwise) before the time of the  
5           refund under this section.

6       **15A       Adjustment of payroll tax if employer changes**  
7       **circumstances**

- 8           (1) This section applies if an employer's circumstances change during a  
9           financial year.
- 10          (2) The employer must, if the amount of payroll tax paid or payable by  
11          the employer when the employer lodges returns for the relevant  
12          period before the change of circumstances is less than the correct  
13          amount of payroll tax payable by the employer for the financial  
14          year, pay the commissioner as payroll tax an amount equal to the  
15          difference.
- 16          (3) A *change of circumstances* occurs if the employer—
- 17               (a) ceases to pay or be liable to pay taxable wages and interstate  
18               wages; or
- 19               (b) becomes a group employer following a period as an individual  
20               employer; or
- 21               (c) ceases to be a group employer and becomes an individual  
22               employer.
- 23          (4) The *relevant period* before a change of circumstances is the period  
24          before the change (during the financial year and after any earlier  
25          change of circumstances) for which the employer paid or was liable  
26          to pay taxable wages or interstate wages.
- 27          (5) In calculating the correct amount of payroll tax payable by the  
28          employer, the wages paid or payable by the employer during the  
29          relevant period are taken to be the only wages paid or payable by the  
30          employer during the financial year.

- 1 (6) Any amount payable by an employer under this section for a  
2 relevant period must be paid within the period during which the  
3 employer is required to lodge a return under this Act for the relevant  
4 period or the last return under this Act for the relevant period.
- 5 (7) Any payroll tax paid or payable by an employer under this section  
6 must be included as payroll tax paid or payable by the employer for  
7 the annual adjustment of payroll tax under this division.

8 **Example**

9 If an employer ceases to be a group employer during a financial year an  
10 adjustment will be made under this section. If later in that financial year the  
11 employer ceases to pay wages there will be a further adjustment under this  
12 section. The first adjustment will adjust payroll tax paid for the period as a group  
13 employer against the correct amount of tax that should have been paid (based on  
14 the assumption that the period as a group employer is the only period for which  
15 the employer paid wages throughout the year). The second adjustment will adjust  
16 payroll tax paid for the period as an individual employer against the correct  
17 amount of tax that should have been paid (based on the assumption that the period  
18 as an individual employer is the only period for which the employer paid wages  
19 throughout the year). Any amount of payroll tax paid under this section is taken  
20 into account for the purposes of the annual adjustment of payroll tax.

21 *Note* An example is part of the Act, is not exhaustive and may extend, but  
22 does not limit, the meaning of the provision in which it appears (see  
23 Legislation Act, s 126 and s 132).

1 **15B Special provision if wages fluctuate**

2 If a person who did not pay and was not liable to pay taxable wages  
3 or interstate wages for any part of a financial year satisfies the  
4 commissioner that, because of the nature of the person's trade or  
5 business, the taxable wages and interstate wages, if any, paid or  
6 payable by the person fluctuate with different periods of the  
7 financial year, the commissioner may determine that the person is to  
8 be treated for this division—

9 (a) if the person has conducted the trade or business in Australia  
10 during the whole of the financial year—as an employer who  
11 pays or is liable to pay taxable wages throughout the financial  
12 year; or

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

17 **Example**

18 The effect of a determination under this section is that when the correct amount of  
19 payroll tax is calculated (for a tax adjustment provided for by this division) the  
20 employer may receive the benefit of the payroll tax threshold for the period for  
21 which the employer is to be treated as paying wages, and not just for the period  
22 for which the employer actually pays wages. Without the determination, an  
23 employer may only receive the benefit of a proportion of the threshold amount  
24 that is equivalent to the proportion of the whole financial year for which the  
25 employer actually pays wages.

26 *Note* An example is part of the Act, is not exhaustive and may extend, but  
27 does not limit, the meaning of the provision in which it appears (see  
28 Legislation Act, s 126 and s 132).

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1 **20 Payroll tax returns**  
2 **Section 16 (2) (c)**

3 *substitute*

- 4 (c) pay any tax that is payable in relation to the return because of  
5 division 2.3 (Liability to taxation—calculation of monthly  
6 payroll tax).

7 **21 New section 16 (4) and (5)**

8 *insert*

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

16 **22 Returns—variation of time for lodging**  
17 **Section 17 (4) (b)**

18 *substitute*

- 19 (b) pay any tax that is payable in relation to each return calculated  
20 in accordance with division 2.4 (Liability to taxation—  
21 calculation of payroll tax for financial year)—
- 22 (i) as if a reference in division 2.4 to a *financial year* (other  
23 than the reference in the definition of *DFY*) or *year* were  
24 a reference to the period as varied by the commissioner;  
25 and
- 26 (ii) with any necessary changes and any changes prescribed  
27 by regulation.

1 **23** **Review of decisions**  
2 **New section 19 (aa) and (ab)**

3 *before section 19 (a), insert*

- 4 (aa) under section 3Q (1), refusing to determine that a person is not  
5 a member of a group; or  
6 (ab) under section 3Q (6), revoking a determination that a person is  
7 not a member of a group; or

8 **24** **New section 100**

9 *insert*

10 **100** **Transitional**

- 11 (1) This section applies to a liability to pay tax under the  
12 pre-amendment Acts.  
13 (2) The pre-amendment Acts continue to apply to—  
14 (a) the liability; and  
15 (b) anything done to satisfy the liability.  
16 (3) In this section:  
17 *pre-amendment Acts* means each of the following Acts as in force  
18 at any time before the commencement of the *Payroll Tax*  
19 *Amendment Act 2007*:  
20 (a) the *Payroll Tax Act 1987*;  
21 (b) the *Taxation Administration Act 1999*.  
22 (4) Subsection (1) and subsection (2) are laws to which the Legislation  
23 Act, section 88 (Repeal does not end effect of transitional laws etc)  
24 applies.  
25 (5) This section expires 5 years after the day it commences.

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**25 New schedule 2***insert***Schedule 2 Motor vehicle allowances**

(s 3C (5))

**2.1 Meaning of *business journey*—sch 2**

In this schedule:

*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 *Fringe Benefits Tax Assessment Act 1986* (Cwlth)) 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)).

**2.2 Continuous recording method**

If an employer selects the continuous recording method for calculating the number of business kilometres travelled during 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 (*relevant business journey*) undertaken by the person during 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;

- 1 (c) the distance travelled by the person during the financial year in  
2 the course of all relevant business journeys (which is taken to  
3 be the *number of business kilometres travelled during the*  
4 *financial year*), calculated on the basis of the odometer  
5 readings mentioned in paragraph (a).

### 6 **2.3 Averaging method**

- 7 (1) If an employer selects the averaging method for calculating the  
8 number of business kilometres travelled during a financial year, the  
9 following details are required to be recorded by the employer:
- 10 (a) the odometer readings at the beginning and end of each  
11 business journey (*relevant business journey*) undertaken by  
12 the person during the relevant 12-week period by means of a  
13 motor vehicle provided or maintained by the person;
- 14 *Note* Section 2.4 defines the relevant 12-week period.
- 15 (b) the specific purpose for which each relevant business journey  
16 was taken;
- 17 (c) the distance travelled by the person during the relevant  
18 12-week period in the course of all relevant business journeys,  
19 calculated on the basis of the odometer readings mentioned in  
20 paragraph (a);
- 21 (d) the odometer readings at the beginning and end of the relevant  
22 12-week period for each motor vehicle (*relevant motor*  
23 *vehicle*) provided or maintained by the person for the purpose  
24 of undertaking business journeys;
- 25 (e) the distance travelled by each relevant vehicle during the  
26 relevant 12-week period, calculated on the basis of the  
27 odometer readings mentioned in paragraph (d);

- 1 (f) the distance travelled by the person in the course of business  
2 journeys undertaken by means of each relevant vehicle during  
3 the relevant 12-week period, calculated as a percentage of the  
4 distance travelled by the vehicle during the period (the *relevant*  
5 *percentage*);
- 6 (g) the odometer readings at the beginning and end of the financial  
7 year for each motor vehicle (*relevant vehicle*) provided or  
8 maintained by the person for the purpose of undertaking  
9 business journeys;
- 10 (h) the distance travelled by each relevant vehicle during the  
11 financial year, calculated on the basis of the odometer readings  
12 mentioned in paragraph (g);
- 13 (i) the distance travelled by the person in the course of business  
14 journeys undertaken by means of each relevant vehicle during  
15 the financial year (which is taken to be the *number of business*  
16 *kilometres travelled during the financial year*), calculated on  
17 the basis that the percentage of the distance that was travelled  
18 by the person in the course of business journeys undertaken by  
19 means of each relevant vehicle during the financial year is the  
20 same as the relevant percentage.
- 21 (2) For the next 4 financial years after the first financial year in which  
22 odometer details are recorded in accordance with subsection (1), an  
23 employer is not required to calculate the relevant percentage, or  
24 record the details mentioned in subsection (1) (a) to (f), for the  
25 person but is required to record the other details mentioned in  
26 subsection (1).
- 27 (3) Accordingly, for the next 4 financial years after the first financial  
28 year in which odometer details are recorded in accordance with  
29 subsection (1), the number of business kilometres travelled during  
30 the financial year is to be calculated (as mentioned in subsection (1)  
31 (i)) on the basis of the relevant percentage calculated for the first  
32 financial year.

- 1           (4) Despite subsection (2) and subsection (3), an employer is required to  
2           calculate the relevant percentage for a financial year, and record the  
3           details mentioned in subsection (1) (a) to (f), if—
- 4           (a) the commissioner serves a written notice on the employer  
5           before the commencement of a financial year during the 4-year  
6           period directing the employer to keep the details referred to in  
7           subsection (1) (a) to (f) for the financial year; or
- 8           (b) the employer wishes to use the recording method mentioned in  
9           this section for 1 or more additional motor vehicles used by the  
10          person in any financial year or for any other reason.
- 11          (5) In a situation mentioned in subsection (4), the new record for the  
12          financial year replaces the relevant percentage details previously  
13          recorded and subsections (2) and (3) apply in relation to the new  
14          record for the financial year as if it were the first financial year in  
15          which odometer details were recorded.
- 16          (6) An employer who has adopted and employed the method of  
17          recording mentioned in subsection (2) and subsection (3) for a  
18          person for 4 successive financial years must, in the next succeeding  
19          financial year, make a fresh recording of all the details stated in  
20          subsection (1) if the employer intends to continue to use the same  
21          method of recording for the person.
- 22          (7) Subsection (2) and subsection (3) apply in relation to the new record  
23          under subsection (6) for the financial year as if it were the first  
24          financial year in which odometer details were recorded.
- 25          (8) If the odometer of a motor vehicle is replaced or recalibrated during  
26          any period for which its readings are relevant for the purposes of  
27          this clause, the odometer readings immediately before and after the  
28          replacement or recalibration are to be recorded.

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1    **2.4           Meaning of relevant 12-week period—s 2.3**

- 2           (1) For section 2.3, *relevant 12-week period* means a continuous period  
3           of at least 12 weeks, selected by the employer, throughout which a  
4           motor vehicle is provided or maintained by a person.
- 5           (2) If the motor vehicle is provided or maintained for less than  
6           12 weeks, the period must be the entire period for which the motor  
7           vehicle is provided or maintained.
- 8           (3) The period may overlap the start or end of the financial year, as long  
9           as it includes part of the year.
- 10          (4) If the averaging method is used for 2 or more motor vehicles for the  
11          same financial year, the odometer readings for those motor vehicles  
12          must cover periods that are concurrent.

13    **2.5           Replacing one motor vehicle with another motor vehicle**

- 14          (1) In using the averaging method, an employer may nominate one  
15          motor vehicle as having replaced another motor vehicle with effect  
16          from a day stated in the nomination.
- 17          (2) After the nomination takes effect, the replacement motor vehicle is  
18          treated as the original motor vehicle, and the original motor vehicle  
19          is treated as a different motor vehicle.
- 20          (3) An employer need not repeat for the replacement vehicle the steps  
21          already taken for the original motor vehicle.
- 22          (4) An employer must record the nomination in writing in the financial  
23          year when the nomination takes effect.
- 24          (5) However, the commissioner may allow an employer to record the  
25          nomination at a later time.

1     **2.6       Changing method of recording**

- 2           (1) An employer may change from using the averaging method to using  
3           the continuous recording method with effect from the beginning of a  
4           financial year if the employer complies with section 2.2 for the  
5           financial year.
- 6           (2) An employer may change from using the continuous recording  
7           method to using the averaging method with effect from the  
8           beginning of a financial year if the employer complies with  
9           section 2.3 for the financial year.

10    **26       Dictionary, note 2, new dot points**

11           *insert*

- 12                   • Corporations Act  
13                   • domestic partner (see s 169 (1))  
14                   • domestic partnership (see s 169 (2))

15    **27       Dictionary, new definitions**

16           *insert*

17           *associated person*, for division 1A.4 (Grouping of employers)—see  
18           section 3E.

19           *business*, for division 1A.4 (Grouping of employers)—see  
20           section 3E.

21           *business journey*, for schedule 2 (Motor vehicle allowances)—see  
22           section 2.1.

23           *designated group employer* means a member designated for a group  
24           under section 3R.

25    **28       Dictionary, definition of *determined rate***

26           *omit*

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**29 Dictionary, new definitions**

*insert*

*entity*, for division 1A.4 (Grouping of employers)—see section 3E.

*group*, for division 1A.4 (Grouping of employers)—see section 3E.

*group employer*, for division 2.5 (Adjustments of tax)—see section 13.

**30 Dictionary, definitions of *group period*, *group year* and *independent employer***

*omit*

**31 Dictionary, new definition of *individual employer***

*insert*

*individual employer*, for division 2.5 (Adjustments of tax)—see section 13.

**32 Dictionary, definition of *interim tax***

*omit*

**33 Dictionary, new definitions**

*insert*

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

*perform*, in relation to services, includes render.

*private company*, for division 1A.4 (Grouping of employers)—see section 3E.

*related person*, for division 1A.4 (Grouping of employers)—see section 3E.

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

3                    **34     Dictionary, definition of *value***

4                    *substitute*

5                    *value*, of a benefit—see section 3A.

1 **Schedule 1 Taxation Administration Act**  
2 **1999**

3 (see s 3)

4 **[1.1] Section 2, note 1**

5 *substitute*

6 *Note 1* The dictionary at the end of this Act defines certain terms used in this  
7 Act, and includes references (*signpost definitions*) to other terms  
8 defined elsewhere.

9 For example, the signpost definition '*corporation*—see the  
10 Corporations Act, section 57A.' means that the term '*corporation*' is  
11 defined in that section and the definition applies to this Act.

12 **[1.2] Section 6 (3) (b)**

13 *omit*

14 **[1.3] Division 11.1**

15 *omit*

16 **[1.4] Schedule 1, section 1.2 (k)**

17 *omit*

18 **[1.5] Dictionary, definitions of *group* and *primary group***

19 *omit*

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2007.

**2 Notification**

Notified under the Legislation Act on 2007.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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