

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Payroll Tax Amendment Bill 2009

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Payroll Tax Amendment Bill 2009

A Bill for

An Act to amend the *Payroll Tax Act 1987*

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

1 Name of Act

This Act is the *Payroll Tax Amendment Act 2009*.

2 Commencement

This Act is taken to have commenced on 1 July 2009.

3 Legislation amended

This Act amends the *Payroll Tax Act 1987*.

**4 Meaning of *wages*
Section 2 (1)**

substitute

(1) For this Act, *wages* means—

- (a) an amount paid or payable to a person in relation to the person's capacity as an employee or former employee; or
- (b) if the person is not an employee or a former employee—an amount mentioned in subsection (2) paid or payable for services performed by the person.

**5 Place where wages payable
Section 2BA (2), note**

substitute

Note The place where wages are paid or payable is sometimes relevant to deciding if the wages are liable to payroll tax under this Act (see s 2E).

6 Section 2D*substitute***2D Wages to which this Act applies**

This Act applies to wages that—

- (a) are taxable in the ACT because of section 2E; and
- (b) are not exempt wages under section 2F.

2E 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 for or in relation to services performed by an employee entirely in the ACT; or
- (b) the wages are paid or payable by an employer for or 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 based outside an Australian jurisdiction—the employer is based in the ACT; or
 - (iii) if the employee and the employer are based outside an Australian jurisdiction—the wages are paid in the ACT; or
 - (iv) if the employee and the employer are based outside an Australian jurisdiction, and the wages are paid or payable outside an Australian jurisdiction—the ACT is the Australian jurisdiction in which the higher or highest proportion of the services is performed; or

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

4 *Note* Section 2F (1) (a) provides an exemption for wages paid or payable for
5 services provided entirely in another country for a continuous period of
6 more than 6 months.

- 7 (2) An assessment of whether wages are taxable in the ACT must—

8 (a) take into account only the services performed by an employee
9 for an employer in the month in which the wages are paid or
10 payable; and

11 (b) treat any wages paid or payable by an employer for or in
12 relation to an employee in a particular month as paid or
13 payable for or in relation to the services performed by the
14 employee for the employer in the month.

15 **Example**

16 If wages paid in a month are paid to an employee for services performed over
17 several months, an assessment of whether the wages for the month are taxable in
18 the ACT must take into account only services performed by the employee in the
19 month in which the wages are paid. Services performed in one of the previous
20 months are disregarded, except in an assessment of whether wages paid in one of
21 the previous months is taxable in the ACT.

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

- 25 (3) However, if no services are performed by an employee in a month in
26 which wages are paid or payable—

27 (a) an assessment of whether the wages are taxable in the ACT is
28 to be decided by taking into account only the services
29 performed by the employee for the employer in the month in
30 which the employee last performed services for the employer
31 (the *last service month*); and

- 1 (b) the wages are taken to be paid or payable for or in relation to
- 2 the services performed by the employee for the employer in the
- 3 last service month.
- 4 (4) However, if no services are performed by an employee for an
- 5 employer in a month in which the wages are paid or payable or in
- 6 any past month—
- 7 (a) the wages are taken to be paid or payable for or in relation to
- 8 services performed by the employee in the month in which the
- 9 wages are paid or payable; and
- 10 (b) the services are taken to have been performed at a place or
- 11 places where it is reasonable to expect that the services will be
- 12 performed by the employee for the employer.
- 13 (5) An assessment of whether wages paid by an employer to an
- 14 employee in a month are taxable in the ACT must be based on the
- 15 total of all wages paid or payable by the employer for the employee
- 16 in the month, and treated as if the wages were paid or payable for all
- 17 services performed by the employee in the month in which the
- 18 wages are paid or payable, or the month in which the employee last
- 19 performed services for the employer, according to the
- 20 circumstances.
- 21 **Example**
- 22 If in January an employer pays an amount of wages for an employee's services in
- 23 the ACT, and the same employer pays another amount of wages for the same
- 24 employee's services in another jurisdiction in the same month, the wages paid by
- 25 the employer to the employee must be totalled and treated as if the total sum was
- 26 paid for all services performed by the employee in January. Subsection (1) (b)
- 27 would be applied to work out whether the wages are taxable in the ACT.
- 28 (6) In an assessment of whether wages are taxable in the ACT, if wages
- 29 are paid in a different month from the month in which they are
- 30 payable, the wages are taken to have been paid in whichever of the
- 31 2 months happens first.

2F Exempt wages

(1) For this Act, the following are *exempt wages*:

(a) wages that are paid or payable for or in relation to services performed by a person entirely in another country for a continuous period of more than 6 months beginning on the day when wages are first paid or payable to the person for the services;

(b) wages declared by the Minister to be exempt wages for section 2D.

(2) A declaration is a disallowable instrument.

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

2G 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 is to be decided by taking into account the state of affairs for 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 is to be decided under section 2H as if a reference in that section to an employer were a reference to an employee.

- 1 (6) In this section:
- 2 *corporate employee* means a company—
- 3 (a) that—
- 4 (i) performs work for or in relation to which services are
- 5 supplied to another person under a contract, agreement or
- 6 undertaking; or
- 7 (ii) performs work for a client of an employment agent as
- 8 part of the services provided by the agent to the client for
- 9 which the agent receives payment; or
- 10 (b) to which a payment is made that is taken to be wages payable
- 11 to an employee under section 5 (1) (c).

12 **2H Jurisdiction in which employer is based**

- 13 (1) For this Act, the jurisdiction in which an employer is based is—
- 14 (a) if the employer has an ABN—the jurisdiction in which the
- 15 employer's registered business address is located; or
- 16 (b) in any other case—the jurisdiction in which the employer's
- 17 principal place of business is located.
- 18 (2) If an employer has a registered business address in more than
- 19 1 jurisdiction, the jurisdiction in which the employer is based is the
- 20 jurisdiction in which the employer's principal place of business is
- 21 located.
- 22 (3) If wages are paid or payable in connection with a business carried
- 23 on by an employer under a trust, the employer's registered business
- 24 address is—
- 25 (a) if the trust has an ABN—the registered business address of the
- 26 trust; or
- 27 (b) if the trust does not have an ABN—the business address of the
- 28 trustee of the trust.

- 1 (4) The jurisdiction in which an employer is based is to be decided by
2 taking into account the state of affairs for the month in which the
3 relevant wages are paid or payable.
- 4 (5) If more than 1 jurisdiction would qualify as the jurisdiction in which
5 an employer is based in a month, the jurisdiction in which the
6 employer is based must be decided by taking into account the state
7 of affairs on the last day of the month.
- 8 (6) For this Act, an employer is taken to be an employer who is not
9 based in an Australian jurisdiction if the employer has neither a
10 registered business address nor a principal place of business.

11 **2I Place and date of payment of wages**

- 12 (1) For this Act, wages are taken to have been paid at a place if, for
13 payment of the wages—
- 14 (a) an instrument is sent or given or an amount is transferred by an
15 employer to a person or a person's agent at the place; or
- 16 (b) an instruction is given by an employer for the crediting of an
17 amount to the account of a person or the person's agent
18 (a *payment instruction*) at the place.
- 19 (2) The wages are taken to have been paid on the date that the
20 instrument was sent or given, the amount was transferred or the
21 account credited in accordance with the payment instruction.
- 22 (3) Wages are taken to be payable at the place at which they are paid.
- 23 (4) However, wages that are not paid by the end of the month in which
24 they are payable are taken to be payable at—
- 25 (a) the place where wages were last paid to the employee; or
- 26 (b) if wages have not been previously paid by the employer to the
27 employee—the place where the employee last performed
28 services for the employer before the wages became payable.

1 (5) If wages paid by an employer for or in relation to services
2 performed by a particular employee in a month are paid or payable
3 at more than 1 place in Australia, the wages paid or payable for the
4 month are taken to have been paid at the place where the higher or
5 highest proportion of the wages is paid or payable.

6 *Note* Under s (5), only 1 jurisdiction may be considered to be the jurisdiction
7 in which the wages are paid or payable.

8 **7 Agreement etc to reduce or avoid liability to payroll tax** 9 **Section 5 (1) (c)**

10 *after*
11 wages
12 *insert*
13 paid or payable to an employee

14 **8 Registration of employers** 15 **Section 7 (2)**

16 *omit*
17 may
18 *substitute*
19 must

20 **9 Division 2.2 heading, new note**

21 *insert*
22 *Note* Wages mentioned in s 2F are also exempt wages.

10 New section 101

insert

101 Transitional—Payroll Tax Amendment Act 2009

(1) The amendments made to this Act by the *Payroll Tax Amendment Act 2009* (the *amendments*) apply in relation to taxable wages that are paid or payable on or after 1 July 2009.

(2) If an employer to whom section 7 (Registration of employers) did not apply in an expired month becomes, as a result of the amendments, an employer to whom section 7 does apply for an expired month, section 7 (6) (c) applies to the employer as if a reference to 7 days after the end of the month were a reference to 7 days after the day the *Payroll Tax Amendment Act 2009* is notified.

Note This subsection extends the usual period an employer, to whom s 7 applies, is required to be registered under pt 2 to avoid committing an offence to take account of the retrospective commencement of the amendments.

(3) If an employer to whom section 16 (Payroll tax returns) did not apply in an expired month becomes, as a result of the amendments, an employer to whom section 16 does apply for an expired month, section 16 (3) (b) applies to any payroll tax return the employer is required to lodge for an expired month as if a reference to 7 days after the end of the month were a reference to 7 days after the day the *Payroll Tax Amendment Act 2009* is notified.

Note This subsection extends the usual period for lodging a payroll tax return to take account of the retrospective commencement of the amendments.

(4) If an employer to whom section 16 applied in an expired month becomes, as a result of the amendments, an employer to whom section 16 does not apply and the employer paid tax in accordance with section 16 (2) (c) for an expired month, the commissioner must refund the amount of tax that the employer is not liable to pay if the employer applies for a refund of that amount.

(5) In this section:

expired month means a month that—

(a) happens after June 2009; and

(b) ends before the day the *Payroll Tax Amendment Act 2009* is notified.

11 Dictionary, note 2

insert

- ACT
- State

12 Dictionary, new definitions

insert

ABN—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

Australian Business Register—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

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

exempt wages—see section 2F.

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

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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