

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

SEAT OF GOVERNMENT (ADMINISTRATION) ACT 1910

PAYROLL TAX (AMENDMENT) ORDINANCE 1988

No. 32 OF 1988

The Payroll Tax (Amendment) Ordinance 1988 makes various amendments to the Payroll Tax Ordinance 1987 (the "Principal Ordinance") in association with a decision to align the ACT payroll tax exemption threshold and rates with those in New South Wales.

This Ordinance changes the formulae used in calculating payroll tax liability. The formulae which previously were applied to a flat rate of tax have been replaced by formulae which enable the imposition of tax liability at different marginal rates. This will result in simpler calculations. The marginal rate calculation is the same method as used to calculate income tax.

This Ordinance introduces a new system for calculating payroll tax payable by associated companies which belong to a group. The previous procedure whereby the group nominated a single member to receive the full benefit of the tax free payroll amount (currently \$200,000) has been replaced by a method under which the tax free threshold is apportioned between group members according to a weighting formula.

This Ordinance also exempts salaries of apprentices employed under group apprenticeship schemes from payroll tax. These schemes offer greater job security than apprenticeships offered by single employers. This exemption is intended to foster greater youth employment and training by encouraging the formation of new schemes and the expansion of existing schemes.

Details of the Ordinance are attached.

AUTHORISED BY THE MINISTER OF STATE FOR THE ARTS AND TERRITORIES

PAYROLL TAX (AMENDMENT) ORDINANCE 1988

Section 1: This section gives the short title of the Ordinance.

Section 2: This section provides for the Ordinance to come into operation on 1 July 1988.

Section 3: This section formally provides that the Principal Ordinance (which this Ordinance amends) is the Payroll Tax Ordinance 1987.

Section 4: This section adds section 2A to the Principal Ordinance. It provides for the Principal Ordinance to be read as one with the Taxation (Administration) Ordinance 1987.

Section 5: This clause provides for the omission of some, and the addition of other definitions in section 3 of the Principal Ordinance.

The definitions of "commissioner" and "group" have been omitted because these terms are defined in the Taxation (Administration) Ordinance 1987. The omission of the remaining definitions results from the repeal of the provisions in which these terms are used.

The expression "determined rate" is now defined. The other substituted definitions are required in relation to the new provisions relating to the calculation of payroll tax liability using the marginal rate approach and because of the revised approach to the allocation of taxation liability to members of a group.

Paragraph 5(e) amends subsection 3(2) of the Principal Ordinance by providing that the value of specified allowances is to be determined under section 99 of the Taxation (Administration) Ordinance 1987.

Section 6: This section repeals sections 6, 7 and 8 of the Principal Ordinance and substitutes a new section 6.

New section 6 has been drafted to make it compatible with the revised text of the Principal Ordinance. Its substantive effect, to subject employers to payroll tax liability, remains unchanged from the effect achieved under former sections 6 and 7 except that there is now no need for the determination of a rate under this section.

Section 7: This section amends section 9 of the Principal Ordinance to exempt salaries paid to apprentices under an approved group apprenticeship scheme from payroll tax.

Section 8: This section repeals sections 10-15 inclusive of the Principal Ordinance. New sections 10-14 are substituted. These new sections provide the appropriate formulae for a variety of factual situations in regard to the imposition of the payroll tax.

New subsection 10(1) sets out how the amount of tax payable by an employer who was an employer in Australia for the whole financial year but was not a member of a group during that year, is calculated. Tax is first calculated on the employer's Australia wide wages amount by applying the rate determined under section 99 of the Taxation (Administration) Ordinance 1987, it is then multiplied by the fraction which ACT wages bears to Australia wide wages. The outcome is the tax payable.

New subsection 10(2) provides for the situation where the employer (who is not a member of a group) is an employer for less than a whole financial year. The fraction which ACT wages bear to Australia wide wages in the period is multiplied by the fraction which the days in the period bear to the number of days in that year. This amount is then multiplied by the estimated tax on Australia wide wages.

New section 11 provides similar forms of calculation to those in new section 10 in the case where the employer in the ACT is part of a group of companies for the purposes of the Taxation (Administration) Ordinance 1987. In these cases the employer's ACT wages are compared with group wages for Australia in the calculations.

Subsection (1) provides a formula for the situation where an employer is a member during all or part of a "group year" (defined in section 5) and is not at any time an independent employer.

Subsection (2) provides a formula for the situation where an employer is a member of a group during part or all of a "group period" and is not at any time an independent employer.

Subsection (3) deals with the case where an employer is an independent employer for part of the period or year and a group member for the remainder.

New section 12 provides the formula for calculating interim tax liability in relation to monthly returns.

New section 13 specifies the formula applicable in relation to the payment of interim tax in respect of periods other than monthly periods.

New section 14 provides for an annual reconciliation of interim tax paid with that which is actually owed having regard to actual wages paid. Paragraph 14(1)(a) specifies what is an overpayment of tax. The Taxation (Administration) Ordinance 1987 provides for refunds of this sum together with interest. Paragraph 14(1)(b) specifies what is an underpayment of tax.

Subsection 14(2) sets out the procedure by which recovery of the unpaid tax may be sought by the Commissioner. Subsection 14(2) ensures that the taxpayer is notified of an underpayment and that interest on this amount (payable by the provisions of the Taxation (Administration) Ordinance 1987) is not payable until the employer has been notified and given time to pay after an end-of-year assessment.

Section 9: This section amends section 16 of the Principal Ordinance. It requires monthly returns to be lodged and tax paid by employers where Australia-wide salaries exceed a threshold amount determined for the purposes of the subsection under section 99 of the Taxation (Administration) Ordinance 1987.

Sections 10 & 11: These sections amend sections 17 and 18 respectively of the Principal Ordinance. They amend these sections by substituting "lodge" and "lodged" for "furnish" and "furnished" for consistency of expression with the Taxation (Administration) Ordinance 1987 which defines and uses "lodge".

In addition, paragraph 10(c) replaces paragraph 17(4) with a provision which adds to the existing requirement that employers lodge returns in accordance with a notice. The additional requirement is that employers pay the interim tax payable in respect of each return.

Section 12: This section amends section 19 of the Principal Ordinance. Section 19 provides for appeals to the Administrative Appeals Tribunal. Paragraph (a) is omitted. It related to appeals from a determination under section 8. That section has been repealed by this Ordinance. Paragraphs (c) and (d) are amended by adding words which make it clear that the paragraphs refer to decisions under section 18 of the Principal Ordinance.