

## EXPLANATORY STATEMENT

### AUSTRALIAN CAPITAL TERRITORY

#### PAYROLL TAX ORDINANCE 1987

No. 40 of 1987

The Payroll Tax Ordinance 1987 provides for payroll tax to be levied in respect of the Australian Capital Territory.

The Ordinance generally contains the provisions contained in the Pay-roll Tax (Territories) Act 1971 and the Pay-roll Tax (Territories) Assessment Act 1971 both of which will cease to apply on the commencement of the Ordinance. However, the grouping provisions contained in the Pay-roll Tax (Territories) Assessment Act 1971 are contained in the Taxation (Administration) Ordinance 1987 and the general administrative provisions are also contained in that Ordinance.

Payroll tax imposed on wages that are paid or payable in the Australian Capital Territory and which are not wages for services rendered wholly outside the Territory, and on wages that are paid or payable elsewhere than in the Australian Capital Territory for services rendered wholly in the Territory. Certain wages are exempt from payroll tax. Tax is only payable on the total of wages over a determined amount. If the amount of wages paid or payable exceeds that amount the total of wages on which tax is calculated is reduced by a deduction calculated by subtracting from the determined amount \$2 for each \$3 by which the total wages exceed that determined amount.

The Commissioner for Australian Capital Territory Revenue Collections appointed under the Taxation (Administration) Ordinance 1987 has the general administration of the Ordinance.

Details of the Ordinance are as follows:

## **PART I - PRELIMINARY**

### **Short title**

Section 1 provides that the Ordinance may be cited as the Payroll Tax Ordinance 1987.

### **Commencement**

Section 2 provides for the commencement of the Ordinance.

### **Interpretation**

Section 3 deals with interpretation.

### **Administration**

Section 4 provides that the Commissioner for Australian Capital Territory Revenue Collections has general administration of the Ordinance.

### **Wages to which this Ordinance applies**

Subsection 5(1) provides that wages that are paid or payable in the Territory which are not in respect of services performed wholly in a State or another Territory and wages that are paid or payable elsewhere than in the Territory in respect of services performed wholly in the Territory are wages to which the Ordinance applies.

Subsection 5(2) makes provision for deeming a place of payment in respect of wages which have not been paid and which are not wages payable in a State or another Territory. If the wages are payable for services not wholly performed in any one jurisdiction and the wages last paid to the employee were included in a return in the Territory by the employer they are deemed to be payable in the Territory. If the wages are not of the first two kinds they are deemed to be payable at the place where the employee last performed services for the employer before the wages became payable.

Subsection 5(3) provides for ascertaining the place of payment of wages which are paid by bill of exchange, promissory note, money order, postal order or other instrument.

## **PART II - LIABILITY TO TAXATION**

### **Payroll tax: general**

Section 6 provides that tax is payable in respect of all wages paid or payable by an employer on or after the commencement date at a rate determined by the Minister.

### **Payroll tax: liability**

Section 7 makes the employer who pays or is liable to pay the wages liable to pay the tax on those wages.

### **General deduction**

Section 8 provides for the calculation of a general deduction from taxable wages for the purpose of ascertaining the tax payable by an employer. The deduction is calculated on a monthly basis and in general is either a determined amount or the determined amount reduced by two thirds of the difference between the amount of wages paid or payable in the month and that determined amount. Special provision is made for calculation of the general deduction where an employer lodges a return for part of a month instead of a whole month or for more than a month instead of for one month only, or includes wages in payroll tax returns under a corresponding law of a State or another Territory. This section does not apply to employers who are members of a group as only the designated group employer is entitled to a deduction, and that is calculated under section 13 of the Ordinance.

### **Exemption from tax**

Section 9 provides that the following wages are not taxable wages:

- . wages paid by the Governor-General;
- . wages paid by a charitable organisation;
- . wages paid by a hospital that is a recognised hospital under the Health Insurance Act 1973;
- . wages paid to members of the official staff of a representative (other than a diplomatic or consular representative) in Australia of the Government of another country;

- . wages paid by an employer to an employee who is a member of the Defence Forces during that employee's absence from work when that absence is because of that membership;
- . wages paid to a person employed as an apprentice where the wages are in respect of the first 12 months of that person's apprenticeship; and
- . wages paid to an employee employed under the Australian Traineeship Scheme.

#### Refund or rebate of tax on annual adjustment

Section 10 provides that at the end of each financial year an employer may apply for a refund or rebate of tax paid during the year in excess of the amount of tax for which the employer was actually liable in respect of wages paid or payable in that year. An application shall be made in the financial year next following the financial year to which the application relates. This section does not apply to employers who are members of a group as special provisions for annual and part year adjustments for groups are made in sections 14 and 15 of the Ordinance.

#### Tax payable on annual basis

Section 11 provides that where tax paid by an employer during a financial year is less than the tax for which the employer is actually liable on the wages paid or payable by the employer during that year the employer is liable to pay the amount of excess tax.

#### Designated group employer

Subsection 12(1) provides for the nomination by members of a group of employers of one of their number to be the designated group employer for the purposes of the Ordinance. The nomination must be signed by every member of the group.

Subsection 12(2) provides that the member nominated is the designated member from the first day of either the return period immediately before the day the nomination was lodged or any later return period specified in the notice of nomination.

Subsection 12(3) provides that the designated group employer ceases to hold that position from the first day of the return period in which either the composition of the group alters or the members of the group notify the Commissioner in writing signed by each of them that the nomination is revoked. In the second case subsection 12(4) provides that the notification has no effect unless the Commissioner's consent to the lodgement is previously obtained and another member is nominated as the designated group employer at the same time.

### Nominated deduction

Section 13 provides for the calculation of a nominated deduction from taxable wages for the purposes of ascertaining the tax payable by a designated group employer. The deduction must be nominated in the notice of nomination of a designated group employer under subsection 12(1) otherwise no deduction is allowable. The amount nominated is calculated in accordance with the formulae set out in subsection 13(3), and in general is either a determined amount or the determined amount reduced by two-thirds of the difference between the wages paid or payable by all the members of the group and that determined amount. Special provision is made for calculation of the nominated deduction where a return relates to part of a month or more than a month instead of to a month only or where members of a group include wages in payroll tax returns under a corresponding law in a State or another Territory.

### Annual adjustments

Section 14 applies to groups where at least one member of the group paid or was liable to pay wages which were taxable under the Ordinance or under corresponding legislation in a State or another Territory. It provides that where the actual amount of tax paid or payable by members of the group for a financial year exceeds the amount of tax which the members of the group were in fact liable to pay for that year the Commissioner is to refund the amount of the excess to the designated group employer or apply that amount in reduction of any liability of the designated group employer under any legislation of which the Commissioner has general administration. No refund is available unless the designated group employer applies for it before the end of the next financial year.

Subsection 14(5) provides that where the actual amount of tax paid by group members during a financial year is less than the tax which the group members were actually liable to pay all group members who were liable to pay taxable wages during that year are jointly and severally liable to pay the excess amount of tax.

### Part-year adjustments

Section 15 contains provisions in the same terms as section 14 but relates to a situation where at least one member of a group was liable to pay wages taxable under the Ordinance or a corresponding law in another jurisdiction during part of a financial year and no member of the group was liable to pay such wages during the whole of that year. It therefore provides for a refund of tax paid by the group members in excess of the actual liability for that part of the financial year and for recovery of an amount of tax for which group members are liable in respect of that part of the year and which is in excess of the amount of tax actually paid by them.

### **PART III - RETURNS**

#### **Returns**

Section 16 provides that an employer who pays or is liable to pay wages at a rate per week in excess of a determined rate shall lodge with the Commissioner within 7 days after the end of the month a return relating to wages paid during that month.

#### **Returns: variation of time for furnishing**

Section 17 provides that an employer may apply to the Commissioner for variation of the periods in relation to which or the time within which the employer is to furnish returns. The Commissioner may give an employer a notice varying the period in relation to which or the time within which a return may be lodged if he or she is satisfied that it would be unduly onerous for the employer to lodge returns in relation to each month or within 7 days after the end of each month. The notice of variation may be revoked if the Commissioner is no longer satisfied that to lodge returns as generally provided would be unduly onerous for the employer.

#### **Monthly returns: exemptions**

Section 18 provides that an employer who considers that either he or she is not liable to pay tax or that tax paid will be refunded may apply to the Commissioner in writing for an exemption from furnishing returns. The application is to specify the amount of wages payable by the employer and the amount of tax which the employer thinks is payable. If the Commissioner is satisfied that the employer is not liable to pay tax or that tax paid will be refunded, a certificate of exemption may be granted, subject to such conditions as the Commissioner determines.

Subsection 18(5) provides that while an exemption certificate is in force the employer need not furnish monthly returns but must furnish a return relating to each financial year, or other period specified in the certificate, within 21 days after the end of the financial year, or within the period specified in the certificate.

Subsection 18(6) provides that an exemption certificate may be cancelled if the Commissioner is no longer satisfied that no tax is payable or that tax paid will be refunded.

Subsection 18(7) allows conditions in the exemption certificate to be varied.

## **PART IV - MISCELLANEOUS**

### Review by Administrative Appeals Tribunal

Section 19 provides that application may be made to the Administrative Appeals Tribunal for review of decisions made under section 8 and section 17, and decisions cancelling or refusing to grant an exemption certificate or imposing or varying conditions in relation to an exemption certificate.

### Notification of decisions

Section 20 provides that when the Commissioner makes a decision which is appealable to the Administrative Appeals Tribunal, notice of the decision shall be given to the taxpayer concerned, together with notification of the taxpayer's right of appeal and right to a statement of reasons for the decision. It also provides that failure to comply with those notice requirements will not affect the validity of the decision concerned.

### Transitional provisions

Section 21 contains transitional provisions relating to notices issued under the Pay-roll Tax (Territories) Assessment Act 1971 varying the time for lodgement of returns and certificates of exemption from the obligation to lodge monthly returns. It also contains transitional provisions in relation to sections 10 and 11 in respect of annual adjustments of tax for individual employers and sections 14 and 15 in respect of annual adjustments of tax for groups of employers, which provide that returns lodged or required to be lodged, tax and wages paid or payable and deductions made under the Pay-roll Tax (Territories) Act 1971 and the Pay-roll Tax (Territories) Assessment Act 1971 shall be taken to have been lodged or required to be lodged, paid or payable or made respectively under the Ordinance. These provisions will allow an annual adjustment for the whole of the financial year beginning on 1 July 1987. Transitional provisions of this nature are necessary as the Taxation Laws Amendment Act (No. 2) 1987 provides in Schedule 3 for the provisions of the Pay-roll Tax (Territories) Assessment Act 1971 relating to annual adjustments of tax for both individual and group employers not to apply to the financial year commencing 1 July 1987. As the provisions in Schedule 3 will come into effect by Proclamation on the date of commencement of the Ordinance the transitional provisions in this section are necessary to prevent a hiatus in the payroll tax legislation in respect to the period 1 July 1987 to the commencement date of the Ordinance.

### Regulations

Section 22 provides that the Minister may make regulations not inconsistent with the Ordinance.

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