

2001

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PAYROLL TAX AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

Circulated by the authority of the Treasurer

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Payroll Tax Amendment Bill 2001

Summary

The *Payroll Tax Act 1987* (the Act) provides for the imposition of payroll tax at the rate of 6.85% on employers where their annual Australian wages bill exceeds the minimum threshold (currently \$1,250,000 per annum).

The Act, at section 9, provides for an exemption from payroll tax for wages paid or payable in specific cases. This section currently provides for exemptions from payroll tax for first year apprentices and for trainees employed under a training agreement pursuant to the Australian Traineeship Scheme. References to both apprentices and trainees will be removed and replaced by a more generic term *new starters*.

The changes are necessary to provide certainty to employers of new starters as to their entitlement to a payroll tax exemption, and to protect the revenue base in cases where the interpretation of legislation may be ambiguous due to the change in the Commonwealth schemes to which the Act refers. Because industry based training is now organised under a national system, with nationally agreed structures defined by the Australian National Training Authority ("ANTA") this has created a level of confusion for ACT payroll tax payers as to what type of training actually qualifies for a payroll tax exemption.

It is possible that the current legislation could be interpreted as operating to exclude all exemptions or likewise it could be interpreted as operating to widen the exemptions beyond the original 12 months for trainees and apprentices. Both of these situations fall well outside the original policy intentions of the government. As payroll tax is self-assessed, it is important that the legislation is clear and consistent, with provisions which are easily understood by the taxpayer.

In keeping with the ANTA framework, all definitions of apprentice and all references to particular training schemes have been removed from the Act. The Act will attain certainty by providing that all new starters in an industry or occupation who are also undertaking an eligible course of training will qualify under section 9 of the Act. The Minister will approve eligible training schemes by way of a disallowable instrument which provides a more flexible approach for accommodating changes to definitions under the national scheme.

Details of the Bill are attached.

Details of the Payroll Tax Amendment Bill 2001

Clause 1 Name of Act

This Act is the *Payroll Tax Amendment Act 2001*.

Clause 2 Commencement

This Act commences on 1 October 2001. Payroll tax is calculated by calendar month starting on the first day of each calendar month. A start date of 1 October removes any inconvenience that payroll tax payers would face in having to account for payroll tax under two different systems within the one accounting period.

Clause 3 Act Amended

This Act amends the *Payroll Tax Act 1987*.

Clause 4 Section 3 (1), definition of *apprentice* Interpretation

All references to *apprentice* have been removed from section 9 of the PTA, and consequently, the definition of *apprentice* is omitted from the Interpretation. This is consistent with the national training framework

Clause 5 Section 3 (1), new definition

A new definition of *new starter* is inserted. The definition is stated in section 9A (Exemption from tax – new starters). Using the generic phrase new starter will provide employers with more clarity in identifying those employees for which they are eligible for a payroll tax exemption.

Clause 6 Section 9 (1) (f), (g) and (h) Exemption from tax

These paragraphs are omitted.

Clause 7 Section 9 (1)

It is noted that these paragraphs will be renumbered when the Act is next republished under the *Legislation Act 2001*.

Clause 8 Section 9 (1), new note

A new note is added to indicate that there are further exemptions from payroll tax in section 9A (Exemption from tax – new starters). This exemption applies to new starters employed for the first time in an industry or occupation while they receive up to 1 year of training starting in their first year of employment.

Clause 9 New section 9A

A new section 9A is inserted, which covers the initial employment for new starters and eligible training for all types of employment, including those previously covered in sections 9 (1) (f), (g) and (h).

The new section 9A (1) applies to a **new starter** and defines them as a person who is employed for the first time in an industry or occupation and is receiving eligible training for work in that industry or occupation. It thus provides for an exemption from payroll tax for wages paid or payable to a new starter.

The new section 9A (2) defines **eligible training** as training that has been approved by the Minister in writing (paragraph (a)), and takes place during a single continuous period, the **training period**, that starts within the first 12 months after the new starter is first employed in the industry or occupation (paragraph (b)).

The continuous 12 month period of exemption is linked to the new starter undertaking an approved training course and can commence at any time within the first 12 months of the new starter's initial employment in the industry or occupation.

If a new starter ceases to be enrolled in an approved training course for any reason, the exemption ceases and cannot recommence for that new starter's wages even if new starters recommence in that or another approved training course whilst in the same industry or occupation.

The reason for the 12 month period for commencement is to allow new entrants to an industry or occupation an opportunity to change employers without the new employer losing the payroll tax benefits associated with training. The 12 month exemption period is consistent with the previous exemption provided for apprentices and trainees which were limited in duration to 12 months.

Section 9A (3) states that an exemption from tax for wages paid or payable applies to the new starter for employment in the industry or occupation while the new starter is receiving training for work in that industry or occupation.

Section 9A (4) limits the subsection (3) exemption to one continuous period of training for each new starter.

Section 9A (5) states that subsection (3) continues to apply if a different employer employs the new starter during the training period. The payroll tax exemption can be claimed by one or more employers within the employee's initial 12 month period in the industry or occupation. This allows for an employer to obtain the benefit of the tax exemption for a new starter who changes employer while enrolled in an approved training course. It also clarifies the position that the training period of up to 12 months, for which exemption is allowed, can form part of a longer period of training.

Section 9A (6) provides that Ministerial approval for an approved training course under subsection 2(a) is to be by way of determination which is a disallowable instrument in terms of the *Legislation Act 2001*.