



## PAY-ROLL TAX

No. 7 of 1976

### ANALYSIS

1. Short title, citation, and commencement.
2. Interpretation.
3. Deduction for small businesses.
4. Application of deductions for small businesses where two or more employers related, &c.
5. Refund or rebate of pay-roll tax on annual adjustment.
6. Registration.
7. Returns to be furnished by employer.
8. Additional tax.
9. Additional tax in certain cases.

\*\*\*\*\*

**AN ACT to amend the Pay-roll Tax Act 1971.**

[20 May 1976]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1**—(1) This Act may be cited as the *Pay-roll Tax Act 1976*.

Short title,  
citation, and  
commencement.

(2) The *Pay-roll Tax Act 1971*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on the 1st July 1976.

Interpretation.  
Cf. No. 8594 of  
1974 (Vict.)  
s. 2.

**2** Section 2 of the Principal Act is amended—

(a) by omitting from paragraphs (a), (b), (c) and (d) of the definition of “wages” the words “payment made” wherever occurring and substituting in each case the words “amount paid or payable”; and by adding at the end of that definition the words “but does not include a reference to allowances for travelling or accommodation paid or payable at a rate in a particular case or class of cases that does not exceed such rate as is prescribed in respect of that case or class of cases”; and

(b) by adding at the end thereof the following subsections:—

“(5) For the purposes of this Act, an employer that is a company is related to another company (whether or not that other company is an employer)—

(a) if the employer and the other company are, by reason of section 6 (5) of the *Companies Act* 1962, deemed to be related to each other;

(b) if the directors of the employer are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the directors of the other company;

(c) if the directors of the other company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the directors of the employer;

(d) if the other company is, by reason of section 6 (5) of the *Companies Act* 1962, to be deemed to be related to another company the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the directors of the employer;

(e) if the directors of the employer and the directors of the other company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of another person;

- (f) if the other company has a share capital and the directors of the employer may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50 per cent or more of the voting power attached to voting shares issued by the other company; or
- (g) where the employer and the other company are companies each of which has a share capital, if the person who may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50 per cent or more of the voting power attached to voting shares issued by one of those companies may also exercise, control the exercise of or substantially influence the exercise of 50 per cent or more of the voting power attached to voting shares issued by the other company.

“(6) Notwithstanding the provisions of subsection (5), an employer that is a company is not related, for the purposes of this Act, to another company (whether or not that other company is an employer) where—

- (a) the employer and the other company are not, by reason of section 6 (5) of the *Companies Act* 1962, to be deemed to be related to each other; and
- (b) the employer satisfies the Commissioner that the trade, business or profession carried on by him is carried on independently of, and is not connected with, the trade, business or profession carried on by the other company.”

**3** Section 9 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(6) Where, by reason of section 9A (3), subsection (1) is to be deemed to have effect as if a reference to an employer were a reference to a member of a group as provided by section 9A (3), this section does not have effect in relation to taxable wages paid or payable by that member except as provided by section 9A.”

Deduction for  
small  
businesses.  
*Ibid.*, sub-s.  
(3).

4 The Principal Act is amended by inserting, after section 9, the following section:—

Application of deductions for small businesses where two or more employers related, &c.  
*Ibid.*, sub-s. (4).

“ 9A—(1) A reference in section 9 to taxable wages does not include a reference to any wages paid or payable by an employer—

(a) where the employer is related, within the meaning of section 2 (5), to another company (in this section called a ‘ related person ’);

(b) where an employee of the employer performs duties for or in connection with a trade, business or profession carried on by the employer and another person (in this section called an ‘ associate ’) whether or not also with another person; or

(c) where—

(i) an employee of the employer is employed solely or mainly to perform duties for or in connection with a trade, business or profession carried on by another person (which other person is, in this section, called an ‘ associate ’); or

(ii) the employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking, whether formal or informal and whether expressed or implied, with another person (which other person is, in this section, called an ‘ associate ’) relating to a trade, business or profession carried on by the associate or by the associate and another person—

unless the employer satisfies the Commissioner that the trade, business or profession in which the employee is employed is carried on independently of, and is not connected with, the carrying on of a trade, business or profession carried on by the associate (whether or not with another person)—

and, for the purposes of this section, the employer, the related persons and the associates are together called a ‘ group ’ and the employer, each related person and each associate is a member of that group.

“(2) Where an employer is a member of a group and the employer or another member of that group is a member of another group, a person who is a member of that other group shall for the purposes of this section—

- (a) be deemed to be a member of the first-mentioned group; and
- (b) be called an 'associate',

unless that person satisfies the Commissioner that the trade, business or profession carried on by that person is carried on independently of, and is not connected with the carrying on, of a trade, business or profession carried on by a member of the first-mentioned group.

“(3) Subject to subsection (8), where by reason of subsection (1), section 9 does not apply to taxable wages paid or payable by an employer and there is a group of which the employer is a member, section 9 (except subsection (6)), and section 11 shall, by reason of this subsection, be deemed to have effect in relation to the sum of—

- (a) the total taxable wages paid or payable to employees by the employer;
- (b) the total taxable wages paid or payable to employees by a related person in the group; and
- (c) the total taxable wages paid or payable to employees by an associate in the group—

(other than taxable wages paid or payable by an associate to employees who the Commissioner is satisfied are employed in a trade, business or profession that is carried on independently of, and is not connected with, the carrying on of a trade, business or profession carried on by the employer, a related person in the group or by another associate in the group) as if—

- (d) a reference in those sections to taxable wages or wages were a reference to that sum of taxable wages;
- (e) for section 9 (2) there were substituted the following subsection:—

‘(2) For the purpose of ascertaining the pay-roll tax payable by a member of the group nominated or appointed for the purposes of section 9A (3) who was such a member during part only of a month, the amount to be deducted for that month from the amount of the taxable wages included in a return or assessment relating to that month or a period that includes that month shall be the amount which bears to the prescribed amount referred to in subsection (3) applicable to the member the same proportion as the number of days in that month during which the member was such a member bears to the total number of days in that month.’;

- (f) for section 9 (5) there were substituted the following subsection:—

‘(5) Where a person who is or was a member of a group within the meaning of section 9A is or was required under a corresponding law of a State to include any wages in a return made under that law relating to a month or relating to any other period and he or another person who is or was a member of that group is or was also required to include any taxable wages in a return under this Act relating to that month or any month included in that period, a deduction shall not be made under this section from those taxable wages unless he has been nominated by the members of the group under section 9A (4) or appointed by the Commissioner to deduct the amount of the general exemption on behalf of the group.’;

- (g) a reference (except in section 9 (2) or (5)) to an employer were a reference to a member of the group nominated or appointed under subsection (4) for the purposes of this subsection;
- (h) a reference to a return were a reference to a return furnished under section 13 (6) in relation to the group or, where such a return is not furnished, to the returns furnished by the employer, the related persons and the associates; and
- (i) a reference to an assessment were a reference to the assessments made in relation to the employer, a related person or an associate.

“(4) Where, in respect of a group—

- (a) a member of the group is nominated by members of the group and notice of the person nominated and persons by whom the nomination is made is given to the Commissioner, the nomination shall be deemed to have been made on the first day of the month in which the notice is given or the date when the member became a member of the group, whichever is the later, and the person so nominated continues to be the person nominated for the purposes of subsection (3) until—
- (i) notice of the nomination of another member of the group is given to the Commissioner; or

(ii) the nomination is revoked by members of the group by notice given to the Commissioner or by direction of the Commissioner; or

(b) the Commissioner appoints a member of the group, the appointment shall be deemed to have been made on the date specified in the appointment (being a date when the member was a member of the group) and the person so appointed continues to be the person appointed for the purposes of subsection (3) until the appointment is revoked by the Commissioner or another appointment is made in his place.

“(5) A nomination or appointment under subsection (4) shall be deemed to be a nomination or appointment in respect of a group notwithstanding that at the time the nomination or appointment is made the identity of one or more members of the group is not known or, in the case of a nomination, one or more members do not join in making the nomination and to continue to be a nomination or appointment in respect of the group notwithstanding that the membership of the group alters.

“(6) Where, for the purposes of subsection (3), the Commissioner—

(a) appoints or revokes the appointment of a member of a group;  
or

(b) directs that a nomination of a member of a group is revoked—

he shall give notice of the appointment or revocation to each member of the group whose identity he knows.

“(7) Nothing in this section requires the Commissioner to appoint a member of a group for the purposes of subsection (3) and, where he makes or revokes such an appointment, he is not liable to any person in any manner by reason of the appointment or revocation.

“(8) Where, in respect of a group, neither a nomination nor an appointment for the purposes of subsection (3) is in force, sections 9 and 11 do not have effect in relation to taxable wages paid or payable by the group or by a member of the group.”

**5** Section 11 of the Principal Act is amended—

(a) by omitting from the commencement of subsection (1) the word “Where” and substituting the words “Subject to section 9A, where”; and

Refund or  
rebate of  
pay-roll tax on  
annual  
adjustment.  
*Ibid.*, sub-s.  
(3).

- (b) by omitting from the commencement of subsection (2) the word "Where" and substituting the words "Subject to section 9A, where".

Registration.  
*Ibid.*, sub-s.  
(6).

**6** Section 12 of the Principal Act is amended by adding, at the end thereof, the following subsections:—

"(5) Where, during a month, by reason of subsection (3) of section 9A, subsection (1) of section 9 is to be deemed to have effect as if a reference to an employer were a reference to a person nominated or appointed in relation to a group for the purposes of subsection (3) of section 9A, each member of the group who is an employer shall, unless he is registered as an employer, apply within seven days after the close of that month to the Commissioner in the prescribed form and manner for registration as an employer and thereupon the Commissioner shall register him as an employer under this Act.

"(6) The Commissioner may cancel the registration under subsection (5) of a person as an employer if that person has ceased to be a member of the group referred to in that subsection."

Returns to be  
furnished by  
employer.  
*Ibid.*, sub-s.  
(7).

**7** Section 13 of the Principal Act is amended by adding, at the end thereof, the following subsection:—

"(6) Where, during a month, by reason of section 9A (3), section 9 (1) is to be deemed to have effect as if a reference to an employer were a reference to a person nominated or appointed in relation to a group for the purposes of section 9A—

- (a) that person may, within seven days after the close of the month, furnish to the Commissioner in accordance with the form and in the manner prescribed a return relating to that month in which he specifies the taxable wages paid or payable by specified members of the group during that month; and
- (b) a member of the group specified in the return is to be deemed to have furnished, when the return referred to in this subsection was furnished, a return under subsection (1) relating to that month."



**8** Section 22 of the Principal Act is amended by omitting from subsection (1) all the words after the words “ at the rate of ” and substituting the numerals and words “ the amount of \$5 or 20 per cent upon the amount of pay-roll tax payable whichever is the greater ”. Additional tax.

**9** Section 36 of the Principal Act is amended—

- (a) by omitting, from paragraph (a) of subsection (1), the word “ ten ” and substituting the numeral “ 20 ”; and
- (b) by omitting, from that paragraph, the words “ two dollars ” and substituting the symbol and numeral “ \$5 ”. Additional tax in certain cases.

