



TASMANIA

PAY-ROLL TAX AMENDMENT ACT 1990

No. 21 of 1990

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PAY-ROLL TAX AMENDMENT ACT 1990

No. 21 of 1990

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

[Royal Assent 11 July 1990]

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:—

Short title

1—This Act may be cited as the *Pay-roll Tax Amendment Act 1990*.

Commencement

2—This Act commences on the first day of the month following the month in which it receives the Royal Assent.

Principal Act

3—In this Act, the *Pay-roll Tax Act 1971** is referred to as the Principal Act.

* No. 43 of 1971. For this Act, as amended to 1st October 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 78 of 1977, No. 91 of 1980, No. 64 of 1981, Nos. 9, 45 and 99 of 1982, No. 57 of 1983, Nos. 29 and 79 of 1984, No. 96 of 1985, No. 50 of 1988 and No. 31 of 1989.

Section 2 amended (Interpretation)

- 4—(1) Section 2 (1) of the Principal Act is amended as follows:—
- (a) by inserting the following definition after the definition of “company”:—
- “**contract**” includes an agreement, arrangement or undertaking, whether formal or informal and whether express or implied;
- (b) by omitting the definition of “corporation” and substituting the following definition:—
- “**corporation**” has the meaning given to that expression by section 5 (1) of the *Companies (Tasmania) Code*;
- (c) by omitting the definition of “employer” and substituting the following definitions:—
- “**employee**” includes a person who—
- (a) performs work for or in relation to which services are supplied to another person under a relevant contract; or
- (b) is a natural person who re-supplies goods to an employer under a relevant contract;
- “**employer**” means a person who pays or is liable to pay any wages and includes a person who—
- (a) is supplied with services for or in relation to the performance of work under a relevant contract; or
- (b) gives out goods to another person under a relevant contract;
- (d) by inserting the following definition after the definition of “financial year”:—
- “**fringe benefit**” has the meaning given to that expression by the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth but does not include—
- (a) a tax-exempt body entertainment fringe benefit within the meaning of that Act; or
- (b) any payment or benefit that is prescribed by the regulations not to be a fringe benefit for the purposes of this definition;
- (e) by omitting “section 9A (1) or (2)” from the definition of “group” and substituting “Part IIIA”;

(f) by inserting the following definition after the definition of “liquidator”:-

“**municipal corporation**” has the meaning given to that expression by section 4 (1) of the *Local Government Act 1962*;

(g) by inserting the following definitions after the definition of “pay-roll tax”:-

“**regulations**” means regulations made under this Act;

“**relevant contract payment**” means a payment for or in relation to the performance of work under a relevant contract and includes the value of any benefits provided under that contract which would be fringe benefits if paid, payable or provided to a person in the capacity of an employee;

“**re-supply**”, in relation to goods acquired from a person, includes the supply to the person—

(a) of goods in an altered form or condition; and

(b) of goods in which the first-mentioned goods have been incorporated; and

(c) of an article manufactured or produced from any such goods;

(h) by inserting the following definitions after the definition of “return period”:-

“**services**” includes the results, whether goods or services, of work performed;

“**supply**” includes—

(a) the supply by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services, the providing, granting or conferring of services;

(i) by inserting the following definition after the definition of “trustee”:-

“**voting share**” has the meaning given to that expression by section 5 (1) of the *Companies (Tasmania) Code*;

(j) by inserting “fringe benefits” in the definition of “wages” after “bonuses,”;

(k) by inserting the following paragraph in the definition of “wages” after paragraph (b):-

(ba) any amount paid or payable under a relevant contract payment;

(2) Section 2 of the Principal Act is further amended as follows:—

(a) by omitting subsection (2) and substituting the following subsections:—

(2) For the purposes of this Act, the value of taxable wages which consist of a fringe benefit is the value that would be the taxable value of the fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

(2A) Where a relevant contract payment is included in a larger amount payable by the employer under a relevant contract, that proportion of the larger amount which is not to be attributable to the relevant contract payment or the re-supply of goods by an employee under the relevant contract may be expressed as a percentage and prescribed by the regulations.

(2B) Where a percentage is prescribed under subsection (2A), it may be prescribed in respect of a class of relevant contract.

(2C) For the purposes of the definition of “relevant contract” payment, the value of a benefit provided under a relevant contract shall be determined in accordance with subsection (2) as if that benefit were a fringe benefit.

(b) by omitting subsections (5) and (6).

Section 3 amended (Application of Act)

5—Section 3 (2) (b) of the Principal Act is amended by inserting “municipal” before “corporation”.

Sections 3A, 3B, 3C and 3D inserted

6—After section 3 of the Principal Act the following sections are inserted in Part I:—

Application of Act to relevant contracts

3A—(1) This Act applies to relevant contracts.

(2) A relevant contract is a contract under which a person (in this section referred to as a “**designated person**”) in the course of a business carried on by the designated person—

(a) supplies to another person services for or in relation to the performance of work; or

- (b) is supplied with the services of a person for or in relation to the performance of work; or
- (c) gives out goods to a natural person for work to be performed by that person in respect of those goods and for the re-supply of those goods—
 - (i) to the designated person; or
 - (ii) where the designated person is a member of a group, to another member of that group.

(3) A relevant contract does not include a contract under which a designated person in the course of a business carried on by the designated person is supplied with services for or in relation to the performance of work that are ancillary—

- (a) to the supply of goods by the person supplying the services; or
- (b) to the use of goods which are the property of that person.

(4) A relevant contract does not include a contract under which a designated person in the course of a business carried on by the designated person is supplied with services for or in relation to the performance of work where—

- (a) those services are of a kind not ordinarily required by the designated person and are rendered by a person who ordinarily tenders services of that kind to the public generally; or
- (b) those services are of a kind ordinarily required by the designated person for less than 180 days in a financial year; or
- (c) those services are provided for a period that does not exceed 90 days or for periods that in the aggregate do not exceed 90 days in a financial year and are not services—
 - (i) provided by a person who provides similar services to the designated person; or
 - (ii) for or in relation to the performance of work where any person who performs the work also performs similar work for the designated person; or
- (d) the payment of the consideration under the contract is at a rate not less than \$500 000 per year; or
- (e) the Commissioner is satisfied that those services are supplied by a person who ordinarily renders services of that kind to the public generally.

(5) Unless the Commissioner determines that the contract was entered into with an intention to directly or indirectly avoid or evade the payment of tax by any person, a relevant contract does not include a contract under which a designated person in the course of a business carried on by the designated person is supplied with services for or in relation to the performance of work by a person (in this subsection referred to as the “**contractor**”) where that work is performed—

- (a) by 2 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or
- (b) where the contractor is a partnership of 2 or more natural persons, by 1 or more of the members of the partnership and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or
- (c) where the contractor is a natural person, by the contractor and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor.

Determination of certain contracts to be relevant contracts

3B—(1) Notwithstanding section 3A (4), the Commissioner may, by notice in writing served on a person (in this section referred to as the “**designated person**”) determine a contract to be a relevant contract—

- (a) where the designated person in the course of business carried on by the designated person supplies to another person services for or in relation to the performance of work under a contract referred to in section 3A (4) (d); and
- (b) the designated person in the course of the same business is supplied with the services for or in relation to the performance of work under a contract referred to in section 3A (4) (b) or (c).

(2) Subsection (1) does not apply if the designated person satisfies the Commissioner that the business is carried on independently of, and is not connected with the carrying on of a business carried on by another person or other persons and that the business is not carried on with an intention to directly or indirectly avoid or evade the payment of tax by any person.

Liability to pay-roll tax on relevant contract payments

3C—(1) Where an employer has paid pay-roll tax in respect of a relevant contract payment, no other person is liable to pay-roll tax in respect of that payment.

(2) Where a person other than an employer makes a payment in respect of wages in relation to the performance of work under a relevant contract, that person is not liable to pay-roll tax in respect of those wages unless the employer fails to pay pay-roll tax in respect of the relevant contract payment to which those wages relate.

Effect of certain contracts

3D—(1) Where—

- (a) a person enters into a contract under which a natural person tenders for or on behalf of another person services in respect of which payment is made to another person related or connected to the natural person; and
- (b) the effect of the contract is to reduce or avoid the liability of any person to the payment of pay-roll tax—

the Commissioner may make any or all of the following determinations:—

- (c) determine that the contract be disregarded for the purposes of this Act;
- (d) determine that any party to the contract is an employer for the purposes of this Act;
- (e) determine that any payment in respect of the contract is wages for the purposes of this Act.

(2) A determination made under subsection (1)—

- (a) shall be in a written form; and
- (b) shall set out the facts on which the Commissioner relies and the reasons for making the determination; and
- (c) shall be served on the employer.

(3) This section has effect in relation to contracts made before, on or after the commencement of this section.

Section 9 substituted

7—Section 9 of the Principal Act is repealed and the following section is substituted:—

Deduction for small businesses

9—(1) For the purposes of ascertaining the pay-roll tax payable by an employer, there shall be deducted from the amount of the taxable wages included in a return under section 13 (1) or assessed by the Commissioner under section 18 an amount calculated in accordance with subsection (2).

(2) The amount referred to in subsection (1) shall be calculated in accordance with the following formula:—

$$\frac{T}{A} \left\{ P \times \frac{D}{M} - \frac{2}{3} \left(A - P \times \frac{D}{M} \right) \right\}$$

where—

- “T” is the taxable wages for the month;
- “A” is the Australian wages for the month;
- “D” is the number of days in the month during which the employer was an employer;
- “M” is the number of days in the month;
- “P” is the amount prescribed in subsection (4).

(3) For the purposes of ascertaining the pay-roll tax payable by an employer, there shall be deducted from the amount of the taxable wages included in a return under section 13 (3A) an amount calculated in accordance with the prescribed amount referred to in section 11A.

(4) For the purposes of subsection (2), the prescribed amount is \$41 666·67.

Section 9A repealed

8—Section 9A of the Principal Act is repealed.

Section 10 amended (Exemption from pay-roll tax)

9—Section 10 (e) of the Principal Act is amended by inserting “municipal” before “corporation”.

Section 11 repealed

10—Section 11 of the Principal Act is repealed.

Section 11A amended (Annual adjustments)

11—Section 11A of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Subject to section 9A, where” and substituting “Where”;
- (b) by omitting subsection (2);
- (c) by inserting in subsection (3) the following paragraph before paragraph (a):—
 - (aa) in the case of adjusted Australian wages for that year that are less than \$500 000—nil;
- (d) by omitting from subsection (4) “Subject to section 9A, where” and substituting “Where”;
- (e) by omitting from subsection (5) paragraphs (a) and (b) of the definition of “adjusted Australian wages”;
- (f) by omitting from subsection (5) the definitions of “reduction amount A”, “reduction amount B” and “reduction amount C”;
- (g) by omitting from subsection (5) the definition of “prescribed amount” and substituting the following definition:—

“prescribed amount” means an amount calculated in accordance with the following formula:—

$$\frac{T}{A} \left\{ 500\,000 - \frac{2}{3} \left(A - 500\,000 \right) \right\}$$

Part IIIA inserted

12—The Principal Act is amended by inserting the following Part after Part III:—

PART IIIA

GROUPING PROVISIONS

Interpretation of Part IIIA

11B—In this Part, “business” includes—

- (a) a trade or profession; and
- (b) any other activity carried on for fee, gain or reward; and
- (c) an activity carried on by an employer of employing any person where that person performs duties for or in connection with another business.

Grouping of corporations

11C—For the purposes of this Act, 2 corporations constitute a group if they are deemed to be related to each other under section 7 (5) of the *Companies (Tasmania) Code*.

Grouping where employees used in another business

11D—For the purposes of this Act, where—

(a) an employee of an employer performs duties solely or mainly for or in connection with a business carried on by that employer and another person or by another person; or

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, a contract with another person relating to a business carried on by that other person whether alone or together with another person—

that employer and—

(c) each such other person; or

(d) both or all of those other persons—

constitute a group.

Grouping of commonly controlled businesses

11E—(1) Where the same person has, or the same persons have together, a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a group.

(2) For the purposes of subsection (1), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:—

(a) in a business carried on by a corporation, where any director, who is entitled to exercise a majority in voting power at meetings of the directors of the corporation or is accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;

(b) in a business carried on by a corporation that has a share capital, where that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50 per centum or more of the voting power attached to voting shares issued by the corporation;

- (c) in a business carried on by a partnership, where that person or those persons—
- (i) owns, or own together (whether or not beneficially) 50 per centum or more of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether or not beneficially) to 50 per centum or more of any profits of the partnership;
- (d) in a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of 50 per centum or more of the value of the interests in the trust first-mentioned in this paragraph;
- (e) in a business where a person (whether or not a trustee of a trust) is the sole owner of the business or 2 or more trustees of a trust have a controlling interest in a business of which they are the owners.

(3) Where a corporation has a controlling interest under subsection (2) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is deemed to be related to it under section 7 (5) of the *Companies (Tasmania) Code* has a controlling interest.

(4) Where—

- (a) a person has, or persons have together, a controlling interest under subsection (2) in a business; and
- (b) the person or persons who carries or carry on that business has or have such a controlling interest in another business—

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

(5) Where—

- (a) a person is a beneficiary under a trust; or
- (b) 2 or more persons together are beneficiaries under a trust—

in respect of 50 per centum or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (2) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (2), be deemed to have a controlling interest in that business.

Smaller groups subsumed into larger groups

11F—If a person is a member of 2 or more groups all the members of those groups constitute 1 group for the purposes of this Act.

Grouping provisions to operate independently

11G—The fact that a person is not a member of a group constituted under one provision of this Part does not prevent that person from being a member of a group constituted under another provision of this Part.

Beneficiaries under discretionary trusts

11H—A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Part, to be a beneficiary in respect of 50 per centum or more of the value of the interests in that trust.

Exclusion of persons from groups

11I—(1) The Commissioner may, by order in writing, exclude members of a group from the group where the Commissioner is satisfied that the businesses carried on by those members are carried on substantially independently of, and are not substantially connected with, the carrying on of a business of another member of the group.

(2) In being satisfied as to the matters referred to in subsection (1), the Commissioner shall have regard to—

- (a) the nature and degree of ownership or control of the businesses concerned; and
- (b) the nature of the businesses; and
- (c) any other matter that the Commissioner considers relevant.

(3) An order excluding members from a group shall be served on those members.

(4) The Commissioner shall not, under subsection (1), make an order so as to exclude a person from a group on and from a date if that person is or was on that date a corporation which is deemed under section 7 (5) of the *Companies (Tasmania) Code* to be related to another corporation which is a member of that group.

(5) An order under subsection (1) shall have effect on and from the date specified in the order which may be a date that is the date of the order or before the date of the order.

Group members jointly and severally liable for payment

11J—If a member of a group fails to pay any amount of pay-roll tax that the member is required to pay every other member of the group who paid or was liable to pay taxable wages during the financial year in which the pay-roll tax liability has incurred is liable jointly and severally to pay that amount to the Commissioner.

Section 12 amended (Registration)

13—Section 12 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsections:—

(1) Where the Australian wages of an employer exceed \$41 667 in any month, that employer shall apply within 7 days after the close of that month to the Commissioner in a form approved by the Commissioner for registration as an employer under this Act.

(1A) On receipt of an application by an employer, the Commissioner shall register that employer as an employer under this Act.

(b) by omitting subsections (5) and (6).

Section 13 amended (Returns to be furnished by employer)

14—Section 13 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “the prescribed form” and substituting “a form approved by the Commissioner”;

(b) by omitting subsection (6) and substituting the following subsections:—

(6) Where an employer considers it is not reasonably practicable to calculate the value of any fringe benefits, the employer may request the Commissioner to agree to accept a return in which that value is calculated in accordance with subsection (7).

(7) Where the Commissioner is satisfied as to the reasonableness of a request made by an employer under subsection (6), the Commissioner may agree—

(a) that a return under subsection (1) may include an estimate of the value of fringe benefits; or

(b) that a return under subsection (3A) may include the value of fringe benefits paid, payable or provided during the year ended 31st March preceding the month in respect of which the return was made.

(8) The Commissioner may cancel an agreement under subsection (7) by notice in writing served on the employer.

Section 41 amended (Agents and trustees)

15—Section 41 of the Principal Act is amended by omitting subsections (2), (3), (4), (5) and (6).

Expiry

16—This Act expires 24 months after the date on which it commences.