



Queensland

# **Pay-roll Tax (Harmonisation) Amendment Act 2008**

**Act No. 16 of 2008**





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# **Pay-roll Tax (Harmonisation) Amendment Act 2008**

## **Act No. 16 of 2008**

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**An Act to amend the *Pay-roll Tax Act 1971* for consistency with  
pay-roll tax legislation of other States, and for related purposes**

**[Assented to 23 April 2008]**

**The Parliament of Queensland enacts—**

**1 Short title**

This Act may be cited as the *Pay-roll Tax (Harmonisation) Amendment Act 2008*.

**2 Commencement**

This Act commences on 1 July 2008.

**3 Act amended**

This Act amends the *Pay-roll Tax Act 1971*.

**4 Amendment of s 3 (Meaning of *superannuation contribution*)**

(1) Section 3(1), after ‘for an employee’—

*insert—*

‘, or by a company for a director of the company’.

(2) Section 3(2), definition *unfunded*, from ‘covered by the fund’—

*omit, insert—*

‘, or by a company for a director of the company, covered by the fund or scheme is not paid or payable while the employee is employed by the employer, or the director is appointed as a director of the company.’.

**5 Insertion of new s 3A**

After section 3—

*insert—*

**‘3A Meaning of *termination payment***

‘(1) A *termination payment* is—



- 
- (a) any of the following payments made because of the retirement from, or termination of, any office or employment of an employee—
- (i) an unused annual leave payment under the *Income Tax Assessment Act 1997* (Cwlth), section 83-10;
  - (ii) an unused long service leave payment under the *Income Tax Assessment Act 1997* (Cwlth), section 83-75;
  - (iii) so much of an employment termination payment paid or payable by an employer, whether paid or payable to the employee or to another entity, that would be included in the assessable income of the employee under the *Income Tax Assessment Act 1997* (Cwlth), chapter 2, part 2-40 if the whole employment termination payment had been paid to the employee; or
- (b) a following amount, if the amount would be an employment termination payment had it been paid or payable because of termination of employment—
- (i) an amount paid or payable by a company because of the termination of the services or office of a director of the company, whether paid or payable to the director or another entity;
  - (ii) an amount paid or payable by a relevant contract employer because of the termination of the supply of the services of an employee under a relevant contract, whether paid or payable to the employee or another entity.

‘(2) In this section—

***employment termination payment*** means—

- (a) an employment termination payment under the *Income Tax Assessment Act 1997* (Cwlth), section 82-130; or
- (b) a payment that is not an employment termination payment under the *Income Tax Assessment Act 1997* (Cwlth), section 82-130 only because it is received later

[s 6]

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than 12 months after the termination of a person's employment; or

- (c) a transitional termination payment under the *Income Tax (Transitional Provisions) Act 1997* (Cwlth), section 82-10.’.

## 6 **Amendment of s 4 (Other provisions about meaning of wages)**

- (1) Section 4, heading, after ‘wages’—

*insert—*

**‘—superannuation contributions and GST’.**

- (2) Section 4(1)—

*insert—*

*‘Note—*

Part 2, divisions 1A to 1D contain other provisions that apply for the definition *wages*.’.

- (3) Section 4(2)—

*omit, insert—*

- ‘(2) For paragraph (g) of the definition, a superannuation contribution paid or payable by an employer for an employee on or after 1 January 2000 is taken to be for the employee's services performed or rendered on or after 1 January 2000.’.

- (4) Section 4(4), ‘paragraph (h)’—

*omit, insert—*

‘paragraph (g)’.

- (5) Section 4(5)—

*omit.*

- (6) Section 4(6) and (7)—

*renumber* as section 4(5) and (6).

**7 Amendment of s 9 (Wages liable to pay-roll tax)**

Section 9(1)(a)(ii), ‘outside Australia’—

*omit, insert—*

‘in another country’.

**8 Amendment of s 13 (Value of taxable wages)**

Section 13(5)—

*omit, insert—*

- ‘(5) The value of taxable wages comprising a fringe benefit under the Fringe Benefits Assessment Act is, unless otherwise prescribed by regulation, the value worked out using the following formula—

$$V = TV \times 1 / (1 - \text{FBT rate})$$

where—

***FBT rate*** means the rate of fringe benefits tax imposed under the Fringe Benefits Assessment Act that applies when the employer’s liability for pay-roll tax on the taxable wages arises.

***TV*** means—

- (a) if paragraph (b) does not apply—the value that would be the taxable value of the taxable wages as a fringe benefit for the Fringe Benefits Assessment Act; or
- (b) if the fringe benefit is an amortised fringe benefit under the Fringe Benefits Assessment Act, section 65CA—the amortised amount of the benefit calculated under that section.

***V*** means the value of the taxable wages.

- ‘(6) This section does not apply to taxable wages comprising the grant of a share or option.

*Note—*

See section 13U (Value of taxable wages).’.

[s 9]

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## **9 Insertion of new pt 2, divs 1A–1D**

Part 2—

*insert—*

### **‘Division 1A Contractor provisions**

#### **‘13A Definitions for div 1A**

‘In this division—

*contract* includes an agreement, arrangement or undertaking, whether formal or informal and whether express or implied.

*relevant contract employee* see section 13D(2).

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

- (a) supply to the person, or, if the person is a member of a group, to another group member, the acquired goods in an altered form or condition; and
- (b) supply to the person, or, if the person is a member of a group, to another group member, other goods in which the acquired goods have been incorporated.

*services* includes results, whether goods or services, of work performed.

*supply* includes—

- (a) supply by way of sale, exchange, lease, hire, or hire purchase; and
- (b) in relation to services, includes the providing, granting or conferring of services.

#### **‘13B Meaning of *relevant contract***

‘(1) A *relevant contract* is a contract under which a person (the *designated person*), in the course of a business carried on by the designated person—

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

- 
- (b) has supplied to the designated person the services of persons in relation to the performance of work; or
  - (c) gives goods to individuals for work to be performed by those individuals in respect of the goods and for the goods to be re-supplied.
- ‘(2) However, a **relevant contract** does not include a contract of service or a contract under which a person (the **designated person**), in the course of a business carried on by the designated person—
- (a) is supplied with services in relation to the performance of work, if the services are ancillary to—
    - (i) the supply of goods under the contract by the person by whom the services are supplied; or
    - (ii) the use of goods that are the property of the person by whom the services are supplied; or
  - (b) is supplied with services in relation to the performance of work, if—
    - (i) the services are of a kind not ordinarily required by the designated person and are performed or rendered by a person who ordinarily performs or renders services of that kind to the public generally; or
    - (ii) the services are of a kind ordinarily required by the designated person for less than 180 days in a financial year; or
    - (iii) the 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 the relevant financial year and are not services—
      - (A) provided by a person by whom similar services are provided to the designated person; or
      - (B) in relation to the performance of work where any of the persons who perform the work also perform similar work for the designated person;

- for periods that, in the aggregate, exceed 90 days in the relevant financial year; or
- (iv) the services are supplied under a contract to which subparagraphs (i) to (iii) do not apply and the commissioner is satisfied the services are performed or rendered by a person who ordinarily performs or renders services of that kind to the public generally in the relevant financial year; or
- (c) is supplied by a person (the **contractor**) with services in relation to the performance of work under a contract to which paragraphs (a) and (b) do not apply, if the work to which the services relate is performed—
- (i) 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
  - (ii) if the contractor is a partnership of 2 or more individuals—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
  - (iii) if the contractor is an individual—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; or
- (d) is supplied with—
- (i) services ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them; or
  - (ii) services solely in relation to the procurement of persons desiring to be insured by the designated person; or
  - (iii) services in relation to the door-to-door sale of goods solely for domestic purposes on behalf of the designated person.

- 
- ‘(3) For subsection (2)(b), *relevant financial year* means the financial year during which the designated person is supplied with the services.
  - ‘(4) Subsections (2)(c) and (d) do not apply if the commissioner is satisfied the contract or arrangement under which the services are supplied was entered into with an intention either directly or indirectly of avoiding the payment of tax by any person.
  - ‘(5) An employment agency contract under which services are supplied by an employment agent, or a service provider is procured by an employment agent, is not a relevant contract.

### ‘13C Persons taken to be employers

- ‘(1) For this Act, a person is taken to be an employer if, under a relevant contract—
  - (a) the person supplies services to another person; or
  - (b) the services of other persons are supplied to the person in relation to the performance of work; or
  - (c) the person gives goods to individuals.
- ‘(2) However, if a contract is a relevant contract under both section 13B(1)(a) and (b)—
  - (a) the person to whom, under the contract, the services of persons are supplied in relation to the performance of work is taken to be an employer; and
  - (b) despite subsection (1)(a), the person who, under the contract, supplies the services is not taken to be an employer.
- ‘(3) A person taken to be an employer under this section is a *relevant contract employer*.

### ‘13D Persons taken to be employees

- ‘(1) For this Act, a person is taken to be an employee if, under a relevant contract—
  - (a) the person performs work in relation to which services are supplied to another person; or

- (b) the person is an individual who re-supplies goods to an employer.
- ‘(2) A person taken to be an employee under this section is a *relevant contract employee*.

### ‘13E Amounts taken to be wages

- ‘(1) For this Act, the following amounts paid or payable by a relevant contract employer under a relevant contract are taken to be wages—
- (a) amounts in relation to the performance of work for which services are supplied on or after 1 July 2008 under a relevant contract;
  - (b) amounts in relation to the performance of work relating to the re-supply of goods by a relevant contract employee under a relevant contract on or after 1 July 2008.

*Note—*

Under section 132, this section applies only in relation to wages paid or payable on or after 1 July 2008.

- ‘(2) Subsection (1)(a) is taken to include the following, to the extent the following do not otherwise comprise wages under this Act—
- (a) a payment—
    - (i) made by the relevant contract employer in relation to a relevant contract employee; and
    - (ii) that would be a superannuation contribution if it were made in relation to a person in the capacity of an employee;
  - (b) the value of a share or option—
    - (i) granted or liable to be granted by a relevant contract employer in relation to a relevant contract employee; and



- 
- (ii) that would comprise wages under this Act if the share or option were granted in relation to a person in the capacity of an employee.
  - ‘(3) For subsection (1), an amount paid or payable on or after 1 July 2008 for the performance of work under a relevant contract is taken to be for services supplied, or goods re-supplied, on or after 1 July 2008.
  - ‘(4) However, if the commissioner is satisfied any part of an amount mentioned in subsection (3) is for services supplied, or goods re-supplied, before 1 July 2008, the part is not wages.
  - ‘(5) If an amount mentioned in subsection (1) is included in a larger amount paid or payable by the relevant contract employer under the relevant contract, the part of the larger amount that is not attributable to the performance of work mentioned in subsection (1)(a) or (b) is the part decided by the commissioner.

### ‘13F **Liability for pay-roll tax for payments taken to be wages**

- ‘(1) If a relevant contract employer pays pay-roll tax on wages comprising a payment (the *primary payment*) in relation to the performance of work—
  - (a) no other person is liable for pay-roll tax on the primary payment; and
  - (b) another person who is liable to pay wages comprising a payment (a *secondary payment*) in relation to the work is not liable for pay-roll tax on the secondary payment.
- ‘(2) Subsection (1)(b) does not apply if the commissioner is satisfied either the secondary payment or the primary payment is made with an intention either directly or indirectly of avoiding the payment of tax by the relevant contract employer or another person.

## **‘Division 1B            Employment agents**

### **‘13G    Meaning of *employment agency contract***

- ‘(1) An *employment agency contract* is a contract under which a person (an *employment agent*) procures the services of another person (a *service provider*) for a client of the employment agent.
- ‘(2) However, a contract is not an employment agency contract if it is, or results in the creation of, a contract of employment between the service provider and the client.
- ‘(3) Subsection (1) applies to a contract whether it is formal or informal, express or implied.
- ‘(4) For this section—  
*contract* includes agreement, arrangement and undertaking.

### **‘13H    Persons taken to be employers**

‘For this Act, the employment agent under an employment agency contract is taken to be an employer.

### **‘13I    Persons taken to be employees**

‘For this Act, the person who performs work in relation to which services are supplied to the client under an employment agency contract is taken to be an employee of the employment agent under the contract.

### **‘13J    Amounts taken to be wages**

- ‘(1) For this Act, the following are taken to be wages paid or payable by the employment agent under an employment agency contract—
  - (a) an amount paid or payable in relation to the service provider in respect of the provision of services in connection with the contract;

- 
- (b) the value of a benefit provided in relation to the provision of services in connection with the contract that would be a fringe benefit if provided to a person in the capacity of an employee;
  - (c) a payment made in relation to the service provider that would be a superannuation contribution if made in relation to a person in the capacity of an employee.
- ‘(2) However, subsection (1) does not apply to an amount, benefit or payment mentioned in the subsection if—
- (a) the amount, benefit or payment would be exempt from pay-roll tax under division 2, other than section 14(2)(j), (k) or (l) or 14A, if it had been paid or provided by the client in relation to the service provider as an employee; and
  - (b) the client has given the employment agent a declaration, in the approved form, that subsection (1) does not apply to the amount, benefit or payment.

### **‘13K Liability for pay-roll tax for payments taken to be wages**

- ‘(1) This section applies if an employment agent—
- (a) under an employment agency contract, procures the services of a service provider for a client of the agent; and
  - (b) pays pay-roll tax on an amount, benefit or payment mentioned in section 13J(1) that is paid or payable by the employment agent in connection with that contract.
- ‘(2) No other person, including another person engaged to procure the services of the service provider for the employment agent’s client, is liable for pay-roll tax on wages paid or payable for the procurement or performance of services by the service provider for the client.
- ‘(3) This section applies subject to sections 13L and 13LA.

**‘13L Employment agency contract reducing or avoiding liability to pay-roll tax**

- ‘(1) If the effect of an employment agency contract is to reduce or avoid the liability of a party to the contract to the assessment, imposition or payment of pay-roll tax, the commissioner may—
- (a) disregard the contract; and
  - (b) determine that any party to the contract is taken to be an employer for this Act; and
  - (c) determine that any payment made in respect of the contract is taken to be wages for this Act.
- ‘(2) If the commissioner makes a determination under subsection (1), the commissioner must give written notice of the determination to the person taken to be an employer for the purposes of this Act.
- ‘(3) The notice must state the facts on which the commissioner relies and the reasons for making the determination.

**‘Division 1C Shares and options**

**‘13M Application of div 1C**

‘This division applies for paragraph (j) of the definition of *wages* in the schedule.

**‘13N Definitions for div 1C**

‘In this division—

*director*, of a company, includes—

- (a) a person who, under a contract or other arrangement, is to be appointed as a director of the company; and
- (b) a former director of the company.

*granted*, in relation to a share or option, see section 13O.

**grantee**, in relation to a grant of a share or option comprising wages for this Act, means the employee or director to whom the share or option is granted.

**grantor**, in relation to a grant of a share or option comprising wages for this Act, means the employer or company by whom the share or option is granted.

**relevant day** see section 13Q(2).

**vesting day** see section 13R(2).

### **‘130 When share or option is granted**

- ‘(1) A share is **granted** to a person if—
- (a) the person acquires the share; or
  - (b) the requirements for the grant of a share prescribed under a regulation are satisfied.
- ‘(2) An option is **granted** to a person if—
- (a) the person acquires a right to the share to which the option relates; or
  - (b) the requirements for the grant of an option prescribed under a regulation are satisfied.
- ‘(3) In this section—
- acquire**, a share or right, means acquire the share or right under the *Income Tax Assessment Act 1936* (Cwlth), section 139G.

### **‘13P Grant of share because of exercise of option**

‘Despite paragraph (j) of the definition of *wages* in the schedule, the grant of a share by a grantor does not comprise wages if—

- (a) the grantor is required to grant the share because a person has exercised an option; and
- (b) either—

- (i) the grant of the option to the person comprises wages for this Act; or
- (ii) the option was granted to the person before 1 July 2008.

### **‘13Q Day on which wages are paid or payable**

- ‘(1) Wages comprising the grant of a share or option are taken to be paid or payable on the relevant day.
- ‘(2) The *relevant day* is the day the grantor elects under this division to treat as the day on which the wages comprising the grant of the share or option are paid or payable.

### **‘13R Election by grantor of relevant day**

- ‘(1) A grantor may elect to treat either of the following as the day on which wages comprising the grant of a share or option are paid or payable—
  - (a) the day the share or option is granted to the grantee;
  - (b) the vesting day for the share or option.
- ‘(2) The *vesting day*—
  - (a) for a share—is the day the share vests in the grantee; or
  - (b) for an option—is the first of the following days—
    - (i) the day the share to which the option relates is granted to the grantee;
    - (ii) the day the grantee exercises a right under the option to have the share to which it relates transferred or allotted to, or vest in, the grantee.
- ‘(3) For subsection (2), a share *vests* in the grantee when—
  - (a) any conditions applying to the grant of the share have been met; and
  - (b) the grantee’s legal or beneficial interest in the share can not be rescinded.

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**‘13S Automatic election of relevant day**

- ‘(1) This section applies if a grantor grants a share or option to a grantee and any of the following applies—
- (a) the value of the grant of the share or option is not included in the taxable wages paid or payable by the grantor for a return period during which the share or option is granted;
  - (b) the value of the taxable wages comprising the grant of the share or option is nil;
  - (c) if the grantor were to elect to treat the day the share or option is granted as the relevant day, the wages would not be liable to pay-roll tax.
- ‘(2) If subsection (1)(a) applies, the grantor is taken to have elected to treat the vesting day for the share or option as the day on which the wages comprising the grant of the share or option are paid or payable.
- ‘(3) If subsection (1)(b) or (c) applies, the grantor is taken to have elected to treat the day the share or option is granted as the day on which the wages comprising the grant of the share or option are paid or payable.
- ‘(4) This section applies despite section 13R.

**‘13T Effect of rescission or cancellation of share or option**

- ‘(1) If, before the vesting day, the grant of a share or option is withdrawn, cancelled or exchanged for consideration other than the grant of other shares or options—
- (a) the date of the withdrawal, cancellation or exchange is taken to be the vesting day for the share or option; and
  - (b) despite section 13U(1)(a), the market value of the share or option on the vesting day is taken to be the amount of the consideration.
- ‘(2) A grantor must reduce, by the relevant amount, the taxable wages paid or payable by the grantor for a financial year or final period, if—

[s 9]

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- (a) the grantor included the value of a grant of a share or option in the taxable wages paid or payable by the grantor for a periodic return period falling in the financial year or final period; and
  - (b) the grant is rescinded, during the financial year or final period, because the conditions of the grant were not met.
- ‘(3) The commissioner must make a reassessment of a grantor’s liability for pay-roll tax for a financial year or final period, to reduce the taxable wages of the grantor by the relevant amount, if—
- (a) the grantor included the value of a grant of a share or option in the taxable wages paid or payable by the grantor for the financial year or final period; and
  - (b) the grant is rescinded, after the end of the financial year or final period, because the conditions of the grant were not met.
- ‘(4) For subsections (2) and (3), the *relevant amount* is the value of the grant of a share or option previously included in the taxable wages of the grantor under subsection (2)(a) or (3)(a).
- ‘(5) Subsections (2) and (3) do not apply only because the grantee fails to exercise an option or otherwise exercise the grantee’s rights in relation to a share or option.

### ‘13U Value of taxable wages

- ‘(1) The value of taxable wages comprising the grant of a share or option is taken to be the amount equal to—
- (a) the market value, in Australian currency, of the share or option on the relevant day, worked out under the Commonwealth income tax provisions; less
  - (b) any consideration paid or given by the grantee for the share or option, other than consideration in the form of services performed.
- ‘(2) For applying the Commonwealth income tax provisions under subsection (1)(a)—
- (a) an option is taken to be a right to acquire a share; and



- 
- (b) the provisions apply with the following changes and any other necessary changes—
- (i) a reference in the provisions to a taxpayer is taken to be a reference to the grantee;
  - (ii) a reference in the provisions to the Commissioner of Taxation must be read as a reference to either that Commissioner or the commissioner under this Act.

‘(3) In this section—

*Commonwealth income tax provisions* means the *Income Tax Assessment Act 1936* (Cwlth), part III (Liability to taxation), division 13A (Employee share schemes), subdivision F (Special provisions about the market value of a share or right).

### ‘13V When services are performed

- ‘(1) Wages comprising the grant of a share or option by a company to a director of the company by way of remuneration for the appointment of the director, but not for services performed, are taken to be paid or payable for services performed or rendered during the month in which the relevant day falls.
- ‘(2) Wages comprising the grant of a share or option to which subsection (1) does not apply are taken to be paid or payable for services performed or rendered during the month in which the relevant day falls.

### ‘13W Place where wages are paid or payable

- ‘(1) Wages comprising the grant of a share or option are taken to be paid or payable in Queensland if—
- (a) for a share—the share is in a local company; or
  - (b) for an option—the option is an option to acquire a share in a local company.
- ‘(2) If subsection (1) does not apply, wages comprising the grant of a share or option are taken to be paid or payable elsewhere than in Queensland.

*Note—*

Wages comprising the grant of a share or option that are taken to be paid or payable elsewhere than in Queensland may be liable to pay-roll tax if the grant is made for services performed or rendered wholly in Queensland (see section 9).

‘(3) Subsection (4) applies to wages comprising the grant of a share or option by a company to a director of the company by way of remuneration for the appointment of the director, but not for services performed or rendered.

‘(4) The wages are taken to be paid or payable for services performed or rendered in the place or places where it may reasonably be expected the services of the director for the company will be performed or rendered.

‘(5) In this section—

*local company* means—

(a) a company that is—

(i) registered or taken to be registered under the Corporations Act; and

(ii) taken to be registered in Queensland for that Act;  
or

(b) another body corporate incorporated under an Act.

## ‘Division 1D Allowances

### ‘Subdivision 1 Motor vehicle allowances

#### ‘13X Definitions for sdiv 1

‘In this subdivision—

*averaging method* means the method described in section 13ZB.

*averaging period* see section 13ZD(1).

*business journey* means—

- 
- (a) a journey undertaken in a motor vehicle by a person, other than for applying the vehicle for a use that—
- (i) is a private use; and
  - (ii) if the person is paid a motor vehicle allowance for the use—results in a fringe benefit under the Fringe Benefits Assessment Act being provided by the employer; or
- (b) a journey undertaken in a motor vehicle by a person in the course of producing assessable income of the person under the *Income Tax Assessment Act 1936* (Cwlth).

***business vehicle***, of an employee, means a motor vehicle provided or maintained by the employee for undertaking business journeys.

***continuous recording method*** means the method described in section 13ZA.

***number of exempt kilometres*** see section 13Y(4), definition K.

***relevant percentage*** see section 13ZB(4).

### **‘13Y Exempt component of motor vehicle allowance**

- ‘(1) For this Act, a reference to wages, in relation to a return period, does not include a reference to the exempt component of a motor vehicle allowance paid or payable to an employee for the period.
- ‘(2) If the total motor vehicle allowance paid or payable to an employee for a return period is not more than the exempt component of the allowance, the allowance does not comprise wages for this Act.
- ‘(3) If the total motor vehicle allowance paid or payable to an employee for a return period is more than the exempt component for the allowance, if any, only the amount of the allowance exceeding the exempt component comprises wages for this Act.
- ‘(4) The ***exempt component*** of a motor vehicle allowance paid or payable to an employee for a business vehicle for a return

period is the amount worked out using the following formula—

$$E = K \times R$$

where—

*E* means the exempt component.

*K* means the number of exempt kilometres travelled by the vehicle during the return period, worked out under section 13Z (the *number of exempt kilometres*).

*R* means—

- (a) the rate prescribed under the *Income Tax Assessment Act 1997* (Cwlth), section 28-25 for calculating a deduction for car expenses for a large car using the cents per kilometre method for the financial year immediately preceding the financial year in which the allowance is paid or payable; or

*Editor's note—*

See the *Income Tax Assessment Regulations 1997* (Cwlth), schedule 1.

- (b) if there is no rate mentioned in paragraph (a) prescribed—the rate prescribed under a regulation.

### **'13Z Working out the number of exempt kilometres**

- '(1) For section 13Y(4), the number of exempt kilometres must be worked out using either of the following chosen by the employer—

- (a) the continuous recording method;
- (b) the averaging method.

*Note—*

See section 13ZG (Switching between continuous recording and averaging methods) for requirements about switching between the continuous recording and averaging methods.

- '(2) However, if the commissioner gives a written approval for the employer to use another method for working out the number

of exempt kilometres, the number of exempt kilometres must be worked out using the approved method.

*Example of another method—*

using an estimate

- ‘(3) An approval mentioned in subsection (2)—
- (a) may be given by the commissioner if the commissioner is satisfied use of the other method would be more appropriate in particular circumstances; and
  - (b) may apply to—
    - (i) the employer; or
    - (ii) a class of employers that includes the employer.
- ‘(4) As soon as practicable after giving an approval under subsection (2), the commissioner must give a copy of the approval to the employer or, if the approval applies to a class of employers, each employer to whom it applies.

### **‘13ZA Continuous recording method**

- ‘(1) This section applies if, under section 13Z(1)(a), the employer uses the continuous recording method to work out the number of exempt kilometres for a business vehicle.
- ‘(2) The employer must keep a record of the following details—
- (a) the odometer readings at the beginning and end of each business journey undertaken by the employee during the return period by means of the vehicle;
  - (b) the specific purpose for which the journey was undertaken;
  - (c) the distance travelled.

*Note—*

See the Administration Act, section 118 (Period for keeping records).

- ‘(3) The number of exempt kilometres is the distance of all business journeys mentioned in subsection (2)(a), worked out using the odometer readings mentioned in the subsection.

### **‘13ZB Averaging method—how it works**

- ‘(1) This section applies if, under section 13Z(1)(b), the employer uses the averaging method to work out the number of exempt kilometres for a business vehicle.
- ‘(2) The employer must keep the records mentioned in section 13ZC.

*Note—*

See the Administration Act, section 118 (Period for keeping records).

- ‘(3) The number of exempt kilometres is the number worked out using the following formula—

$$\mathbf{K = D \times RP}$$

where—

*D* means the total distance travelled by the business vehicle during the return period, worked out using the odometer readings mentioned in section 13ZC(3)(a).

*K* means the number of exempt kilometres.

*RP* means the relevant percentage for the vehicle.

- ‘(4) The *relevant percentage* for the business vehicle is the percentage worked out using the following formula—

$$\mathbf{RP = B/T \times 100}$$

where—

*B* means the distance travelled by the employee in the course of business journeys undertaken by means of the vehicle during the averaging period for the vehicle, worked out using the odometer readings mentioned in section 13ZC(2)(a).

*RP* means the relevant percentage.

*T* means the total distance travelled by the vehicle during the averaging period for the vehicle, worked out using the odometer readings mentioned in section 13ZC(2)(d).

- ‘(5) If a relevant percentage for the business vehicle is worked out on the basis of an averaging period for the vehicle, the number of exempt kilometres for the vehicle for a return period

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mentioned in subsection (6) must be worked out using that relevant percentage.

- ‘(6) For subsection (5), the return periods are—
- (a) any return period falling in or comprising the financial year in which the averaging period falls or, if the averaging period falls in 2 financial years, the second financial year in which the period falls, other than a return period ending before the averaging period ends; and
  - (b) the return periods falling in or comprising any of the succeeding 4 financial years after the financial year mentioned in paragraph (a).
- ‘(7) Subsection (5) applies subject to section 13ZE.

### **‘13ZC Averaging method—records to be kept by employer**

- ‘(1) An employer who, under section 13Z(1)(b), works out the number of exempt kilometres for a business vehicle using the averaging method must keep a record of the details stated in this section.
- ‘(2) In relation to the averaging period for the business vehicle, the details are each of the following—
- (a) the odometer readings at the beginning and end of each business journey undertaken by the employee during the averaging period by means of the vehicle;
  - (b) the specific purpose for which each business journey mentioned in paragraph (a) was undertaken;
  - (c) the distance travelled by the employee during the averaging period in the course of all business journeys mentioned in paragraph (a), worked out using the odometer readings mentioned in the paragraph;
  - (d) the odometer readings at the beginning and end of the averaging period;
  - (e) the distance travelled by the vehicle during the averaging period, worked out using the odometer readings mentioned in paragraph (d);

- (f) the relevant percentage for the vehicle.

*Note—*

Under section 13ZB(5), the relevant percentage worked out on the basis of an averaging period must be used for the return periods mentioned in section 13ZB(6). While the employer is using that relevant percentage, the employer is not required to work out the relevant percentage again, or to make a new record of the details mentioned in subsection (2).

- ‘(3) In relation to the return period to which the number of exempt kilometres relates, the details are each of the following—
- (a) the business vehicle’s odometer readings at the beginning and end of the return period;
  - (b) the distance travelled by the vehicle during the return period, worked out using the odometer readings mentioned in paragraph (a);
  - (c) the number of exempt kilometres for the vehicle for the return period.
- ‘(4) If the odometer of the business vehicle is replaced or recalibrated during a return period for which its readings are relevant for using the averaging method, the employer must keep a record of the odometer readings immediately before and immediately after the replacement or recalibration.

### ‘13ZD Averaging method—what is the *averaging period*

- ‘(1) The *averaging period*, for a business vehicle of an employee, means a continuous period of at least 12 weeks, chosen by the employer, throughout which the vehicle is provided or maintained by the employee.
- ‘(2) The averaging period may overlap the start or end of a financial year.

*Note—*

See also section 13ZB(5) and (6) in relation to using a relevant percentage worked out on the basis of an averaging period that falls in 2 financial years.

- ‘(3) If the averaging method is used for more than 1 business vehicle of an employee for the same return period, the



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averaging period for the vehicles must be the same.

‘(4) This section applies subject to section 13ZE.

**‘13ZE Averaging method—recalculation of relevant percentage**

‘(1) This section applies to an employer who, under section 13Z(1)(b), works out the number of exempt kilometres for a business vehicle using the averaging method.

‘(2) The employer must recalculate the relevant percentage for the business vehicle if—

(a) the commissioner gives the employer a written notice, before the start of a return period, directing the employer to recalculate the relevant percentage for the vehicle on the basis of an averaging period that falls wholly or partly during the return period; or

(b) the employer wishes to start using the averaging method for 1 or more other business vehicles used by the employee.

*Note—*

See also section 13ZD(3).

‘(3) Also, the employer must recalculate the relevant percentage for the business vehicle if the employer—

(a) has used a relevant percentage worked out on the basis of an averaging period for the vehicle for the succeeding 4 financial years after the financial year mentioned in section 13ZB(6)(a); and

(b) intends to continue using the averaging method to work out the number of exempt kilometres for the vehicle.

*Note—*

If the employer recalculates the relevant percentage on the basis of a new averaging period, the new averaging period applies for the purposes of section 13ZB(5) and the employer must use the new relevant percentage for the return periods mentioned in section 13ZB(6).

‘(4) In this section—

*recalculate* the relevant percentage for a business vehicle means—

- (a) record the details mentioned in section 13ZC(2)(a) to (e) in relation to a new averaging period for the vehicle; and
- (b) work out a new relevant percentage for the vehicle using the details mentioned in paragraph (a).

### **‘13ZF Averaging method—replacing a business vehicle**

- ‘(1) An employer using the averaging method may nominate 1 business vehicle (the *replacement vehicle*) to be the replacement of another business vehicle (the *original vehicle*).
- ‘(2) The employer must record the nomination in writing—
  - (a) during the financial year in which the nomination takes effect; or
  - (b) if the commissioner allows the employer to record the nomination at a later time—at the later time allowed by the commissioner.
- ‘(3) The nomination takes effect on the day stated in it.
- ‘(4) After the nomination takes effect, for the employer’s use of the averaging method the replacement vehicle is taken to be the original vehicle.
- ‘(5) The employer need not repeat, for the replacement vehicle, the steps already taken under this subdivision for the original vehicle.

*Example—*

The employer is not required to recalculate the relevant percentage worked out for the original vehicle.

- ‘(6) The employer must keep a record of—
  - (a) the odometer reading of the original vehicle immediately before the nomination takes effect; and
  - (b) the odometer reading of the replacement vehicle immediately after the nomination takes effect.

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**‘13ZG Switching between continuous recording and averaging methods**

- ‘(1) An employer may change from using a recording method to using the other recording method with effect from the beginning of a financial year.

*Note—*

See section 13ZA(2) or 13ZC for the record keeping requirements with which the employer must comply for the financial year for the continuous recording method or averaging method.

- ‘(2) In this section—

***recording method*** means the averaging method or continuous recording method.

**‘Subdivision 2 Accommodation allowances****‘13ZH Exempt rate for accommodation allowance**

- ‘(1) For this Act, a reference to wages does not include a reference to an accommodation allowance—
- (a) paid or payable to an employee for a night’s absence from the employee’s usual place of residence; and
  - (b) that is not more than the exempt rate.
- ‘(2) If an accommodation allowance paid or payable to an employee for a night’s absence from the employee’s usual place of residence is more than the exempt rate, the allowance comprises wages for this Act only to the extent it is more than the exempt rate.
- ‘(3) The ***exempt rate***, for a financial year, is—
- (a) the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the year decided by the Commissioner of Taxation of the Commonwealth for the *Income Tax Assessment Act 1997* (Cwlth), section 900-50; or
  - (b) if no decision mentioned in paragraph (a) is in force—the rate prescribed under a regulation.’.

## **10 Amendment of s 14 (Exemption from pay-roll tax)**

(1) Section 14(2)—

*insert—*

‘(k) subject to subsection (8), to an employee for a period when the employee is—

(i) taking part in fire fighting or fire prevention activities, or associated activities, as a volunteer member of a rural fire brigade under the *Fire and Rescue Service Act 1990*; or

(ii) performing functions as a volunteer member of the State Emergency Service or an emergency service unit under the *Disaster Management Act 2003*; or

(iii) performing functions as an honorary ambulance officer under the *Ambulance Service Act 1991*; or

(l) to a person who is an Aboriginal person or Torres Strait Islander employed under an employment project under the Community Development Employment Project funded by the Department of Employment and Workplace Relations (Cwlth) or the Torres Strait Regional Authority.’.

(2) Section 14—

*insert—*

‘(8) The exemption given in subsection (2)(k) does not apply to wages paid or payable as annual leave, long service leave, recreation leave or sick leave.’.

## **11 Insertion of new s 14A**

After section 14—

### **‘14A Exemption for parental and adoption leave**

‘(1) The wages liable to pay-roll tax under this Act do not include wages paid or payable to an employee for parental leave or adoption leave.

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- ‘(2) It is immaterial whether the parental leave is taken during or after the pregnancy, or the adoption leave is taken before or after the adoption.
- ‘(3) The exemption under subsection (1) is limited to wages paid or payable for—
- (a) not more than 14 weeks’ maternity leave for any 1 pregnancy; and
  - (b) not more than 14 weeks’ paternity leave for any 1 pregnancy; and
  - (c) not more than 14 weeks’ adoption leave for any 1 adoption.
- ‘(4) A reference in subsection (3) to 14 weeks’ leave is a reference to—
- (a) for a full-time employee who takes leave on less than full pay—a period equivalent to 14 weeks’ leave on full pay; or
  - (b) for a part-time employee—a period of 14 weeks’ leave at the employee’s part-time rate of pay.
- ‘(5) An employer who claims an exemption under subsection (1) must obtain and keep as a record—
- (a) for wages paid or payable for maternity leave—a medical certificate for, or statutory declaration by, the employee stating—
    - (i) the employee is or was pregnant; or
    - (ii) the employee has given birth and the date of birth; or
  - (b) for wages paid or payable for paternity leave—a statutory declaration by the employee stating—
    - (i) a female is or was pregnant with his unborn child; or
    - (ii) his child has been born and the date of birth; or
  - (c) for wages paid or payable for adoption leave—a statutory declaration by the employee stating—

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- (i) a child has been placed in the custody of the employee pending the making of an adoption order; or
- (ii) that an adoption order has been made or recognised in favour of the employee.

*Note—*

Under the Administration Act, section 118, these records must be kept for at least 5 years.

‘(6) The exemption under subsection (1) does not apply to wages comprising a fringe benefit under the Fringe Benefits Assessment Act.

‘(7) In this section—

*adoption leave* means leave given to an employee in connection with the adoption of a child by the employee, other than annual leave, recreation leave, sick leave or similar leave.

*maternity leave* means leave given to a female employee in connection with her pregnancy or the birth of her child, other than annual leave, recreation leave, sick leave or similar leave.

*parental leave* means maternity leave or paternity leave.

*paternity leave* means leave given to a male employee in connection with the pregnancy of a female carrying his unborn child or the birth of his child, other than annual leave, recreation leave, sick leave or similar leave’.

## 12 **Amendment of s 50 (Arrangements for avoidance of tax may be disregarded)**

Section 50(2)—

*insert—*

*Note—*

See also sections 13L and 13LA for particular provisions about avoidance arrangements relating to employment agency contracts.’.

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**13 Amendment, relocation and renumbering of s 51  
(Avoidance arrangements involving employment agents)**

- (1) Section 51, heading, 'Avoidance'—  
*omit, insert—*  
**'Particular avoidance'**.
- (2) Section 51(2)(a) and (6), definition *avoidance arrangement*, paragraph (b), 'agency agreement'—  
*omit, insert—*  
'employment agency contract'.
- (3) Section 51(3), 'section 69'—  
*omit, insert—*  
'section 71'.
- (4) Section 51(6)—  
*insert—*  
'**employment agency contract** see the definition *employment agent* for this section.  
  
**employment agent** means a person who, by a contract, agreement, arrangement or undertaking (the **employment agency contract**), procures the services of another person (the **worker**) for a client of the agent, if the employment agency contract is not, and does not result in the creation of, a contract of employment between the worker and the client.'
- (5) Section 51—  
*relocate and renumber*, in part 2, division 1B, as section 13LA.

**14 Insertion of new pt 2, div 8**

- Part 2—  
*insert—*

## **‘Division 8                      Miscellaneous provisions**

### **‘51      Wages paid by or to third parties**

‘(1) Subsection (2) applies if money or other consideration—

- (a) for an employee’s services as an employee of an employer, is paid or given or to be paid or given—
  - (i) to the employee, by a person other than the employer; or
  - (ii) to a person other than the employee, by the employer; or
  - (iii) to a person other than the employee, by a person other than the employer; and
- (b) had it been paid or given, or to be paid or given, directly by the employer to the employee, would be wages paid or payable by the employer to the employee for this Act.

*Example of other consideration—*

the grant of a share or option

‘(2) The money or other consideration is taken to be wages paid or payable by the employer to the employee.

‘(3) Subsection (4) applies if money or other consideration—

- (a) by way of remuneration for the appointment or services of a director of a company to the company, is paid or given or to be paid or given—
  - (i) to the director by a person other than the company; or
  - (ii) to a person other than the director by the company; or
  - (iii) to a person other than the director by a person other than the company; and
- (b) had it been paid or given, or to be paid or given, directly by the company to the director, would comprise wages paid or payable by the company for this Act.



*Example of other consideration—*

the grant of a share or option

‘(4) The money or other consideration is taken to be wages paid or payable by the company to the director.

‘(5) In this section—

**director** of a company includes—

- (a) a person who, under a contract or other arrangement, is to be appointed as a director of the company; and
- (b) a former director of the company.

### **‘51A Joint and several liability of group members**

‘(1) This section applies if a member of a group fails to pay an amount the member is required to pay under this Act in respect of a period.

‘(2) Every member of the group is liable jointly and severally to pay the amount, whether or not the member was an employer during the period to which the amount relates.

‘(3) This section is subject to sections 34(2) and 42(2).’

## **15 Replacement of pt 4, divs 1 and 2**

Part 4, divisions 1 and 2—

*omit, insert—*

### **‘Division 1 Interpretation**

#### **‘66 Definitions for pt 4**

‘In this part—

**business** includes any of the following, whether carried on by 1 person or 2 or more persons together—

- (a) a profession or trade;
- (b) any other activity carried on for fee, gain or reward;

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- (c) the activity of employing 1 or more persons who perform duties in connection with another business;
- (d) the carrying on of a trust, including a dormant trust;
- (e) the activity of holding money or property used in connection with another business.

*related body corporate* see the Corporations Act, section 9.

#### **‘67 Grouping provisions to operate independently**

‘The fact that a person is not a member of a group constituted under a provision of this part does not prevent the person being a member of a group constituted under another provision of this part.

## **‘Division 2 Business groups**

#### **‘68 Constitution of groups**

‘A group is constituted by all the persons forming a group that is not part of a larger group.

#### **‘69 Groups of corporations**

- ‘(1) Corporations constitute a group if they are related bodies corporate.
- ‘(2) For assessing whether corporations are related bodies corporate, they are taken to carry on a business and not to be trustee companies.

*Note—*

Section 74 allows the commissioner to exclude, for pay-roll tax purposes, persons from a group in some circumstances, but not if the persons are related bodies corporate.

#### **‘70 Groups arising from the use of common employees**

- ‘(1) If 1 or more employees of an employer perform duties in connection with 1 or more businesses carried on by the

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employer and 1 or more other persons, the employer and each of those other persons constitute a group.

‘(2) If 1 or more employees of an employer are employed solely or mainly to perform duties in connection with 1 or more businesses carried on by 1 or more other persons, the employer and each of those other persons constitute a group.

‘(3) If 1 or more employees of an employer perform duties—

- (a) in connection with 1 or more businesses carried on by 1 or more other persons; and
- (b) in connection with, or in fulfilment of the employer’s obligation under, a relevant agreement;

the employer and each of those other persons constitute a group.

‘(4) In this section—

*relevant agreement* means an agreement, arrangement or undertaking for services to be provided to 1 or more of the other persons in connection with the business or those businesses carried on by the other person or persons—

- (a) whether the agreement, arrangement or undertaking is formal or informal, express or implied; and
- (b) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the employees or states the duties to be performed by them.

*Note—*

Section 74 allows the commissioner to exclude, for pay-roll tax purposes, persons from a group constituted under this section in some circumstances.

## ‘71 Groups of commonly controlled businesses

‘(1) If a person or set of persons has a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a group.

*Note—*

Section 74 allows the commissioner to exclude, for pay-roll tax purposes, persons from a group constituted under this section in some circumstances.

- (2) For this section, a person or set of persons has a ***controlling interest*** in a business if any of the following applies—
- (a) for 1 person—the person is the sole owner of the business, whether or not as trustee;
  - (b) for a set of persons—together the persons are the sole owners of the business as trustees;
  - (c) for a business carried on by a corporation—
    - (i) the person or each person in the set of persons is a director of the corporation, and the person or set of persons is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or
    - (ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instruction or wishes of the person or set of persons;
  - (d) for a business carried on by a body corporate or unincorporate—the person or set of persons constitute more than 50% of, or control the composition of, the board of management, by whatever name called, of the body;
  - (e) for a business carried on by a corporation with a share capital—the person or set of persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or a class of voting shares, issued by the corporation;
  - (f) for a business carried on by a partnership—the person or set of persons—

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- (i) own, whether beneficially or not, more than 50% of the capital of the partnership; or
  - (ii) is entitled, whether beneficially or not, to more than 50% of the profits of the partnership;
  - (g) for a business carried on under a trust—the person or set of persons, whether or not as the trustee or beneficiary of another trust, is the beneficiary in respect of more than 50% of the value of the interests in the trust under which the business is carried on.
- ‘(3) If—
- (a) 2 corporations are related bodies corporate; and
  - (b) 1 of the corporations has a controlling interest in a business;
- the other corporation has a controlling interest in the business.
- ‘(4) If—
- (a) a person or set of persons has a controlling interest in a business; and
  - (b) a person or set of persons who carry on the business has a controlling interest in another business;
- the person or set of persons mentioned in paragraph (a) has a controlling interest in the other business.
- ‘(5) If—
- (a) a person or set of persons is the beneficiary of a trust in respect of more than 50% of the value of the interests in the trust; and
  - (b) the trustee of the trust, whether alone or together with another trustee or trustees, has a controlling interest in the business of another trust;
- the person or set of persons has a controlling interest in the business.
- ‘(6) A person who may benefit from a discretionary trust as a result of the trustee or another person, or the trustee and another person, exercising or failing to exercise a power or discretion, is taken for this part to be a beneficiary of the trust

in respect of more than 50% of the value of the interests in the trust.

‘(7) If—

- (a) a person or set of persons has a controlling interest in the business of a trust; and
- (b) the trustee of the trust, whether alone or together with another trustee or trustees, has a controlling interest in the business of a corporation;

the person or set of persons has a controlling interest in the business of the corporation.

‘(8) If—

- (a) a person or set of persons has a controlling interest in the business of a trust; and
- (b) the trustee of the trust, whether alone or together with 1 or more other trustees, has a controlling interest in the business of a partnership;

the person or set of persons has a controlling interest in the business of the partnership.

## ‘72 Groups arising from tracing of interests in corporations

‘(1) A relevant entity and a corporation constitute a group if the entity has a controlling interest in the corporation.

*Note—*

Section 74 allows the commissioner to exclude, for pay-roll tax purposes, persons from a group constituted under this section in some circumstances.

‘(2) For this section, a relevant entity has a *controlling interest* in a corporation if—

- (a) the corporation has share capital; and
- (b) the entity has an interest in the corporation; and
- (c) the value of the interest is more than 50%.

‘(3) In this section—

*interest* means a direct interest, indirect interest or aggregate interest under section 74B.

*relevant entity* see section 74B.

### **‘73 Smaller groups subsumed into larger groups**

‘If a person is a member of 2 or more groups, the members of all the groups together constitute a group.

*Note 1*—

Section 74 allows the commissioner to exclude, for pay-roll tax purposes, persons from a group constituted under this section in some circumstances.

*Note 2*—

See also section 68.

### **‘74 Exclusion of persons from groups**

- ‘(1) The commissioner may, by order in writing (an *exclusion order*), exclude a person from a group.
- ‘(2) The commissioner may make an exclusion order only if the commissioner is satisfied a business carried on by the person is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of the group.
- ‘(3) For deciding whether to make an exclusion order, the commissioner must have regard to—
  - (a) the nature and degree of ownership and control of the businesses carried on by the person and the other members of the group; and
  - (b) the nature of the businesses; and
  - (c) any other matters the commissioner considers relevant.
- ‘(4) Despite subsection (1), the commissioner can not make an exclusion order if the person and another body corporate that is a member of the group are related bodies corporate.
- ‘(5) The commissioner may, by order in writing, revoke an exclusion order if the commissioner is satisfied the

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circumstances in which an exclusion order may be made do not apply to the person.

- (6) An exclusion order or order revoking an exclusion order takes effect on the date stated in it, which may be a date earlier than the date of the exclusion order.

## **‘Division 2A            Business groups—interpretation provisions for tracing of interests in corporations**

### **‘74A    Application of div 2A**

‘This division applies for interpreting section 72.

### **‘74B    Definitions for div 2A**

‘In this division—

*aggregate interest* see section 74G(1).

*associated persons* see section 74C.

*direct interest* see section 74E.

*indirect interest* see section 74F.

*private company* means a company that is not limited by shares, or whose shares are not quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

*related persons* see section 74D.

*relevant entity* means—

- (a) a person; or
- (b) 2 or more associated persons.

### **‘74C    Who are *associated persons***

‘Persons are *associated persons* if they are any of the following—



- 
- (a) related persons;
  - (b) individuals who are partners in a partnership;
  - (c) private companies in which common shareholders have a majority interest;
  - (d) trustees of trusts, other than public unit trust schemes, of which there is a common beneficiary;
  - (e) a private company and a trustee of a trust, other than a public unit trust scheme, if a related body corporate of the company is a beneficiary of the trust.

#### **‘74D Who are *related persons***

‘(1) Persons are *related persons* if they are any of the following—

- (a) individuals, if—
  - (i) 1 is the spouse of the other; or
  - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;
- (b) private companies that are related bodies corporate;
- (c) an individual and a private company, if the individual is a majority shareholder or director of—
  - (i) the company; or
  - (ii) another private company that is a related body corporate of the company;
- (d) an individual and a trustee of a trust, other than a public unit trust scheme, of which the individual is a beneficiary;
- (e) a private company and a trustee of a trust, other than a public unit trust scheme, if the company, or a majority shareholder or director of the company, is a beneficiary of the trust.

‘(2) In this section—

*de facto partner* means 1 of 2 persons who is a de facto partner within the meaning of the *Acts Interpretation Act 1954*, section 32DA, if—

[s 15]

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- (a) the persons are living, and for at least 2 years have lived, together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA; or
- (b) the persons are not living, but for at least 2 years were living, together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA.

*spouse* includes a de facto partner.

#### **‘74E Direct interest**

- ‘(1) A relevant entity has a *direct interest* in a corporation if—
  - (a) for a relevant entity that is a person—the person can, directly or indirectly, exercise the voting power attached to any voting shares issued by the corporation; or
  - (b) for a relevant entity that is 2 or more associated persons—each of the associated persons can, directly or indirectly, exercise the voting power attached to any voting shares issued by the corporation.
- ‘(2) The value of the relevant entity’s direct interest in the corporation is the percentage equivalent to the proportion of the voting power of all voting shares issued by the corporation that—
  - (a) for a relevant entity that is a person—the person can, directly or indirectly, exercise; or
  - (b) for a relevant entity that is 2 or more associated persons—the associated persons can, if acting together, directly or indirectly exercise.
- ‘(3) In this section—

*exercise*, in relation to voting power attached to voting shares issued by a corporation, includes control the exercise of, or substantially influence the exercise of, the voting power.

---

**‘74F Indirect interest**

- ‘(1) A relevant entity has an *indirect interest* in a corporation if the corporation is linked to another corporation (the *directly controlled corporation*) in which the entity has a direct interest.

*Note—*

It is possible for a relevant entity to have more than 1 indirect interest in a corporation. In that case, the relevant entity has an aggregate interest in the corporation under section 74G(1)(b).

*Examples—*

- 1 The relevant entity has a direct interest in corporations A and B. Both corporations A and B have a direct interest in corporation C.
  - 2 The relevant entity has a direct interest in corporation A. Corporation A is linked to another corporation through more than 1 chain of corporations.
- ‘(2) A corporation is linked to the directly controlled corporation if the corporation is part of a chain of corporations—
- (a) that starts with the directly controlled corporation; and
  - (b) in which a link is formed if a corporation has a direct interest in the next corporation in the chain.

*Examples—*

- 1 A relevant entity has a direct interest in corporation A (the directly controlled corporation). Corporation A has a direct interest in corporation B. Corporations A and B are linked and form part of a chain of corporations. Therefore, the relevant entity has a direct interest in corporation A, and an indirect interest in corporation B.
- 2 Corporation B also has a direct interest in corporation C. Corporations B and C are linked to corporation A, and corporations A, B and C form part of a chain of corporations. The relevant entity has a direct interest in corporation A, and an indirect interest in corporations B and C.
- 3 Corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, 1 consisting of corporations A, B and C and the other consisting of corporations A, B and D. Corporations B, C and D are all linked to corporation A. The relevant entity has a direct interest in corporation A, and an indirect interest in corporations B, C and D. However, if a relevant entity had a direct interest in corporation C only, the entity would not have an indirect

interest in corporation D because corporation D is not linked to corporation C.

- (3) The value of a relevant entity's indirect interest in a corporation (the *indirectly controlled corporation*) that is linked to a directly controlled corporation is the percentage worked out by multiplying the following amounts—
- (a) the value of the relevant entity's direct interest in the directly controlled corporation;
  - (b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.

*Examples—*

- 1 A relevant entity has a direct interest (with a value of 80%) in corporation A. Corporation A has a direct interest (with a value of 70%) in corporation B. The value of the relevant entity's indirect interest in corporation B is  $80\% \times 70\% = 56\%$ . For section 72, the relevant entity has a controlling interest in corporation B.
- 2 Corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the relevant entity's indirect interest in corporation C is  $80\% \times 70\% \times 40\% = 22.4\%$ . For section 72, the relevant entity does not have a controlling interest in corporation C.

## **'74G Aggregate interest**

- (1) A relevant entity has an *aggregate interest* in a corporation if—
- (a) the entity has a direct interest and 1 or more indirect interests in the corporation; or
  - (b) the entity has more than 1 indirect interest in the corporation.
- (2) The value of a relevant entity's aggregate interest in a corporation is the sum of the following amounts—
- (a) the value of the direct interest, if any, of the entity in the corporation;
  - (b) the value of each indirect interest of the entity in the corporation.

*Example—*

A relevant entity has a direct interest (with a value of 40%) in corporation B. The relevant entity also has a direct interest (with a value of 25%) in corporation A. Corporation A has a direct interest (with a value of 60%) in corporation B. Accordingly, the relevant entity also has an indirect interest in corporation B with a value of 15% (25% x 60%). The value of the relevant entity's aggregate interest in corporation B is 40% + 15% = 55%. For section 72, the relevant entity has a controlling interest in corporation B.

**16 Amendment of s 80 (Reassessment—making or revocation of order excluding a person from a group)**

Section 80(1)(a)(i), 'section 68, 69, 70 or 71'—

*omit, insert—*

'section 74'.

**17 Amendment of pt 7 hdg (Savings and transitional provisions)**

Part 7, heading, after 'provisions'—

*insert—*

'for Pay-roll Tax Administration Amendment Act 2004'.

**18 Insertion of new pt 8**

After section 130—

*insert—*

**'Part 8 Transitional provisions for Pay-roll Tax (Harmonisation) Amendment Act 2008****'131 Interpretation of amended provisions**

'(1) The amendments made to this Act by the *Pay-roll Tax (Harmonisation) Amendment Act 2008* are intended to

enhance the consistency of this Act with the *Payroll Tax Act 2007* (NSW) and the *Payroll Tax Act 2007* (Vic).

*Note—*

Minor variations in language used in some of the amended provisions are not intended to alter their meaning from the corresponding provisions in the New South Wales and Victorian Acts. For example—

- the phrase “in relation to” used in sections 13B to 13D, 13E(1), 13F, 13I and 13J(1) and (2)(a), is intended to have the same meaning as the phrase “for or in relation to”, or “to or in relation to”, used in the corresponding provisions; and
- the phrase “in connection with” used in sections 66 and 70(1), (2) and (3)(a) is intended to have the same meaning as the phrase “for or in connection with” used in the corresponding provisions.

‘(2) However, this section does not apply to the extent—

- (a) the *Pay-roll Tax (Harmonisation) Amendment Act 2008* inserted section 14(2)(k)(iii) of this Act; or
- (b) section 14A, as inserted by the *Pay-roll Tax (Harmonisation) Amendment Act 2008*, section 11, applies to paternity leave.

### **‘132 Application of amended Act**

‘This Act, as amended by the *Pay-roll Tax (Harmonisation) Amendment Act 2008*, applies in relation to wages paid or payable on or after 1 July 2008.

### **‘133 Application of avoidance provision for employment agency contracts**

‘Section 13L applies to employment agency contracts made before, on or after the commencement of this section.

### **‘134 Continuation of orders excluding person from group**

‘(1) This section applies if—

- (a) an order excluding a person from a group, made by the commissioner under section 68, 69, 70 or 71, as it was in

force before 1 July 2008, is in effect immediately before 1 July 2008; and

- (b) the composition of the group is not changed, other than the order mentioned in paragraph (a) no longer having effect, because of the commencement of the *Pay-roll Tax (Harmonisation) Amendment Act 2008*.

‘(2) The order mentioned in paragraph (a) is taken to be an exclusion order made by the commissioner under section 74(1).’.

## 19 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *agent*, *client*, *death benefit ETP*, *employment agent*, *ETP* and *taxable ETP*—

*omit*.

- (2) Schedule—

*insert*—

***‘aggregate interest***, for part 4, division 2A, see section 74B.

***associated persons***, for part 4, division 2A, see section 74B.

***averaging method***, for part 2, division 1D, subdivision 1, see section 13X.

***averaging period***, for part 2, division 1D, subdivision 1, see section 13X.

***business***, for part 4, see section 66.

***business journey***, for part 2, division 1D, subdivision 1, see section 13X.

***business vehicle***, for part 2, division 1D, subdivision 1, see section 13X.

***continuous recording method***, for part 2, division 1D, subdivision 1, see section 13X.

***contract***, for part 2, division 1A, see section 13A.

***direct interest***, for part 4, division 2A, see section 74B.

**director**—

- (a) of a company, includes a member of the governing body of the company; and
- (b) for part 2, division 1C, see section 13N.

**employment agency contract** see section 13G(1).

**employment agent**, under an employment agency contract, see section 13G(1).

**granted**, for part 2, division 1C, see section 13N.

**grantee**, for part 2, division 1C, see section 13N.

**grantor**, for part 2, division 1C, see section 13N.

**indirect interest**, for part 4, division 2A, see section 74B.

**number of exempt kilometres**, for part 2, division 1D, subdivision 1, see section 13X.

**option** means an option or right, whether actual, prospective or contingent, of a person to—

- (a) acquire a share; or
- (b) have a share transferred or allotted to the person.

**private company**, for part 4, division 2A, see section 74B.

**related body corporate**, for part 4, see section 66.

**related persons**, for part 4, division 2A, see section 74B.

**relevant contract** see section 13B.

**relevant contract employee** see section 13A.

**relevant contract employer** see section 13C(3).

**relevant day**, for part 2, division 1C, see section 13N.

**relevant entity**, for part 4, division 2A, see section 74B.

**relevant percentage**, for part 2, division 1D, subdivision 1, see section 13X.

**re-supply**, for part 2, division 1A, see section 13A.



**return period**, in relation to an employer, means each of the following periods for which the employer is required under this Act to lodge a return—

- (a) a periodic return period;
- (b) a financial year;
- (c) a final period.

**service provider**, in relation to an employment agency contract, see section 13G(1).

**services**, for part 2, division 1A, see section 13A.

**share**—

- (a) means a share in a company; and
- (b) includes a stapled security under the *Income Tax Assessment Act 1936* (Cwlth), section 139GCD.

**supply**, for part 2, division 1A, see section 13A.

**termination payment** see section 3A.

**vesting day**, for part 2, division 1C, see section 13N.’.

- (3) Schedule, definition *employer*, from ‘and any person’—

*omit, insert*—

‘and any person taken to be an employer under another provision of this Act.

*Note*—

For provisions under which persons are taken to be employers, see, for example, sections 13C (relevant contract employers) and 13H (employment agents under employment agency contracts).’.

- (4) Schedule, definition *wages*, after ‘any wages,’—

*insert*—

‘remuneration,’.

- (5) Schedule, definition *wages*, from ‘, or in relation to’ to ‘employee’s benefit’—

*omit, insert*—

‘an employee as an employee’.

- (6) Schedule, definition *wages*, paragraph (c), ‘or member of the governing body’—

*omit.*

- (7) Schedule, definition *wages*, paragraph (f)—

*omit.*

- (8) Schedule, definition *wages*, paragraph (h), from ‘other than’—

*omit, insert—*

‘other than a superannuation contribution—

- (i) paid or payable by a company for a director of the company before 1 July 2008; or
- (ii) for services performed or rendered by an employee before 1 January 2000; and’.

- (9) Schedule, definition *wages*, paragraph (i)—

*omit, insert—*

- ‘(i) a termination payment; and
- (j) an amount taken to be wages under another provision of this Act; and

*Note—*

See, for example, sections 13E (amounts paid or payable under a relevant contract), 13J (amounts paid or payable under an employment agency contract) and 51 (amounts paid or payable by or to third parties).

- (k) a share or option granted—

- (i) by an employer to an employee in respect of services performed or rendered by the employee; or
- (ii) by a company to a director of the company by way of remuneration for the appointment or services of the director.

*Note—*

See part 2, division 1C for provisions that apply for interpreting this paragraph.’.

- (10) Schedule, definition *wages*, paragraphs (g) to (k)—  
*renumber* as paragraphs (f) to (j).

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