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South Australia

Payroll Tax Act 2009

An Act to re-enact and modernise the law relating to payroll tax, to harmonise payroll tax law with other States, to repeal the *Pay-roll Tax Act 1971* and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Payroll Tax Act 2009*.

2—Commencement

This Act will come into operation on 1 July 2009.

3—Interpretation

In this Act, unless the contrary intention appears—

agent includes—

(a) a person who, in this jurisdiction, for or on behalf of another person outside this jurisdiction, holds or has the management or control of the business of that other person; and

(b) a person who, by an order of the Commissioner, is declared to be an agent or the sole agent for any other person for the purposes of this Act and on whom notice of that order has been served;

Australia means the States of the Commonwealth and the Territories;

coastal waters of South Australia has the same meaning as ***coastal waters of the State*** has in relation to South Australia in the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

the Commissioner means the person appointed or acting as the Commissioner of State Taxation, and includes a person appointed or acting as a Deputy Commissioner of State Taxation (see Part 9 of the *Taxation Administration Act 1996*);

company includes all bodies and associations (corporate and unincorporate) and partnerships;

corporation has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth;

corresponding law means a law in force in another State or a Territory relating to the imposition upon employers of a tax on wages paid or payable by them and the assessment and collection of that tax;

council means a council or council subsidiary under the *Local Government Act 1999*;

designated group employer means a member designated for a group in accordance with section 80;

director of a company includes a member of the governing body of the company;

employer means a person who pays or is liable to pay wages and includes—

(a) the Crown in any of its capacities; and

(b) a person taken to be an employer by or under this Act; and

(c) a public, local or municipal body or authority constituted under the law of the Commonwealth or of a State or Territory unless, being an authority constituted under the law of the Commonwealth, it is immune from the operation of this Act;

employment agency contract has the meaning given in section 37;

employment agent has the meaning given in section 37;

exempt wages mean wages that are declared by or under this Act to be exempt wages;

FBTA Act means the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth;

financial year means each year commencing on 1 July;

fringe benefit has the same meaning as in the FBTA Act but does not include—

(a) a tax-exempt body entertainment fringe benefit within the meaning of that Act; or

(b) anything that is prescribed by the regulations under this Act not to be a fringe benefit for the purposes of this definition;

group has the meaning given in section 67;

GST has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth except that it includes notional GST of the kind for which payments may be made under Part 3 of the *National Tax Reform (State Provisions) Act 2000* by a person that is an exempt entity within the meaning of that Act;

interstate wages means wages that are taxable wages within the meaning of a corresponding law;

ITAA means the *Income Tax Assessment Act 1997* of the Commonwealth;

liquidator means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;

month means the month of January, February, March, April, May, June, July, August, September, October, November and December;

option means an option or right, whether actual, prospective or contingent, of a person to acquire a share or to have a share transferred or allotted to the person;

paid, in relation to wages, includes provided, conferred and assigned and ***pay*** and ***payable*** have corresponding meanings;

payroll tax means tax imposed by section 6;

perform, in relation to services, includes render;

return period, in relation to an employer, means a period relating to which that employer is required to lodge a return under this Act;

share means a share in a company and includes a stapled security within the meaning of section 139GCD of the *Income Tax Assessment Act 1936* of the Commonwealth;

superannuation contribution has the meaning given in section 17(2);

taxable wages has the meaning given in section 10;

termination payment has the meaning given in section 27;

Territories means the Australian Capital Territory (including the Jervis Bay Territory) and the Northern Territory;

this jurisdiction means South Australia and the coastal waters of South Australia;

voting share has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth;

wages has the meaning given in Part 3.

4—Taxation Administration Act 1996

This Act is to be read together with the *Taxation Administration Act 1996* which provides for the administration and enforcement of this Act and other taxation laws.

5—Act binds the Crown

(1) This Act binds the Crown in right of this jurisdiction and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

Part 2—Imposition of payroll tax

Division 1—Imposition of tax

6—Imposition of payroll tax

(1) Payroll tax is imposed on all taxable wages.

(2) Payroll tax is levied and collected for the credit of the Consolidated Account at the Treasury.

7—Who is liable for payroll tax?

The employer by whom taxable wages are paid or payable is liable to pay payroll tax on the wages.

8—Amount of payroll tax

The amount of payroll tax payable by an employer is to be ascertained in accordance with Schedule 1 and Schedule 2.

9—When must payroll tax be paid?

(1) A person who is liable to pay payroll tax on taxable wages must pay the tax—

(a) within 7 days after the end of the month in which those wages were paid or payable, other than the month of June; and

(b) within 21 days after the end of the month of June in relation to taxable wages paid or payable in the month of June.

(2) However, if the Commissioner has reason to believe that a person may leave Australia before any payroll tax becomes payable by the person, the tax is payable on the day fixed by the Commissioner by notice served on the person.

Division 2—Taxable wages

10—What are taxable wages?

(1) For the purposes of this Act, ***taxable wages*** are wages, other than exempt wages, that are paid or payable by an employer for services performed and—

(a) are wages that are paid or payable in this jurisdiction, other than wages so paid or payable for—

(i) services performed wholly in 1 other State or Territory; or

(ii) services performed by a person wholly in another country for a continuous period of more than 6 months beginning on the day on which wages were first paid or payable to that person for services so performed; or

(b) are wages that are paid or payable outside this jurisdiction for services performed wholly in this jurisdiction; or

(c) are wages that are paid or payable outside Australia for services performed mainly in this jurisdiction.

(2) For the purposes of subsection (1)(a), wages that are payable to a person by the person's employer, but have not been paid (not being wages that under the terms of employment are payable in this jurisdiction or in another State or a Territory) are taken—

(a) if those wages are payable in respect of services performed wholly in this jurisdiction—to be wages payable to that person in this jurisdiction; and

(b) if those wages are not payable in respect of services performed wholly in this jurisdiction or wholly in 1 other State or Territory and where the wages last paid or payable to that person by that employer were included or are required to be included in a return under this Act—to be wages payable to that person in this jurisdiction; and

(c) if those wages are not taken by paragraph (a) or (b) or by any provision in a corresponding law that corresponds to either of those paragraphs to be wages payable to that person in this jurisdiction or in another State or a Territory—to be wages payable to that person by that employer at the place where that person last performed any services for that employer before those wages became payable.

(3) If, for the purpose of the payment of wages—

(a) an instrument is sent or given or an amount is transferred by an employer to a person or a person's agent at a place in Australia; or

(b) an instruction is given by an employer for the crediting of an amount to the account of a person or a person's agent at a place in Australia,

those wages are taken to have been paid at that place and to have been paid when the instrument was sent or given, the amount was transferred or the account is credited in accordance with the instruction (as the case may be).

(4) In determining the question whether services are performed wholly or mainly in this jurisdiction or another State or a Territory, regard must be had only to the services performed during the month in respect of which the question arises.

(5) In this section—

instrument includes a cheque, bill of exchange, promissory note, money order or a postal order issued by a post office.

11—Wages not referable to services performed in a particular month

For the purposes of this Act, wages that are not paid in respect of services performed by an employee in a particular month are taxable wages as if they were paid or payable in respect of services performed during the month in which they were paid or became payable.

Division 3—Other

12—Liability for payroll tax not affected by subsequent amendment to Act

A liability for payroll tax arises and will be assessed in accordance with the provisions of this Act as in force at the time the liability arises and such a liability, once having arisen, is not affected by a subsequent amendment to this Act (except to the extent that the amendment operates retrospectively).

Part 3—Wages

Division 1—General concept of wages

13—What are wages?

(1) For the purposes of this Act, wages mean wages, remuneration, salary, commission, bonuses or allowances paid or payable to an employee, including—

(a) an amount paid or payable by way of remuneration to a person holding an office under the Crown or in the service of the Crown; and

(b) an amount paid or payable under any prescribed classes of contracts to the extent to which that payment is attributable to labour; and

(c) an amount paid or payable by a company by way of remuneration to or in relation to a director of that company; and

(d) an amount paid or payable by way of commission to an insurance or time payment canvasser or collector; and

(e) an amount or benefit that is included as or taken to be wages by any other provision of this Act.

(2) For the purposes of this Act, wages, remuneration, salary, commission, bonuses or allowances are wages—

(a) whether paid or payable at piece work rates or otherwise; and

(b) whether paid or payable in cash or in kind.

(3) Wages do not include anything that is prescribed by the regulations not to be wages for the purposes of this Act.

Division 2—Fringe benefits

14—Wages include fringe benefits

(1) For the purposes of this Act, wages include a fringe benefit.

(2) Subsection (1) does not apply to benefits that are exempt benefits for the purposes of the FBTA Act (other than deposits to the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth).

15—Value of wages comprising fringe benefits

(1) For the purposes of this Act, the value of wages comprising a fringe benefit is to be determined in accordance with the formula—

$$TV \times \frac{1}{1 - FBT\ rate}$$

where—

FBT rate is the rate of fringe benefits tax imposed by the FBTA Act that applies when the liability to payroll tax under this Act arises

TV is the value that would be the taxable value of the benefit as a fringe benefit for the purposes of the FBTA Act.

(2) In this Act, a reference to taxable wages that were paid or payable by an employer during a month is, in relation to taxable wages comprising fringe benefits—

(a) a reference to the value of the fringe benefits paid or payable by the employer during the month; or

(b) if an election by the employer is in force under section 16, a reference to an amount calculated in accordance with that section.

(3) In this Act, a reference to taxable wages that were paid or payable by an employer during a year is, in relation to taxable wages comprising fringe benefits, a reference to an amount calculated by adding together the amounts under subsection (2)(a) or (b) (or subsection (2)(a) and (b)) as the case requires, for the months of that year.

16—Employer election regarding taxable value of fringe benefits

(1) An employer who has paid or is liable to pay fringe benefits tax imposed by the FBTA Act in respect of a period of not less than 15 months before 30 June in any year may elect to include as the value of the fringe benefits paid or payable by the employer during the month concerned—

(a) in a return lodged in relation to each of the first 11 months occurring after 30 June in that year—1/12th of the amount determined in accordance with subsection (2) or that part of that amount as, in accordance with section 10, comprises taxable wages for the year of tax (within the meaning of the FBTA Act) ending on 31 March preceding the commencement of the current financial year; and

(b) in the return lodged in relation to the 12th month—the amount determined in accordance with subsection (2) or that part of that amount as, in accordance with section 10, comprises taxable wages for the year of tax (within the meaning of the FBTA Act) ending on 31 March preceding that month, less the total of the amounts of fringe benefits included in the returns for each of the preceding 11 months.

(2) The amount determined in accordance with this subsection is to be determined in accordance with the formula—

$$AFBA \times \frac{1}{1 - FBT\ rate}$$

where—

AFBA is the aggregate fringe benefits amount within the meaning of section 136 of the FBTA Act

FBT rate is the rate of fringe benefits tax imposed by the FBTA Act that applies when the liability to payroll tax under this Act arises.

(3) An election under subsection (1) takes effect when it is notified to the Commissioner in the form approved by the Commissioner.

(4) After an employer has made an election under subsection (1), the employer must lodge returns containing amounts calculated in accordance with the election unless the Commissioner approves, by notice in writing given to the employer, the termination of the election and allows the employer to include the value referred to in section 15(2)(a).

(5) If an employer ceases to be liable to pay payroll tax, the value of taxable wages comprising fringe benefits to be included in the employer's final return is (irrespective of whether or not the employer has made an election under subsection (1)) the value of the fringe benefits paid or payable by the employer for the period commencing on and including the preceding 1 July until the date on which the employer ceases to be liable to payroll tax, less the value of the fringe benefits paid or payable by the employer during that period on which payroll tax has been paid.

Division 3—Superannuation contributions

17—Wages include superannuation contributions

(1) For the purposes of this Act, ***wages*** include a superannuation contribution.

(2) A ***superannuation contribution*** is a contribution paid or payable by an employer in respect of an employee—

(a) to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or

(b) as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; or

(c) to or as any other form of superannuation, provident or retirement fund or scheme including—

(i) the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth; and

(ii) a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth; or

(d) involving—

(i) the crediting of an account of an employee, or any other allocation to the benefit of an employee (other than the actual payment of a contribution), so as to increase the entitlement or contingent entitlement of the employee under any form of superannuation, provident or retirement fund or scheme; or

(ii) the crediting or the debiting of any other account, or any other allocation or deduction, so as to increase the entitlement or contingent entitlement of an employee under any form of superannuation, provident or retirement fund or scheme.

(3) The Treasurer may estimate the contingent liability of an employer for contributions that will be payable to or in respect of an employee who is a member of the old or new scheme of superannuation under the *Superannuation Act 1988* or of any other unfunded or partly funded scheme of superannuation, and the Treasurer's estimate is to be treated as a contribution paid or payable by an employer in respect of an employee for the purposes of the definition of ***superannuation contribution*** in subsection (2).

(4) For the purposes of this Act, wages that are comprised of the Treasurer's estimate of an employer's contingent liability for superannuation contributions will be taken to be payable as soon as the contingent liability accrues.

(5) The Treasurer's estimate must be based on an actuary's assessment of the employer's cost of the accruing liability for the employee.

(6) Setting aside any money or anything that is worth money as, or as part of, a superannuation fund, superannuation guarantee charge or any other form of superannuation, provident or retirement fund or scheme is taken to be paying a superannuation contribution.

(7) Making a superannuation contribution of anything that is worth money is taken to be paying a superannuation contribution of the amount equal to its value, and its value is to be worked out in accordance with section 43 as if that section referred to the contribution instead of to wages.

(8) For the purposes of this Act, where a superannuation contribution arises under this Act because of subsection (2)(d)—

(a) subject to paragraphs (b) and (c), the amount of wages attributable to that superannuation contribution will be taken to be the value of the increase of the entitlement or contingent entitlement of the relevant employee;

(b) if that superannuation contribution can be directly attributed to a payment or setting apart of money within the ambit of paragragphs (a), (b) or (c) of subsection (2), the value of the superannuation contribution under paragraph (d) of subsection (2) (and therefore the relevant amount of wages) will only be the amount (if any) by which the value of that contribution exceeds the amount of the payment or setting apart of money (as the case may be);

(c) if that superannuation contribution can be directly attributed to an increase in the capital of the relevant fund or scheme or to the payment of interest, over and above any contribution that the employer is required to make, or would be required to make but for the increase in capital or the payment of interest, the value of the superannuation contribution (to the extent that it exceeds any contribution that the employer is required, or would be required, to make as mentioned above), will be taken to be nil;

(d) if there is a crediting or a debiting of an account, or any other allocation or deduction, and a corresponding debiting or crediting, or deduction or allocation, then liability for payroll tax will only arise with respect to 1 crediting or debiting, or allocation or deduction, so as to avoid double taxation.

(9) In this section—

employee includes any person to whom, by virtue of a paragraph of the definition of ***wages*** in section 13(1), an amount paid or payable in the circumstances referred to in that paragraph constitutes wages;

partly funded scheme of superannuation means a scheme of superannuation (including a provident or retirement fund or scheme) under which the employer's liability for superannuation contributions is partly satisfied by a payment within the meaning of paragraphs (a) to (d) of the definition of ***superannuation contribution***;

unfunded scheme of superannuation means a scheme of superannuation (including a provident or retirement fund or scheme) under which no payment within the meaning of paragraphs (a) to (d) of the definition of ***superannuation contribution*** is made by the employer in total or partial satisfaction of his, her or its liability for superannuation contributions.

Division 4—Shares and options

18—Inclusion of grant of shares and options as wages

(1) For the purposes of this Act, ***wages*** include the grant of a share or option to an employee by an employer in respect of services performed by the employee.

(2) Any such wages are taken, for the purpose of the imposition of payroll tax, to be paid or payable on the relevant day.

(3) For the purposes of this Division, the ***relevant day*** is the day that the employer elects in accordance with this Division to treat as the day on which the wages are paid or payable.

(4) To avoid doubt, the grant of a share or option is valuable consideration for the purposes of section 46.

19—Choice of relevant day

(1) The employer can elect to treat as the ***relevant day*** either the date on which the share or option is granted to the employee or the vesting date.

(2) A share or option is ***granted*** to a person in the following circumstances:

(a) in the case of a share—if the person acquires the share (within the meaning of section 139G of the *Income Tax Assessment Act 1936* of the Commonwealth) or in the circumstances prescribed by the regulations under this Act;

(b) in the case of an option—if the person acquires a right (within the meaning of section 139G of the *Income Tax Assessment Act 1936* of the Commonwealth) to the share to which the option relates or in the circumstances prescribed by the regulations under this Act.

(3) The ***vesting date*** in respect of a share is the date on which the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded).

(4) The ***vesting date*** in respect of an option is 1 of the following dates (whichever happens first):

(a) the date on which the share to which the option relates is granted to the employee;

(b) the date on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vest in him or her.

20—Deemed choice of relevant day in special cases

(1) If an employer grants a share or an option to an employee and the value of the grant of the share or option is not included in the taxable wages of the employer for the financial year in which the share or option was granted, the employer is taken to have elected to treat the wages constituted by the grant of that share or option as being paid or payable on the vesting date.

(2) If an employer grants a share or an option to an employee and the value of the grant of the share or option is nil or, if the employer were to elect to treat the date of grant as the relevant day, the wages constituted by the grant would not be liable to payroll tax, the employer is taken to have elected to treat the wages constituted by the grant of that share or option as being paid or payable on the date on which the share or option was granted.

21—Effect of rescission, cancellation of share or option

(1) If the grant of a share or option is withdrawn, cancelled or exchanged before the vesting date for any valuable consideration (other than the grant of other shares or options), the following provisions apply:

(a) the date of withdrawal, cancellation or exchange is taken to be the vesting date of the share or option;

(b) the market value of the share or option, on the vesting date, is taken to be the amount of the valuable consideration (and, accordingly, that amount is the amount paid or payable as wages on that date).

(2) If an employer includes the value of a grant of a share or option in the taxable wages of the employer for a financial year and the grant is rescinded because the conditions attaching to the grant were not met, the taxable wages of the employer, in the financial year in which the grant is rescinded, are to be reduced by the value of the grant as previously included in the taxable wages of the employer.

(3) Subsection (2) does not apply just because an employee fails to exercise an option or to otherwise exercise his or her rights in respect of a share or option.

22—Grant of share pursuant to exercise of option

The grant of the share by an employer does not constitute wages for the purposes of this Act if the employer is required to grant the share as a consequence of the exercise of an option by a person and—

(a) the grant of the option to the person constitutes wages for the purposes of this Act; or

(b) the option was granted to the person before 1 July 2008.

23—Value of shares and options

(1) If the grant of a share or option constitutes wages under this Division, the amount paid or payable as wages is taken, for the purposes of this Act, to be the market value of the share or option (expressed in Australian currency) on the relevant day, less the consideration (if any) paid or given by the employee in respect of the share or option (other than consideration in the form of services performed).

(2) The market value of a share or option on the relevant day is to be determined in accordance with the Commonwealth income tax provisions.

(3) For that purpose, the Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications:

(a) the market value of an option is to be determined as if it were a right to acquire a share;

(b) a reference to a taxpayer is to be read as a reference to the employee;

(c) a reference to the Commissioner of Taxation is to be read as a reference to either that Commissioner or the Commissioner of State Taxation.

(4) Section 15 does not apply to the grant of a share or option that constitutes wages, even if it constitutes a fringe benefit.

(5) In this section—

Commonwealth income tax provisions means the provisions of Subdivision F of Division 13A of Part III of the *Income Tax Assessment Act 1936* of the Commonwealth.

24—Inclusion of shares and options granted to directors as wages

(1) For the purposes of this Act, ***wages*** include the grant of a share, or option, by a company to a director of the company by way of remuneration for the appointment or services of the director that would be wages under this Division if the director were an employee of the company.

(2) For that purpose, the other provisions of this Division apply in respect of any such grant as if a reference to the employer were a reference to the company and a reference to the employee were a reference to the director of the company.

(3) In this section, a reference to a director of the company includes a reference to the following:

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

(b) a former director of the company.

(4) In the case of wages constituted by 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—

(a) the grant of the share or option is taken, for the purposes of this Act, to be paid or payable for services performed during the month in which the relevant day occurs; and

(b) a reference in this Act to the place or places where services are performed is a reference to the place or places where it may reasonably be expected that the services of the director in respect of the company will be performed.

25—When services considered to have been performed

For the purposes of this Act, if the grant of a share or an option constitutes wages for the purposes of this Act, the services in respect of which those wages are paid or payable are taken to have been performed during the month in which the relevant day occurs.

26—Place where wages are payable

(1) The wages constituted by the grant of the share or option are taken to be paid or payable in this jurisdiction if the share is a share in a local company or, in the case of an option, an option to acquire shares in a local company.

(2) In any other case, the wages constituted by the grant of the share or option are taken to be paid or payable outside this jurisdiction.

Note—

If the wages concerned are taken to be payable outside this jurisdiction, because the shares concerned are shares in a company that is not a local company, the grant of the share or option may still be liable to payroll tax under this Act if the grant is made for services performed or rendered wholly or mainly in this jurisdiction (see section 10(1)(b) and (c)).

(3) In this section—

local company means—

(a) a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth that is taken to be registered in this jurisdiction for the purposes of that Act; or

(b) any other body corporate that is incorporated under an Act of this jurisdiction.

Division 5—Termination payments

27—Definitions

In this Division—

employment termination payment means—

(a) an employment termination payment within the meaning of section 82—130 of the ITAA; or

(b) a payment that would be an employment termination payment within the meaning of section 82—130 of the ITAA but for the fact that it was received later than 12 months after the termination of a person's employment; or

(c) a transitional termination payment within the meaning of section 82—10 of the *Income Tax (Transitional Provisions) Act 1997* of the Commonwealth;

termination payment means—

(a) a payment made in consequence of the retirement from, or termination of, any office or employment of an employee, being—

(i) an unused annual leave payment; or

(ii) an unused long service leave payment; or

(iii) so much of an employment termination payment paid or payable by an employer, whether or not paid to the employee or to any other person or body, that would be included in the assessable income of an employee under Part 2—40 of the ITAA if the whole of the employment termination payment had been paid to the employee; or

(b) an amount paid or payable by a company as a consequence of the termination of the services or office of a director of the company, whether or not paid to the director or to any other person or body, that would be an employment termination payment if that amount had been paid or payable as a consequence of termination of employment; or

(c) an amount paid or payable by a person who is an employer under a relevant contract (within the meaning of section 32) as a consequence of the termination of the supply of the services of an employee under the contract, whether or not paid to the employee or to any other person, if the amount would be an employment termination payment if that amount had been paid or payable as a consequence of termination of employment;

unused annual leave payment has the same meaning as in section 83—10 of the ITAA;

unused long service leave payment has the same meaning as in section 83—75 of the ITAA.

28—Termination payments

For the purposes of this Act, ***wages*** include a termination payment.

Division 6—Allowances

29—Motor vehicle allowances

(1) For the purposes of this Act, ***wages***, in respect of a financial year, do not include the exempt component of a motor vehicle allowance paid or payable in respect of that year.

(2) Accordingly, if the total motor vehicle allowance paid or payable to an employee in respect of a financial year does not exceed the exempt component, the motor vehicle allowance is not ***wages*** for the purposes of this Act.

(3) If the total motor vehicle allowance paid or payable to an employee in respect of a financial year exceeds the exempt component (if any), only that amount that exceeds the exempt component of the motor vehicle allowance is included as ***wages*** for the purposes of this Act.

(4) The ***exempt component*** of a motor vehicle allowance paid or payable in respect of a financial year is calculated in accordance with the formula:

$E = K \times R$

where—

E is the exempt component

K is the number of business kilometres travelled during the financial year

R is the exempt rate.

(5) The **number of business kilometres travelled during the financial year** ("K") is to be determined in accordance with the continuous recording method, or the averaging method, whichever method is selected and used by the employer in accordance with Part 4 of Schedule 1.

(6) The Commissioner, by order in writing, may approve the use, by an employer or class of employer, of another method of determining the number of business kilometres travelled during the financial year (including the use of an estimate). If so, the number of business kilometres travelled during the financial year is to be determined in accordance with the method approved by the Commissioner.

(7) For the purposes of this section, the ***exempt rate*** for the financial year concerned is—

(a) the rate prescribed by the regulations under section 25—28 of the ITAA for calculating a deduction for car expenses for a large car using the "cents per kilometre method" in the financial year immediately preceding the financial year in which the allowance is paid or payable; or

(b) if no rate referred to in paragraph (a) is prescribed, the rate prescribed by the regulations under this Act.

30—Accommodation allowances

(1) For the purposes of this Act, ***wages*** do not include an accommodation allowance paid or payable to an employee in respect of a night's absence from the person's usual place of residence that does not exceed the exempt rate.

(2) If the accommodation allowance paid or payable to an employee in respect of a night's absence from the person's usual place of residence exceeds the exempt rate, ***wages*** include that allowance only to the extent that it exceeds the exempt rate.

(3) For the purposes of this section, the ***exempt rate*** for the financial year concerned is—

(a) the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the financial year determined by the Commissioner of Taxation of the Commonwealth; or

(b) if no determination referred to in paragraph (a) is in force, the rate prescribed by the regulations.

Division 7—Contractor provisions

31—Definitions

In this Division—

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

relevant contract has the meaning given in section 32;

re-supply of goods acquired from a person includes—

(a) a supply to the person of goods in an altered form or condition; and

(b) a supply to the person of goods in which the first-mentioned goods have been incorporated;

services includes results (whether goods or services) of work performed;

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

32—What is a relevant contract?

(1) In this Division, a ***relevant contract*** in relation to a financial year is a contract under which a person (the ***designated person***) during that financial year, 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 another person for or in relation to the performance of work; or

(c) gives out goods to a person for work to be performed by the person in respect of those goods and for re-supply of the goods to the designated person or, where the designated person is a member of a group, to another member of that group.

(2) However, a ***relevant contract*** does not include a contract of service or a contract under which a person (the ***designated person***) during a financial year in the course of a business carried on by the designated person—

(a) is supplied with services for or in relation to the performance of work that are ancillary to the supply of goods under the contract by the person by whom the services are supplied or to the use of goods which are the property of that person; or

(b) is supplied with services for or in relation to the performance of work where—

(i) those services are of a kind not ordinarily required by the designated person and are performed by a person who ordinarily performs services of that kind to the public generally; or

(ii) those services are of a kind ordinarily required by the designated person for less than 180 days in a financial year; or

(iii) 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 that financial year and are not services—

(A) provided by a person by whom similar services are provided to the designated person; or

(B) for or in relation to the performance of work where any person who performs the work also performs similar work for the designated person,

for periods that, in the aggregate, exceed 90 days in that financial year; or

(iv) those services are supplied under a contract to which subparagraphs (i) to (iii) do not apply and the Commissioner is satisfied that those services are performed by a person who ordinarily performs services of that kind to the public generally in that financial year; or

(c) is supplied by a person (the ***contractor***) with services for or in relation to the performance of work under a contract to which paragraphs (a) and (b) do not apply where 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) 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

(iii) 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,

unless the Commissioner determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person; 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 for or in relation to the procurement of persons desiring to be insured by the designated person; or

(iii) services for or in relation to the door-to-door sale of goods solely for domestic purposes on behalf of the designated person,

unless the Commissioner determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

(3) For the purposes of this section, 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.

(4) For the purposes of this section, a relevant contract does not include a contract of service of a class excluded from the operation of this section by the regulations.

33—Persons taken to be employers

(1) For the purposes of this Act, a person—

(a) who during a financial year, under a relevant contract, supplies services to another person; or

(b) who during a financial year, under a relevant contract, is supplied with services for or in relation to the performance of work; or

(c) who during a financial year, under a relevant contract, gives out goods to another person,

is taken to be an employer in respect of that financial year.

(2) If a contract is a relevant contract under both section 32(1)(a) and (b)—

(a) the person to whom, under the contract, the services of another person are supplied for or 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 taken not to be an employer.

34—Persons taken to be employees

For the purposes of this Act, a person who during a financial year—

(a) performs work for or in relation to which services are supplied to another person under a relevant contract; or

(b) being a natural person, under a relevant contract, re-supplies goods to an employer,

is taken to be an employee in respect of that financial year.

35—Amounts under relevant contracts taken to be wages

(1) For the purposes of this Act, amounts paid or payable by an employer during a financial year for or in relation to the performance of work relating to a relevant contract or the re-supply of goods by an employee under a relevant contract are taken to be wages paid or payable during that financial year.

(2) If an amount referred to in subsection (1) is included in a larger amount paid or payable by an employer under a relevant contract during a financial year, that part of the larger amount which is not attributable to the performance of work relating to the relevant contract or the re-supply of goods by an employee under the relevant contract is as determined by the Commissioner.

(3) An amount paid or payable for or in relation to the performance of work under a relevant contract is taken to include—

(a) any payment made by a person who is taken to be an employer under a relevant contract in relation to a person who is taken to be an employee under the relevant contract that would be a superannuation contribution if made in relation to a person in the capacity of an employee; and

(b) the value of any share or option (not otherwise included as wages under this Act) provided or liable to be provided by a person who is taken to be an employer under a relevant contract in relation to a person who is taken to be an employee under the relevant contract that would be included as wages under Division 4 if provided to a person in the capacity of an employee.

36—Liability provisions

If, in respect of a payment for or in relation to the performance of work that is taken to be wages under this Division, payroll tax is paid by a person taken under this Division to be an employer—

(a) no other person is liable to payroll tax in respect of that payment; and

(b) if another person is liable to make a payment for or in relation to that work, that person is not liable to payroll tax in respect of that payment unless it or the payment by the first-mentioned person is made with an intention either directly or indirectly of avoiding or evading the payment of tax whether by the first-mentioned person or another person.

Division 8—Employment agents

37—Definitions

(1) For the purposes of this Act, an ***employment agency contract*** is a contract, whether formal or informal and whether express or implied, 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 for the purposes of this Act if it is, or results in the creation of, a contract of employment between the service provider and the client.

(3) In this section—

contract includes agreement, arrangement and undertaking.

38—Persons taken to be employers

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

39—Persons taken to be employees

For the purposes of this Act, the person who performs work for or 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.

40—Amounts taken to be wages

(1) For the purposes of this Act, the following are taken to be wages paid or payable by the employment agent under an employment agency contract—

(a) any amount paid or payable to or in relation to the service provider in respect of the provision of services in connection with the employment agency contract;

(b) the value of any benefit provided for or in relation to the provision of services in connection with the employment agency contract that would be a fringe benefit if provided to a person in the capacity of an employee;

(c) any 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) Subsection (1) does not apply to an employment agency contract to the extent that an amount, benefit or payment referred to in that subsection would be exempt from payroll tax under Part 4 (other than under Division 4 or Division 5 of that Part or section 50) had the service provider been paid by the client as an employee, if the client has given a declaration to that effect, in the form approved by the Commissioner, to the employment agent.

(3) If it is not reasonably practicable to determine the extent to which an amount, benefit or payment constitutes wages under subsection (1), the Commissioner may accept a return, or make an assessment, in which the amount on which payroll tax is levied is determined on the basis of estimates.

41—Liability provisions

Subject to section 42, if an employment agent under an employment agency contract—

(a) by arrangement procures the services of a service provider for a client of the employment agent; and

(b) pays payroll tax in respect of an amount, benefit or payment that is, under section 40, taken to be wages paid or payable by the employment agent in respect of the provision of those services in connection with that contract,

no other person (including any other person engaged to procure the services of the service provider for the employment agent's client as part of the arrangement) is liable to pay payroll tax in respect of wages paid or payable for the procurement or performance of those services by the service provider for the client.

42—Agreement to reduce or avoid liability to payroll tax

(1) If the effect of an employment agency contract is to reduce or avoid the liability of any party to the contract to the assessment, imposition or payment of payroll tax, the Commissioner may—

(a) disregard the contract; and

(b) determine that any party to the contract is taken to be an employer for the purposes of this Act; and

(c) determine that any payment made in respect of the contract is taken to be wages for the purposes of this Act.

(2) If the Commissioner makes a determination under subsection (1), the Commissioner must serve a notice of the determination on the person taken to be an employer for the purposes of this Act.

(3) The notice must set out the facts on which the Commissioner relies and the reasons for the determination.

(4) This section has effect in relation to agreements, transactions and arrangements made before, on or after the commencement of this section.

Division 9—Other

43—Value of wages paid in kind

The value of wages (except fringe benefits and shares and options) that are paid or payable in kind is the greater of—

(a) the value agreed or attributed to the wages in, or ascertainable for the wages from, arrangements between the employer and the employee, whichever is the greater; and

(b) if the regulations prescribe how the value of wages of that type is to be determined—the value determined in accordance with the regulations.

44—GST excluded from wages

(1) If a person is liable to pay GST on the supply to which wages paid or payable to the person relate, the amount or value of those wages on which payroll tax is payable is the amount or value of the wages paid or payable to the person minus the relevant proportion of the amount of GST payable by the person on the supply to which the wages relate.

(2) Subsection (1) does not apply in respect of the value of wages comprising a fringe benefit.

(3) In this section—

consideration has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth;

relevant proportion, in relation to GST payable on a supply to which wages relate, means the proportion that the amount or value of the wages bears to the consideration for the supply to which the wages relate.

45—Wages paid by group employers

A reference in this Act to wages paid or payable by a member of a group includes wages that would be taken to be paid or payable by a member of a group if the member were the employer of the employee to whom the wages were paid.

46—Wages paid by or to third parties

(1) If any of the following amounts of money or other valuable consideration would, if paid or given or to be paid or given directly by an employer to an employee, be or be included as wages paid or payable by the employer to the employee for the purposes of this Act, they are taken to be wages paid or payable by the employer to the employee:

(a) any money or other valuable consideration paid or given, or to be paid or given, to an employee, for the employee's services as an employee of an employer, by a person other than the employer;

(b) any money or other valuable consideration paid or given, or to be paid or given, by an employer, for an employee's services as the employee of the employer, to a person other than the employee;

(c) any money or other valuable consideration paid or given, or to be paid or given, by a person other than an employer, for an employee's services as an employee of the employer, to a person other than the employee.

(2) If any of the following amounts of money or other valuable consideration would, if paid or given or to be paid or given directly by a company to a director of the company, be or be included as wages paid or payable by the company to the director for the purposes of this Act, they are taken to be wages paid or payable by the company to the director:

(a) any money or other valuable consideration paid or given, or to be paid or given, to a director of a company, by way of remuneration for the appointment or services of the director to the company, by a person other than the company;

(b) any money or other valuable consideration paid or given, or to be paid or given, by a company, by way of remuneration for the appointment or services of the director to the company, to a person other than the director;

(c) any money or other valuable consideration paid or given, or to be paid or given, by any person, by way of remuneration for the appointment or services of a director to the company, to a person other than the director.

(3) 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.

47—Agreement etc to reduce or avoid liability to payroll tax

(1) If any person enters into any agreement, transaction or arrangement, whether in writing or otherwise, under which a natural person performs, for or on behalf of another person, services in respect of which any payment is made or benefit provided to some other person related or connected to the natural person performing the services and the effect of the agreement, transaction or arrangement is to reduce or avoid the liability of any person to the assessment, imposition or payment of payroll tax, the Commissioner may—

(a) disregard the agreement, transaction or arrangement; and

(b) determine that any party to the agreement, transaction or arrangement is taken to be an employer for the purposes of this Act; and

(c) determine that any payment made or benefit provided in respect of the agreement, transaction or arrangement is taken to be wages for the purposes of this Act.

(2) If the Commissioner makes a determination under subsection (1), the Commissioner must serve a notice to that effect on the person taken to be an employer for the purposes of this Act.

(3) The notice must set out the facts on which the Commissioner relies and the reasons for the determination.

(4) This section has effect in relation to agreements, transactions and arrangements made before, on or after the commencement of this section.

Part 4—Exemptions

Division 1—Non-profit organisations

48—Non-profit organisations

(1) Subject to subsection (2), wages are exempt wages if they are paid or payable by any of the following:

(a) a religious institution;

(b) a public benevolent institution (but not including an instrumentality of the State);

(c) a non-profit organisation having as its sole or dominant purpose a charitable purpose (but not including a school, a college, an educational institution, an educational company or an instrumentality of the State).

(2) The wages must be paid or payable—

(a) for work of a kind ordinarily performed in connection with the religious, public benevolent or charitable purposes of the institution or body; and

(b) to a person engaged exclusively in that kind of work.

(3) For the purposes of subsection (1)(c), an ***educational company*** is a company—

(a) in which an educational institution has a controlling interest; and

(b) that provides, promotes or supports the educational services of that institution.

(4) For the purposes of subsection (3), an educational institution has a ***controlling interest*** in an educational company if—

(a) members of the board of management of the company who are entitled to exercise a majority in voting power at meetings of the board of management are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the educational institution; or

(b) the educational institution may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to voting shares, or any class of voting shares, issued by the company; or

(c) the educational institution has power to appoint more than 50% of the members of the board of management of the company.

(5) In this section—

educational institution means an entity that provides education above secondary level.

Division 2—Education and training

49—Schools and educational services and training

Wages are exempt wages as provided for in Division 1 of Part 3 of Schedule 2.

50—Community Development Employment Project

(1) Wages are exempt wages if they are paid or payable to an Aboriginal person who is employed under an employment project.

(2) An ***employment project*** is an employment project under the Community Development Employment Project funded by the Department of Employment and Workplace Relations of the Commonwealth or the Torres Strait Regional Authority.

Division 3—Health services providers

51—Health services providers

(1) Subject to subsection (2), wages paid or payable by an employer who provides health services otherwise than for the purpose of profit or gain are exempt wages.

(2) The wages must be paid or payable to a person engaged exclusively in—

(a) the provision of health services; or

(b) work that is incidental to the provision of health services.

(3) For the purposes of this section, ***health service*** has the meaning given in Division 2 of Part 3 of Schedule 2.

52—Division not to limit other exemptions

(1) Nothing in this Division limits the application of any other Division of this Part.

(2) For example, if an employer who provides health services is also a non-profit organisation, the exemption for non-profit organisations referred to in section 48 may still apply.

Division 4—Maternity and adoption leave

53—Maternity and adoption leave

(1) Wages are exempt wages if they are paid or payable to an employee in respect of—

(a) maternity leave, being leave given to a female employee in connection with her pregnancy or the birth of her child (other than sick leave, recreation leave, annual leave or any similar leave); or

(b) adoption leave, being leave given to an employee in connection with the adoption of a child by him or her (other than sick leave, recreation leave, annual leave or any similar leave).

(2) It is immaterial whether the leave is taken during or after the pregnancy or before or after the adoption.

(3) The exemption is limited to wages paid or payable in respect of a maximum of 14 weeks maternity leave in respect of any 1 pregnancy and 14 weeks adoption leave in respect of any 1 adoption.

(4) For the avoidance of doubt, a reference in subsection (3) to a period of 14 weeks leave is a reference to—

(a) a period that is the equivalent of 14 weeks leave on full pay, in the case of full-time employees who take leave on less than full pay; or

(b) a period of 14 weeks leave at part-time rates of pay, in the case of part-time employees.

(5) The exemption does not apply to any part of wages paid or payable in respect of maternity or adoption leave that comprises fringe benefits.

54—Administrative requirements for exemption

(1) An employer wishing to claim an exemption under section 53 in respect of maternity leave must obtain and keep a medical certificate in respect of, or statutory declaration by, the employee—

(a) stating that the employee is or was pregnant; or

(b) stating that the employee has given birth and the date of birth.

(2) An employer wishing to claim an exemption under section 53 in respect of adoption leave must obtain and keep a statutory declaration by the employee stating—

(a) that a child has been placed in the custody of the employee pending the making of an adoption order; or

(b) that an adoption order has been made or recognised in favour of the employee.

Note—

Section 53 of the *Taxation Administration Act 1996* requires these records to be kept for at least 5 years unless the Commissioner of State Taxation authorises earlier destruction.

Division 5—Volunteer firefighters and emergency service volunteers

55—Volunteer firefighters

Subject to section 57, wages are exempt wages if they are paid or payable to an employee in respect of any period when he or she was engaged as a volunteer member of a SACFS organisation within the meaning of the *Fire and Emergency Services Act 2005* in responding to any situation that involved or may have involved an emergency under that Act.

56—Emergency service volunteers

Subject to section 57, wages are exempt wages if they are paid or payable to an employee in respect of any period when he or she was engaged as a volunteer member of an emergency services organisation under the *Fire and Emergency Services Act 2005* in responding to any situation that involved or may have involved an emergency under that Act.

57—Limitation of exemption

An exemption under this Division does not apply to wages paid or payable as recreation leave, annual leave, long service leave or sick leave.

Division 6—Local government

58—Councils

Subject to section 59, wages are exempt wages if they are paid or payable by a council.

59—Limitation on local government exemptions

An exemption under this Division does not apply to wages paid or payable for or in connection with—

(a) any of the activities referred to in section 60; or

(b) the construction of any buildings or works, or the installation of plant, machinery or equipment for use in or in connection with any of the activities referred to in section 60.

60—Specified activities

Section 59 applies to the following activities:

(a) the supply of electricity or gas;

(b) water supply;

(c) sewerage;

(d) the conduct of—

(i) abattoirs;

(ii) public markets;

(iii) parking stations;

(iv) cemeteries or crematoria;

(v) hostels;

(vi) public transport;

(vii) an activity prescribed by the regulations.

Division 7—Other government and defence

61—State Governors

Wages paid or payable by the Governor of a State are exempt wages.

62—Defence personnel

Wages are exempt wages if they are paid or payable to an employee in respect of any period when he or she was on leave from employment because of being a member of—

(a) the Defence Force of the Commonwealth; or

(b) the armed forces of any part of the Commonwealth of Nations.

63—War Graves Commission

Wages paid or payable by the Commonwealth War Graves Commission are exempt wages.

Division 8—Foreign government representatives and international agencies

64—Consular and non-diplomatic representatives

Wages paid or payable to members of his or her official staff by a consular or other representative of any country in Australia (other than a diplomatic representative) are exempt wages.

65—Trade commissioners

Wages paid or payable to members of his or her official staff by a Trade Commissioner representing any other part of the Commonwealth of Nations in Australia are exempt wages.

66—Australian–American Fulbright Commission

Wages paid or payable by the Australian-American Fulbright Commission are exempt wages.

Part 5—Grouping of employers

Division 1—Interpretation

67—Definitions

In this Part—

business includes—

(a) a profession or trade; and

(b) any other activity carried on for fee, gain or reward; and

(c) the activity of employing 1 or more persons who perform duties for or in connection with another business; and

(d) the carrying on of a trust (including a dormant trust); and

(e) the activity of holding any money or property used for or in connection with another business,

whether carried on by 1 person or 2 or more persons together;

group means a group constituted under this Part, but does not include any member of the group in respect of whom a determination under Division 4 is in force.

68—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 that person from being a member of a group constituted under another provision of this Part.

Division 2—Business groups

69—Constitution of groups

A ***group*** is constituted by all the persons or bodies forming a group that is not a part of any larger group.

70—Groups of corporations

Corporations constitute a group if they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

71—Groups arising from the use of common employees

(1) If 1 or more employees of an employer perform duties for or in connection with 1 or more businesses carried on by the 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 for or 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 for or in connection with 1 or more businesses carried on by 1 or more other persons, being duties performed in connection with, or in fulfilment of the employer's obligation under, an agreement, arrangement or undertaking for the provision of services to any 1 or more of those other persons in connection with that business or those businesses, the employer and each of those other persons constitute a group.

(4) Subsection (3) applies to an agreement, arrangement or undertaking—

(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 specifies the duties to be performed by them.

Note—

Section 79 (Exclusion of persons from groups) allows the Commissioner, for payroll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

72—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 79 (Exclusion of persons from groups) allows the Commissioner, for payroll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

(2) For the purposes of this section, a person or set of persons has a controlling interest in a business if—

(a) in the case of 1 person—the person is the sole owner (whether or not as trustee) of the business; or

(b) in the case of a set of persons—the persons are together the owners (whether or not as trustees) of the business; or

(c) in the case of a business carried on by a corporation—

(i) the person or each of 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, instructions or wishes of that person or set of persons; or

(d) in the case of a business carried on by a body corporate or unincorporate—that person or set of persons constitute more than 50% of the board of management (by whatever name called) of the body or control the composition of that board; or

(e) in the case of a business carried on by a corporation that has a share capital—that 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 any class of voting shares, issued by the corporation; or

(f) in the case of a business carried on by a partnership—that person or set of persons—

(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; or

(g) in the case of a business carried on under a trust—the person or set of persons (whether or not as a trustee of, or beneficiary under, another trust) is the beneficiary in respect of more than 50% of the value of the interests in the first-mentioned trust.

(3) If—

(a) 2 corporations are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; 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 referred to in paragraph (a) has a controlling interest in that 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 the purposes of this Part, to be a beneficiary 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 is taken to have 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 another trustee or trustees) has a controlling interest in the business of a partnership,

the person or set of persons is taken to have a controlling interest in the business of the partnership.

73—Groups arising from tracing of interests in corporations

(1) An entity and a corporation form part of a group if the entity has a controlling interest in the corporation.

Note—

Section 79 (Exclusion of persons from groups) allows the Commissioner, for payroll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

(2) For the purposes of this section, an entity has a ***controlling interest*** in a corporation if the corporation has share capital and—

(a) the entity has a direct interest in the corporation and the value of that direct interest exceeds 50%; or

(b) the entity has an indirect interest in the corporation and the value of that indirect interest exceeds 50%; or

(c) the entity has an aggregate interest in the corporation and the value of the aggregate interest exceeds 50%.

(3) Division 3 applies for the purposes of the interpretation of this section.

Note—

Division 3 sets out the manner for determining whether an entity has a direct interest, indirect interest or aggregate interest in a corporation, and the value of such an interest.

(4) In this section—

associated person means a person who is associated with another person in accordance with any of the following provisions:

(a) persons are associated persons if they are related persons;

(b) natural persons are associated persons if they are partners in a partnership;

(c) private companies are associated persons if common shareholders have a majority interest in each private company;

(d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;

(e) a private company and a trustee are associated persons if a related body corporate of the company (within the meaning of the *Corporations Act 2001* of the Commonwealth) is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

entity means—

(a) a person; or

(b) 2 or more persons who are associated persons (as defined in this section);

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 person means a person who is related to another person in accordance with any of the following provisions:

(a) natural persons are related persons if—

(i) 1 is the spouse or domestic partner of the other; or

(ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;

(b) private companies are related persons if they are related bodies corporate within the meaning of the Corporations Act;

(c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the Corporations Act;

(d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

(e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.

74—Smaller groups subsumed by larger groups

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

(2) If 2 or more members of a group have together a controlling interest in a business (within the meaning of section 72), all the members of the group and the person or persons who carry on the business together constitute a group.

Note—

Section 79 (Exclusion of persons from groups) allows the Commissioner, for payroll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

Division 3—Business groups—tracing of interests in corporations

75—Application

This Division applies for the purposes of section 73 (Groups arising from tracing of interests in corporations).

76—Direct interest

(1) An entity has a ***direct interest*** in a corporation if—

(a) in the case of an entity that is a person—the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation; or

(b) in the case of an entity that is 2 or more persons who are associated persons—each of the associated persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation.

(2) The value of the direct interest of the entity in the corporation is the proportion (expressed as a percentage) of the voting power of all voting shares issued by the corporation that—

(a) in the case of an entity that is a person—the person can directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as referred to in subsection (1); or

(b) in the case of an entity that is 2 or more persons who are associated persons—the associated persons can, if acting together, directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as referred to in subsection (1).

77—Indirect interest

(1) An 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.

(2) A corporation is linked to a 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 in the chain is formed if a corporation has a direct interest in the next corporation in the chain.

(3) The following are examples of how subsections (1) and (2) work (the examples are cumulative):

(a) corporation A (a directly controlled corporation) has a direct interest in corporation B. Corporations A and B form part of a chain of corporations, and corporation B is linked to corporation A. Accordingly, an entity that has a direct interest in corporation A also has an indirect interest in corporation B;

(b) corporation B also has a direct interest in corporation C. In this case, corporations A, B and C form part of a chain of corporations. Both corporations B and C are linked to corporation A. The entity that has a direct interest in corporation A has an indirect interest in both corporations B and C;

(c) corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, 1 consisting of A, B and C, and 1 consisting of A, B and D. Corporations B, C and D are all linked to corporation A and an entity that has a direct interest in corporation A would have an indirect interest in corporations B, C and D. An entity that has a direct interest in corporation B would have an indirect interest in corporations C and D. However, an entity that has a direct interest in corporation C only would not have an indirect interest in corporation D, as corporation D is not linked to corporation C.

(4) The value of the indirect interest of an entity in a corporation (an ***indirectly controlled corporation***) that is linked to a directly controlled corporation is calculated by multiplying together the following:

(a) the value of the direct interest of the entity 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.

(5) The following are examples of how subsection (4) works (the examples are cumulative):

(a) an 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 indirect interest of the entity in corporation B is 80% × 70% (that is, 56%). Accordingly, in this example the entity has a controlling interest (within the meaning of section 73 (Groups arising from tracing of interests in corporations)) in corporation B;

(b) corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the indirect interest of the entity in corporation C is 80% × 70% x 40% (that is, 22.4%). Accordingly, in this example the entity does not have a controlling interest in corporation C.

(6) It is possible for an entity to have more than 1 indirect interest in a corporation. This may occur if the corporation is linked to more than 1 corporation in which the entity has a direct interest, or if the corporation is linked to only 1 corporation in which the entity has a direct interest but is linked through more than 1 chain of corporations. In that case, the entity has an aggregate interest in the corporation (see section 78 (Aggregation of interests)).

78—Aggregation of interests

(1) An 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 the aggregate interest of an entity in a corporation is the sum of the following:

(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.

(3) For example—

(a) an entity has a direct interest (with a value of 40%) in corporation B;

(b) the entity also has a direct interest (with a value of 25%) in corporation A, which in turn has a direct interest (with a value of 60%) in corporation B. Accordingly, the entity also has an indirect interest in corporation B with a value of 15% (that is, 25% ×60%);

(c) the value of the entity's aggregate interest in corporation B is the sum of the direct interest (40%) and the indirect interest (15%), which is 55%;

(d) accordingly, in this example, the entity has a controlling interest in corporation B (within the meaning of section 73 (Groups arising from tracing of interests in corporations)).

Division 4—Miscellaneous

79—Exclusion of persons from groups

(1) The Commissioner may, by order in writing, determine that a person who would, but for the determination, be a member of a group is not a member of the group.

(2) The Commissioner may only make such a determination if satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the Commissioner considers relevant, that 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 that group.

(3) The Commissioner cannot exclude a person from a group if the person is a body corporate that, by reason of section 50 of the *Corporations Act 2001* of the Commonwealth, is related to another body corporate that is a member of that group.

(4) This section extends to a group constituted by reason of section 74 (Smaller groups subsumed by larger groups).

(5) A determination can be expressed to take effect on a date that is earlier than the date of the determination.

(6) The Commissioner may by order in writing revoke a determination that applies in respect of a person if satisfied that the circumstances in which a determination may be made do not apply to the person.

(7) The revocation of a determination can be expressed to take effect on a date that is earlier than the date of the determination.

80—Designated group employers

(1) The members of a group may, with the approval of the Commissioner, designate a qualified member of the group to be the designated group employer for the group for the purposes of this Act.

(2) A member of a group is a qualified member if the member—

(a) has paid during the preceding financial year wages that exceeded $600 000; or

(b) is likely to pay during the current financial year wages that are likely to exceed that amount.

(3) If none of the members of a group is a qualified member but the members together—

(a) have paid during the preceding financial year wages that exceeded $600 000; or

(b) are, in the opinion of the Commissioner, likely to pay during the current financial year wages that will exceed that amount,

the members may, with the approval of the Commissioner, designate any member of the group to be the designated group employer for the group for the purposes of this Act.

(4) If the members of a group do not designate a member as the designated group employer within 7 days after the end of the month in which the group is established, the Commissioner may (but is not obliged to) designate any member of the group as the designated group employer.

(5) The designated group employer of a group stops being the designated group employer from and including the earlier of the following days:

(a) the first day of a return period during which there is a change in the membership of the group;

(b) the first day of a return period during which the members of the group revoke the designation.

(6) The designation of a designated group employer under subsection (1) or (3) must be by notice in writing.

(7) Such a notice must—

(a) be executed by or on behalf of each member of the group; and

(b) be served on the Commissioner.

81—Joint and several liability

(1) If a member of a group fails to pay an amount that the member is required to pay under this Act in respect of any period, every member of the group is liable jointly and severally to pay that amount to the Commissioner.

(2) If 2 or more persons are jointly or severally liable to pay an amount under this section, the Commissioner may recover the whole of the amount from them, or any of them, or any 1 of them.

(3) If, under this section, 2 or more persons are jointly and severally liable to pay an amount that is payable by any 1 of them, each person is also jointly and severally liable to pay—

(a) any amount payable to the Commissioner under this or any other Act in relation to that amount, including any interest and penalty tax; and

(b) any costs and expenses incurred in relation to the recovery of that amount that the Commissioner is entitled to recover from any such person.

(4) A person who pays an amount in accordance with the liability imposed by this section has such rights of contribution or indemnity from the other person or persons as are just.

(5) This section applies whether or not the person was an employer during the relevant period.

Part 6—Adjustments of tax

82—Determination of correct amount of payroll tax

(1) For the purposes of this Part, the ***correct amount of payroll tax*** payable by an employer in respect of a financial year is the amount determined in accordance with Schedule 1 in respect of that financial year.

(2) This Part applies in respect of payroll tax paid or payable whether as a group employer or as an individual employer.

(3) If an employer is liable for payroll tax both as an individual employer and as a group employer (for different periods in the same financial year) separate adjustments are to be made under this Part in respect of any period as a group employer and any period as an individual employer (and for that purpose separate determinations of the correct amount of payroll tax payable by the employer are to be made).

(4) In this Part—

group employer means an employer who is a member of a group;

individual employer means an employer who is not a member of a group.

83—Annual adjustment of payroll tax

(1) If the amount of payroll tax paid or payable by an employer when the employer made the returns relating to a financial year is greater than the correct amount of payroll tax payable by the employer in respect of the financial year, the Commissioner (on application by the employer) is to refund to that employer an amount equal to the difference.

Note—

There is a time limit on these refund applications—see clause 20 of Schedule 2.

(2) If the amount of payroll tax paid or payable by an employer when the employer made the returns relating to a financial year is less than the correct amount of payroll tax payable by the employer in respect of the financial year, the employer must pay to the Commissioner as payroll tax an amount equal to the difference.

(3) Any amount payable by an employer under this section in respect of a financial year must be paid within the period during which the employer is required to lodge a return under this Act in respect of the return period that is or includes the month of June in that financial year.

(4) The amount of any refund payable to an employer in respect of a financial year under this section is to be reduced by the amount of any other refund of payroll tax made in respect of that financial year to that employer (whether under this section or otherwise) before the time of the refund under this section.

84—Adjustment of payroll tax when employer changes circumstances

(1) If an employer changes their circumstances during a financial year, the employer must, if the amount of payroll tax paid or payable by the employer when the employer made returns relating to the relevant period prior to the change of circumstances is less than the correct amount of payroll tax payable by the employer in respect of the financial year, pay to the Commissioner as payroll tax an amount equal to the difference.

(2) A ***change of circumstances*** occurs when the employer—

(a) ceases to pay or be liable to pay taxable wages and interstate wages; or

(b) becomes a group employer (following a period as an individual employer); or

(c) ceases to be a group employer (and becomes an individual employer).

(3) The ***relevant period*** prior to a change of circumstances is the period prior to the change (during the financial year concerned and since any prior change of circumstances) for which the employer paid or was liable to pay taxable wages or interstate wages.

(4) In calculating for the purposes of this section the correct amount of payroll tax payable by the employer, it is to be assumed that the wages paid or payable by the employer during the relevant period are the only wages paid or payable by the employer during the financial year concerned.

(5) Any amount payable by an employer under this section in respect of a relevant period must be paid within the period during which the employer is required to lodge a return under this Act relating to that relevant period or the last return under this Act relating to the relevant period.

(6) Any payroll tax paid or payable by an employer under this section is to be included as payroll tax paid or payable by the employer for the purposes of the annual adjustment of payroll tax under this Part.

Note—

If an employer ceases to be a group employer during a financial year an adjustment will be made under this section. If later in that financial year the employer ceases to pay wages there will be a further adjustment under this section. The first adjustment will adjust payroll tax paid for the period as a group employer against the correct amount of tax that should have been paid (based on the assumption that the period as a group employer is the only period for which the employer paid wages throughout the year). The second adjustment will adjust payroll tax paid for the period as an individual employer against the correct amount of tax that should have been paid (based on the assumption that the period as an individual employer is the only period for which the employer paid wages throughout the year). Any amount of payroll tax paid under this section is taken into account for the purposes of the annual adjustment of payroll tax.

85—Special provision where wages fluctuate

If a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the Commissioner that, by reason of the nature of the person's trade or business, the taxable wages and interstate wages, if any, paid or payable by the person fluctuate with different periods of the financial year, the Commissioner may determine that the person is to be treated for the purposes of this Part—

(a) if the person has conducted that trade or business in Australia during the whole of the financial year—as an employer who pays or is liable to pay taxable wages throughout the financial year; or

(b) if the person has conducted that trade or business in Australia during part only of the financial year—as an employer who pays or is liable to pay taxable wages throughout that last-mentioned part of the financial year.

Note—

The effect of such a determination is that when the correct amount of payroll tax is calculated (for the purposes of a tax adjustment provided for by this Part) the employer may receive the benefit of the payroll tax threshold for the period for which the employer is to be treated as paying wages, and not just for the period for which the employer actually pays wages. Without such a determination, an employer may only receive the benefit of a proportion of the threshold amount that is equivalent to the proportion of the whole financial year for which the employer actually pays wages.

Part 7—Registration and returns

86—Registration

(1) An employer who is not already registered must apply for registration as an employer under this Act if—

(a) during a month the employer pays or is liable to pay, anywhere, wages of more than $11 538 per week that are wholly or partly taxable wages; or

(b) the employer is a member of a group the members of which together during a month pay or are liable to pay, anywhere, wages of more than $11 538 per week that are wholly or partly taxable wages.

(2) The application for registration is to be made to the Commissioner in a form and manner approved by the Commissioner within 7 days after the end of the month concerned.

(3) The Commissioner is to register the applicant as an employer under this Act.

(4) The Commissioner may cancel the registration of a person as an employer if satisfied that the person has ceased to pay or to have a liability to pay wages as described in subsection (1).

(5) If the Commissioner cancels the registration of a person as an employer in any financial year and that person subsequently pays or is liable to pay taxable wages during that financial year, the person may, despite the fact that the person is not required to apply for registration, apply to the Commissioner (in a form and manner approved by the Commissioner) for registration as an employer, and the Commissioner is then to register the person as an employer under this Act.

87—Returns

(1) Every employer who is registered or required to apply for registration as an employer under this Act must—

(a) within 7 days after the end of each month except June, lodge with the Commissioner a return relating to that month; and

(b) within 21 days after the end of June in each year, lodge with the Commissioner a return relating to that month and to the adjustment of payroll tax paid or payable by the employer during the financial year ending on the close of that month.

(2) The Commissioner may vary—

(a) the time within which a specified employer is required to furnish returns;

(b) the period in relation to which a specified employer, or employers of a specified class, are required to furnish returns generally, or returns relating to wages of a specified kind.

(3) A variation under subsection (2)—

(a) may be made subject to conditions or limitations;

(b) may be made, varied or revoked by notice in writing to an employer or by notice in the Gazette.

(4) The designated group employer for a group may, with the approval of the Commissioner, lodge a joint return for the purposes of this section covering specified members of the group (including the designated group employer).

(5) If a joint return is lodged and the return would, if lodged by a single employer, comply with this section, each of the employers covered by the return is taken to have complied with this section.

Part 8—Collection and recovery of tax

Division 1—Agents and trustees generally

88—Application

(1) This Division applies to an agent of or trustee for an employer.

(2) Nothing in this Division limits or otherwise affects the application of Part 5 to an agent or trustee, or 2 or more persons 1 or more of whom is an agent or trustee.

89—Agents and trustees are answerable

An agent or trustee is answerable as the employer for the doing of all things that are required to be done by or under this Act in respect of the payment of any wages which are subject to payroll tax under this Act.

90—Returns by agent or trustee

(1) An agent or trustee must, in respect of the wages referred to in section 89, make the returns required under Part 7, but in a representative capacity only, and each return must, except as otherwise provided by this Act, be separate and distinct from any other.

(2) In the case of an executor or administrator, the returns must be the same as far as practicable as the deceased person, if living, would have been liable to make.

91—Liability to pay tax

(1) An agent or trustee is personally liable for tax on the wages referred to in section 89 if—

(a) after the Commissioner has required the agent or trustee to make a return; or

(b) while the tax remains unpaid,

the agent or trustee, except with the written permission of the Commissioner, disposes of or parts with any fund or money which comes to the agent or trustee from or out of which tax could legally be paid.

(2) Otherwise than as provided in subsection (1), the agent or trustee is not personally liable to pay the tax in a representative capacity.

(3) The agent or trustee must retain from time to time out of any money which comes to the agent or trustee in a representative capacity enough to pay the tax.

(4) For the purpose of ensuring the payment of tax, the Commissioner has the same remedies against attachable property of any kind vested in or under the control or management or in the possession of the agent or trustee, as the Commissioner has against the property of any other person in respect of tax, and in as full and ample a manner.

92—Indemnity for agent or trustee

(1) An agent or trustee is indemnified for all payments that the agent or trustee makes under this Act or in accordance with the requirements of the Commissioner.

(2) An agent or trustee who pays tax as agent or trustee may recover the amount paid from the person on whose behalf it was paid, or deduct it from any money in the agent's or trustee's hands belonging to that person.

Division 2—Special cases

93—Tax not paid during lifetime

(1) This section applies if, whether intentionally or not, a person escapes full payment of tax in his or her lifetime by reason of not having duly made full, complete and accurate returns.

(2) The Commissioner has the same powers and remedies against the trustees of the estate of the person in respect of the liability to which the person was subject as the Commissioner would have had against the person if the person were still living.

(3) The trustees must lodge the returns under this Act that the Commissioner requires.

(4) The trustees are subject to tax to the same extent as the deceased person would be subject to tax if he or she were still living, but the Commissioner, in any circumstances the Commissioner considers appropriate, may remit tax payable by the trustees under this section by any amount.

(5) The amount of any tax payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

94—Payment of tax by executors or administrators

(1) If, at the time of an employer's death, he or she had not paid the whole of the tax payable up to the date of death, the Commissioner has the same powers and remedies for the assessment and recovery of tax from the executors and administrators as the Commissioner would have had against the employer, if the employer were alive.

(2) The executors or administrators must lodge any of the returns referred to in Part 7 that have not been lodged by the deceased.

95—Assessment if no probate within 6 months of death

(1) If, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within 6 months after the death, the Commissioner may make an assessment under section 8 of the *Taxation Administration Act 1996* of the tax liability of the deceased under this Act.

(2) The Commissioner must cause notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory in which the deceased resided.

(3) Any person claiming an interest in the estate of the deceased may, within 60 days after the first publication of notice of the assessment, lodge an objection with the Commissioner in accordance with Division 1 of Part 10 of the *Taxation Administration Act 1996*.

(4) Subject to any amendment of the assessment by the Commissioner or by the Supreme Court, the assessment so made is conclusive evidence of the indebtedness of the deceased to the Commissioner.

(5) However, if probate of the will or letters of administration of the estate of the deceased is or are granted to a person after the assessment is first published, that person may, within 60 days after the date of the grant, lodge an objection in accordance with Division 1 of Part 10 of the *Taxation Administration Act 1996*.

96—Person in receipt or control of money for absentee

(1) This section applies to a person (the ***controller***) who has the receipt, control or disposal of money belonging to a person resident out of Australia (the ***principal***) if the principal is liable to pay tax under this Act.

(2) The controller must pay the tax payable by the principal at the time, or within the period, specified by the Commissioner.

(3) A controller who pays tax in accordance with subsection (2) may recover the amount paid from the principal or deduct it from any money in the controller's hands belonging to the principal.

(4) A controller must from time to time retain out of any money which comes to the controller on behalf of the principal so much as is sufficient to pay the tax which is or will become due by the principal.

(5) A controller is personally liable for the tax payable by the controller on behalf of the principal if—

(a) after the tax becomes payable; or

(b) after the Commissioner has required the controller to pay the tax,

the controller, except with the written permission of the Commissioner, disposes of or parts with any fund or money then in the controller's possession, or which comes to the controller from or out of which the tax could legally be paid.

(6) Otherwise than as provided in subsection (5), a controller is not personally liable to pay the tax payable by the principal.

(7) A controller is indemnified for all payments which the controller makes under this Act or in accordance with the requirements of the Commissioner.

97—Agent for absentee principal winding-up business

(1) If an agent for an absentee principal has been required by the principal to wind-up the principal's business, the agent must notify the Commissioner of the intention to wind-up the business before taking any steps to wind it up.

Maximum penalty: $500.

(2) After receiving notice under subsection (1), the Commissioner may notify the agent in writing of—

(a) the amount (if any) of payroll tax for which the principal is liable; and

(b) the date (at least 21 days after the notice is given) by which the tax must be paid.

(3) An agent who is given notice under subsection (2) must—

(a) set aside an amount out of the assets of the principal's business that is sufficient to pay the tax; and

(b) pay the tax to the Commissioner by the date specified in the notice.

Maximum penalty: $500.

(4) If an agent contravenes this section, the agent is personally liable for any tax that becomes payable in respect of the principal's business.

98—Recovery of tax paid on behalf of another person

A person who, under the provisions of this Act, pays any tax for or on behalf of another person is entitled to recover the amount so paid from the other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in the person's hands belonging or payable to the other person.

99—Liquidator to give notice

(1) Within 14 days after becoming liquidator of a company that has been an employer registered or required to be registered under this Act, the liquidator must give the Commissioner notice in writing of the liquidator's appointment.

(2) As soon as practicable after receiving the notice, the Commissioner must notify the liquidator of the amount that appears to the Commissioner to be sufficient to provide for any tax which is or will become payable by the company.

(3) The liquidator—

(a) must not without leave of the Commissioner part with any of the assets of the company until the liquidator has been so notified; and

(b) must set aside out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and

(c) is, to the extent of the value of the assets which the liquidator is so required to set aside, liable as trustee to pay the tax.

(4) A liquidator must not fail—

(a) to comply with this section; or

(b) as trustee duly to pay the tax for which the liquidator is liable under subsection (3).

Maximum penalty: $5 000.

(5) If a liquidator commits an offence against subsection (4), the liquidator is personally liable to pay the tax, to the extent of the value of the assets of which the liquidator has taken possession and which are, or were at any time, available to the liquidator for the payment of the tax.

(6) If more than 1 person is appointed as liquidator or required by law to carry out the winding-up of a company—

(a) the obligations and liabilities attaching to a liquidator under this section attach to each of those persons; and

(b) if any 1 of those persons has paid the tax due in respect of the company being wound-up, the others are each liable to pay that person that person's equal share of the amount of the tax so paid.

(7) Despite anything in this section, all costs, charges and expenses that, in the Commissioner's opinion, have been properly incurred by a liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any tax payable in respect of the company.

(8) Nothing in this section—

(a) limits the liability of a liquidator under section 91; or

(b) affects any of the provisions of the *Corporations Act 2001* of the Commonwealth.

Part 9—General

100—Returns etc to be completed in manner approved by Commissioner

A return, application, statement, notice or any other document relating to the payment of payroll tax that is to be provided to the Commissioner for the purposes of this Act or the *Taxation Administration Act 1996* must be provided in a manner and form determined or approved by the Commissioner.

101—Regulations

(1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision for—

(a) the manner of making any application to the Commissioner under this Act;

(b) the evidence that the Commissioner may require for the purpose of determining whether or not—

(i) an employer was an employer for part only of a financial year; or

(ii) a person was a member of a group at any time or during any period;

(c) the signing of returns, applications, notices, statements or forms by or on behalf of employers and deeming any return, application, notice, statement or form signed on behalf of an employer to have been signed by the employer;

(d) the authentication of any certificate, notice or other document issued for the purpose of this Act or any regulation;

(e) prescribing any matter which or thing required or permitted by this Act to be prescribed or necessary or convenient to be prescribed to give effect to this Act.

(3) The regulations—

(a) may provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Commissioner or a prescribed authority; and

(b) may differ according to differences in time, place or circumstances; and

(c) may prescribe a fine not exceeding $2 500 for the contravention of, or failure to comply with, a regulation.

Schedule 1—Calculation of payroll tax liability

Part 1—Interpretation

1—Interpretation

In this Schedule—

financial year means the financial year commencing on 1 July 2009 or on 1 July in any subsequent financial year

FY is the number of days in the financial year

R is 4.95%

relevant financial year means the financial year to which the calculation of the relevant payroll tax relates

TA or threshold amount is $600 000.

Part 2—Employers who are not members of a group

2—Application of Part

This Part applies only to an employer who is not a member of a group.

3—Interpretation

In this Part—

C is the number of days in the relevant financial year in respect of which the employer paid or was liable to pay taxable wages or interstate wages (otherwise than as a member of a group)

IW represents the total interstate wages paid or payable by the employer concerned (otherwise than as a member of a group) during the relevant financial year

TW represents the total taxable wages paid or payable by the employer concerned (otherwise than as a member of a group) during the relevant financial year.

4—Payroll of employer under threshold

An employer is not liable to pay payroll tax for a financial year if the total taxable wages and interstate wages paid or payable by the employer (otherwise than as a member of a group) during that year is not more than the ***employer's threshold amount***, being the amount calculated in accordance with the following formula:

$$TA \times \frac{C}{FY}$$

5—Payroll of employer over threshold

If the total taxable wages and interstate wages paid or payable by an employer (otherwise than as a member of a group) during a financial year is more than the employer's threshold amount, the employer is liable to pay as payroll tax for that year the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left[\frac{TW}{TW + IW} \times TA \times \frac{C}{FY}\right]\right] \times R$$

Part 3—Groups with a designated group employer

6—Application of Part

This Part applies only to an employer who is a member of a group for which there is a designated group employer.

7—Interpretation

In this Part—

C is the number of days in the relevant financial year in respect of which at least one member of the group paid or was liable to pay (as a member of the group) taxable wages or interstate wages

GIW represents the total interstate wages paid or payable by the group concerned during the relevant financial year

GTW represents the total taxable wages paid or payable by the group concerned during the relevant financial year

TW represents the total taxable wages paid or payable by the employer concerned (as a member of the group) during the relevant financial year.

8—Payroll of group under threshold

None of the members of a group is liable to pay payroll tax for the financial year if the total taxable wages and interstate wages paid or payable by the group during that year is not more than the ***group threshold amount***, being the amount calculated in accordance with the following formula:

$$TA \times \frac{C}{FY}$$

9—Payroll of group over threshold

(1) If the total taxable wages and interstate wages paid or payable by a group during the financial year is more than the group threshold amount, payroll tax is payable as provided by subclauses (2) and (3).

(2) The designated group employer for the group is liable to pay as payroll tax for the financial year the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left[\frac{GTW}{GTW + GIW} \times TA \times \frac{C}{FY} \right] \right] \times R$$

(3) Each member of the group (other than that designated group employer) is liable to pay as payroll tax for the financial year the amount of dollars calculated in accordance with the following formula:

$$TW \times R$$

Part 4—Motor Vehicle Allowances

10—Continuous recording method

If an employer selects the continuous recording method for the purposes of determining the number of business kilometres travelled during the financial year, the following details are required to be recorded by the employer:

(a) the odometer readings at the beginning and end of each business journey undertaken by the person during a financial year by means of a motor vehicle provided or maintained by the person;

(b) the specific purpose for which each such business journey was taken;

(c) the distance travelled by the person during the financial year in the course of all such business journeys (which is taken to be the ***number of business kilometres travelled during the financial year***), calculated on the basis of the odometer readings referred to in paragraph (a).

11—Averaging method

(1) If an employer selects the averaging method for the purposes of determining the number of business kilometres travelled during the financial year, the following details are required to be recorded by the employer:

(a) the odometer readings at the beginning and end of each business journey undertaken by the person during the relevant 12-week period by means of a motor vehicle provided or maintained by the person;

Note—

Clause 12 defines the relevant 12-week period.

(b) the specific purpose for which each such business journey was taken;

(c) the distance travelled by the person during the relevant 12-week period in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a);

(d) the odometer readings at the beginning and end of the relevant 12-week period for each motor vehicle provided or maintained by the person for the purpose of undertaking business journeys;

(e) the distance travelled by each such vehicle during the relevant 12-week period, calculated on the basis of the odometer readings referred to in paragraph (d);

(f) the distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the relevant 12-week period, calculated as a percentage of the distance travelled by that vehicle during that period (the ***relevant percentage***);

(g) the odometer readings at the beginning and end of the financial year for each vehicle provided or maintained by the person for the purpose of undertaking business journeys;

(h) the distance travelled by each such vehicle during the financial year, calculated on the basis of the odometer readings referred to in paragraph (g);

(i) the distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the financial year (which is taken to be the ***number of business kilometres travelled during the financial year***), calculated on the basis that the percentage of that distance that was travelled by the person in the course of business journeys undertaken by means of each such vehicle during the financial year is the same as the relevant percentage.

(2) For the next succeeding 4 financial years after the first financial year in which odometer details are recorded in accordance with subclause (1), an employer is not required to calculate the relevant percentage, or record the details referred to in subclause (1)(a)—(f), for the person but is required to record the other details referred to in that subclause.

(3) Accordingly, for the next succeeding 4 financial years after the first financial year in which odometer details are recorded in accordance with subclause (1), the number of business kilometres travelled during the financial year is to be calculated (as referred to in subclause (1)(i)) on the basis of the relevant percentage calculated for the first financial year.

(4) Despite subclauses (2) and (3), an employer is required to calculate the relevant percentage for a financial year, and record the details referred to in subclause (1)(a)—(f), if—

(a) the Commissioner serves a notice on the employer before the commencement of a financial year during that period directing the employer to keep the details referred to in subclause (1)(a)—(f) for that financial year; or

(b) the employer wishes to use the recording method referred to in this clause for 1 or more additional motor vehicles used by the person in any financial year or for any other reason.

(5) In a situation referred to in subclause (4), the new record for the financial year replaces the relevant percentage details previously recorded and subclauses (2) and (3) apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.

(6) An employer who has adopted and employed the method of recording referred to in subclauses (2) and (3) for a person for 4 successive financial years must, in the next succeeding financial year, make a fresh recording of all the details specified in subclause (1) if the employer intends to continue to use the same method of recording for the person. Subclauses (2) and (3) then apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.

(7) If the odometer of a motor vehicle is replaced or recalibrated during any period for which its readings are relevant for the purposes of this clause, the odometer readings immediately before and after the replacement or recalibration are to be recorded.

12—Meaning of relevant 12-week period

(1) In clause 11, ***relevant 12-week period*** means a continuous period of at least 12 weeks, selected by the employer, throughout which a motor vehicle is provided or maintained by a person. If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.

(2) The period may overlap the start or end of the financial year, so long as it includes part of the year.

(3) If the averaging method is used for 2 or more motor vehicles for the same financial year, the odometer readings for those motor vehicles must cover periods that are concurrent.

13—Replacing 1 motor vehicle with another motor vehicle

(1) For the purposes of using the averaging method, an employer may nominate 1 motor vehicle as having replaced another motor vehicle with effect from a day specified in the nomination.

(2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.

(3) An employer must record the nomination in writing in the financial year in which the nomination takes effect.

(4) However, the Commissioner may allow an employer to record the nomination at a later time.

14—Changing method of recording

(1) An employer may change from using the averaging method to using the continuous recording method with effect from the beginning of a financial year if the employer complies with clause 10 in respect of the financial year.

(2) An employer may change from using the continuous recording method to using the averaging method with effect from the beginning of a financial year if the employer complies with clause 11 in respect of the financial year.

15—Definition

In this Part—

business journey means—

(a) a journey undertaken in a motor vehicle by a person otherwise than in the application of the vehicle to a private use, being an application that, if the person is paid a motor vehicle allowance for that use, results in the provision of a fringe benefit (within the meaning of the FBTA Act) 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 (within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth).

Schedule 2—South Australia Specific Provisions

Part 1—Introduction

1—Introduction to Schedule

This Schedule sets out provisions that apply only in this jurisdiction.

2—Interpretation

In this Schedule—

prescribed amount means $50 000.

Part 2—Calculation of monthly payroll tax

Division 1—Rate of payroll tax

3—Rate of payroll tax

The rate of payroll tax in this jurisdiction is 4.95%.

Division 2—Employers who are not members of a group

4—Application of Division

This Division applies only to an employer who is not a member of a group.

5—Amount of payroll tax to be paid each month

(1) The amount of payroll tax payable by an employer on taxable wages paid or payable by the employer in a month is the amount of dollars calculated in accordance with the following formula:

$$(TW - D) \times R$$

where—

D is the deductible amount referred to in clause 6

R is the rate of tax referred to in clause 3

TW represents the total taxable wages paid or payable by the employer (otherwise than as a member of a group) during the month.

(2) If D is equal to or more than TW in respect of a month, the employer is not required to pay payroll tax in respect of that month.

6—Deductible amount from taxable wages

(1) The ***deductible amount*** for an employer who pays or is liable to pay taxable wages (including interstate wages) in a month is—

(a) if notice has been given under subclause (2) and no determination under subclause (5) is in force—the amount specified in the most recent notice given under subclause (2); or

(b) if a determination is in force under subclause (5)—the amount specified in the determination.

(2) From time to time, the employer may give a notice to the Commissioner, containing the information required by the Commissioner, of an amount, calculated in accordance with subclause (3), that the employer claims to be the employer's deductible amount for that month and subsequent months.

(3) The amount is to be calculated in accordance with the following formula:

$$D = \frac{T}{(T + I)} x \frac{TA \times C}{FY}$$

where—

C is the number of days in the relevant financial year in respect of which the employer paid or was liable to pay taxable wages or interstate wages (otherwise than as a member of a group)

D is the deductible amount per month

FY is the number of days in the financial year

I represents the estimated interstate wages in the financial year in which D will be applied

T represents the estimated taxable wages in the financial year in which D will be applied

TA or threshold amount is $600 000.

(4) The deductible amount claimed cannot be more than the prescribed amount.

(5) At any time, the Commissioner may, by notice in writing to the employer, determine an amount, not more than the prescribed amount, as the deductible amount for the employer for 1 or more months specified in the determination.

(6) A determination under subclause (5) may be made on application by the employer or on the Commissioner's own motion.

(7) At any time, the Commissioner, by notice in writing to the employer, may revoke a determination made under subclause (5).

Division 3—Groups with a designated group employer

7—Application of Division

This Division applies only to an employer who is a member of a group for which there is a designated group employer.

8—Amount of payroll tax to be paid each month

(1) If an approval is in force under section 87(4) for the designated group employer to lodge a joint return—

(a) the amount of payroll tax payable by the designated group employer on taxable wages paid or payable in a month by the employers covered by the return is the amount of dollars calculated in accordance with the following formula:

$(JTW - D) \times R$

where—

D is the deductible amount referred to in clause 9

JTW represents the total taxable wages paid or payable during the month by the employers covered by the return (as members of a group)

R is the rate of tax referred to in clause 3.

(b) the amount of payroll tax payable by each employer who is a member of the group but is not covered by the return on taxable wages paid or payable by the employer in a month is the amount of dollars calculated in accordance with the following formula:

$TW \times R$

where—

R is the rate of tax referred to in clause 3

TW represents the total taxable wages paid or payable by the employer concerned (as a member of the group) during the relevant month.

(2) If an approval under section 87(4) is not in force for the designated group employer—

(a) the amount of payroll tax payable by the designated group employer on taxable wages paid or payable by the designated group employer in a month is the amount of dollars calculated in accordance with the following formula:

$(TW - D) \times R$

where—

D is the deductible amount referred to in clause 9 (as the case requires)

R is the rate of tax referred to in clause 3

TW represents the total taxable wages paid or payable by the designated group employer (as a member of a group) during the month.

(b) the amount of payroll tax payable by each employer who is a member of the group on taxable wages paid or payable by the employer in a month is the amount of dollars calculated in accordance with the following formula:

$TW \times R$

where—

R is the rate of tax referred to in clause 3

TW represents the total taxable wages paid or payable by the employer concerned (as a member of the group) during the relevant month.

(3) For the purposes of subclauses (1)(a) and (2)(a), if D is equal to or more than JTW or TW in respect of a month (as the case requires), the designated group employer is not required to pay payroll tax in respect of that month.

9—Deductible amount for groups

(1) The ***deductible amount*** for a group in which 1 or more members pay or are liable to pay taxable wages (including interstate wages) in a month is—

(a) if notice has been given under subclause (2) and no determination under subclause (5) is in force—the amount specified in the most recent notice given under subclause (2); or

(b) if a determination is in force under subclause (5)—the amount specified in the determination.

(2) From time to time, the designated group employer may give a notice to the Commissioner, containing the information required by the Commissioner, of an amount, calculated in accordance with subclause (3), that the employer claims to be the group's deductible amount for that month and subsequent months.

(3) The amount is to be calculated in accordance with the following formula:

$$D = \frac{T}{(T + I)} \times \frac{TA \times C}{FY}$$

where—

C is the number of days in the relevant financial year in respect of which any member of the group paid or was liable to pay taxable wages or interstate wages

D is the deductible amount per month

FY is the number of days in the financial year

I represents the estimated interstate wages in the financial year in which D will be applied

T represents the estimated taxable wages in the financial year in which D will be applied

TA or threshold amount is $600 000.

(4) The deductible amount claimed cannot be more than the prescribed amount.

(5) At any time, the Commissioner may, by notice in writing to the designated group employer, determine an amount, not more than the prescribed amount, as the deductible amount for the group for 1 or more months specified in the determination.

(6) A determination under subclause (5) may be made on application by the designated group employer or on the Commissioner's own motion.

(7) At any time, the Commissioner, by notice in writing to the designated group employer, may revoke a determination made under subclause (5).

Part 3—Exemptions

Division 1—Education and training

10—Education and training

Wages paid or payable by a school or college that—

(a) is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association and is not carried on by or on behalf of the State; and

(b) provides education at or below, but not above, the secondary level,

being wages paid or payable to a person during a period in respect of which the school or college satisfies the Commissioner that the person is engaged exclusively in work of the school or college of a kind ordinarily performed in connection with the conduct of schools or colleges providing education of that kind are exempt wages.

Division 2—Health services providers

11—What is a health services provider?

For the purposes of Division 3 of Part 4 of this Act, ***health service*** means—

(a) a service designed to promote health; or

(b) a therapeutic or other service designed to cure, alleviate, or afford protection against, any mental or physical illness, abnormality or disability; or

(c) a paramedical or ambulance service; or

(d) the care of, or assistance to, sick or disabled persons at their place of residence; or

(e) a prescribed service.

Division 3—Other exemptions

12—Hospitals

(1) Wages paid or payable by a public hospital to a person during a period in respect of which the hospital satisfies the Commissioner that the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connection with the conduct of public hospitals are exempt wages.

(2) Wages paid or payable by a hospital that is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association, being wages paid or payable to a person during a period in respect of which the hospital satisfies the Commissioner that the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connection with the conduct of hospitals are exempt wages.

13—Family planning

Wages paid or payable by the Sexual Health Information Networking and Education SA Incorporated are exempt wages.

14—Kindergartens

Wages paid or payable by an employer who conducts a kindergarten otherwise than for the purpose of profit or gain, being wages paid or payable to an employee during a period in respect of which the employer satisfies the Commissioner that the employee is engaged exclusively in work of the kindergarten of a kind ordinarily performed in connection with the conduct of a kindergarten are exempt wages.

15—Child care

Wages paid or payable by a child care centre that is an eligible organisation within the meaning of the *Child Care Act 1972* of the Commonwealth, being wages paid or payable to a person during a period in respect of which the child care centre satisfies the Commissioner that the person is engaged exclusively in work of the centre of a kind ordinarily performed in connection with the conduct of child care centres are exempt wages.

16—Universities

Wages paid or payable by a University College affiliated with the University of Adelaide or the Flinders University of South Australia are exempt wages.

17—Film production

Wages paid or payable by a motion picture production company, being wages paid or payable to a person who is involved in the production of a feature film in respect of which the motion picture production company satisfies the Treasurer—

(a) that the film will be produced wholly or substantially within the State; and

(b) that the production of the film will involve or result in the employment of South Australian residents; and

(c) that economic benefits will accrue to the State of South Australia on account of the production of the film,

are exempt wages.

Part 4—Returns and refunds

18—Further returns

The Commissioner may, by notice in writing, call upon any employer or person to lodge, within the time specified in the notice, a return or further or fuller return as the Commissioner requires, whether on the person's own behalf or as an agent or trustee.

19—Notification of change in circumstances

An employer must give the Commissioner written notice within 14 days—

(a) after any change in the employer's—

(i) name; or

(ii) trading name; or

(iii) location of head office; or

(iv) postal address; or

(v) members, if the employer is a partnership; or

(b) after the employer ceases to—

(i) pay wages as referred to in section 86(1)(a); or

(ii) be a member of a group referred to in section 86(1)(b); or

(c) after the employer becomes a member of a group referred to in section 86(1)(b).

Maximum penalty: $2 000.

20—Time limit for refund applications

An application for a refund due under section 83 must be made before the end of the financial year next following the financial year in respect of which the refund is due.

Part 5—General

21—Disregarding cents

If, for the purposes of this Act, it is necessary—

(a) to calculate the proportion that 1 amount bears to another amount; or

(b) to calculate an amount in accordance with a formula,

and, but for this clause, 1 or more of those amounts or an amount included in the formula would be amounts of dollars and cents—the cents are to be disregarded.

Schedule 3—Repeal and transitional provisions

Part 1—Repeal

1—Repeal of *Pay-roll Tax Act 1971*

The *Pay-roll Tax Act 1971* is repealed.

Part 2—Transitional provisions

2—Interpretation

In this Schedule—

repealed Act means the *Pay-roll Tax Act 1971*.

3—Savings and transitional provisions

(1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule or regulations made under this Schedule, apply to any amendment or repeal effected by this Act.

4—Continuation of repealed Act and regulations

If a provision of the repealed Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision:

(a) any other provision of the repealed Act necessary to give effect to that continued provision;

(b) any regulation made under the repealed Act for the purposes of that continued provision.

5—Application of this Act and repealed Act

(1) This Act applies to payroll tax on taxable wages that are paid or payable on or after 1 July 2009.

(2) Despite its repeal, the repealed Act continues to apply to payroll tax on taxable wages (within the meaning of the repealed Act) paid or payable before 1 July 2009.

(3) The *Taxation Administration Act 1996*, as in force immediately before 1 July 2009, continue to apply on and after that day in respect of any matter to which the repealed Act continues to apply on and after that day.

6—Superannuation contributions not readily related to particular employees

For the purposes of an assessment of payroll tax, the Commissioner may determine—

(a) whether, and the extent to which, any monetary or non-monetary contribution paid or payable by an employer to a superannuation, provident or retirement fund or scheme that is not identified by the employer as paid or payable in respect of a particular employee (and whether or not purporting to be so paid or payable on any actuarial basis) is to be regarded as a superannuation contribution paid or payable in respect of a particular employee;

(b) the portion of any monetary or non-monetary contribution paid by an employer as a superannuation contribution to a wholly or partly unfunded fund or scheme, being money paid in respect of an employee (or that is to be regarded under paragraph (a) to have been so paid) who performed services to the employer on or after, as well as before, 1 July 1996, that is to be regarded as having been paid in respect of services performed before that date.

7—Registration of employers

An employer who was registered under section 14 of the repealed Act immediately before 1 July 2009 is taken, on and after that day, to be registered under section 86 of this Act.

8—Designated group employers

A member of a group who was the nominated or appointed member for the group under section 18J of the repealed Act immediately before 1 July 2009 is taken, on and after that day, to be the designated group employer for the group as if the member had been designated under section 80 of this Act.

9—References

Unless the contrary intention appears, a reference in any other Act, law, instrument or other form of document to pay-roll tax under the repealed Act will be taken to include a reference to payroll tax under this Act.