

Passed by both Houses



New South Wales

Payroll Tax Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Payroll Tax Bill 2007

Act No , 2007

An Act to provide for a tax on employers in respect of certain wages, to harmonise payroll tax law with Victoria, to repeal the *Pay-roll Tax Act 1971*; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Payroll Tax Act 2007*.

2 Commencement

This Act commences or is taken to have commenced on 1 July 2007.

3 Definitions

(1) In this Act:

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 Chief 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 the State has the same meaning as in Part 10 of the *Interpretation Act 1987*.

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.

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.

exercise a function includes perform a duty.

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.

function includes a power, authority or duty.

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 section 5 of the *Intergovernmental Agreement Implementation (GST) Act 2000* by a person that is a State 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.

Clause 4 Payroll Tax Bill 2007

Part 1 Preliminary

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 New South Wales and the coastal waters of the State.

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.

- (2) Notes included in this Act do not form part of this Act.

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

Payroll tax is imposed on all taxable wages.

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 Schedules 1 and 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 Chief 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 Chief 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 one 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 one 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 Payroll tax paid under corresponding applied law**

- (1) For the purposes of ascertaining the payroll tax payable under this Act by an employer who during a return period pays taxable wages and Commonwealth place wages, there is to be deducted from the amount of payroll tax payable by the employer under this Act the amount of payroll tax payable by the employer under the corresponding applied law.

- (2) In this section:

Commonwealth Act means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.

Commonwealth place wages means wages that would be taxable wages within the meaning of the corresponding applied law if the corresponding applied law applied in relation to each place in this jurisdiction that is a Commonwealth place.

corresponding applied law means the provisions of the *Payroll Tax Act 2007* that would apply in relation to each place in this jurisdiction that is a Commonwealth place, pursuant to section 6 (2) of the Commonwealth Act, if those provisions were **excluded provisions** within the meaning of section 6 (1) of the Commonwealth Act.

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 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.

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:

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

where:

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

- (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— $\frac{1}{12}$ 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:

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

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 Chief Commissioner in the form approved by the Chief 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 Chief 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, and
 - (iii) a wholly or partly unfunded fund or scheme.
- (3) 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.
 - (4) 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.
 - (5) A superannuation, provident or retirement fund or scheme is unfunded to the extent that money paid or payable by an employer in respect of an employee covered by the fund or scheme is not paid or payable during the employee's period of service with the employer.
 - (6) 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.

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 one 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 2003.

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 Chief Commissioner of State Revenue.

- (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 5 of Schedule 1.
- (6) The Chief 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 Chief 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 28-25 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) has supplied to the designated person the services of persons for or in relation to the performance of work, or
 - (c) gives out goods to natural persons for work to be performed by those persons 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.

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- (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 of the persons who perform the work also perform similar work for the designated person, for periods that, in the aggregate, exceed 90 days in that financial year, or
 - (iv) those services are supplied under a contract to which subparagraphs (i)–(iii) do not apply and the Chief 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 two 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 two or more natural persons, by one or more of the members of the partnership and one 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 one 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 Chief 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 Chief 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.

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) to whom during a financial year, under a relevant contract, the services of persons are supplied for or in relation to the performance of work, or
 - (c) who during a financial year, under a relevant contract, gives out goods to other persons,

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 persons 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 Chief 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:

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- (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 5 of that Part, section 50 or clause 5 of Schedule 2) 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 Chief Commissioner, to the employment agent.

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 Chief 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 Chief Commissioner makes a determination under subsection (1), the Chief 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 Chief 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 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 Chief 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 in respect of the agreement, transaction or arrangement is taken to be wages for the purposes of this Act.
- (2) If the Chief Commissioner makes a determination under subsection (1), the Chief 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 Chief 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 wholly charitable, benevolent, philanthropic or patriotic purposes (but not including a school, 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, charitable, benevolent, philanthropic or patriotic 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 care service providers

51 Health care service providers

- (1) Subject to subsection (2), wages paid or payable by a health care service provider are exempt wages.
- (2) The wages must be paid or payable:
- (a) for work of a kind ordinarily performed in connection with the conduct of a health care service provider, and
 - (b) to a person engaged exclusively in that kind of work.
- (3) For the purposes of this section, *health care service provider* 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 a health care service provider 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 one pregnancy and 14 weeks adoption leave in respect of any one 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

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- (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 Chief Commissioner 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 taking part in bushfire fighting activities as a volunteer member of a rural fire brigade under the *Rural Fires Act 1997*.

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 engaging in emergency operations as a volunteer member of an emergency services organisation under the *State Emergency and Rescue Management Act 1989*.

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 Local and county councils

Subject to section 60, wages are exempt wages if they are paid or payable by a council or county council, within the meaning of the *Local Government Act 1993*.

59 Local government business entities

- (1) Subject to section 60, wages are exempt wages if they are paid or payable:
- (a) by a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a council (within the meaning of the *Local Government Act 1993*), and
 - (b) to a person for or in connection with an activity that is conducted for the council under a written arrangement between the subsidiary and the council.

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- (2) The written arrangement referred to in subsection (1) (b) must include a provision for the payment by the subsidiary to the council of an amount approximately equivalent to the amount of tax that would be payable by the subsidiary under this Act but for the exemption.

60 Limitation on local government exemptions

- (1) 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 subsection (2), or
 - (b) the construction of any buildings or works, or the installation of plant, machinery or equipment for use in any of the activities referred to in subsection (2).
- (2) Subsection (1) 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) an activity prescribed by the regulations,
 - (e) an activity specified in Schedule 2.

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.

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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 one or more persons who perform duties 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

- (1) Corporations constitute a group if they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (2) For the purpose of assessing whether corporations are related bodies corporate under that Act, they are taken to carry on a business and not to be trustee companies.

Note. Section 79 (Exclusion of persons from groups) allows the Chief Commissioner, for payroll tax purposes, to exclude persons from a group in certain circumstances but not in the case of corporations that are related bodies corporate.

71 Groups arising from the use of common employees

- (1) If one or more employees of an employer perform duties for or in connection with one or more businesses carried on by the employer and one or more other persons, the employer and each of those other persons constitute a group.
- (2) If one or more employees of an employer are employed solely or mainly to perform duties for or in connection with one or more businesses carried on by one or more other persons, the employer and each of those other persons constitute a group.
- (3) If one or more employees of an employer perform duties for or in connection with one or more businesses carried on by one 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 one 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 Chief 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 Chief 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 as trustees the sole owners of the business, or
 - (c) in the case of a business carried on by a corporation:

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- (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 Chief 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:

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- (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 of a person means a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender).

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) one 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 2001* of the Commonwealth,
 - (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 2001* of the Commonwealth,
 - (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.
- (5) For the purposes of the definition of *domestic partner* in subsection (4), in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 4 (2) of the *Property (Relationships) Act 1984* as may be relevant in a particular case.

74 Smaller groups subsumed by larger groups

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

Note. Section 79 (Exclusion of persons from groups) allows the Chief 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

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- 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, one consisting of A, B and C, and one 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 $80\% \times 70\%$ (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 $80\% \times 70\% \times 40\%$ (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 one indirect interest in a corporation. This may occur if the corporation is linked to more than one corporation in which the entity has a direct interest, or if the corporation is linked to only one corporation in which the entity has a direct interest but is linked through more than one 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 one or more indirect interests in the corporation, or
 - (b) the entity has more than one 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, $25\% \times 60\%$),
 - (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 Chief 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 Chief 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 Chief 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 Chief 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 Chief 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 Chief 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 Chief Commissioner, likely to pay during the current financial year wages that will exceed that amount,the members may, with the approval of the Chief 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 Chief 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 Chief 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 Chief Commissioner.
- (2) If 2 or more persons are jointly or severally liable to pay an amount under this section, the Chief Commissioner may recover the whole of the amount from them, or any of them, or any one 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 one of them, each person is also jointly and severally liable to pay:
 - (a) any amount payable to the Chief 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 Chief 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 Chief Commissioner (on application by the employer) is to refund to that employer an amount equal to the difference.
- (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 Chief 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 Chief 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 Chief 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 Chief 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 Chief Commissioner in a form and manner approved by the Chief Commissioner within 7 days after the end of the month concerned.
- (3) The Chief Commissioner is to register the applicant as an employer under this Act.
- (4) The Chief 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 Chief 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 Chief Commissioner (in a form and manner approved by the Chief Commissioner) for registration as an employer, and the Chief 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 Chief Commissioner a return relating to that month, and
 - (b) within 21 days after the end of June in each year, lodge with the Chief 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 designated group employer for a group may, with the approval of the Chief Commissioner, lodge a joint return for the purposes of this

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Part 7 Registration and returns

section covering specified members of the group (including the designated group employer).

- (3) 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 one 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 Chief 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 Chief 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 Chief 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 Chief 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 Chief 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 Chief 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 Chief 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 Chief 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 Chief Commissioner, in any circumstances the Chief 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 Chief Commissioner has the same powers and remedies for the assessment and recovery of tax from the executors and administrators as the Chief Commissioner would have had against the employer, if the employer were alive.

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- (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 Chief 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 Chief 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 Chief 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 Chief Commissioner or by the Supreme Court, the assessment so made is conclusive evidence of the indebtedness of the deceased to the Chief 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 Chief 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 Chief Commissioner has required the controller to pay the tax,
the controller, except with the written permission of the Chief 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 Chief 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 Chief Commissioner of the intention to wind-up the business before taking any steps to wind it up.
Maximum penalty: 5 penalty units.
- (2) After receiving notice under subsection (1), the Chief 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 Chief Commissioner by the date specified in the notice.
Maximum penalty: 5 penalty units.
- (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 Chief Commissioner notice in writing of the liquidator's appointment.
- (2) As soon as practicable after receiving the notice, the Chief Commissioner must notify the liquidator of the amount that appears to the Chief 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 Chief 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: 50 penalty units.
- (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 one 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 one 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 Chief 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.

Clause 99 Payroll Tax Bill 2007

Part 8 Collection and recovery of tax

- (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 Provisions specific to this jurisdiction

Schedule 2, which contains provisions that are applicable only to this jurisdiction, has effect.

101 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the Governor may make regulations for or with respect to the following:
 - (a) the manner of making any application to the Chief Commissioner under this Act,
 - (b) the evidence that the Chief 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.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

102 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

103 Savings, transitional and other provisions

Schedule 3 has effect.

104 Repeal

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

Clause 105 Payroll Tax Bill 2007

Part 9 General

105 Amendment of other Acts

The Acts specified in Schedule 4 are amended as set out in that Schedule.

106 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Calculation of payroll tax liability for financial year commencing 1 July 2007 and subsequent financial years

(Sections 8, 82)

Part 1 Interpretation

1 Definitions

In this Schedule:

financial year means the financial year commencing on 1 July 2007 or on 1 July in any subsequent financial year.

R is 6%.

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 Definitions

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 not more than 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:

$$TA \times \frac{C}{365}$$

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:

$$\left[TW - \left[\frac{TW}{TW + IW} \times TA \times \frac{C}{365} \right] \right] \times R$$

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 Definitions

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 not more than 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:

$$TA \times \frac{C}{365}$$

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:

$$\left[TW - \left[\frac{GTW}{GTW + GIW} \times TA \times \frac{C}{365} \right] \right] \times R$$

(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 Groups with no designated group employer

10 Application of Part

This Part applies only to an employer who is a member of a group for which there is no designated group employer.

11 Definitions

In this Part:

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

12 Calculation of payroll tax

Each member of the group 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 5 Motor vehicle allowances

13 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).

14 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 15 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 Chief 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 one or more additional motor vehicles used by the person in any financial year or for any other reason.

Payroll Tax Bill 2007

Schedule 1 Calculation of payroll tax liability for financial year commencing 1 July 2007 and subsequent financial years

- (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.

15 Meaning of relevant 12-week period

- (1) In clause 14, *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.

16 Replacing one motor vehicle with another motor vehicle

- (1) For the purposes of using the averaging method, an employer may nominate one 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 Chief Commissioner may allow an employer to record the nomination at a later time.

17 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 13 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 14 in respect of the financial year.

18 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 NSW specific provisions

(Sections 8, 100)

Part 1 Introduction

1 Introduction to Schedule

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

Part 2 Calculation of payroll tax

2 Calculation by reference to return period

The amount of payroll tax that an employer is required to pay in relation to a return of wages in respect of a financial year or a part of a financial year is a proportion (equivalent to the ratio of the number of days to which the return relates to the number of days in the financial year) of the payroll tax that would be payable by the employer for the whole of that year.

3 Amount payable for whole of financial year

For the purposes of this Part, the payroll tax that would be payable by an employer for the whole of a financial year is to be ascertained on the basis of the following assumptions:

- (a) the assumption that the employer pays or is liable to pay taxable wages for the whole of the financial year,
- (b) the assumption that the total amount of taxable wages paid or payable by the employer during the financial year is a multiple (equivalent to the ratio of the number of days in the financial year to the number of days to which the return relates) of the taxable wages paid or payable by the employer during the period to which the return relates.

Part 3 Exemptions

Division 1 Education and training

4 Schools and colleges

Wages are exempt wages if they are paid or payable by a school or college (other than a technical school or a technical college) that:

- (a) provides education at or below, but not above, the secondary level of education, and

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- (b) 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 of New South Wales.

5 Apprentices and trainees—exemption and rebate

- (1) Apprentice/trainee wages that are paid or payable before 1 July 2008 are exempt wages.
- (2) An employer by whom apprentice/trainee wages are paid or payable on or after 1 July 2008 is entitled to a rebate of payroll tax paid in respect of those wages.
- (3) The amount of the rebate in respect of apprentice/trainee wages paid or payable in a particular period is the amount of the reduction in payroll tax payable by the employer that would result if the wages paid or payable by the employer in that period were reduced by the amount of those apprentice/trainee wages.
- (4) A rebate to which an employer is entitled under this clause is payable:
- (a) by refunding the amount of the rebate out of payroll tax paid by the employer, or
 - (b) by allowing the amount of the rebate as an offset against payroll tax payable by the employer.
- (5) Wages are ***apprentice/trainee wages*** if the wages are paid or payable to:
- (a) an apprentice within the meaning of the *Apprenticeship and Traineeship Act 2001*, or
 - (b) a trainee within the meaning of the *Apprenticeship and Traineeship Act 2001*, other than a trainee who was an employee of the employer within the period of 3 months before commencing employment as a trainee, or
 - (c) a person employed in accordance with a group apprenticeship scheme or a group traineeship scheme approved for the time being by the Director-General of the Department of Education and Training (other than a person employed as referred to in clause 6).
- (6) The regulations may make provision for or with respect to the payment of a rebate provided for by this clause, including provision for or with respect to any of the following:
- (a) the time for payment of the rebate,
 - (b) the method of payment of the rebate,
 - (c) providing for an exemption from any requirement to lodge a return in respect of apprentice/trainee wages.

- (7) An approval in force for the purposes of section 10 (1) (m) of the *Pay-roll Tax Act 1971* immediately before the commencement of this clause lapses on that commencement and has no operation for the purposes of this clause.

6 Exemption for non-profit group apprenticeship and traineeship schemes

- (1) Wages are exempt wages if they are paid or payable to an employee who is employed:
- (a) by a non-profit organisation that is approved by the Director-General of the Department of Education and Training for the purposes of this clause, and
 - (b) in accordance with a group apprenticeship scheme or a group traineeship scheme approved for the time being by the Director-General of the Department of Education and Training.
- (2) An approval in force for the purposes of section 10 (1) (m) of the *Pay-roll Tax Act 1971* immediately before the commencement of this clause lapses on that commencement and has no operation for the purposes of this clause.

Division 2 Health care service providers

7 What is a health care service provider?

For the purposes of Division 3 of Part 4 of this Act, a *health care service provider* is:

- (a) a public hospital, or
- (b) a hospital that is carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of the society or association.

8 Crown employees—public hospitals and area health services

Wages paid or payable by the Crown in respect of staff employed in connection with a public hospital or an area health service are exempt wages if the wages are paid or payable:

- (a) for work of a kind ordinarily performed in connection with the conduct of public hospitals or of the area health service concerned, and
- (b) to a person engaged exclusively in that kind of work.

9 Home Care Service

Wages paid or payable by the Crown in respect of staff employed under Chapter 1A of the *Public Sector Employment and Management Act*

2002 in the Government Service to enable the Home Care Service to exercise its functions are exempt wages if the wages are paid or payable:

- (a) for work of a kind ordinarily performed in connection with the conduct of the Home Care Service, and
- (b) to a person engaged exclusively in that kind of work.

10 Ambulance Service

Wages paid or payable by the Crown in respect of staff of the NSW Health Service comprising the Ambulance Service of NSW are exempt wages if the wages are paid or payable:

- (a) for work of a kind ordinarily performed in connection with the provision of the services provided by the Director-General of the Department of Health under Chapter 5A (Ambulance services) of the *Health Services Act 1997*, and
- (b) to a person engaged exclusively in that kind of work.

Division 3 Local government

11 Limitation on local government exemptions

For the purposes of section 60 (2) (e), the following activities are specified:

- (a) the supply of liquefied petroleum gas or hydraulic power and the supply and installation of associated fittings and appliances and of pipes and apparatus,
- (b) the operation of a transport service,
- (c) the supply of building materials,
- (d) the operation of a coal mine and the supply and distribution of coal.

Division 4 Other exemptions

12 Continuation of certain exemptions—religious institutions, public benevolent institutions, non-profit and charitable organisations

- (1) Wages are exempt wages for the purposes of this Act if they are paid or payable by:
 - (a) a religious institution, to a person in respect of time when the person engaged in religious work of the religious institution, being a religious institution in existence immediately before the repeal of the *Pay-roll Tax Act 1971*, or
 - (b) a public benevolent institution (other than an instrumentality of the State), to a person in respect of time when the person is

engaged in work of a public benevolent nature, being a public benevolent institution in existence immediately before the repeal of the *Pay-roll Tax Act 1971*, or

- (c) by a non-profit organisation (other than a school or college, statutory body or an instrumentality of the State) having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, to a person in respect of time when the person is engaged in charitable, benevolent, philanthropic or patriotic work of the non-profit organisation, being a non-profit organisation in existence immediately before the repeal of the *Pay-roll Tax Act 1971*, or
 - (d) by an organisation (other than a school or college, statutory body or an instrumentality of the State) that:
 - (i) was, immediately before the repeal of the *Charitable Collections Act 1934*, a charity within the meaning of that Act and registered or exempted from registration under that Act, and
 - (ii) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects,to a person in respect of time when the person is engaged in the charitable work of the organisation, or
 - (e) by a society or an institution (other than a school or college, statutory body or an instrumentality of the State) which:
 - (i) is, in the opinion of the Chief Commissioner, a charitable society or institution, and
 - (ii) was immediately before the repeal of the *Pay-roll Tax Act 1971* approved by the Chief Commissioner for the purposes of section 10 (1) (k) of that Act,to a person in respect of time when the person is engaged in the charitable work of the society or institution.
- (2) Wages are exempt under subclause (1) (c) or (e) only if the organisation, society or institution concerned has not, since the repeal of the *Pay-roll Tax Act 1971*, altered its constitution in so far as its constitution relates to its charitable, benevolent, philanthropic or patriotic purposes.

13 Exemption for joint government water savings projects

Wages are exempt wages if they are paid or payable by a joint government enterprise that has the function of allocating funds for water savings projects.

Part 4 Government bodies—special provisions

14 Application of Act to certain Divisions of the Government Service

- (1) This clause applies in relation to any Division of the Government Service specified in Part 1 or 2 of Schedule 1 to the *Public Sector Employment and Management Act 2002* in which staff are employed under Chapter 1A of that Act to enable a statutory corporation to exercise its functions.
- (2) For the purposes of this Act, each Division of the Government Service to which this clause applies is taken to be a separate employer with respect to the matters specified in subclause (3). If the Division concerned comprises separate branches each of which is assigned to a different statutory corporation, each such branch of the Division is taken to be a separate employer with respect to the matters specified in subclause (3) in so far as they relate to that branch.
- (3) The matters that are specified for the purposes of subclause (2) are as follows:
 - (a) the wages paid or payable to the staff of the Division or branch of the Division,
 - (b) any fees or other remuneration paid or payable to the members of the board or other governing body of the statutory corporation to which the staff of the Division (or branch of the Division) are assigned,
 - (c) any amount paid or payable under a relevant contract (within the meaning of Division 7 of Part 3) entered into by the statutory corporation concerned,
 - (d) if any staff are also employed in a Division of the Government Service specified in Part 3 of Schedule 1 to the *Public Sector Employment and Management Act 2002* in connection with the statutory corporation concerned—the wages paid or payable to the staff of that Division.

15 Grouping of government departments

The persons, groups of persons and bodies specified for the time being in Column 1 of Schedule 3 to the *Public Finance and Audit Act 1983* together constitute a group constituted under Part 5 (Grouping of employers) of this Act.

16 Grouping of State owned corporations

For the purposes of Part 5 (Grouping of employers) of this Act, a statutory State owned corporation (within the meaning of the *State*

Owned Corporations Act 1989) is not a member of the same group as another statutory State owned corporation because of section 72.

Part 5 Recovery of payroll tax from principal contractors

17 Liability of principal contractor for payroll tax payable in respect of employees of subcontractor

- (1) This Part applies if:
 - (a) a person (referred to in this Part as the *principal contractor*) has entered into a contract for the carrying out of work by another person (referred to in this Part as the *subcontractor*), and
 - (b) employees of that subcontractor (referred to in this Part as the *relevant employees*) are engaged in carrying out the work, and
 - (c) the work is carried out in connection with a business undertaking of the principal contractor.
- (2) If, at the end of the period of 60 days after the end of a financial year, any payroll tax payable by the subcontractor in respect of wages paid or payable to the relevant employees during the financial year for work done in connection with the contract has not been paid, the principal contractor is jointly and severally liable with the subcontractor for the payment of the payroll tax.
- (3) Section 45 of the *Taxation Administration Act 1996* (subsection (3) excepted) applies to an amount payable under this clause.

Note. Section 44 of the *Taxation Administration Act 1996* provides that the amount of tax payable may be recovered by the Chief Commissioner as a debt to the Chief Commissioner. Section 45 of the *Taxation Administration Act 1996* provides that if parties are jointly and severally liable for the payment of an amount under a taxation law, the Chief Commissioner may recover the amount payable from any of the parties. It also provides for the recovery of interest, penalty tax and costs from the parties who are jointly and severally liable for the payment of the tax.

18 Written statement relieves principal contractor of liability

- (1) The principal contractor is not liable under this Part for the payment of any payroll tax payable in respect of wages paid or payable to the relevant employees during a period if the principal contractor has been given a written statement by the subcontractor in respect of that period.
- (2) The written statement is a statement comprising the following statements:
 - (a) a statement by the subcontractor that the subcontractor is registered as an employer under this Act or is not required to be registered under this Act (whichever is applicable),

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- (b) a statement by the subcontractor that all payroll tax payable by the subcontractor in respect of wages paid or payable to the relevant employees during any period of the contract for work done in connection with the contract has been paid,
 - (c) a statement by the subcontractor as to whether the subcontractor is also a principal contractor in connection with that work,
 - (d) if the subcontractor is also a principal contractor in connection with that work, a statement by the subcontractor as to whether the subcontractor has been given a written statement under this clause in the capacity of principal contractor in connection with that work.
- (3) The written statement may include any statement made by the subcontractor for the purposes of section 127 of the *Industrial Relations Act 1996* or a similar provision under any other Act.
 - (4) The written statement is to be in a form approved by the Chief Commissioner.
 - (5) The subcontractor must keep a record of a written statement given to a principal contractor under this clause.
Note. Section 53 of the *Taxation Administration Act 1996* requires the record to be kept for not less than 5 years after it was made.
 - (6) The principal contractor may withhold any payment due to the subcontractor under the contract until the subcontractor gives a written statement under this clause for any period up to the date of the statement. Any penalty for late payment under the contract does not apply to any payment withheld under this subclause.
 - (7) The written statement is not effective to relieve the principal contractor of liability under this Part if the principal contractor had, when given the statement, reason to believe it was false.
 - (8) A subcontractor who gives the principal contractor a written statement knowing it to be false is guilty of an offence.
Maximum penalty: 100 penalty units.

19 Right of recovery

The principal contractor is entitled to recover from the subcontractor as a debt in a court of competent jurisdiction any payment made by the principal contractor as a consequence of a liability arising under this Part.

20 Application of Part

- (1) This Part does not apply in relation to a contract if the subcontractor is in receivership or in the course of being wound up or, in the case of an

individual, is bankrupt and if payments made under the contract are made to the receiver, liquidator or trustee in bankruptcy.

- (2) To avoid doubt, this Part extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.

Part 6 Miscellaneous

21 Exemption from lodging returns

- (1) If the Chief Commissioner is of the opinion that tax will not be payable by an employer, or, if paid, would be refunded, the Chief Commissioner may issue a certificate to that employer exempting the employer from lodging monthly returns in accordance with section 87 and any employer to whom such a certificate is issued may refrain from lodging monthly returns but must, unless the contrary is expressed in the certificate, lodge a return relating to each financial year within 21 days after the close of that financial year.
- (2) A certificate issued under this clause may be either unconditional or subject to such conditions as are prescribed by the regulations or as the Chief Commissioner thinks fit.
- (3) The Chief Commissioner may, at any time, by notice in writing, revoke any certificate issued under this clause.
- (4) The issue of a certificate under this clause does not exempt an employer from the payment of any payroll tax, despite the fact that it may have the effect of postponing the time for payment of any payroll tax.

Schedule 3 Savings, transitional and other provisions

(Section 103)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part:

old Act means the *Pay-roll Tax Act 1971* as in force immediately before its repeal.

3 Application of this Act and old Act

- (1) This Act applies to payroll tax on taxable wages that are paid or payable on or after 1 July 2007.
- (2) Despite its repeal, the old Act continues to apply to payroll tax on taxable wages (within the meaning of the old Act) paid or payable before 1 July 2007.
- (3) The *Taxation Administration Act 1996*, as in force immediately before 1 July 2007, continues to apply on and after that day in respect of any matter to which the old Act continues to apply on and after that day.

4 Exclusion of redundancy and long service contributions as wages

The old Act applies to payroll tax on taxable wages (within the meaning of the old Act) paid or payable before 1 July 2007 as if section 3AG of the old Act had never been enacted.

5 Fringe benefits

An election by an employer under section 13A (2) of the old Act that was in force immediately before 1 July 2007 remains in force on and after that date for the purposes of this Act as if it were an election made by the employer under section 16 (1) of this Act.

6 Superannuation contributions relating to pre-1 July 1996 service

- (1) Despite anything in section 11 or 17, *wages* do not include a superannuation contribution paid or payable in respect of services performed by an employee before 1 July 1996.
- (2) A superannuation contribution that is alleged by an employer to be paid in respect of services performed by an employee before 1 July 1996 must be evidenced to the satisfaction of the Chief Commissioner in the employer's records for payroll tax purposes.
- (3) In particular, the employer's records must show the manner of calculation of the contribution and any actuarial basis for it.
- (4) For the purposes of subclause (3) and of any assessment of payroll tax to which that subclause is material, the certificate of a fellow or accredited member of the Institute of Actuaries of Australia to the effect that the actuarial basis on which an amount is calculated is justified is evidence and, in the absence of evidence to the contrary, proof of that fact.
- (5) If records are not kept as required by this clause, the Chief Commissioner is entitled to assume that a payment of money by an employer as a superannuation contribution on or after 1 July 1996 is an amount payable in respect of services performed by an employee on or after that day.

7 Superannuation payments not readily related to particular employees

For the purposes of an assessment of payroll tax, the Chief 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, and

- (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 1997, that is to be regarded as having been paid in respect of services performed before that date.

8 Employment agents

A declaration under section 3C (4) (a) of the old Act that was in force immediately before 1 July 2007 remains in force on and after that day for the purposes of this Act as if it were a declaration made under section 40 (2) of this Act.

9 Designated group employer

The designation of an employer as a designated group employer that had effect under the old Act immediately before its repeal has effect as the designation of a designated group employer under this Act.

10 Return lodgment exemption

A certificate in force or deemed to be in force under section 14 (Exemption from furnishing returns) of the old Act immediately before its repeal is taken to be an approval under Division 2 (Approval of special tax return arrangements) of Part 6 of the *Taxation Administration Act 1996*, and for that purpose is taken to be in terms appropriate to give it the same effect as it had as a certificate under that section of the old Act.

11 Redundancy and long service contributions excluded from wages

A contribution to a redundancy benefit scheme or portable long service leave fund that was paid or payable after 30 June 2006 and that would (but for this clause) have constituted wages under the old Act because of the operation of section 3AG of that Act is taken not to have constituted wages for the purposes of the old Act.

12 Registration of employers

An employer who was registered under section 12 of the old Act immediately before 1 July 2007 is taken, on and after that day, to be registered under section 86 of this Act.

13 Agreements to reduce or avoid payroll tax

Sections 42 and 47 extend to an agreement, transaction or arrangement entered into before the commencement of those sections.

14 Recovery of payroll tax from principal contractors

Part 5 of Schedule 2 extends to contracts entered into before the commencement of that Part.

15 General saving

Any act, matter or thing that had effect under or for the purposes of a provision of the old Act, or a provision of another Act repealed by this Act, immediately before the repeal of the provision continues to have effect under or for the purposes of the corresponding provision of this Act, subject to any other provision of this Part or the regulations under this Part.

Schedule 4 Amendment of Acts

(Section 105)

4.1 Employment Protection Act 1982 No 122

Section 5 Grouping provisions

Omit “section 16H of the *Pay-roll Tax Act 1971*” from section 5 (1) (b).

Insert instead “section 79 (Exclusion of persons from groups) of the *Payroll Tax Act 2007*”.

4.2 Regional Development Act 2004 No 58

[1] Section 4 Definitions

Omit the definitions of *group* and *pay-roll tax* from section 4 (1).

Insert instead:

group means a group within the meaning of the *Payroll Tax Act 2007*.

payroll tax means payroll tax payable under the *Payroll Tax Act 2007*, excluding additional tax and penal tax imposed by or under that Act.

[2] Sections 6 and 8

Omit “pay-roll tax” wherever occurring. Insert instead “payroll tax”.

[3] Section 14 Disclosure of information

Omit “*Pay-roll Tax Act 1971*”. Insert instead “*Payroll Tax Act 2007*”.

4.3 Taxation Administration Act 1996 No 97

[1] Section 4 Meaning of “taxation laws”

Omit “*Pay-roll Tax Act 1971*”. Insert instead “*Payroll Tax Act 2007*”.

[2] Part 10A Business groups

Omit the Part.

4.4 Transport Administration Act 1988 No 109

Section 88ZD

Omit the section. Insert instead:

88ZD Rail authorities and ARTC not grouped for payroll tax purposes

For the purposes of the *Payroll Tax Act 2007*, a rail authority and ARTC do not constitute a group merely because of an arrangement entered into for the purposes of Division 5.

4.5 Workers Compensation Act 1987 No 70

[1] Section 175D Grouping of employers

Omit the definition of *group* from section 175D (1).

Insert instead:

group means a group constituted under Division 2B, but does not include any member of the group in respect of whom a determination under section 175E is in force.

[2] Section 175D (2) (b)

Omit “section 106J of the *Taxation Administration Act 1996*”.

Insert instead “section 175Q”.

[3] Section 175F Grounds for excluding employers from group

Omit section 175F (1) (a) and (b). Insert instead:

- (a) an employer who would, but for the determination, be a member of a group arising under section 175N (Primary groups arising from the use of common employees),
- (b) an employer that carries on a business as trustee of a trust and would, but for the determination, be a member of a group arising under section 175O (Primary groups of commonly controlled businesses),

[4] Section 175F (2)

Omit the subsection. Insert instead:

- (2) In the case of an employer referred to in subsection (1) (b), the determination may be made only if the Authority is satisfied that the employer would, but for the determination, be a member of a group with a person who carries on another business because of the application of one (but not more than one) of the following grouping principles:

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- (a) the exclusive ownership grouping principle (section 175O (2) (a) and (b)),
 - (b) the corporate grouping principle (section 175O (2) (c) and (d) and (3)),
 - (c) the common beneficiary grouping principle (section 175O (2) (e) and (f) and (5)–(8)).

[5] Part 7, Division 2B

Insert after Division 2A of Part 7:

Division 2B Constitution of employer groups

175K Definitions

In this Division:

business means:

- (a) a profession or trade, or
 - (b) any other activity carried on for fee or reward, or
 - (c) the activity of employing persons to perform duties in connection with another business, or
 - (d) the carrying on of a trust,
- whether carried on by 1 person or 2 or more persons together.

primary group means a primary group constituted under section 175M, 175N, 175O, 175P, 175Q or 175R.

175L Membership of groups

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

175M Primary groups of corporations

- (1) Corporations constitute a primary group if they are related corporations within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (2) For the purpose of assessing whether corporations are related under that Act, they are taken to carry on a business and not to be trustee companies.

175N Primary groups arising from the use of common employees

- (1) If 2 persons have an agreement under which an employee of 1 of them works solely or mainly in connection with a business carried on by:

- (a) the other, or
 - (b) both of them,
- then the 2 persons constitute a primary group.

- (2) In this section:

agreement means an agreement, arrangement or undertaking, whether formal or informal, whether express or implied, and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services.

person includes a set of persons.

Note. Section 175E allows the Authority to exclude persons from a group constituted under this section in certain circumstances.

1750 Primary 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 primary group.

Note. Section 175E allows the Authority 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 exclusive 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 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 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

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- the voting power attached to the voting shares issued by the corporation, or
- (e) 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
 - (f) in the case of a business carried on under a trust—the person or set of persons (whether or not as a trustee or trustees of 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 to each other 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 a business of the 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 subsection (5), 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.
- (9) Subsection (1) does not apply in relation to a person or set of persons that has a controlling interest in 2 businesses if:
 - (a) in the case of 1 person—the businesses are wholly owned by the person, whether as trustee or otherwise, or
 - (b) in the case of a set of persons—the businesses are wholly owned by the persons as trustees.
- (10) A statutory State owned corporation (within the meaning of the *State Owned Corporations Act 1989*) is not a member of the same group as another statutory State owned corporation because of this section.

175P Primary groups arising from tracing of interests in corporations

- (1) An entity and a corporation form part of a primary group if the entity has a controlling interest in the corporation.
- (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) Schedule 2 has effect.

Note. Schedule 2 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 has the meaning given by the *Duties Act 1997*.

entity means:

(a) a person, or

(b) a group of associated persons.

175Q Grouping of government departments

The persons, groups of persons and bodies specified for the time being in Column 1 of Schedule 3 to the *Public Finance and Audit Act 1983* together constitute a primary group.

175R Smaller primary groups subsumed by larger groups

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

175S Grouping provisions to operate independently

The fact that a person is not a member of a primary group constituted under a provision of this Division does not prevent that person from being a member of a primary group constituted under another provision of this Division.

[6] Schedule 2

Insert after Schedule 1:

Schedule 2 Employer groups—tracing of interests in corporations

(Section 175P)

1 Application

This Schedule applies for the purposes of section 175P.

2 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 a group of 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 subclause (1), or
 - (b) in the case of an entity that is a group of 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 subclause (1).

3 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 subclauses (1) and (2) work (the examples are cumulative):
 - (a) **Example 1**

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) **Example 2**

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) **Example 3**

Corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, one consisting of A, B and C, and one 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 subclause (4) works (the examples are cumulative):

(a) **Example 1**

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 $80\% \times 70\%$ (that is, 56%). Accordingly, in this example the entity has a controlling interest (within the meaning of section 175P) in corporation B.

(b) **Example 2**

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 $80\% \times 70\% \times 40\%$ (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 one indirect interest in a corporation. This may occur if the corporation is linked to more than one corporation in which the entity has a direct interest, or if the corporation is linked to only one corporation in which the entity has a direct interest but is linked through more than one chain of corporations. In that case, the entity has an aggregate interest in the corporation (see clause 4).

4 Aggregation of interests

- (1) An entity has an *aggregate interest* in a corporation if:
- (a) the entity has a direct interest and one or more indirect interests in the corporation, or
 - (b) the entity has more than one 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:
An entity has a direct interest (with a value of 40%) in corporation 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, $25\% \times 60\%$).

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%.

Accordingly, in this example, the entity has a controlling interest in corporation B (within the meaning of section 175P).