

PAY-ROLL TAX (AMENDMENT) ACT 1985 No. 175

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 175, 1985

An Act to amend the Pay-roll Tax Act 1971 to provide for the taxation of payments made under certain contracts, to vary the amount that may be deducted from taxable wages liable to pay-roll tax and for other purposes. [Assented to, 3rd December, 1985.]

Pay-roll Tax (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Pay-roll Tax (Amendment) Act 1985".

Amendment of Act No. 22, 1971

2. The Pay-roll Tax Act 1971 is amended in the manner set forth in Schedule 1.

Saving

3. Without limiting the application of the Interpretation Act 1897, the amendments effected by section 2 and Schedule 1 (4), (6) and (7) do not, except where otherwise specifically provided, affect any duty, obligation, liability, benefit or right imposed, created, incurred or existing in respect of wages paid or payable before 1 July 1986.

SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE PAY-ROLL TAX ACT 1971

- (1) (a) Section 3 (1), definition of "employer"—

After "Wales", insert "and a person who is an employment agent for the purposes of paragraph (f) of the definition of 'wages' in this subsection".

- (b) Section 3 (1), definition of "wages"—

- (i) From paragraph (d), omit "and".

- (ii) After paragraph (e), insert:

Pay-roll Tax (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

- (f) any amount paid or payable by way of remuneration by an employment agent (as described in subsection (4)) directly or indirectly to a person who was engaged to perform services for a client of the employment agent, or to some other person in respect of those services, as a result of which engagement the employment agent receives directly or indirectly payment, whether by way of a lump sum or an ongoing fee, during or in respect of the period when the services are provided by that person to the client; and
- (g) any amount deemed by or under a provision of this Act to be wages.

(c) Section 3 (4)—

After section 3 (3), insert:

(4) For the purposes of paragraph (f) of the definition of “wages” in subsection (1), a person (in this subsection referred to as the “agent”) is an employment agent if the person procures by an arrangement the services of a person (in this subsection referred to as the “worker”) for another person (in this subsection referred to as the “client”), under which arrangement—

- (a) the worker does not become the employee of either the agent or the client but does carry out duties of a similar nature to those of an employee; and
- (b) remuneration is paid directly or indirectly by the agent to the worker or to some other person in respect of the services provided by the worker.

(2) Sections 3A, 3B—

After section 3, insert:

Pay-roll Tax (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

Application of this Act to certain contracts

3A. (1) A reference in this section to a relevant contract in relation to a financial year is a reference to a contract under which a person (in this subsection referred to as the “designated person”), during that financial year, in the course of a business carried on by the person—

- (a) supplies to another person services for or in relation to the performance of work;
- (b) is supplied with 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 those goods to the designated person or, where the designated person is a member of a group, to another member of that group,

but does not include a reference to a contract of service or a contract under which the designated person, during a financial year, in the course of a business carried on by the designated person—

- (d) 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;
- (e) 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 rendered by a person who ordinarily renders services of that kind to the public generally;
 - (ii) those services are of a kind ordinarily required by the designated person for less than 180 days in that financial year;

*Pay-roll Tax (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

- (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;
- (iv) the payment of the consideration under the contract is made at a rate that is not less than \$500,000 per annum; or
- (v) those services are supplied under a contract to which subparagraphs (i)–(iv) do not apply and the Chief Commissioner is satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally; or
- (f) is supplied by a person (in this paragraph referred to as “the contractor”) with services for or in relation to the performance of work under a contract to which paragraphs (d) and (e) do not apply, where the work to which the services relate is performed—
 - (i) by 2 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor;
 - (ii) where the contractor is a partnership of 2 or more natural persons, by 1 or more of the members of the partnership and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or

*Pay-roll Tax (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

- (iii) where the contractor is a natural person, by the contractor and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor,

unless the Chief Commissioner determines that the contract 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.

(2) For the purposes of this Act—

(a) a person—

- (i) who during a financial year, under a relevant contract, supplies services to another person;
- (ii) 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
- (iii) who during a financial year, under a relevant contract, gives out goods to other persons,

shall be deemed to be an employer in respect of that financial year;

(b) a person who during a financial year—

- (i) performs work for or in relation to which services are supplied to another person under a relevant contract; or
- (ii) being a natural person, under a relevant contract, re-supplies goods to an employer,

shall be deemed to be an employee in respect of that financial year;

(c) 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 shall be deemed to be wages paid or payable during that financial year; and

Pay-roll Tax (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

(d) where an amount referred to in paragraph (c) 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 may be prescribed by the regulations.

(3) Where a contract is a relevant contract pursuant to both subsection (1) (a) and subsection (1) (b)—

(a) the person to whom, under the contract, the services of persons are supplied for or in relation to the performance of work shall be deemed to be an employer; and

(b) notwithstanding subsection (2) (a) (i), the person who, under the contract, supplies the services shall not be deemed to be an employer.

(4) Where—

(a) a contract under which a person (in this subsection referred to as the “designated person”) in the course of a business carried on by the person supplies to another person services for or in relation to the performance of work would, but for subsection (1) (e) (iv), be a relevant contract; and

(b) contracts under which the designated person in the course of the same business is supplied with the services of persons for or in relation to the performance of work would, but for subsection (1) (e) (ii) or (iii), be relevant contracts,

Pay-roll Tax (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

the Chief Commissioner may, unless the designated person satisfies the Chief Commissioner that the business is carried on independently of, and is not connected with, the carrying on of a business carried on by another person or other persons and that the business is not carried on with an intention either directly or indirectly of avoiding or evading the payment of tax whether by the designated person or another person, by notice in writing given to the designated person determine that the contracts referred to in paragraph (b) are relevant contracts notwithstanding subsection (1) (e) (ii) and (iii).

(5) Where, in respect of a payment for or in relation to the performance of work that is deemed to be wages under this section, pay-roll tax is paid by a person deemed under this section to be an employer—

- (a) no other person shall be liable to pay-roll tax in respect of that payment; and
- (b) where another person is liable to make a payment for or in relation to that work, that person shall not be liable to pay-roll tax in respect of that payment unless it or the payment by the person so deemed to be an employer is made with an intention either directly or indirectly of avoiding or evading the payment of tax whether by that deemed employer or another person.

(6) In this section—

- (a) a reference to a contract includes a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied;
- (b) a reference to supply includes a reference to supply by way of sale, exchange, lease, hire or hire-purchase and, in relation to services, includes a reference to the providing, granting or conferring of services;
- (c) a reference (however expressed) to the re-supply of goods acquired from a person includes a reference to—
 - (i) a supply to the person of goods in an altered form or condition;

Pay-roll Tax (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

- (ii) a supply to the person of goods in which the firstmentioned goods have been incorporated; and
- (iii) a supply to the person of an article manufactured or produced from any such goods;
- (d) a reference to services includes a reference to results (whether goods or services) of work performed; and
- (e) a reference to a financial year shall be deemed to include a reference to the period from the commencement of this section to 30 June 1986.

Agreement, etc., to reduce or avoid liability to pay-roll tax

3B. (1) Where any person enters into any agreement, transaction or arrangement, whether in writing or otherwise, under which a natural person performs or renders, 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 or rendering 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 pay-roll tax, the Chief Commissioner may—

- (a) disregard the agreement, transaction or arrangement;
- (b) determine that any party to the agreement, transaction or arrangement shall be deemed 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 shall be deemed to be wages for the purposes of this Act.

(2) Where the Chief Commissioner makes a determination under subsection (1), the Chief Commissioner shall serve a notice to that effect on the person deemed to be an employer for the purposes of this Act and shall set out in the notice the facts on which the Chief Commissioner relies and the reasons for making the determination.

*Pay-roll Tax (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

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

(3) Section 6 (4)—

Omit the subsection, insert instead:

(4) For the purposes of this section, where for the purpose of the payment of wages—

(a) a cheque, bill of exchange, promissory note, money order or postal order issued by a post office or any other instrument is sent or given by an employer to any person or the agent of any person at any place in Australia; or

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

those wages shall be deemed to have been paid at that place and to have been paid when the instrument was so sent or given or when the account is credited in accordance with the instruction, as the case may be.

(4) Section 9B (1), definition of “prescribed amount”—

(a) From paragraph (a), omit “January, 1985”, insert instead “July 1986”.

(b) From paragraph (a), omit “\$10,833” wherever occurring, insert instead “\$14,166”.

(c) From paragraph (b), omit “December, 1984”, insert instead “June 1986”.

(d) From paragraph (b), omit “\$14,166” wherever occurring, insert instead “\$16,666”.

(5) (a) Section 11A (1A)—

Omit “1st July, 1984”, insert instead “1 July 1985”.

(b) Section 11A (2)—

Omit the subsection, insert instead:

*Pay-roll Tax (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

(2) For the purposes of the financial year commencing on 1 July 1985, a reference in sections 11B and 11C to the “prescribed amount” is, in relation to an employer, a reference to the amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \left| \frac{170000C}{D} - \frac{2}{3} \left\{ (TW + IW) - \frac{170000C}{D} \right\} \right|$$

where—

TW is the total of the taxable wages paid or payable by the employer during the financial year;

IW is the total of the interstate wages paid or payable by the employer during the financial year;

C is the number of days in the financial year in respect of which wages (disregarding foreign wages) were paid or payable by the employer; and

D is the number of days in the financial year.

(c) Section 11A (2A)—

Omit “1st July, 1985,” insert instead “1 July 1986”.

(d) Section 11A (2A)—

Omit “170000C” wherever occurring, insert instead “200000C”.

(6) Section 12 (1), (2A)—

Omit “\$3,265” wherever occurring, insert instead “\$3,846”.

(7) (a) Section 16I (1) (a)—

Omit “31st December, 1984”, insert instead “30 June 1986”.

(b) Section 16I (1) (b)—

Omit “1st January, 1985”, insert instead “1 July 1986”.

(8) (a) Section 16J (1)—

Omit “1st July, 1984,” insert instead “1 July 1985”.

*Pay-roll Tax (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PAY-ROLL TAX ACT 1971—*continued*

(b) Section 16J (2)—

Omit the subsection, insert instead:

(2) For the purposes of the financial year commencing on 1 July 1985, a reference in sections 16K and 16L to the “prescribed amount” is, in relation to a designated group employer, a reference to the amount calculated in accordance with the following formula:

$$\frac{\text{TW}}{\text{TW} + \text{IW}} \left| \frac{170000\text{C}}{\text{D}} - \frac{2}{3} \left\{ (\text{TW} + \text{IW}) - \frac{170000\text{C}}{\text{D}} \right\} \right|$$

where—

TW is the total of the taxable wages paid or payable by the members of the group, in respect of which that designated group employer is the designated group employer, during the financial year;

IW is the total of the interstate wages paid or payable by the members of that group during the financial year;

C is the number of days in that part of the financial year for which that designated group employer was the designated group employer in respect of that group, reduced by the number of days, if any, during that part in respect of which no wages (disregarding foreign wages) were paid or payable by any member of that group; and

D is the number of days in the financial year.

(c) Section 16J (3)—

Omit “1st July, 1985,” insert instead “1 July 1986”.

(d) Section 16J (3)—

Omit “170000C” wherever occurring, insert instead “200000C”.