

PAY-ROLL TAX ASSESSMENT.

No. 128 of 1982.

AN ACT to amend the Pay-roll Tax Assessment Act 1971-1982.

[Assented to 10 December 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Pay-roll Tax Assessment Amendment Act 1982*. Short title and citation.

(2) In this Act the Pay-roll Tax Assessment Act 1971-1982 is referred to as the principal Act. Reprinted as approved 15 Dec. 1978 and amended by Acts Nos. 40 of 1979, 80 of 1981 and 10 of 1982.

(3) The principal Act as amended by this Act may be cited as the Pay-roll Tax Assessment Act 1971-1982.

Commence-
ment.

2. This Act shall come into operation on 1 January 1983.

Section 2
amended.

3. Section 2 of the principal Act is amended by deleting "ss. 6-11" and substituting the following—

" ss. 6-11E. " .

Section 3
amended.

4. Section 3 of the principal Act is amended—

(a) in subsection (1), in the definition of "employer", by inserting after "Australia" the following—

" and includes also a person who is an employment agent for the purposes of paragraph (f) of the definition of "wages" in this subsection " ;

(b) in subsection (1), in the definition of "State", by deleting "together deemed to be such a State" and substituting the following—

" deemed to be States " ;

(c) in subsection (1), in the definition of "wages"—

(i) by deleting "and" at the end of paragraph (d);

(ii) by deleting the full stop at the end of paragraph (e) and substituting the following—

" ; and " ;

(iii) by inserting after paragraph (e) the following paragraph—

" (f) any amount paid or payable by way of remuneration by an employment agent 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. ” ;

- (d) by inserting after subsection (2) the following subsection—

“ (2a) For the purposes of paragraph (f) of the definition of “wages” in subsection (1) of this section, “employment agent” means a person (in this definition referred to as the agent) who by an arrangement procures the services of a person (in this definition referred to as the worker) for another person (in this definition 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,

but this subsection does not apply to the current term of any arrangement entered into by an employment agent before 12 October 1982 which extends after 1 January 1983 if the Commis-

sioner is satisfied that no provision was made in the arrangement for the payment of pay-roll tax in respect of that term. ” ; and

- (e) in subsection (3), by deleting “together deemed to be a State” and substituting the following—

“ deemed to be States ” .

Section 11E
inserted.

5. After section 11D of the principal Act, the following section is inserted—

Arrange-
ments for
avoidance
of tax may
be dis-
regarded.

“ 11E. (1) Where any person enters into any agreement, transaction, or arrangement, whether in writing or otherwise, whereby 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 such 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 Commissioner may—

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

(2) Where the Commissioner makes a determination under subsection (1) of this section, he 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 Commissioner relies and his reasons for making the determination. ” .

6. After section 16D of the principal Act, the following section is inserted—

Section
16DA
inserted.

“ 16DA. (1) For the purposes of this Act, two businesses constitute a group if—

Grouping of
head and
branch
businesses.

(a) one of the businesses is a branch, agency, or subsidiary of a head or parent business; and

(b) the head or parent business exercises managerial control, whether administrative, financial, or procedural over the branch, agency or subsidiary.

(2) Where the Commissioner is satisfied, having regard to the nature and degree of managerial control exercised by the head or parent business and to any other matters that he considers relevant, that it would not be just and reasonable to include as a member of a group a person or persons carrying on a business, the Commissioner may, by order in writing served on that person or persons, exclude him or them from the group. ” .

7. Section 16H of the principal Act is amended—

Section 16H
amended.

(a) in subsection (1) by inserting after “16D” the following—

“ , 16DA ” ;

(b) in subsection (2) by inserting after “16D” the following—

“ , 16DA ” ;

(c) in subsection (3) by inserting after "16D" the following—

" , 16DA " ; and

(d) in subsection (4) by inserting after "16D (7)" the following—

" , 16DA (2) " .

Section 16I
amended.

8. Section 16I of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection—

" (1a) If the members of a group do not in accordance with subsection (1) of this section designate one of the members of the group to be the designated group employer in respect of the group for the purposes of this Act, the Commissioner may exercise in respect of the group the powers of designation and nomination conferred on members of the group by that subsection and for the purposes of this Act such a designation and nomination by the Commissioner shall be by instrument in writing served on the member of the group designated as the designated group employer and shall have the same effect and give rise to the same consequences as if validly made by the members of the group. " ;

(b) in subsection (2) by deleting "The designated" and substituting the following—

" Subject to subsection (2a) of this section, the designated " ;

(c) by inserting after subsection (2) the following subsections—

" (2a) The members of a group may exercise the power of revoking a designation conferred by subsection (2) of

this section only with the prior written consent of the Commissioner or, if at the same time as revoking the designation, the members make a further designation of one of their members to be the designated group member in substitution for the member whose designation is revoked.

(2b) Where the Commissioner has exercised the powers conferred on him by subsection (1a) of this section, he may, by instrument in writing served on the member of the group designated as the designated group employer, revoke his designation of that member as the designated group employer and thereafter may further exercise the powers conferred on him by that subsection. ” ;

(d) in subsection (3)—

(i) by inserting after “subsection (1)” the following—

“ or (1a) ” ; and

(ii) by inserting after “Commissioner” the following—

“ or by the Commissioner, as the case may be, ” ; and

(e) in subsection (6)—

(i) by inserting after “(1)” the following—

“ or (1a) ” ; and

(ii) by inserting after “(2)” the following—

“ or (2b) ” .

Section 18
amended.

9. Section 18 of the principal Act is amended in subsection (5)—

(a) by deleting “double” and substituting the following—

“ an amount equal to ” ; and

(b) by deleting “or the amount of two dollars, whichever is the greater, ” .

Section 22
amended.

10. Section 22 of the principal Act is amended in subsection (1)—

(a) by deleting “forthwith be payable—” and substituting the following—

“ forthwith be payable of an amount equal to the amount of the pay-roll tax, further tax or additional tax, as the case may be. ” ; and

(b) by deleting paragraphs (a) and (b).

Section 25
amended.

11. Section 25 of the principal Act is amended in subsection (4) by deleting “One thousand” and substituting the following—

“ Two thousand ” .

Section 26
amended.

12. Section 26 of the principal Act is amended in subsection (2) by deleting “One thousand” and substituting the following—

“ Two thousand ” .

Section 31
amended.

13. Section 31 of the principal Act is amended in subsection (2) by deleting “One thousand” and substituting the following—

“ Two thousand ” .

Section 35
amended.

14. Section 35 of the principal Act is amended in subsection (1) by deleting “One thousand” and substituting the following—

“ Two thousand ” .

15. Section 36 of the principal Act is amended by repealing subsection (1) and substituting the following subsection— Section 36 amended.

“ (1) Notwithstanding anything contained in section 35 of this Act, any employer who—

(a) fails or neglects, otherwise than as referred to in paragraph (b) of this subsection, duly to furnish any return or information as and when required by this Act or by the Commissioner shall be liable to pay by way of additional tax an amount equal to the amount of pay-roll tax payable by him; or

(b) furnishes a return to the Commissioner, but fails or neglects to include in that return all of the taxable wages required by this Act to be included in that return shall be liable to pay by way of additional tax an amount equal to the amount of the difference between the pay-roll tax properly payable and the pay-roll tax payable upon the basis of the return furnished,

in addition to any penal tax that is or may become payable under section 22 of this Act. ” .

16. Section 37 of the principal Act is amended by deleting “One thousand” and substituting the following— Section 37 amended.

“ Two thousand ” .

17. Section 40 of the principal Act is amended by deleting “One thousand” and substituting the following— Section 40 amended.

“ Two thousand ” .

Section 44 amended.

18. Section 44 of the principal Act is amended in subsection (1) by deleting "One thousand" and substituting the following—

" Two thousand " .

Schedule 1 repealed and substituted.

19. Schedule 1 to the principal Act is repealed and the following Schedule is substituted—

" SCHEDULE 1. [ss. 9E, 11A, 12, and 16J].

Minimum amount for s. 9E. 1. The amount specified for the purposes of the definition of "minimum amount" in section 9E (1) of this Act is \$3 150.

Prescribed amount for s. 9E. 2. The amount specified for the purposes of the definition of "prescribed amount" in section 9E (1) of this Act is \$10 416.

Prescribed amount for 1982-83 for ss. 11A and 16J. 3. For the purposes of sections 11A (2e) and 16J (6) of this Act, the amount shall be calculated for the purposes of the financial year commencing on 1 July 1982 in accordance with the following formulae—

$$\text{For the Period } \frac{A}{A+B} \left[\begin{array}{l} \frac{51\,000\ C}{184} - \frac{2}{3} \left\{ A + B - \frac{51\,000\ C}{184} \right\}; \\ \text{or} \\ \frac{18\,000\ C}{184} \\ \text{whichever is the greater} \end{array} \right]$$

and

$$\text{For the Period } \frac{A}{A+B} \left[\begin{array}{l} \frac{62\,496\ C}{181} - \frac{2}{3} \left\{ A + B - \frac{62\,496\ C}{181} \right\}; \\ \text{or} \\ \frac{18\,900\ C}{181} \\ \text{whichever is the greater} \end{array} \right]$$

Where: A = Taxable wages paid or payable during the period by an employer, or in the case of a group, by the members of that group.

B = Interstate wages paid or payable during the period by an employer, or in the case of a group, by the members of that group.

C = Number of days in which wages were paid or payable during the period by an employer, or in the case of a group, by the members of that group.

4. For the purposes of sections 11A (2e) and 16J (6) of this Act the amount shall be calculated for the purposes of the financial year commencing on 1 July 1983 and every succeeding financial year in accordance with the following formulae—

Prescribed
amount
for 1983
onwards
for ss. 11A
and 16J.

$$\frac{A}{A + B} \left[\begin{array}{c} \frac{124\,992\,C}{D} - \frac{2}{3} \left\{ A + B - \frac{124\,992\,C}{D} \right\}; \\ \text{or} \\ \frac{37\,800\,C}{D} \\ \text{whichever is the greater} \end{array} \right]$$

Where: A = Taxable wages paid or payable during the financial year by an employer, or in the case of a group, by the members of that group.

B = Interstate wages paid or payable during the financial year by an employer, or in the case of a group, by the members of that group.

C = Number of days during the financial year in which wages were paid or payable by an employer, or in the case of a group, by the members of that group.

D = Number of days in the financial year.

5. The amount per week prescribed for the purposes of section 12 of this Act is \$2 400. " .

Prescribed
amount
for s. 12.

20. Without prejudice to the application of the Interpretation Act 1918 to the repeal of Schedule 1 to the principal Act by section 19 of this Act, Schedule 1 to the principal Act, in the form in which it was in force immediately before the coming into operation of this Act, shall continue to have effect, according to its tenor and as if it had not been repealed, with respect to the period before the coming into operation of this Act. Savings.