



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

\*\*\*\*\*

No. 55 of 1991

An Act to amend the Pay-roll Tax Act 1971.

[Assented to 28 November 1991]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Pay-roll Tax (Miscellaneous) Amendment Act 1991*.
- (2) The *Pay-roll Tax Act 1971* is referred to in this Act as “the principal Act”.

## Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Sections 5 to 11 (inclusive) will come into operation on 1 December 1991.

## Preliminary

3. Section 3 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of “wages” and substituting the following definition:

“wages” means any wages, remuneration, salary, commission, bonuses or allowances paid or payable to a person in relation to his or her capacity as an employee and, without limiting the generality of the foregoing, includes—

- (a) any amount paid or payable by way of remuneration to a person holding office under the Crown in right of the State of South Australia or in the service of the Crown in right of the State of South Australia;
- (b) any amount paid or payable under any contract of a prescribed class to the extent to which that payment is attributable to labour;
- (c) any amount paid or payable by a company by way of remuneration to a director or member of the governing body of that company;

- (d) any amount paid or payable by way of commission to an insurance or time-payment canvasser or collector;
- (e) any fringe benefit;
- (f) the value of any payments made in kind;
- (g) any other amount determined by or under a provision of this Act to be wages.;

and

(b) by inserting after subsection (1c) the following subsection:

(2) Wages includes a benefit (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth) constituted by the making of a payment of money by an employer on behalf of an employee to, or the setting apart of money by an employer on behalf of an employee as, a superannuation fund within the meaning of the *Occupational Superannuation Standards Act 1987* of the Commonwealth, but does not include a payment to a superannuation fund by the employer for which the employer is, or would be if the employer were liable to pay tax in accordance with the *Income Tax Assessment Act 1936* of the Commonwealth, entitled to a deduction under section 82AAC of that Act.

#### Insertion of ss. 4 to 4c

4. The following sections are inserted immediately after section 3 of the principal Act:

##### Application of Act to service contracts

4. (1) Subject to subsection (2), a service contract is a contract (not being a contract of employment) under which a person (in this section referred to as a "designated person"), in the course of a business carried on by the person—

- (a) supplies services to another person for or in relation to the performance of work;
- (b) is supplied with the services of another person for or in relation to the performance of work;

or

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

(2) A service contract for the purposes of this section does not include a contract—

- (a) where the services are ancillary—

- (i) to the supply of goods by the person supplying the services;

or

- (ii) to the use of goods that are the property of the person supplying the services;

- (b) where the services are provided—

- (i) for a period that does not exceed 90 days;

or

- (ii) for periods that in aggregate do not exceed 90 days in a financial year,  
and the services are not services—
  - (iii) provided by a person who provides similar services to the designated person;
  - or
  - (iv) for or in relation to the performance of work where any person who performs the work also performs similar work for the designated person;
- (c) where the services are of a kind ordinarily required by the designated person for less than 180 days in a financial year;
- (d) where—
- (i) the services are of a kind not ordinarily required by the designated person;
  - and
  - (ii) the services are supplied by a person who, in the financial year in which the services are supplied, renders (or can be reasonably expected to render) services of that kind to the public generally;
- (e) where the Commissioner is satisfied that the services are supplied by a person who ordinarily renders services of that kind to the public generally;
- (f) where the services are supplied by a person (“the contractor”) and 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 business carried on by the contractor;
  - (ii) where the contractor is a partnership, by one or more 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 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;
- (g) where—
- (i) the services are ancillary to the conveyance of goods by means of a vehicle provided by the person conveying the goods;
  - (ii) the services are supplied to a person for or in relation to the procurement of persons to take out insurance with the person;
- or
- (iii) the services are supplied to a person for or in relation to the door-to-door sale of goods to consumers on the person’s behalf,

unless the 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;

- (h) where the services are supplied by an employment agent, or a contract worker procured by an employment agent, under an employment agency contract within the meaning of section 4a;
- (i) where the service contract is of a class excluded from the operation of this section by the regulations.

(3) For the purposes of this Act—

(a) a person—

- (i) who is supplied with services for or in relation to the performance of work under a service contract;

or

- (ii) who gives out goods to another person under a service contract, will be taken to be an employer;

(b) a person—

- (i) who performs work for or in relation to which services are supplied to another person under a service contract;

or

- (ii) who is a person who resupplies goods to a person under a service contract,

will be taken to be an employee of the person who is taken to be an employer under the contract;

and

(c) subject to this section—

- (i) any amounts paid or payable for or in relation to the performance of work under a service contract or the resupply of goods under a service contract;

and

- (ii) the value of any benefits provided for or in relation to the performance of work under a service contract that would be fringe benefits if provided to a person in the capacity of an employee,

will be taken to be wages paid or payable by the person who is taken to be an employer under the contract.

(4) Where an amount referred to in subsection (3) (c) is included in a larger amount paid or payable, or provided, by an employer under a service contract, that proportion of the larger amount that is not to be attributable to the performance of work under a service contract or the resupply of goods under a service contract may be determined by the Commissioner.

(5) Where—

- (a) the supplier of the service under a service contract employs or engages a person to carry out some or all of the work to be performed by the supplier under the contract;

and

- (b) pay-roll tax is paid by the employer under the service contract in respect of the amounts paid or payable under the service contract for or in relation to the performance of that work,

pay-roll tax is not payable on any amount paid or payable by the supplier of the service to the person employed or engaged by the supplier to carry out the work to the extent that the amount can be related to the performance of that particular work.

(6) A reference in this section to a contract includes a reference to an agreement, arrangement or undertaking whether formal or informal and whether express or implied.

(7) In this section—

“resupply”, in relation to goods acquired from a person, includes the supply to the person—

(a) of goods in an altered form or condition;

(b) of goods that incorporate the goods acquired from the person;

or

(c) of an article manufactured or produced from any such goods:

“services” includes the results (whether goods or services) of work performed:

“supply” includes—

(a) the supply of goods by way of sale, exchange, lease, hire or hire-purchase;

and

(b) in relation to services, the providing, granting or conferring of services.

#### **Employment agents**

4a. (1) An employment agency contract is a contract (not being a contract of employment) under which a person (in this section referred to as an “employment agent”) by arrangement procures the services of another (in this section referred to as a “contract worker”) for a client of his or hers and as a result receives directly or indirectly payment, whether by way of a lump sum or ongoing fee, during or in respect of the period when the services are provided by the contract worker to the client.

(2) For the purposes of this Act—

(a) the employment agent under an employment agency contract will be taken to be an employer;

(b) the contract worker under an employment agency contract will be taken to be an employee of the employment agent;

and

(c) any amount paid or payable by way of remuneration to the contract worker in respect of the provision of services in connection with an employment agency contract, other than an amount that would be exempt from pay-roll tax had the contract worker been paid by the client as an employee, will be taken to be wages paid or payable by the employment agent.

(3) Where it is not reasonably practicable to determine the extent to which an amount paid or payable to a contract worker constitutes remuneration in respect of the provision of services, the Commissioner may accept a return, or make an assessment, in which the amount upon which pay-roll tax is levied is determined on the basis of estimates.

**Third party payments**

## 4b. (1) Where—

(a) an amount is paid or payable to a person other than the employee in relation to the performance of work by an employee;

(b) the payment is or will be made by the employer or a person acting for or in concert, or under or pursuant to a contract, with the employer;

and

(c) the amount, if it were paid to the employee, would constitute wages paid or payable by the employer for the purposes of this Act,

the amount will be taken to be wages paid or payable by the employer to the employee.

## (2) Where—

(a) an amount is paid or payable to an employee by a person other than the employer in relation to the performance of work by the employee in his or her capacity as an employee of the employer;

and

(b) the amount, if paid or payable by the employer, would constitute wages paid or payable by the employer for the purposes of this Act,

the amount will be taken to be wages paid or payable by the employer to the employee (and the person by whom the amount is paid or payable is not liable to pay-roll tax to the extent to which the employer pays pay-roll tax in respect of that amount).

(3) A reference in subsection (1) to a contract includes a reference to an agreement, arrangement or undertaking whether formal or informal and whether express or implied.

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

4c. (1) Without derogating from the operation of a preceding provision of this Part, where—

(a) a person enters into any agreement, arrangement or transaction, 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

(b) the Commissioner has reason to believe or suspect that the purpose of the agreement, arrangement or transaction is to reduce or avoid the liability of any person to the assessment, imposition or payment of pay-roll tax,

the Commissioner may—

(c) disregard the agreement, arrangement or transaction;

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

and

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

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

**Imposition of pay-roll tax on taxable wages**

5. Section 9 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) Subject to, and in accordance with, the provisions of this Act, pay-roll tax is imposed and chargeable on all taxable wages at the rate of—

- (a) in relation to wages paid or payable before 1 December 1991—6.25 per cent of those wages;
- (b) in relation to wages paid or payable on or after 1 December 1991—6.1 per cent of those wages.

**Deduction from taxable wages**

6. Section 11a of the principal Act is amended by striking out paragraph (a) of the definition of “prescribed amount” in subsection (1) and substituting the following paragraph:

(a) where the return period is a period of one month—

- (i) ending before 1 January 1992, means \$36 000;
- (ii) commencing on or after 1 January 1992 and ending before 1 July 1992, means \$37 000;
- (iii) commencing on or after 1 July 1992, means \$38 000;

**Meaning of prescribed amount**

7. Section 13a of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsections:

(1) In this section and sections 13b and 13c, unless the contrary intention appears—

“financial year” means—

- (a) the period commencing on 1 July 1991 and ending on 30 November 1991;
- (b) the period commencing on 1 December 1991 and ending on 30 June 1992;

and

(c) any financial year commencing on or after 1 July 1992:

“interstate wages” does not include interstate wages paid or payable by a member of a group:

“taxable wages” does not include taxable wages paid or payable by a member of a group.

(2) A reference in section 13b or 13c to the prescribed amount—

(a) in relation to the financial year commencing on 1 July 1991, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{CU}{153}$$

where—

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

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

C is \$180 000

U is the number of days in the financial year in respect of which the employer paid or was liable to pay wages (disregarding foreign wages);

(b) in relation to the financial year commencing on 1 December 1991, is an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{DX}{213}$$

where—

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

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

D is \$258 000

X is the number of days in the financial year in respect of which the employer paid or was liable to pay wages (disregarding foreign wages);

and

(c) in relation to a financial year commencing on or after 1 July 1992, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{AY}{Z}$$

where—

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

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

A is \$456 000

Y is the number of days in the financial year in respect of which the employer paid or was liable to pay wages (disregarding foreign wages)

Z is the number of days in that financial year.

### Annual adjustments

8. Section 13b of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Where the Commissioner is satisfied that an employer has not received the full benefit of the deductions prescribed by section 11a by virtue of the prescription under section 13a (1) of two or more periods as financial years for a full financial year (being the period commencing on 1 July in any year and ending on 30 June in the



next year), the Commissioner may, in such manner as the Commissioner thinks fit, apply any unused deduction from one period to any other period or periods in that same full financial year and refund or rebate to the employer the amount of tax that has, on the basis of that adjustment, been overpaid.

### Registration

9. Section 14 of the principal Act is amended by striking out from subsection (4) "\$7 500" and substituting "\$8 000".

### Substitution of s. 18k

10. Section 18k of the principal Act is repealed and the following section is substituted:

#### Interpretation

18k. (1) In this section and sections 18l and 18m, unless the contrary intention appears—

“financial year” means—

- (a) the period commencing on 1 July 1991 and ending on 30 November 1991;
- (b) the period commencing on 1 December 1991 and ending on 30 June 1992;
- and
- (c) any financial year commencing on or after 1 July 1992.

(2) A reference in section 18l or 18m to the prescribed amount—

- (a) in relation to the financial year commencing on 1 July 1991, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{CU}{153}$$

where—

- TW is the amount of taxable wages paid or payable by the members of the group during such period of the financial year as the designated group employer was the designated group employer in respect of the group
- IW is the amount of interstate wages paid or payable by the members of the group during the period referred to above
- C is \$180 000
- U is the number of days in the financial year in respect of which any member of the group paid or was liable to pay wages (disregarding foreign wages);

- (b) in relation to the financial year commencing on 1 December 1991, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{DX}{213}$$

where—

- TW is the amount of taxable wages paid or payable by the members of the group during such period of the financial year as the designated group employer was the designated group employer in respect of the group
- IW is the amount of interstate wages paid or payable by members of the group during the period referred to above
- D is \$258 000
- X is the number of days in the financial year in respect of which any member of the group paid or was liable to pay wages (disregarding foreign wages);

and

(c) in relation to a financial year commencing on or after 1 July 1992, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{AY}{Z}$$

where—

- TW is the amount of taxable wages paid or payable by the members of the group during such period of the financial year as the designated group employer was the designated group employer in respect of the group
- IW is the amount of interstate wages paid or payable by the members of the group during the period referred to above
- A is \$456 000
- Y is the number of days in the financial year in respect of which any member of the group paid or was liable to pay wages (disregarding foreign wages)
- Z is the number of days in that financial year.

#### Annual adjustments

11. Section 18l of the principal Act is amended by inserting after subsection (7) the following subsection:

(8) Where the Commissioner is satisfied that the members of a group have not received the full benefit of the deductions prescribed by section 11a by virtue of the prescription under section 18k (1) of two or more periods as financial years for a full financial year (being the period commencing on 1 July in any year and ending on 30 June in the next year), the Commissioner may, in such manner as the Commissioner thinks fit, apply any unused deduction from one period to any other period or periods in that same financial year and refund or rebate to the designated group employer the amount of tax that has, on the basis of that adjustment, been overpaid.

**Application of amendments**

12. The amendments effected by sections 3 and 4 of this Act to the principal Act apply in relation to agreements, arrangements, undertakings or transactions made before, on or after the commencement of those sections but pay-roll tax is only payable in respect of any wages paid or payable on or after the commencement of those sections.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor