



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 94 of 1975

An Act to amend the Pay-roll Tax Act, 1971-1974.

[Assented to 20th November, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Pay-roll Tax Act Amendment Act, 1975".

(2) The Pay-roll Tax Act, 1971-1974, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Pay-roll Tax Act, 1971-1975".

Commence-
ment.

2. This Act shall come into operation on the first day of January, 1976.

Amendment of
principal Act,
s. 2—
Division of
Act.

3. Section 2 of the principal Act is amended by inserting immediately after the item "Part IV—REGISTRATION AND RETURNS" the following item:—

PART IVA—GROUPING PROVISIONS.

Amendment of
principal Act,
s. 3—
Definitions.

4. Section 3 of the principal Act is amended—

(a) by inserting in subsection (1) immediately after the definition of "company" the following definition:—

"corporation" has the meaning ascribed to that expression by subsection (1) of section 5 of the Companies Act, 1962, as amended;

(b) by inserting in subsection (1) immediately after the definition of "council" the following definition:—

"designated group employer", in relation to a group, means the member of that group who, under section 18j of this Act is for the time being the designated group employer in respect of that group;

- (c) by striking out from subsection (1) the definition of “financial year” and inserting in lieu thereof the following definitions:—

“financial year” means any year commencing on the first day of July:

“foreign wages” means wages that are not taxable wages and are not interstate wages:

“group” means a group constituted under Part IVA of this Act:

“interstate wages” means wages that are taxable wages within the meaning of a corresponding law:

- (d) by inserting in subsection (1) immediately after the definition of “person” the following definition:—

“return period”, in relation to an employer, means a period relating to which that employer is required to furnish a return under this Act.;

- (e) by inserting in subsection (1) immediately after the definition of “trustee” the following definition:—

“voting share” has the meaning ascribed to that expression by subsection (1) of section 5 of the Companies Act, 1962, as amended.;

and

- (f) by striking out from the definition of “wages” in subsection (1) the passage “payment made”, wherever it occurs, and inserting in lieu thereof, in each case, the passage “amount paid or payable”.

5. Section 11 of the principal Act is amended—

- (a) by striking out from subsection (7) the passage “the return relating to the month or period in which the determination is made and to any subsequent month or period” and inserting in lieu thereof the passage “any return specified in the determination whether relating to a month or period that is before or after or partly before and partly after the making of the determination”;

- (b) by inserting immediately after subsection (7) the following subsection:—

(7a) The amendment to subsection (7) of this section effected by the Pay-roll Tax Act Amendment Act, 1975, shall be deemed to have come into operation on the seventh day of September, 1971.;

and

- (c) by inserting immediately after subsection (9) the following subsection:—

(10) This section does not apply so as to authorize a deduction to be made in accordance with this section in respect of any return period that commences after the month of December, 1975.

Amendment of
principal Act,
s. 11—
General
exemption.

Enactment of
s. 11a of
principal Act—

6. The following section is enacted and inserted in the principal Act immediately after section 11 thereof:—

Deduction
from taxable
wages after
1st January,
1976.

11a. (1) In this section—

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

“prescribed amount”—

(a) in relation to a return for a return period of one month, means the amount of three thousand four hundred and sixty-six dollars;

and

(b) in relation to a return for a return period of two or more months, means the product ascertained by multiplying the amount of three thousand four hundred and sixty-six dollars by the number of months in that return period:

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

(2) This section applies only so as to authorize a deduction to be made for a return period that is after the month of December, 1975, from the taxable wages included in a return or assessment relating to that return period.

(3) For the purpose of ascertaining the pay-roll tax payable by an employer who pays or is liable to pay taxable wages for the whole of a return period but does not pay and is not liable to pay interstate wages during that return period, there shall be deducted, for that return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to that return period) the prescribed amount, reduced by two dollars for each three dollars (disregarding any remainder) by which the amount of those taxable wages (in whole dollars) exceeds the prescribed amount.

(4) For the purpose of ascertaining the pay-roll tax payable by an employer who pays or is liable to pay wages during a return period and pays or is liable to pay taxable wages for part only of that return period but does not pay and is not liable to pay interstate wages during that return period, there shall be deducted, for that return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to that return period) an amount that bears to the prescribed amount the same proportion as the number of days in that part of that return period bears to the total number of days in that return period, reduced by two dollars for each three dollars (disregarding any remainder) by which the amount of those taxable wages (in whole dollars) exceeds the same proportion of the prescribed amount.

(5) An employer who during any return period pays or is liable to pay taxable wages and interstate wages may, by notice in the form approved by the Commissioner, served on the Commissioner, nominate an amount, calculated in the prescribed manner, not exceeding the prescribed amount, as the deduction that he claims to be entitled to make for that return period and for subsequent return periods.

(6) For the purpose of ascertaining the pay-roll tax payable by an employer who has served on the Commissioner a notice under subsection (5) of this section, there shall, subject to subsection (7) of this section, be deducted, for a return period (being the return period ending last before the day on which he served that notice on the Commissioner or any subsequent return period) from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) the amount nominated in that notice.

(7) The Commissioner may, on an application made to him in writing by, or of his own motion in relation to, an employer who pays or is liable to pay taxable wages and interstate wages during any return period, at any time, make a determination specifying an amount, not exceeding the prescribed amount, that may be deducted for any return period specified or referred to in the determination (being a return period commencing before, but not before the first day of January, 1976, or after, or the return period in which, the determination is made) from the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) and there shall be deducted, for any such return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) the amount so specified.

(8) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subsection (7) of this section and any such revocation shall have effect on and from the first day of the return period specified in the instrument, whether that return period is before, but not before the date of the determination, or after, or the return period in which, the instrument is executed by him.

(9) The Commissioner shall, as soon as practicable after making a determination under subsection (7) of this section, serve notice of the determination on the employer concerned.

7. Section 13 of the principal Act is amended—

(a) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) For the purposes of subsections (1) and (2) of this section the amount prescribed in respect of the financial year—

(a) ending on the thirtieth day of June, 1975, is the amount of twenty thousand eight hundred dollars;

and

(b) ending on the thirty-first day of December, 1975, is the amount of ten thousand four hundred dollars.;

and

(b) by inserting immediately after subsection (7) the following subsection:—

(8) In this section, except subsection (3) of this section, “financial year” includes the period commencing on the first day of July, 1975, and ending on the thirty-first day of

Amendment of
principal Act,
s. 13—
Refund or
rebate of
pay-roll tax
on annual
adjustment.

December, 1975, but does not include the period commencing on the first day of July, 1975, and ending on the thirtieth day of June, 1976, or the financial year commencing on the first day of July, 1976, or a financial year commencing on any subsequent first day of July.

Enactment of
ss. 13a, 13b
and 13c of
principal Act—

“Financial
year” for
purposes of
this section
and sections
13b and 13c
and
“prescribed
amount” for
purposes of
sections
13b and 13c.

8. The following sections are enacted and inserted in the principal Act immediately after section 13 thereof:—

13a. (1) In this section and sections 13b and 13c of this Act—

“financial year” includes the period commencing on the first day of January, 1976, and ending on the thirtieth day of June, 1976:

“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) Subject to subsection (4) of this section, a reference in sections 13b and 13c of this Act to the prescribed amount is, in relation to an employer—

(a) who pays or is liable to pay taxable wages for the whole of a financial year but not any interstate wages during that financial year—a reference to the amount of forty-one thousand six hundred dollars, reduced by two dollars for each three dollars (disregarding any remainder) by which the total (in whole dollars) of the taxable wages paid or payable by that employer during that financial year exceeds forty-one thousand six hundred dollars;

(b) who during a financial year pays or is liable to pay wages (disregarding foreign wages), those wages being taxable wages that are paid or payable for part only of that financial year but who does not pay and is not liable to pay any interstate wages during that financial year—a reference to the amount that bears to forty-one thousand six hundred dollars the same proportion as that part bears to that financial year, reduced by two dollars for each three dollars (disregarding any remainder) by which the total (in whole dollars) of the taxable wages paid or payable by that employer during that part exceeds the amount first mentioned in this paragraph;

(c) who pays or is liable to pay wages (disregarding foreign wages) for the whole of a financial year at some time during which taxable wages are paid or payable and at some time during which interstate wages are paid or payable—a reference to the amount that bears to another amount [that other amount being forty-one thousand six hundred dollars, reduced by two dollars for each three dollars (disregarding any remainder) by which the sum of the total (in whole dollars) of—

(i) the taxable wages paid or payable by that employer during that financial year;

and

(ii) the interstate wages paid or payable by that employer during that financial year,

exceeds forty-one thousand six hundred dollars] the same proportion as the total (in whole dollars) of the taxable wages paid or payable by that employer during that financial year bears to the sum of the total (in whole dollars) of—

(iii) the taxable wages paid or payable by that employer during that financial year;

and

(iv) the interstate wages paid or payable by that employer during that financial year;

or

(d) who during a financial year pays or is liable to pay wages (disregarding foreign wages) otherwise than for the whole of that financial year, some of those firstmentioned wages being taxable wages and some being interstate wages—a reference to the amount that bears to another amount [that other amount being an amount that bears to forty-one thousand six hundred dollars the same proportion as the part (excluding any period during which he paid or was liable to pay foreign wages only) of that year for which he pays or is liable to pay wages bears to that financial year, reduced by two dollars for each three dollars (disregarding any remainder) by which the sum of the total (in whole dollars) of—

(i) the taxable wages paid or payable by that employer during that part;

and

(ii) the interstate wages paid or payable by that employer during that part,

exceeds that proportionate amount of forty-one thousand six hundred dollars] the same proportion as the total (in whole dollars) of the taxable wages paid or payable by that employer during that part bears to the sum of the total (in whole dollars) of—

(iii) the taxable wages paid or payable by that employer during that part;

and

(iv) the interstate wages paid or payable by that employer during that part.

(3) Where a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the Commissioner that, by reason of the nature of his trade or business, the taxable wages and interstate wages, if any, paid or payable by him fluctuate with different periods of the financial year, the Commissioner may treat him—

(a) if he has conducted that trade or business in Australia during the whole of the financial year—as an employer throughout the financial year;

or

(b) if he has conducted that trade or business in Australia during part only of the financial year—as an employer during that lastmentioned part of the financial year.

(4) In its application to the financial year ending on the thirtieth day of June, 1976, subsection (2) of this section shall be construed as if the references therein to forty-one thousand six hundred dollars were references to twenty thousand eight hundred dollars.

Annual
adjustments.

13b. (1) In this section—

“annual amount of pay-roll tax”, in relation to an employer, means the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 9 of this Act to the difference between—

(a) the total of the taxable wages paid or payable by that employer during a financial year;

and

(b) the prescribed amount, if any.

(2) Where taxable wages are paid or payable by an employer during a financial year commencing on or after the first day of January, 1976—

(a) the Commissioner shall, on application made by that employer in accordance with subsection (3) of this section, where the amount of pay-roll tax paid or payable by that employer when he made the returns relating to that financial year is greater than the annual amount of pay-roll tax in relation to that employer for that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the amount, if any, refunded to him under section 21 of this Act in respect of the tax paid or payable by that employer when returns relating to that year were made or required to be made under this Act by that employer;

or

(b) that employer shall, where the amount of pay-roll tax paid or payable by that employer when he made the returns relating to that financial year is less than the annual amount of pay-roll tax in relation to that employer for that financial year, pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Act in respect of the return period that is or includes the month of June in that financial year, an amount equal to the difference.

(3) An application under paragraph (a) of subsection (2) of this section shall, notwithstanding section 21 of this Act, be made within the financial year next following the financial year in respect of which the refund or rebate is applied for.

13c. (1) In this section—

“prescribed period”, in relation to an employer who pays or is liable to pay wages, otherwise than as a member of a group, for part only of a financial year, means that part of that financial year:

Adjustment of pay-roll tax when employer ceases to be an employer during a financial year.

“total amount of pay-roll tax”, in relation to an employer, means the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 9 of this Act to the difference between—

(a) the total of the taxable wages paid or payable by the employer during a prescribed period;

and

(b) the prescribed amount, if any:

“wages” does not include foreign wages.

(2) Where in a financial year an employer ceases to pay wages or becomes a member of a group he shall, where the amount of pay-roll tax paid or payable by him when he made returns relating to the prescribed period is less than the total amount of pay-roll tax in relation to that employer for that prescribed period, pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Act relating to that prescribed period or the last return under this Act relating to that prescribed period, an amount equal to the difference.

(3) Where an employer, who has ceased to pay wages or has become a member of a group, as referred to in subsection (2) of this section, in any financial year, subsequently pays or is liable to pay taxable wages or interstate wages during that financial year otherwise than as a member of a group, section 13b of this Act applies to and in respect of him as if the reference in subsection (2) of that section to the amount of pay-roll tax paid or payable by that employer included a reference to any pay-roll tax paid or payable by that employer under subsection (2) of this section.

9. Section 14 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “four hundred dollars” and inserting in lieu thereof the passage “eight hundred dollars”;

(b) by inserting in subsection (1) immediately after the passage “taxable wages” the passage “or who, being a member of a group, during a month pays or is liable to pay any taxable wages”;

and

(c) by striking out subsection (2) and inserting in lieu thereof the following subsections:—

(2) The Commissioner may cancel the registration of a person as an employer if—

(a) that person, not being a member of a group, has ceased to be an employer paying wages as referred to in subsection (1) of this section;

or

Amendment of principal Act, s. 14—
Registration.

(b) that person—

(i) ceases to be a member of a group;

and

(ii) does not pay and is not liable to pay wages as referred to in subsection (1) of this section.

(2a) The power conferred on the Commissioner by subsection (2) of this section, as re-enacted by the Pay-roll Tax Act Amendment Act, 1975, extends to authorizing the Commissioner to cancel the registration of a person as an employer where that person was not, immediately before the first day of January, 1976, an employer paying wages as referred to in subsection (1) of this section, as amended by that Act.

(2b) Where the Commissioner cancels the registration of a person as an employer in any financial year and that person subsequently pays or is liable to pay (otherwise than as a member of a group) taxable wages during that financial year that person may, notwithstanding that during any month he pays or is liable to pay wages at a rate not in excess of eight hundred dollars per week, apply to the Commissioner, in duplicate in the form and manner approved by the Commissioner, for registration as an employer and thereupon the Commissioner shall register him as an employer under this Act.

Amendment of
principal Act,
s. 16—
Exemption from
furnishing
returns.

10. Section 16 of the principal Act is amended—

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

(1a) In subsection (1) of this section “financial year” includes the period commencing on the first day of July, 1975, and ending on the thirty-first day of December, 1975, and the period commencing on the first day of January, 1976, and ending on the thirtieth day of June, 1976, but does not include the period commencing on the first day of July, 1975, and ending on the thirtieth day of June, 1976.;

and

(b) by inserting immediately after subsection (2) the following subsection:—

(2a) The Commissioner may, at any time, by notice in writing, revoke any certificate issued under subsection (1) of this section.

Amendment of
principal Act,
s. 17—
Further
returns.

11. Section 17 of the principal Act is amended by striking out the passage “In addition to any return required to be furnished by this Act, the” and inserting in lieu thereof the word “The”.

12. The following Part is enacted and inserted in the principal Act immediately after section 18 thereof:—

Enactment of
Part IVA of
principal Act—

PART IVA

GROUPING PROVISIONS

18a. In this Part, “business” includes—

Interpretation.

- (a) a trade or profession;
- (b) any other activity carried on for fee, gain or reward;
- and
- (c) the activity, carried on by an employer, of employing one or more persons where that person performs or those persons perform duties for or in connection with another business.

18b. For the purposes of this Act, two corporations constitute a group if they are by reason of subsection (5) of section 6 of the Companies Act, 1962, as amended, deemed, for the purposes of that Act, to be related to each other.

Grouping
of
corporations.

18c. For the purposes of this Act, where—

Grouping
where
employees
used in
another
business.

- (a) an employee of an employer, or two or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons;

or

- (b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

- (c) each such other person;
- or
- (d) both or all of those other persons,

constitute a group.

18d. (1) A reference in this section to two businesses does not include a reference to two businesses both of which are owned by the same person or persons, not being a trustee or trustees, or by the trustee or trustees of a trust.

Grouping
of commonly
controlled
businesses.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3) of this section, in each of two businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2) of this section, the same person has, or the same persons have together, a controlling interest in each of two businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs of this subsection in one of the businesses and a controlling interest under the same or another of those paragraphs in the other business:—

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors, of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, fifty per centum or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together (whether beneficially or not beneficially) fifty per centum or more of the capital of the partnership;or
 - (ii) is, or are together entitled (whether beneficially or not beneficially) to fifty per centum or more of any profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is a beneficiary or those persons (whether or not as the trustees of another trust) are together beneficiaries, in respect of fifty per centum or more of the value of the interests in the trust first-mentioned in this paragraph;
- (e) a person has, or persons have together, a controlling interest in a business, if that person (whether or not he is a trustee of a trust) is the sole owner of the business, or those persons (whether or not they are trustees of a trust) are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) of this section in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is, by reason of subsection (5) of section 6 of the Companies Act, 1962, as amended, to be deemed, for the purposes of that Act, to be related to it has a controlling interest.

(5) Where—

(a) a person is a beneficiary under a trust;

or

(b) two or more persons together are beneficiaries under a trust,

in respect of fifty per centum or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) of this section a controlling interest in a business that beneficiary or those beneficiaries shall for the purposes of that subsection be deemed to have a controlling interest in that business.

(6) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) of this section in a business;

and

(b) the person or persons who carries or carry on that business has or have a controlling interest under subsection (3) of this section in another business,

the person or persons referred to in paragraph (a) of this subsection shall be deemed to have a controlling interest for the purposes of that subsection in the business referred to in paragraph (b) of this subsection.

18e. (1) The Governor may make regulations—

Grouping by regulation.

(a) specifying circumstances in which two or more persons shall constitute a group;

or

(b) declaring that two or more persons shall constitute a group in relation to such wages (excluding foreign wages) paid or payable by those persons as are specified or described in the regulation,

and, for the purposes of this Act, any such regulation shall have effect so as to constitute a group according to its tenor.

(2) The power to make a regulation for the purposes of subsection (1) of this section is not limited by any other provision of this Part.

(3) In respect of a regulation made for the purposes of subsection (1) of this section, the Acts Interpretation Act, 1915-1972, shall be deemed to be amended by striking out paragraph (c) from subsection (1) of section 38 of that Act and inserting in lieu thereof the following paragraph:—

(c) shall, subject to subsection (2) hereof, take effect on and from a date specified in the regulation, being the date of publication, an earlier date (but not earlier than the first day of January, 1976) or a later date;.

18f. (1) Notwithstanding any other provision of this Part (except subsection (2) of this section), where a person is, whether or not by virtue of this subsection, a member of two or more groups (each of which is in subsection (2) of this section referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

Smaller groups subsumed into larger groups.

(2) Except for the purpose of determining whether a group is constituted under subsection (1) of this section, a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1) of this section.

Grouping provisions to operate independently.

18g. 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.

Beneficiaries under discretionary trusts.

18h. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and other person, may benefit under that trust shall be deemed, for the purposes of this Part, to be a beneficiary in respect of fifty per centum or more of the value of the interests in that trust.

Exclusion of persons from groups.

18i. (1) Where the Commissioner is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters that he considers relevant, that a business carried on by a member of a group is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group, the Commissioner may, by notice in writing served on that first-mentioned member, exclude him from that group.

(2) The Commissioner shall not exercise the power conferred on him by subsection (1) of this section so as to exclude a person from a group on and from a date if that person is or was on that date a corporation which, by reason of subsection (5) of section 6 of the Companies Act, 1962, as amended, is to be deemed, for the purposes of that Act, to be related to another corporation which is a member of that group.

(3) Notwithstanding any other provision of this Part, a notice under subsection (1) of this section shall have effect according to its tenor on and from the date specified in the notice (being a date that is the date of the notice or before the date of the notice) as the date on and from which the person referred to in the notice is or shall be deemed to have been excluded from the group so referred to.

Designated group employer.

18j. (1) The members of a group may, by an instrument in writing in the form approved by the Commissioner, executed by or on behalf of each member of the group and served on the Commissioner, 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 and nominate an amount, calculated in the prescribed manner, not exceeding the prescribed amount as defined in subsection (1) of section 11a of this Act, as the deduction to be made for any return period in relation to which that designated group employer is required to furnish returns under this Act.

(2) The designated group employer in respect of a group ceases to be the designated group employer in respect of that group on and from the first day of the return period relating to him during which—

(a) the composition of the group alters;

or

- (b) the members of the group, by an instrument in the form approved by the Commissioner, executed by or on behalf of each of them who is known to the Commissioner to be a member of the group and served on the Commissioner, revoke the designation,

whichever occurs the earlier.

(3) For the purpose of ascertaining the pay-roll tax payable by a designated group employer, there shall, subject to subsection (4) of this section, be deducted, for a return period (being the return period commencing last before the day on which the instrument under subsection (1) of this section designating him as the designated group employer in respect of the group is served on the Commissioner or any subsequent return period) from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) the amount nominated in that instrument.

(4) The Commissioner may, on an application made to him in writing executed by or on behalf of each person known to the Commissioner to be a member of a group or of his own motion in relation to a group, at any time, make a determination specifying an amount, not exceeding the prescribed amount as defined in subsection (1) of section 11a of this Act, that may be deducted for any return period specified or referred to in the determination (being a return period commencing before, but not before the first day of January, 1976, or after, or the return period in which, the determination is made) from the taxable wages included in a return made by, or an assessment relating to, an employer specified in the determination who was, during any such return period, a member of that group and there shall be deducted, for any such return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) the amount so specified.

(5) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subsection (4) of this section and any such revocation shall have effect as on and from the first day of the return period specified in the instrument, whether that return period is before, but not before the date of, the determination, or after, or the return period in which, the instrument is executed by him.

(6) An employer specified in a determination made under subsection (4) of this section shall, on the first day of the first return period specified or referred to in the determination, be deemed to have been designated under subsection (1) of this section to be the designated group employer in respect of the group of which he was then a member and shall, subject to subsection (2) of this section, thereafter be the designated group employer in respect of that group.

(7) The Commissioner shall, as soon as practicable after making a determination under subsection (4) of this section, serve notice of the determination on the designated group employer in respect of the group concerned.

"Financial year" for purposes of this section and sections 181 and 18m and "prescribed amount" for purposes of sections 181 and 18m.

18k. (1) In this section and sections 181 and 18m of this Act "financial year" includes the period commencing on the first day of January, 1976, and ending on the thirtieth day of June, 1976.

(2) Subject to subsection (3) of this section, a reference in sections 181 and 18m of this Act to the prescribed amount is, in relation to a designated group employer—

(a) who during the whole of a financial year is the designated group employer in respect of a group at least one of the members of which pays or is liable to pay taxable wages for the whole of that financial year and none of the members of which pays or is liable to pay, as a member of that group, any interstate wages during that financial year—a reference to the amount of forty-one thousand six hundred dollars, reduced by two dollars for each three dollars (disregarding any remainder) by which the total (in whole dollars) of the taxable wages paid or payable by the employers in that group during that financial year exceeds forty-one thousand six hundred dollars;

(b) who during part only of a financial year is the designated group employer in respect of a group at least one of the members of which pays or is liable to pay taxable wages for the whole of that part and none of the members of which pays or is liable to pay, as a member of that group, any interstate wages during that financial year—a reference to an amount that bears to forty-one thousand six hundred dollars the same proportion as that part of that financial year bears to that financial year, reduced by two dollars for each three dollars (disregarding any remainder) by which the total (in whole dollars) of the taxable wages paid or payable by the employers in that group during that part exceeds the amount firstmentioned in this paragraph;

(c) where—

(i) during the whole of a financial year that designated group employer is the designated group employer in respect of a group;

(ii) at least one member of that group pays or is liable to pay taxable wages or interstate wages for the whole of that year;

and

(iii) at some time during that year taxable wages are paid or payable by a member of that group and at some time during that year interstate wages are paid or payable by a member of that group, whether or not those times are wholly or partly concurrent and whether or not those members are the same member,

a reference to an amount that bears to another amount [that other amount being forty-one thousand six hundred dollars, reduced by two dollars for each three dollars (disregarding any remainder) by which the sum of the total (in whole dollars) of—

- (iv) the taxable wages paid or payable by the employers in that group during that financial year;

and

- (v) the interstate wages paid or payable by employers in that group during that financial year,

exceeds forty-one thousand six hundred dollars] the same proportion as the total (in whole dollars) of the taxable wages paid or payable by the employers in that group during that financial year bears to the sum of the total (in whole dollars) of—

- (vi) the taxable wages paid or payable by the employers in that group during that financial year;

and

- (vii) the interstate wages paid or payable by employers in that group during that financial year;

or

(d) where—

- (i) during part only of a financial year that designated group employer is the designated group employer in respect of a group;

- (ii) at least one member of that group pays or is liable to pay taxable wages or interstate wages for the whole of that part;

and

- (iii) at some time during that part taxable wages are paid or payable by a member of that group and at some time during that part interstate wages are paid or payable by a member of that group, whether or not those times are wholly or partly concurrent and whether or not those members are the same member,

a reference to the amount that bears to another amount [that other amount being the amount that bears to forty-one thousand six hundred dollars the same proportion as that part bears to that financial year, reduced by two dollars for each three dollars (disregarding any remainder) by which the sum of the total (in whole dollars) of—

- (iv) the taxable wages paid or payable by the employers in that group during that part;

and

(v) the interstate wages paid or payable by employers in that group during that part,

exceeds that proportionate amount of forty-one thousand six hundred dollars] the same proportion as the total (in whole dollars) of the taxable wages paid or payable by the employers in that group during that part bears to the sum of the total (in whole dollars) of—

(vi) the taxable wages paid or payable by the employers in that group during that part;

and

(vii) the interstate wages paid or payable during that part by the employers in that group.

(3) In respect of the financial year ending on the thirtieth day of June, 1976, subsection (2) of this section shall be construed as if the references therein to forty-one thousand six hundred dollars were references to twenty thousand eight hundred dollars.

Annual
adjustment.

181. (1) This section applies in relation to a group at least one member of which, as such a member, paid or was liable to pay taxable wages or interstate wages for the whole of a financial year.

(2) A reference in this section to the annual amount of pay-roll tax paid or payable by the members of a group is a reference to the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 9 of this Act to the amount by which—

(a) the total of the taxable wages paid or payable by the members of that group during a financial year,

exceeds—

(b) where—

(i) during that year there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer;

or

(ii) during that year there were two or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group during that year, would have been applicable to that designated group employer.

(3) A reference in this section to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is a reference to the amount of pay-roll tax paid or payable when returns were made or required to be made under this Act relating to that financial year, being returns in which the taxable wages referred to in paragraph (a) of subsection (2) of this section were included or required to be included.

(4) Where the actual amount of pay-roll tax paid or payable in respect of a financial year commencing on or after the first day of January, 1976, by the members of a group is greater than the annual amount of pay-roll tax in relation to those members for that financial year, the Commissioner shall, on application made in accordance with subsection (7) of this section by the person who is the designated group employer in respect of that group on the thirtieth day of June in that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the total of the amounts, if any, refunded to any member of that group under section 21 of this Act in respect of the tax paid or payable by any such member when returns relating to that year were made or required to be made under this Act by that member.

(5) Where the actual amount of pay-roll tax paid or payable in respect of a financial year commencing on or after the first day of January, 1976, by the members of a group is less than the annual amount of pay-roll tax in relation to those members for that financial year, the person who is the designated group employer in respect of that group on the thirtieth day of June in that financial year shall pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Act in respect of the return period that is or includes the month of June in that financial year, an amount equal to the difference.

(6) If a designated group employer in respect of a group fails to pay any amount that he is required to pay under subsection (5) of this section in respect of a financial year, every member of the group who paid or was liable to pay taxable wages during that financial year is liable jointly and severally to pay that amount to the Commissioner.

(7) An application under subsection (4) of this section shall, notwithstanding section 21 of this Act, be made within the financial year next following the financial year in respect of which the refund is applied for.

18m. (1) This section applies in relation to a group at least one member of which paid or was liable to pay, as such a member, taxable wages or interstate wages for part only (being a continuous part) of a financial year and no member of which paid or was liable to pay, as such a member, any such wages during the whole of that year.

Payment of pay-roll tax when members of a group cease to pay taxable wages or interstate wages during a financial year.

(2) In this section, "prescribed period", in relation to a group, means that part only (being a continuous part) of a financial year for which at least one member of that group paid or was liable to pay, as such a member, taxable wages or interstate wages.

(3) A reference in this section to the total amount of pay-roll tax paid or payable for a prescribed period by the members of a group is a reference to the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 9 of this Act to the amount by which—

(a) the total of the taxable wages paid or payable by the employers in that group during that prescribed period,

exceeds—

(b) where—

(i) during that prescribed period there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer;

or

(ii) during that prescribed period there were two or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group during that prescribed period, would have been applicable to that designated group employer.

(4) Where, at the expiration of a prescribed period relating to a group, the total amount of pay-roll tax paid or payable when returns were made or required to be made under this Act, being returns in which the taxable wages referred to in paragraph (a) of subsection (3) of this section were included or required to be included, is less than the total amount of pay-roll tax paid or payable for that prescribed period by the members of that group, the person who is the designated group employer in respect of that group on the last day of that prescribed period shall pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Act or the last return under this Act relating to that prescribed period, an amount equal to the difference.

(5) Subsections (4) and (5) of section 181 of this Act apply in relation to a group to which this section applies, as if—

(a) at least one member of the group paid or was liable to pay, as such a member, taxable wages or interstate wages for the whole of that financial year;

(b) the reference in subsection (3) of that section to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of that group included a reference to any pay-roll tax paid or payable under subsection (4) of this section by a designated group employer in respect of that financial year;

and

(c) the person, if any, who was the designated group employer in respect of that group at the time when the group last ceased in that financial year to have a member who was paying or was liable to pay, as such a member, taxable wages or interstate wages was the designated group employer in respect of that group on the thirtieth day of June in that financial year.

(6) If a designated group employer in respect of a group fails to pay any amount that he is required to pay under subsection (4) of this section in respect of a period, every member of the group who paid or was liable to pay taxable wages during the financial year that includes that period is liable jointly and severally to pay that amount to the Commissioner.

13. Section 20 of the principal Act is amended—

Amendment of
principal Act,
s. 20—
Assessments.

- (a) by inserting in paragraph (a) of subsection (1) immediately after the passage “taxable wages” the passage “or, where relevant, inter-state wages”;
 - (b) by striking out from paragraph (b) of subsection (1) the word “thereon” and inserting in lieu thereof the passage “by the employer”;
 - (c) by striking out from subsection (3) the passage “section 11 of”;
- and
- (d) by striking out from subsection (4) the passage “under subsection (6) of section 11 of this Act in respect of a month or period ending before the determination is made” and inserting in lieu thereof the passage “in respect of a return period ending before the determination is made as to the deduction that may be made from the taxable wages included or required to be included in returns made or required to be made under this Act”.

14. Section 25 of the principal Act is repealed and the following section is enacted and inserted in its place—

Repeal of
s. 25 of
principal Act
and enactment
of section in
its place—
Penal Tax

25. (1) If pay-roll tax, further tax or additional tax is not paid before the expiration of the time specified in section 19 or 20 of this Act, or such further time as may be allowed by the Commissioner under section 24 of this Act, penal tax shall forthwith be payable—

- (a) where it is paid on or before the fourteenth day after that time, at the rate of ten per centum per annum of the pay-roll tax, further tax or additional tax, as the case may be, to be computed from the expiration of the time specified in section 19 or 20 of this Act, or, where further time has been allowed by the Commissioner under section 24 of this Act, from the expiration of that further time, as the case may require;
- (b) where—
 - (i) it is paid within one month after that day, at the rate of ten per centum;
 - (ii) it is not paid within one month, but is paid within two months, after that day, at the rate of twenty-five per centum;

or

 - (iii) it is not paid as referred to in paragraph (a) of this subsection or sub-paragraph (i) or (ii) of this paragraph, at the rate of one hundred per centum,

of the pay-roll tax, further tax or additional tax, as the case may be.

(2) The Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the penal tax or any part thereof.

Amendment of principal Act, s. 26—
Recovery of tax.

15. Section 26 of the principal Act is amended by striking out from subsection (2) the passage “or further tax unpaid, including any additional tax,” and inserting in lieu thereof the word “unpaid”.

Amendment of principal Act, s. 27—
Substituted service.

16. Section 27 of the principal Act is amended by striking out the passage “further tax or additional tax”.

Amendment of principal Act, s. 28—
Liquidator to give notice.

17. Section 28 of the principal Act is amended by inserting in paragraph (a) of subsection (7) immediately after the word “Act” the passage “or his liability, as a trustee, under Part IVA of this Act”.

Amendment of principal Act, s. 36—
Objections and appeals.

18. Section 36 of the principal Act is amended—

(a) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) A person desirous of appealing from or against any assessment of the Commissioner or against the decision by the Tribunal on an objection shall within sixty days after the day on which the Commissioner’s assessment or, as the case may be, after the day on which the decision of the Tribunal is communicated to him, give notice in writing to the Commissioner or the person affected by the decision of the Tribunal, as the case may be, of his intention to appeal therefrom together with a statement of the grounds of such appeal and, within a further period of fourteen days, institute the appeal in the Supreme Court by notice of motion stating with sufficient particularity the grounds of the appeal.;

and

(b) by striking out from subsection (8) the passage “or appeal” and inserting in lieu thereof the passage “or notice of motion to appeal”.

Amendment of principal Act, s. 39—
Additional tax in certain cases.

19. Section 39 of the principal Act is amended by striking out from paragraph (b) of subsection (1) the passage “section 11 of”.

Amendment of principal Act, s. 45—
Public officer of company.

20. Section 45 of the principal Act is amended—

(a) by inserting in subsection (1) immediately after the passage “public officer”, firstly occurring, the passage “(being a natural person whose principal place of residence is in the State)”;

and

(b) by inserting in subsection (1) immediately after the word “filled” the passage “by such a person”.

Amendment of principal Act, s. 46—
Agents and trustees.

21. Section 46 of the principal Act is amended by inserting after the present contents (which are hereby designated subsection (1) thereof) the following subsection:—

(2) Nothing in subsection (1) of this section affects the operation of Part IVA of this Act in relation to trustees.

22. Section 57 of the principal Act is amended by inserting in paragraph (b) of subsection (2) immediately after the passage “financial year” the passage “, whether or not a person was or was not a member of a group”.

Amendment of
principal Act,
s. 57—
Regulations.

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

M. L. OLIPHANT, Governor