

# PAY-ROLL TAX BILL 1971.

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## EXPLANATORY MEMORANDUM.

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### PART I.—PRELIMINARY.

#### *Clause 1.*

The short title and commencement date. The legislation is to commence on 1 September, 1971, which is the date agreed on at the June Premiers' Conference. Employers liable to the tax will begin payment to the State in the first week in October.

#### *Clause 2.*

Index of the Bill in Parts.

#### *Clause 3.*

##### *Sub-clause (1)—Definitions.*

The definitions in the present Commonwealth Pay-Roll Tax Assessment Act have been adopted but modified or added to where necessary to provide for the takeover of the tax by the States. Apart from the following, the definitions are self explanatory :

“ *Australia* ” Under Clause 3 (3) the Australian Capital Territory including the Jervis Bay Territory and the Northern Territory are together deemed to be a State of the Commonwealth.

“ *Corresponding Law* ” This expression means the corresponding pay-roll tax legislation in the other States and the Territories.

“ *Financial Year* ” The definition is mainly for transitional purposes providing for the commencement of pay-roll tax in the first year on 1 September, 1971.

“ *Wages* ” The definition is the same as under the Commonwealth Pay-roll Assessment Act with the addition of paragraph (a) which ensures that remuneration paid to persons holding office under the Crown in the right of Victoria are wages for the purposes of the Bill.

*Sub-clause (2).* The provisions of the Commonwealth Act relating to the value of meals and use of quarters are adopted in this Bill.

*Sub-clause (4).* This is a transitional provision to ensure that there is no double taxation under the Commonwealth Act and the provisions of this Bill.

### PART II.—ADMINISTRATION.

#### *Clause 4.*

This clause relates to the administration of the Act and follows the Commonwealth Act with such minor changes as are necessary.

*Sub-clauses (1), (2) and (3).* The person from time to time holding office as the Comptroller of Stamps under the Stamps Act is to be the Commissioner of Pay-roll Tax under this Bill. A Deputy Comptroller of Stamps under the Stamps Act is a Deputy Commissioner of Pay-roll Tax and may exercise the powers and functions of the Commissioner.

*Sub-clauses (4) to (10).* Provides for delegation by the Commissioner of his powers or functions to officers of the Public Service under him but subject to limitations on further delegation or the issue of certificates to be used for evidence in Court.

*Clause 5.*

Relates to the disclosure of information.

*Sub-clause (1).* This sub-clause prohibits disclosure of pay-roll tax information without the consent of the person concerned except for the purposes of administration of the tax or where the Commonwealth law relating to Census and Statistics requires disclosure. Information contained in pay-roll tax returns is also required by the Commonwealth Statistician for the calculation of the average wages factor in the Tax Reimbursement Grant Formula. The Commonwealth Statistician is of course bound by the secrecy provisions of his own Act. A similar provision is to be made in the legislation of all the States and the Territories.

*Sub-clause (2).* This is the usual provision in taxation legislation for the exchange of information between the Commonwealth Commissioner of Taxation and authorities administering pay-roll legislation in the various States.

### PART III.—LIABILITY TO TAXATION.

This Part sets out the wages that are liable to taxation in Victoria, deductions that may be claimed and exemptions from taxation.

*Clause 6.*

*Sub-clause (1).* This sub-clause sets out the basis of liability under this Bill. It is the basis agreed upon by all the States and provides for a State basis of liability. Wages paid to an employee who works only in Victoria are taxable in Victoria irrespective of where they are paid. If an employee works partly in Victoria wages paid to him in Victoria are taxable. The sub-clause also makes provision for wages to be taxed in the, probably rare, case where an employee works mainly in Victoria but is paid outside Australia in respect of that work. It also contains a transitional provision to avoid double taxation between the present Commonwealth Act and this legislation.

*Sub-clause (2).* This sub-clause makes provision for cases where wages have become payable but have not yet been paid.

*Sub-clause (3).* Provision is made here for determining where wages are paid when, for example, they are sent by cheque through the post.

*Clause 7.*

This clause levies the tax at the rate of  $3\frac{1}{2}$  per cent.

*Clause 8.*

This clause makes it clear that the tax is payable by the employer not the employee.

*Clause 9.*

The Commonwealth Act provides that where an employer engages labour throughout the year he may claim a deduction of \$20,800 from his payroll (i.e. \$1,733.33 a month) before calculating his pay-roll tax. Where he engages labour for a part of a year he may claim a proportionate deduction. This clause maintains that concession for all employers.

*Sub-clause (1).* Authorizes the deduction of \$1,733.33 a month whether returns are made on a monthly basis or at periods of more than a month.

*Sub-clause (2).* Authorizes a proportionate deduction where an employer employs labour during part of a month only.

*Sub-clause (3).* This sub-clause prescribes as the monthly deduction the sum of \$1,733.33 or where applicable part of that sum only.

*Sub-clause (4).* Makes provision for cases where employers engage labour both in Victoria and elsewhere in Australia and sets out what must be done to obtain the appropriate deduction in Victoria. The employer must notify the Commissioner what amount he wishes to claim. This amount will be that proportion of \$20,800 which his estimated pay-roll in Victoria for 1971/72 bears to his estimated pay-roll in Australia for the same year. The balance of the \$20,800 will, of course, be claimed in the other States or Territories in which he pays tax under the corresponding pay-roll tax laws of those States or Territories.

*Sub-clause (5).* Allows an interstate employer to continue to deduct from his pay-roll the amount notified to the Commissioner under the previous sub-clause until such time as the amount to be deducted is revised.

*Sub-clause (6).* Where, for an interstate employer, the Commissioner considers that the amount claimed in Victoria as a deduction was unreasonably high he may revise the figure by making a determination. The determination dates back to the month when the existing claim was first made then carried forward until the next revision.

*Sub-clause (7).* An employer may request the Commissioner to revise the amount being deducted. The revised amount would thereafter be claimed by the employer until any subsequent change or determination is made.

*Sub-clause (8).* Requires the Commissioner to serve notice on any determination made by him on the employer concerned.

*Sub-clause (9).* As in the Commonwealth Act where in any month the full allowable deduction cannot be utilized because the wages paid in that month are less than the deductible amount the balance can be carried forward to subsequent months in the same year.

#### *Clause 10.—Exemptions.*

With the exception of exemption (e) the exemptions are the same as those contained in the Commonwealth Act although in some cases the terminology has been updated. Exemption (e) exempts municipalities or any union or partnership of municipalities except as to the activities or undertakings specified in the exemption.

#### *Clause 11.*

The present Commonwealth Act makes provision for an annual adjustment of pay-roll tax and an appropriate refund where a taxpayer's total wages in a year do not exceed \$20,800, or where the actual deductions which he makes during a year are less than \$20,800. An example of the latter would be a seasonal employer who in the months when he paid very little in wages could not obtain the full monthly deduction of \$1,733.33. This Bill provides for the same annual adjustments to be made.

*Sub-clause (1).* Provides for a refund of all tax paid by an employer where his total pay-roll in Australia for a year is less than the amount prescribed under sub-clause (4), i.e., \$17,333.33 for the first financial year beginning on 1 September, 1971, and \$20,800 for subsequent financial years. Paragraph (b) of this sub-clause makes provision for the case where a taxpayer is an employer for a part of a year only.

*Sub-clause (2).* Provides for a refund of part of the tax paid by an employer where the deductions actually made by him during the year fall short of the prescribed amount, i.e., \$20,800, or \$17,333.33 in the first year.

Paragraph (a) applies to an employer for a whole year.

Paragraph (b) applies to an employer for part of a year.

Paragraph (c) deals with the case where a taxpayer employs labour in Victoria only.

Paragraph (d) deals with the case where a taxpayer employs labour both in Victoria and elsewhere in Australia. An employer always obtains the benefit of the full \$20,800 exemption. In the first financial year, or if he is an employer for part of a year, he obtains a proportionate part of \$20,800.

*Sub-clause (3).* An application for a refund must be made during the year following the year in which entitlement to the refund arises.

*Sub-clause (5).* For the purposes of the refund provisions this sub-clause sets out the basis for calculating the annual allowable deduction in Victoria as follows :

$$\frac{\text{Victorian pay-roll}}{\text{Australian pay-roll}} \text{ of } \$20,800.$$

The sub-clause also makes provision for the first financial year and the case of an employer for part of a year.

*Sub-clause (6).* Deals with the case of an employer who conducts a continuing business of a seasonal nature. He is entitled to be treated as an employer for the whole year. Thus a primary producer who has a substantial pay-roll at a particular time of the year but who, during the remainder of the year, may have no employees would be entitled to the full exemption of \$20,800. This provision is in the present Commonwealth Act.

*Sub-clause (7).* This provides that a taxpayer cannot obtain a refund larger than the amount of tax paid by him.

#### PART IV.—REGISTRATION AND RETURNS.

##### *Clause 12.*

*Sub-clause (1).* Requires an employer who pays wages in excess of \$400 a week to register with the Commissioner.

*Sub-clause (2).* Empowers the Commissioner to cancel any registration where an employer's pay-roll has permanently fallen below \$400 a week.

*Sub-clause (3).* Provides for employers registered under the present Commonwealth Act to be treated as registered under this Bill.

##### *Clause 13.*

*Sub-clause (1).* Requires every taxable employer to submit a return within seven days of the end of each month stating the wages paid or payable by him in the previous month.

*Sub-clause (2).* Permits the Commissioner to vary the times in which returns must be lodged.

*Sub-clause (3).* Permits revocation of any variation of return periods.

*Sub-clause (4).* Where the Commonwealth Commissioner under the present Commonwealth law has allowed taxpayers to lodge returns for periods other than monthly returns the Commissioner under this Bill may allow that practice to continue.

*Sub-clause (5).* This is a transitional provision necessary because the operation of the State law begins on 1 September, 1971.

##### *Clause 14.*

*Sub-clause (1).* Permits the Commissioner to issue a certificate exempting a taxpayer from furnishing monthly returns where he has reason to believe that no tax will ultimately be payable by the taxpayer. However, the taxpayer receiving the certificate may be required by the Commissioner to furnish an annual return for checking purposes.

*Sub-clause (2).* Allows the Commissioner to issue a certificate subject to conditions.

*Sub-clause (3).* Ensures that the issue of a certificate does not operate as an exemption from tax but postpones the time of payment where wages prove to be taxable.

*Sub-clause (4).* A certificate issued under the present Commonwealth Act is deemed to be a certificate issued under this legislation.

##### *Clause 15.*

Empowers the Commissioner to require additional or correctly completed returns where necessary.

##### *Clause 16.*

*Sub-clause (1).* Empowers the Commissioner to make such inquiries as are necessary to establish a taxpayer's liability under the provisions of this legislation.

*Sub-clause (2).* The information may be required to be given on oath or by statutory declaration or either orally or in writing.

*Sub-clause (3).* Permits the prescription of a scale of expenses to be allowed to persons required to give evidence under this clause.

#### PART V.—COLLECTION AND RECOVERY OF TAX.

##### *Clause 17.*

Requires a taxpayer to pay the tax due at the same time as he lodges his return.

##### *Clause 18.*

*Sub-clause (1) and (2).* Enables the Commissioner to issue an assessment where he has reason to believe that a correct return has not been lodged or where there has been a failure to lodge a return.

*Sub-clause (3).* Prohibits the Commissioner from issuing an assessment because a taxpayer has made an error in estimating the statutory deduction permitted to be made under clause 9 of the Bill. The correct procedure for the Commissioner is to make a determination under sub-clause (6) of clause 9.

*Sub-clause (4).* Where a taxpayer has claimed a higher deduction under clause 9 than that to which he was entitled and the Commissioner has made a determination he may issue an assessment for any further tax which may be payable.

*Sub-clause (5).* Imposes a penalty on taxpayers for failure to pay tax. The penalty is double the amount of tax payable or the sum of \$2 whichever is the greater. The Commissioner may remit any penalty tax payable if the circumstances warrant it.

*Sub-clause (6).* The Commissioner must serve notice of any assessment he has made on the employer liable to pay the tax.

*Sub-clause (7).* Enables the Commissioner to specify the date on which the amount set out on any assessment should be paid.

*Sub-clause (8).* The omission by the Commissioner to give any such notice does not invalidate the assessment.

##### *Clause 19.*

Empowers the Commissioner to refund overpaid taxes.

##### *Clause 20.*

The Commissioner may fix a date on which tax may be payable where he has reason to believe that a taxpayer may leave Australia before the tax would become payable.

##### *Clause 21.*

Permits the Commissioner to extend the time for payment of tax or allow the tax to be paid by instalments where the circumstances warrant it.

##### *Clause 22.*

If assessed tax is not paid on or before the due date interest by way of a penalty is incurred.

##### *Clause 23.*

When tax becomes payable it is a debt due to the Crown and may be recovered in any Court of competent jurisdiction.

##### *Clause 24.*

Provides for substitute service.

##### *Clause 25.*

Deals with the liability of liquidators of companies in respect of pay-roll tax.

*Sub-clause (1).* Requires any liquidator to register with the Commissioner within fourteen days.

*Sub-clause (2).* The Commissioner must notify a liquidator of any tax that is or will be payable.

*Sub-clause (3).* Prohibits a liquidator from parting with the assets of a company without the Commissioner's permission and provides that he must set aside sufficient assets of the company to meet the debt due to the Commissioner.

*Sub-clause (4).* Imposes a penalty on a liquidator who fails to comply with the requirements of the legislation.

*Sub-clause (5).* Deals with the situation where more than one person is appointed liquidator of a company.

*Sub-clause (6).* Enables a liquidator to recover his costs charges and expenses properly incurred in winding up a company on priority to pay-roll tax.

*Sub-clause (7).* The provisions of this clause do not limit the liability of a liquidator to comply with clause 42 which deals with agents and trustees or effect the provisions of the *Companies Act* 1961.

*Sub-clauses (8) and (9).* Are transitional provisions. Any notice given by a liquidator under the Commonwealth Act is sufficient notice under this clause.

#### *Clause 26.*

Deals with the position of an agent winding up a business for an absentee principal. It has similar provisions to those imposed on a liquidator including the transitional provisions.

#### *Clause 27.*

This clause deals with a situation where a person during his lifetime has failed to pay the full amount of tax properly payable or has failed to submit returns. The clause generally vests the Commissioner with the same powers and remedies given the Trustee of the estate of the taxpayer as he would have it given the taxpayer had he been living.

#### *Clause 28.*

Has similar provisions in regard to executors and administrators as those in the preceding clause in relation to Trustees. Special procedures are laid down where probate or letters of administration have not been taken out.

#### *Clause 29.*

Where any person has paid tax for or on behalf of some other person he is entitled to recover the amount paid from the person concerned.

#### *Clause 30.*

Where two or more persons are jointly liable to pay the tax each is liable for the whole but each has a right of recovery of a due proportion from the defaulters.

#### *Clause 31.*

This clause empowers the Commissioner to collect unpaid tax from a debtor of the employer liable for the tax.

*Sub-clause (1).* Enables the Commissioner to serve notice on any person who holds money on behalf of a defaulting employer requiring him to pay from this money a sufficient amount to meet the outstanding tax liability.

*Sub-clause (2).* Any person who fails to comply with such a notice is guilty of an offence.

*Sub-clause (3).* Where the amount held is inadequate to meet the tax liability the amount is to be paid to the Commissioner in reduction of the tax.

*Sub-clause (4).* Indemnifies any such person against any action by the employer to recover the money.

*Sub-clause (5).* If the employer pays his tax liability before the Commissioner receives the money from the person on whom he has served such a notice the Commissioner is required to notify him immediately.

## PART VI.—OBJECTIONS AND APPEALS.

Under the Commonwealth Act the time for lodging an objection or an appeal varies between 30 days and 42 days. All States have agreed to adopt a uniform period of 60 days in which such objections and appeals may be lodged.

*Clause 32.*

Any employer dissatisfied with an assessment or other decision of the Commissioner concerning his tax liability may lodge an objection which the Commissioner may allow or disallow. Where an assessment is reduced the appropriate refund is to be made.

*Clause 33.*

Any person dissatisfied with a decision of the Commissioner on an objection made within 60 days of service of the notice of the decision or within such further time as the Commissioner allows appeal to the Supreme Court. The Commissioner must within 60 days of the appeal forward it to the Court. An appeal is limited to the grounds stated in the objection.

*Clause 34.*

Even though an appeal is pending on an assessment the assessed tax must be paid but if the Court alters the assessment the appropriate refund must be made.

## PART VII.—PENAL PROVISIONS.

*Clause 35.*

This clause sets out various offences and imposes a penalty for any breach. In some cases failure to comply with the requirements of the legislation constitutes a continuing offence.

*Clause 36.*

In addition to the penalties provided in the previous clause additional tax becomes payable in certain cases. Where a person fails or neglects to furnish a return he is liable to additional tax at the rate of 10 per cent. per annum upon the tax payable by him or the sum of \$2, whichever is the greater or if he furnishes a return but fails to include any taxable wages in that return he is liable by way of additional tax to double the amount which he should have paid or the sum of \$2, whichever is the greater. Under sub-clause (3) if the Commissioner takes action to recover the penalty under clause 35 the additional tax under this clause is not to be charged.

*Clause 37.*

Any avoidance of tax is an offence, the penalty being \$1,000 and treble the amount of tax avoided.

*Clause 38.*

This clause sets out the time within which proceedings for offences should be taken.

*Clauses 39 and 40.*

Payment of penalties does not relieve a person from his liability to tax and any person who hinders or obstructs the due administration of the Act is guilty of an offence.

## PART VIII.—MISCELLANEOUS.

*Clause 41.*

The Commonwealth Act makes it essential for every company to appoint a public officer. The States agreed that they would provide for it only to be mandatory for a company to appoint a public officer where the Commissioner by notice requires that it be done.

*Clause 42.*

This clause deals with the obligations and rights of an agent or trustee for an employer.

*Clause 43.*

Sets out the responsibilities of a person who is in receipt of or has control of money belonging to a taxpayer who is resident outside Australia. Any such person is required under this clause to pay outstanding tax to the Commissioner but is indemnified for all payments which he makes to the Commissioner under the legislation.

*Clause 44.*

Requires employers liable for tax to keep and preserve proper books of accounts for a period of not less than five years unless the Commissioner has otherwise permitted.

*Clause 45.*

Gives the Commissioner and any duly authorized officer access to books, records and other documents in relation to the legislation.

*Clause 46.*

Allows the Commissioner to issue certificates to be used in proceedings for recovery of tax. The clause sets out in detail the matters which a certificate may contain and the extent to which the certificate may be accepted in evidence.

*Clause 47.*

Deals with the method of effecting service of documents by the Commissioner.

*Clause 48.*

Deals with the service of documents on the Commissioner.

*Clause 49.*

Lays down the procedure for the institution of prosecutions for offences against the legislation.

*Clause 50.*

Empowers the Governor in Council to make regulations for the purposes of the legislation.