

PAY-ROLL TAX BILL 1974.

EXPLANATORY MEMORANDUM.

Clause 1.

Title and commencement. Clauses 1 and 2 will operate from 1st November, 1974. The remaining clauses are to come into operation on a date or dates to be proclaimed.

Clause 2.

The provisions of this clause will subject to the exceptions referred to later, in effect, deem all related and associated parts of an organization to be the one group and allow the group one general exemption only on all wages paid by the related and associated employers in the group.

Sub-clause (1) inserts a new sub-section (5) into section 3 of the Principal Act to determine whether two corporations are to be treated as related corporations and as one group. Paragraph (a) provides that all subsidiary corporations are treated as one group with the parent company.

Paragraphs (b) (c) (d) (e) (f) and (g) provide a series of tests to determine whether two corporations are effectively under the same control and therefore to be treated as related and as one group. An exception is provided to exclude those cases where the Commissioner is satisfied that the corporations are not operating with any intention of avoiding pay-roll tax. The exception does not apply to corporations grouped by paragraph (a).

Sub-clause (2)—This sub-clause will allow an exemption from tax for certain travelling and accommodation expenses. Pay-roll tax is payable on wages paid by an employer and the definition of wages includes allowances. When an employé provides a motor vehicle for use in the course of his employment and is reimbursed by a mileage allowance then the amount of that allowance is subject to pay-roll tax. On the other hand, if the reimbursement for the use of the motor vehicle is on the basis of actual expenses incurred then the amount of that reimbursement is not subject to the tax. A similar position applies in the case of accommodation expenses paid to employés. An exemption from pay-roll tax is provided for prescribed rates of travelling and accommodation allowances.

Sub-clause (3) provides that the general exemption under section 9 does not apply to employers who are members of a group except to the extent permitted by the new section 9A.

Sub-clause (4) inserts a new section 9A in the Principal Act. Sub-section (1) of the new section describes the circumstances in which employers are treated as forming a group in which case the exemption in section 9 does not apply to the wages paid by each employer in the group. These circumstances are :—

- (a) where there are related corporations to the extent provided in clause 2 (1) (c).
- (b) where an employer and associates, who may or may not also be employers, carry on the one business and the employés work in that business. An example would be a business run by a partnership in which each of the partners is on the face of it a separate employer of a small part only of the total workforce employed in the business.
- (c) (i) where a business enterprise is carried on by a company or person but all or most of the workforce is provided by a number of nominal employers brought into existence for that purpose and whose only business is to supply labour for the enterprise.
- (ii) where there is some arrangement or understanding between two or more companies or persons whereby one part of what is really the one organization is carried on by one of those companies or persons and the other part or parts is carried on by others. An example would be a motor car business in which one person or company ran the new car section, another the used car section and another the repairs section.

An exception is provided to paragraph (c) to exclude any case where the Commissioner is satisfied that a business is carried on independently and is not carried on with any intention of avoiding or evading the tax.

An example of this would be a secretarial agency where the agency is the employer and for a fee provides a temporary workforce for various clients.

Sub-section (2) of the new section 9A provides that the members of two or more groups which have a common member are deemed to be members of the one group. Again there is an exception for any business which the Commissioner is satisfied is carried on independently and not with the intention of avoiding or evading tax.

The effect of sub-section (3) of the new section is to apply the general exemption to the aggregate of the wages paid by all the members of the group. i.e. it grants one general exemption only for the group as a whole. In order to obtain an exemption for the group it is necessary for a member of the group to be nominated or appointed under sub-section (4).

Sub-section (4) indicates the two methods whereby the group becomes eligible for the general exemption. The first is for members of the group to nominate a member for this purpose and the second is for the Commissioner to appoint a member. A nomination remains in force until revoked by members of the group or by the Commissioner or a member of the group objects. An appointment by the Commissioner is revocable by him.

Sub-section (5) validates a nomination even though it may have been made by some members only of a group and even though the membership of the group may alter.

Sub-section (6) requires the Commissioner to give notice of any appointment or revocation to all the members of the group whose identity is known to him.

Sub-section (7) makes it clear that it is not mandatory for the Commissioner to make an appointment and it protects him from liability in respect of any appointment or revocation.

Sub-section (8) provides that no general exemption is available to any member of a group or to the group as a whole unless a nomination or appointment is in force.

Sub-clause (5) amends section 11 of the Principal Act relating to refunds or rebates of tax on annual adjustment. At present section 11 provides for a refund or rebate of tax where an employer has paid less wages in a financial year than the amount of his general exemption or has not been able to use all his available general exemption at the end of the financial year. The amendment effected by this sub-clause will apply the provisions of section 11 to the wages of a group as a whole and not the wages of the individual members of a group. Paragraph (c) is a transitory provision necessary because clause 2 is to operate from 1st November, 1974.

Sub-clause (6) amends section 12 of the Principal Act by inserting two new sub-sections (4) and (5) and by making a consequential amendment to sub-section (2). At present section 12 requires an employer to register only when his wages exceed \$400 a week. The new sub-section (4) will apply to all members of groups who are employers and who are not now registered. They will be required to register whether or not their wages exceed \$400 a week. The transitory provision in sub-clause (9) of clause 2 provides that if a member of a group registers not later than 31st March, 1975, he is deemed to have been registered since 1st November, 1974. Sub-section (5) will enable the Commissioner to cancel the registration of a member if he ceases to be a member of a group.

Sub-clause (7) amends section 13 of the Principal Act to permit a group, if its members so wish, to lodge a composite return. The return is to be lodged by the member nominated or appointed for the purposes of section 9A and must specify the names of all the members on whose behalf it is lodged and the taxable wages paid by each of them. Under paragraph (b) the specified members are then deemed to have lodged their individual returns for the relevant period but their liability for payment of their tax will still remain if the nominated or appointed member fails to pay the tax when he lodges the return.

Sub-clause (8) is a transitory provision to the effect that a nomination made not later than 31st March, 1975, operates retrospectively to the commencement date of this clause, namely 1st November, 1974. This provision is included to enable a group to obtain its general exemption retrospectively to 1st November, 1974.

Clause 3.

This clause amends section 23 of the Principal Act to enable the Commissioner to sue for and recover unpaid pay-roll tax, further tax and additional tax in Magistrates' Courts and to provide appropriate procedures for those actions. It proposes to replace the present sub-section (2) of section 23 with four new sub-sections :—

New sub-section (2)—will enable the Commissioner or his appropriate officers to take action either in a Magistrates' Court (irrespective of amount) or in any other Court of competent jurisdiction.

New sub-section (3)—deems actions for recovery brought in the Commissioner's name to have been done by his authority unless there is evidence to the contrary.

New sub-section (4)—provides that an officer of the Commissioner authorized under sub-section (2) to sue under this section may appear in Court on the Commissioner's behalf in these actions.

New sub-section (5)—is a procedural provision and is based on section 60 of the *Land Tax Act* 1958. This procedure enables the Court to make an order for the amount claimed where no defence is entered without the necessity of any appearance on behalf of the Commissioner. In such a case, the rights of either party to make applications for a re-hearing of the action are preserved.

Clause 4.

This clause amends sections 22 and 36 of the Principal Act to increase the maximum amounts of additional tax to which an employer becomes liable on late payment of pay-roll tax and or late lodgement of returns.

Sub-clause (1) amends section 22 by increasing the rate of additional tax to 20 per cent. per annum with a minimum of \$5.

Sub-clause (2) amends section 36 by substituting 20 per cent. per annum for the present 10 per cent. per annum as the rate of additional tax for late lodgement of returns and by substituting \$5 for the present \$2 as the minimum for returns.

The powers of remission in full or in part, contained in the existing section 22 (2) and section 36 (2), are not altered or reduced in any way by these amendments.

Clause 5.

This Clause amends section 4 of the Principal Act in relation to the Commissioner, Deputy Commissioners and Assistant Commissioners.

Paragraph (a)—substitutes a new sub-section (3) for the present sub-section (3) of section 4, the effect being that an Assistant Comptroller of Stamps under the *Stamps Act* 1958 shall also be an Assistant Commissioner of Pay-roll Tax under the *Pay-Roll Tax Act* 1971. This will bring the Pay-roll Tax Act of Victoria into line with the equivalent provisions in New South Wales and Queensland where there are also Deputy and Assistant Commissioners of both Stamp Duty and Pay-roll Tax.

Paragraph (b)—makes consequential amendments to sub-sections (9) and (10) of section 4.

Clause 6.

This clause amends section 292 (1) (e) of the *Companies Act* 1961 to give Pay-roll Tax, further tax, additional tax and penal tax payable under the *Pay-roll Tax Act* 1971 and outstanding at the date of a winding up the same priority as that already given by that section to income tax, land tax and municipal rates.