

Serial 235
Pay-roll Tax Amendment Bill 2000
Mr Reed

**A BILL
for
AN ACT**

to amend the *Pay-roll Tax Act*



NORTHERN TERRITORY OF AUSTRALIA
PAY-ROLL TAX AMENDMENT ACT 2000

No. of 2000

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2000

AN ACT

to amend the *Pay-roll Tax Act*

[Assented to 2000]
[Second reading 2000]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Pay-roll Tax Amendment Act 2000*.

2. Commencement

This Act comes into operation on 1 July 2000.

3. Principal Act

The *Pay-roll Tax Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 3 of the Principal Act is amended –

- (a) by inserting after paragraph (d) of the definition of "employer" in subsection (1) the following:

"(e) a person who is a labour hire agent for the purposes of paragraph (f) of the definition of 'wages';";

- (b) by omitting "employer; and" from paragraph (d) of the definition of "wages" in subsection (1) and substituting "employer";

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- (c) by omitting "employer." from paragraph (e) of the definition of "wages" in subsection (1) and substituting "employer; and";
- (d) by adding at the end of the definition of "wages" in subsection (1) the following:
 - "(f) an amount paid or payable by a labour hire agent, directly or indirectly, to a person who was engaged to perform services for a client of the labour hire agent, or to some other person in respect of those services, as a result of which the labour hire agent receives, directly or indirectly, payment, whether by way of lump sum or an ongoing fee, during or in respect of the period when the services are provided by the person to the client."; and
- (e) by inserting after subsection (5) the following:

"(6) For the purposes of paragraph (f) of the definition of 'wages' and sections 9A and 24A, 'labour hire agent' means a person (the agent) who by an arrangement procures the services of a person (the worker) for another person (the client) under which arrangement the worker, in whole or in part, performs services for the client of the agent."

5. Fringe benefits

Section 3B of the Principal Act is amended by omitting from the definition of "employee" in subsection (4) "or (c)" and substituting ", (c) or (f)".

6. Prescribed benefits

Section 3C of the Principal Act is amended by omitting from the definition of "employee" in subsection (4) "or (c)" and substituting ", (c) or (f)".

7. Pay-roll tax

Section 6 of the Principal Act is amended –

- (a) by omitting from subsection (1) "6.75%" and substituting "6.6%"; and
- (b) by omitting subsection (2) and substituting the following:

"(2) Subsection (1) does not apply in relation to wages that are paid or payable in respect of services performed or rendered wholly in another country or other countries for a continuous period of more than 6 months after wages were first paid to the person for those services.

"(2A) The wages referred to in subsection (2) are liable to tax during the period of 6 months referred to in that subsection after wages were first paid for the services."

8. New section

The Principal Act is amended by inserting after section 9 the following:

"9A. Exemption of labour hire agent from tax when paid by another person

"A labour hire agent is not liable to tax in relation to an arrangement referred to in section 3(6) if another person who provides the services of a worker has paid tax in respect of the wages paid to the worker who provided the services under the arrangement to the client."

9. New section

The Principal Act is amended by inserting after section 11A the following:

"11B. Arrangement for avoidance of tax by labour hire agents

"(1) This section applies if—

- (a) an avoidance arrangement exists in relation to a labour hire agency in a return period; and
- (b) the assumed non-adjusted tax for the period is less than the assumed adjusted tax for the period.

"(2) If this section applies in a return period, then for the period—

- (a) if the avoidance arrangement involves a labour hire agent acting as trustee for a client of the labour hire agent under a trust or acting as agent for the client of the labour hire agent under an agency agreement—section 59(1)(a), (b) and (f) does not apply to the trustee or agent, or in relation to the trust or agency agreement;
- (b) if the avoidance arrangement involves a client of a labour hire agent acquiring, or clients of a labour hire agent jointly acquiring, a controlling interest in the business of the labour hire agent referable to the client or clients—the client or clients is or are taken not to have the controlling interest;
- (c) the labour hire agent, or each labour hire agent, involved in the labour hire agency is answerable as an employer for doing everything required to be done under this Act for the payment of wages by the labour hire agent that are subject to tax under this Act (including the giving of returns and payment of tax); and
- (d) if the labour hire agency involves more than one labour hire agent—the labour hire agents constitute a group.

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"(3) A client has, or clients have, a controlling interest in a business if the client has, or the clients have, a controlling interest in the business under section 17D.

"(4) In subsection (1)–

- (a) a reference to the assumed non-adjusted tax for a return period is a reference to the total amount of tax that would be payable by the labour hire agent or agents involved in the labour hire agency for the period if the amount were calculated without applying any resultant provision; and
- (b) a reference to the assumed adjusted tax for a return period is a reference to the total amount of tax that would be payable by the labour hire agent or agents involved in the labour hire agency for the period if the amount were calculated applying each relevant resultant provision.

"(5) To remove any doubt about the application of subsection (4)(b), if a labour hire agency is involved in more than one avoidance arrangement in a return period, subsection (4)(b) is to be applied by first applying each relevant resultant provision to each avoidance arrangement and then calculating the total amount for the subsection.

"(6) In this section –

'avoidance arrangement' means an arrangement involving a labour hire agency if the arrangement involves one or more of the following:

- (a) a labour hire agent acting as trustee for a client of the labour hire agent under a trust;
- (b) a labour hire agent acting as agent for a client of the labour hire agent under an agency agreement;
- (c) a client of a labour hire agent acquiring, or clients of a labour hire agent jointly acquiring, a controlling interest in the business of the labour hire agent referable to the client or clients;

'client' includes an individual or company that is related to the client –

- (a) in a way mentioned in section 56C(3) and (5) of the *Taxation (Administration) Act*; or
- (b) in another way prescribed under the Regulations;

'labour hire agency' means a business enterprise involving –

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- (a) the business of a labour hire agent; or
- (b) the businesses of 2 or more labour hire agents;

'resultant provision' means subsection (2)(a), (b), (c) or (d)."

10. Returns

Section 13 of the Principal Act is amended by omitting from subsections (1) and (2) "7 days" and substituting "21 days".

11. New section

The Principal Act is amended by inserting after section 24 the following:

"24A. Labour hire agent not prevented from recovering tax from client

"Nothing in this Act prevents a labour hire agent who is liable to tax in relation to an arrangement referred to in section 3(6) recovering an amount equal to the tax paid or payable from the client under the arrangement."

12. Objections

Section 34 of the Principal Act is amended –

- (a) by inserting after subsection (1) the following:

"(1A) If the Commissioner is satisfied that an applicant has a reasonable excuse for failing to lodge an objection within the 60-day period, the Commissioner may extend the time for lodging the objection.";

- (b) by inserting after subsection (4) the following:

"(4A) A refund under subsection (4) must include interest on the amount paid by the person in excess of his or her liability calculated at the prescribed rate from the date of payment of the tax until the date the refund is made."; and

- (c) by adding at the end the following:

"(6) In subsection (4A), 'prescribed rate' means –

- (a) a rate prescribed by regulation; or
- (b) if a rate is not prescribed under paragraph (a) – the rate prescribed for the purposes of section 214A of the *Income Tax Assessment Act 1936* of the Commonwealth or the provision of the *Income Tax Assessment Act 1997* of the Commonwealth equivalent to that section."

13. Appeal

Section 35 of the Principal Act is amended by adding at the end the following:

"(4) If the person's liability or assessment has been reduced on appeal, the Commissioner must refund to the person any amounts paid by the person in excess of his or her liability.

"(5) A refund under subsection (4) must include interest on the amount paid by the person in excess of his or her liability calculated at the prescribed rate from the date of payment of the tax until the date the refund is made.

"(6) In subsection (4), 'prescribed rate' means –

(a) a rate prescribed by regulation; or

(b) if a rate is not prescribed under paragraph (a) – the rate prescribed for the purposes of section 214A of the *Income Tax Assessment Act 1936* of the Commonwealth or the provision of the *Income Tax Assessment Act 1997* of the Commonwealth equivalent to that section."

14. Labour hire agent to pay tax in relation to wages paid before Act commences

(1) In this section, "labour hire agent" has the same meaning as it has in the Principal Act as amended by this Act.

(2) An amount paid or payable by a labour hire agent to a person on or after 16 May 2000 and before 1 July 2000 that are wages within the meaning of paragraph (f) of the definition of "wages" (as inserted by this Act) are to be taken to have been paid or payable to the person on 1 July 2000 and the labour hire agent is liable to tax in relation to the wages in accordance with the Principal Act as amended by this Act.

15. Service before commencement of Act not included

For the purposes for section 6(2) of the Principal Act, as inserted by this Act, the continuous period of service is to be calculated from the commencement of this Act and any period of service performed before that commencement cannot be included.

16. Transitional

(1) Section 34 of the Principal Act, as amended by this Act, applies only to an objection posted to or lodged with the Commissioner after the commencement of this section.

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(2) Section 35 of the Principal Act, as amended by this Act, applies only to an appeal lodged with the Supreme Court after the commencement of this section.

