

Serial 148
Pay-roll Tax Amendment (Harmonisation) Bill 2008
Ms Lawrie

A Bill for an Act to amend the *Pay-roll Tax Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

PAY-ROLL TAX AMENDMENT (HARMONISATION) ACT 2008

Act No. [] of 2008

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2008

An Act to amend the *Pay-roll Tax Act*, and for related purposes

[Assented to [] 2008]
[Second reading [] 2008]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary

1 Short title

This Act may be cited as the *Pay-roll Tax Amendment (Harmonisation) Act 2008*.

2 Commencement

This Act commences on 1 July 2008.

Part 2 Amendment of Pay-roll Tax Act

3 Act amended

This Part amends the *Pay-roll Tax Act*.

4 New Part 1, Division 1 heading

Before section 1

insert

Division 1 Formal provisions

5 New Part 1, Division 2 heading

After section 2

insert

Division 2 Interpretative provisions**6 Amendment of section 3 (Interpretation)**

- (1) Section 3(1), definitions **designated group employer**, **group**, **prescribed benefit** and **related**

omit

- (2) Section 3(1)

insert (in alphabetical order)

designated group employer means the member of a group who is for the time being the designated group employer for the group under section 17P.

director, of a company, includes a member of the governing body of the company.

group, see section 17A.

ITAA means the *Income Tax Assessment Act 1997* (Cth).

option means an option or right, whether actual, prospective or contingent, of a person to acquire a share or to have a share transferred or allotted to the person.

paid, in relation to wages, includes provided, conferred and assigned and **pay** and **payable** have corresponding meanings.

private unit trust scheme, see section 56C(1) and (1A) of the *Stamp Duty Act*.

public unit trust scheme means a unit trust scheme that is not a private unit trust scheme.

share means a share in a company and includes a stapled security as defined in section 139GCD of the *Income Tax Assessment Act 1936* (Cth).

unit trust scheme, see section 4(1) of the *Stamp Duty Act*.

- (3) Section 3(1), definition **wages**
omit
means wages,
substitute
means wages, remuneration,
- (4) Section 3(1), definition **wages**, paragraphs (b) and (baa)
omit
or a member of the governing body
- (5) Section 3(1), definition **wages**, paragraph (cb)
omit, substitute
(cb) a termination payment that constitutes wages under section 3S; and
- (6) Section 3(1), definition **wages**, paragraph (e)
omit, substitute
(e) the value of a fringe benefit, shares or options that is, under Division 4 or Division 7, taken to be part of the wages paid or payable by the employer; and
- (7) Section 3(3)(a)
omit
- (8) Section 3(4)
omit
or prescribed benefit
- 7 New Part 1, Division 3 heading**
After section 3
insert

Division 3 Superannuation benefits

8 Amendment of section 3A (Superannuation benefits)

Section 3A(1) and (3)

omit (all references)

the Schedule

substitute

Schedule 1

9 New Part 1, Division 4 heading

After section 3A

insert

Division 4 Fringe benefits**10 Repeal of section 3C**

Section 3C

repeal

11 New Part 1, Division 5 heading

Before section 3D

insert

Division 5 GST**12 New Part 1, Divisions 6, 7 and 8**

After section 3D

insert

Division 6 Allowances**3E Motor vehicle allowances**

- (1) For the purposes of this Act, **wages**, in respect of a financial year, do not include the exempt component of a motor vehicle allowance paid or payable in respect of that year.
- (2) Accordingly, if the total motor vehicle allowance paid or payable to an employee in respect of a financial year does not exceed the

exempt component, the motor vehicle allowance is not **wages** for the purposes of this Act.

- (3) If the total motor vehicle allowance paid or payable to an employee in respect of a financial year exceeds the exempt component (if any), only that amount that exceeds the exempt component of the motor vehicle allowance is included as **wages** for the purposes of this Act.
- (4) The **exempt component** of a motor vehicle allowance paid or payable in respect of a financial year is calculated in accordance with the formula:
- $$E = K \times R$$
- where:
- E is the exempt component; and
- K is the number of business kilometres travelled during the financial year; and
- R is the exempt rate.
- (5) The **number of business kilometres travelled during the financial year** ("K") is to be determined in accordance with the continuous recording method, or the averaging method, whichever method is selected and used by the employer in accordance with Schedule 2.
- (6) The Commissioner, by order in writing, may approve the use, by an employer or class of employer, of another method of determining the number of business kilometres travelled during the financial year (including the use of an estimate). If so, the number of business kilometres travelled during the financial year is to be determined in accordance with the method approved by the Commissioner.
- (7) For the purposes of this section, the **exempt rate** for the financial year concerned is:
- (a) the rate prescribed by the regulations under section 28-25 of the ITAA for calculating a deduction for car expenses for a large car using the **cents per kilometre method** in the financial year immediately preceding the financial year in which the allowance is paid or payable; or
- (b) if no rate referred to in paragraph (a) is prescribed, the rate prescribed by the regulations under this Act.

3F Accommodation allowances

- (1) For the purposes of this Act, **wages** do not include an accommodation allowance paid or payable to an employee in respect of a night's absence from the person's usual place of residence that does not exceed the exempt rate.
- (2) If the accommodation allowance paid or payable to an employee in respect of a night's absence from the person's usual place of residence exceeds the exempt rate, **wages** include that allowance only to the extent that it exceeds the exempt rate.
- (3) For the purposes of this section, the **exempt rate** for the financial year concerned is:
 - (a) the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the financial year determined by the Commissioner of Taxation of the Commonwealth; or
 - (b) if no determination referred to in paragraph (a) is in force, the rate prescribed by the regulations.

Division 7 Shares and options**3G Inclusion of grant of shares and options as wages**

- (1) For the purposes of this Act, **wages** include the grant of a share or option to or in relation to an employee by an employer in respect of services performed by the employee.
- (2) Any such wages are taken, for the purpose of the imposition of pay-roll tax, to be paid or payable on the relevant day.
- (3) For the purposes of this Division, the **relevant day** is the day that the employer elects in accordance with this Division to treat as the day on which the wages are paid or payable.
- (4) To avoid doubt, the grant of a share or option to, or in relation to, an employee or director may constitute remuneration of the employee or director.

3H Choice of relevant day

- (1) The employer can elect to treat as the **relevant day** either the date on which the share or option is granted to the employee or the vesting date.

- (2) A share or option is **granted** to a person in the following circumstances:
- (a) in the case of a share – if the person acquires the share (as defined in section 139G of the *Income Tax Assessment Act 1936* (Cth)) or in the circumstances prescribed by the regulations under this Act;
 - (b) in the case of an option – if the person acquires a right (as defined in section 139G of the *Income Tax Assessment Act 1936* (Cth)) to the share to which the option relates or in the circumstances prescribed by the regulations under this Act.
- (3) The **vesting date**, in respect of a share, is the date on which the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded).
- (4) The **vesting date**, in respect of an option, is 1 of the following dates (whichever happens first):
- (a) the date on which the share to which the option relates is granted to the employee;
 - (b) the date on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vest in him or her.

3J Deemed choice of relevant day in special cases

- (1) If an employer grants a share or an option to an employee and the value of the grant of the share or option is not included in the taxable wages of the employer for the financial year in which the share or option was granted, the employer is taken to have elected to treat the wages constituted by the grant of that share or option as being paid or payable on the vesting date.
- (2) If an employer grants a share or an option to an employee and the value of the grant of the share or option is nil or, if the employer were to elect to treat the date of grant as the relevant day, the wages constituted by the grant would not be liable to pay-roll tax, the employer is taken to have elected to treat the wages constituted by the grant of that share or option as being paid or payable on the date on which the share or option was granted.

3K Effect of rescission, cancellation of share or option

- (1) If the grant of a share or option is withdrawn, cancelled or exchanged before the vesting date for any valuable consideration

(other than the grant of other shares or options), the following provisions apply:

- (a) the date of withdrawal, cancellation or exchange is taken to be the vesting date of the share or option;
 - (b) the market value of the share or option, on the vesting date, is taken to be the amount of the valuable consideration (and, accordingly, that amount is the amount paid or payable as wages on that date).
- (2) If an employer includes the value of a grant of a share or option in the taxable wages of the employer for a financial year commencing on or after the commencement of this section, and the grant is rescinded because the conditions attaching to the grant were not met, the taxable wages of the employer, in the financial year in which the grant is rescinded, are to be reduced by the value of the grant as previously included in the taxable wages of the employer.
- (3) Subsection (2) does not apply just because an employee fails to exercise an option or otherwise to exercise his or her rights in respect of a share or option.

3L Grant of share pursuant to exercise of option

The grant of the share by an employer does not constitute wages for the purposes of this Act if the employer is required to grant the share as a consequence of the exercise of an option by a person and:

- (a) the grant of the option to the person constitutes wages for the purposes of this Act; or
- (b) the option was granted to the person before 1 July 1999.

3M Value of shares and options

- (1) If the grant of a share or option constitutes wages under this Division, the amount paid or payable as wages is taken, for the purposes of this Act, to be the market value of the share or option (expressed in Australian currency) on the relevant day, less the consideration (if any) paid or given by the employee in respect of the share or option (other than consideration in the form of services performed).
- (2) The market value of a share or option on the relevant day is to be determined in accordance with the Commonwealth income tax provisions.
- (3) For that purpose, the Commonwealth income tax provisions apply

with the following modifications, and any other necessary modifications:

- (a) the market value of an option is to be determined as if it were a right to acquire a share;
 - (b) a reference to a taxpayer is to be read as a reference to the employee;
 - (c) a reference to the Commissioner of Taxation is to be read as a reference to either that Commissioner or the Commissioner of Territory Revenue.
- (4) Section 3B does not apply to the grant of a share or option that constitutes wages, even if it constitutes a fringe benefit.
- (5) In this section:

Commonwealth income tax provisions means the provisions of Part III, Division 13A, Subdivision F of the *Income Tax Assessment Act 1936* (Cth).

3N Inclusion of shares and options granted to directors as wages

- (1) For the purposes of this Act, **wages** include the grant of a share, or option, by a company to a director of the company by way of remuneration for the appointment or services of the director that would be wages under this Division if the director were an employee of the company.
- (2) For that purpose, the other provisions of this Division apply in respect of any such grant as if a reference to the employer were a reference to the company and a reference to the employee were a reference to the director of the company.
- (3) In this section, a reference to a director of the company includes a reference to the following:
- (a) a person who, under a contract or other arrangement, is to be appointed as a director of the company;
 - (b) a former director of the company.
- (4) In the case of wages constituted by the grant of a share or option by a company to a director of the company by way of remuneration for the appointment of the director, but not for services performed:
- (a) the grant of the share or option is taken, for the purposes of this Act, to be paid or payable for services performed during the month in which the relevant day occurs; and

- (b) a reference in this Act to the place or places where services are performed is a reference to the place or places where it may reasonably be expected that the services of the director in respect of the company will be performed.

3P When services considered to have been performed

For the purposes of this Act, if the grant of a share or an option constitutes wages for the purposes of this Act, the services in respect of which those wages are paid or payable are taken to have been performed during the month in which the relevant day occurs.

3Q Place where wages are payable

- (1) The wages constituted by the grant of the share or option are taken to be paid or payable in the Territory if the share is a share in a local company or, in the case of an option, an option to acquire shares in a local company.
- (2) In any other case, the wages constituted by the grant of the share or option are taken to be paid or payable outside the Territory.

Note

If the wages concerned are taken to be payable outside the Territory, because the shares concerned are shares in a company that is not a local company, the grant of the share or option may still be liable to pay-roll tax under this Act if the grant is made for services performed or rendered wholly in the Territory (see section 6(1)(b)).

- (3) In this section:

local company means:

- (a) a company incorporated or taken to be incorporated under the Corporations Act 2001 that is taken to be registered in the Territory for the purposes of that Act; or
- (b) any other body corporate that is incorporated under an Act of the Territory.

Division 8 Termination payments

3R Definitions

In this Division:

employment termination payment means:

- (a) an employment termination payment as defined in section 82-130 of the ITAA; or

- (b) a payment that would be an employment termination payment as defined in section 82-130 of the ITAA but for the fact that it was received later than 12 months after the termination of a person's employment; or
- (c) a transitional termination payment as defined in section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* (Cth).

termination payment means:

- (a) a payment made in consequence of the retirement from, or termination of, any office or employment of an employee, being:
 - (i) an unused annual leave payment; or
 - (ii) an unused long service leave payment; or
 - (iii) so much of an employment termination payment paid or payable by an employer, whether or not paid to the employee or to any other person or body, that would be included in the assessable income of an employee under Part 2-40 of the ITAA if the whole of the employment termination payment had been paid to the employee; or
- (b) an amount paid or payable by a company as a consequence of the termination of the services or office of a director of the company, whether or not paid to the director or to any other person or body, that would be an employment termination payment if that amount had been paid or payable as a consequence of termination of employment.

unused annual leave payment, see section 83-10 of the ITAA.

unused long service leave payment, see section 83-75 of the ITAA.

3S Termination payments

For the purposes of this Act, **wages** include a termination payment.

13 Amendment of section 6 (Pay-roll tax)

- (1) Section 6(1)

omit

1 July 2003

substitute

1 July 2008

- (2) Section 6(1)

omit

6.2%

substitute

5.9%

- (3) Section 6(2) and (2A)

omit, substitute

- (2) Subsection (1) does not apply to wages paid or payable for services performed by a person wholly in another country for a continuous period of more than 6 months beginning on the day on which wages were first paid or payable to that person for services so performed.

14 Amendment of section 11A (Arrangements for avoidance of tax may be disregarded)

Section 11A(3)

omit, substitute

- (3) For the purposes of this section:
- (a) a reference in subsection (1) to the making of a payment to a person related to, or connected with, a natural person includes the provision of a fringe benefit, or the grant of a share or option, to the person related to, or connected with, the natural person; and
- (b) the value of a fringe benefit, share or option is to be calculated in the same way as if it had been provided or granted by the employer to the employee.

15 Amendment of section 11B (Arrangements for avoidance of tax by labour hire agents)

Section 11B(3)

omit

section 17D

substitute

section 17F

16 Repeal and substitution of Part IVA

Part IVA

repeal, substitute

Part 5 Grouping of employers

Division 1 Interpretation

17A Definitions

In this Part:

business includes:

- (a) a profession or trade; and
- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity of employing 1 or more persons who perform duties for, or in connection with, another business; and
- (d) the carrying on of a trust (including a dormant trust); and
- (e) the activity of holding any money or property used for, or in connection with, another business;

whether carried on by 1 person or 2 or more persons together.

group means a group constituted under this Part, but does not include any member of the group in respect of whom a determination under Division 4 is in force.

17B Grouping provisions to operate independently

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.

Division 2 Business groups**17C Constitution of groups**

A **group** is constituted by all the persons or bodies forming a group that is not a part of any larger group.

17D Groups of corporations

Corporations constitute a group if they are related bodies corporate as defined in the Corporations Act 2001.

17E Groups arising from the use of common employees

- (1) If 1 or more employees of an employer perform duties for, or in connection with, 1 or more businesses carried on by the employer and 1 or more other persons, the employer and each of those other persons constitute a group.
- (2) If 1 or more employees of an employer are employed solely or mainly to perform duties for, or in connection with, 1 or more businesses carried on by 1 or more other persons, the employer and each of those other persons constitute a group.
- (3) If 1 or more employees of an employer perform duties for, or in connection with, 1 or more businesses carried on by 1 or more other persons, being duties performed in connection with, or in fulfilment of the employer's obligation under, an agreement, arrangement or undertaking for the provision of services to any 1 or more of those other persons in connection with that business or those businesses, the employer and each of those other persons constitute a group.
- (4) Subsection (3) applies to an agreement, arrangement or undertaking:
 - (a) whether the agreement, arrangement or undertaking is formal or informal, express or implied; and
 - (b) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the employees or specifies the duties to be performed by them.

Note

Section 17N allows the Commissioner, for pay-roll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

17F Groups of commonly controlled businesses

- (1) If a person or set of persons has a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a group.

Note

Section 17N allows the Commissioner, for pay-roll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

- (2) For the purposes of this section, a person or set of persons has a controlling interest in a business if:
- (a) in the case of 1 person – the person is the sole owner (whether or not as trustee) of the business; or
 - (b) in the case of a set of persons – the persons are together as trustees the sole owners of the business; or
 - (c) in the case of a business carried on by a corporation:
 - (i) the person or each of the set of persons is a director of the corporation and the person or set of persons is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or
 - (ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of that person or set of persons; or
 - (d) in the case of a business carried on by a body corporate or unincorporated – that person or set of persons constitute more than 50% of the board of management (by whatever name called) of the body or control the composition of that board; or
 - (e) in the case of a business carried on by a corporation that has a share capital – that person or set of persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or any class of voting shares, issued by the corporation; or
 - (f) in the case of a business carried on by a partnership – that person or set of persons:
 - (i) own (whether beneficially or not) more than 50% of the capital of the partnership; or

- (ii) is entitled (whether beneficially or not) to more than 50% of the profits of the partnership; or
 - (g) in the case of a business carried on under a trust – the person or set of persons (whether or not as a trustee of, or beneficiary under, another trust) is the beneficiary in respect of more than 50% of the value of the interests in the first-mentioned trust.
- (3) If:
- (a) 2 corporations are related bodies corporate as defined in the Corporations Act 2001; and
 - (b) 1 of the corporations has a controlling interest in a business;
the other corporation has a controlling interest in the business.
- (4) If:
- (a) a person or set of persons has a controlling interest in a business; and
 - (b) a person or set of persons who carry on the business has a controlling interest in another business;
the person or set of persons referred to in paragraph (a) has a controlling interest in that other business.
- (5) If:
- (a) a person or set of persons is the beneficiary of a trust in respect of more than 50% of the value of the interests in the trust; and
 - (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of another trust;
the person or set of persons has a controlling interest in the business.
- (6) A person who may benefit from a discretionary trust as a result of the trustee or another person, or the trustee and another person, exercising or failing to exercise a power or discretion, is taken, for the purposes of this Part, to be a beneficiary in respect of more than 50% of the value of the interests in the trust.
- (7) If:
- (a) a person or set of persons has a controlling interest in the

business of a trust; and

- (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a corporation;

the person or set of persons is taken to have a controlling interest in the business of the corporation.

(8) If:

- (a) a person or set of persons has a controlling interest in the business of a trust; and
- (b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a partnership;

the person or set of persons is taken to have a controlling interest in the business of the partnership.

17G Groups arising from tracing of interests in corporations

- (1) An entity and a corporation form part of a group if the entity has a controlling interest in the corporation.

Note

Section 17N allows the Commissioner, for pay-roll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

- (2) For the purposes of this section, an entity has a **controlling interest** in a corporation if the corporation has share capital and:
 - (a) the entity has a direct interest in the corporation and the value of that direct interest exceeds 50%; or
 - (b) the entity has an indirect interest in the corporation and the value of that indirect interest exceeds 50%; or
 - (c) the entity has an aggregate interest in the corporation and the value of the aggregate interest exceeds 50%.

- (3) Division 3 applies for the purposes of the interpretation of this section.

Note

Division 3 sets out the manner for determining whether an entity has a direct interest, indirect interest or aggregate interest in a corporation, and the value of such an interest.

(4) In this section:

associated person means a person who is associated with another person in accordance with any of the following:

- (a) persons are associated persons if they are related persons;
- (b) natural persons are associated persons if they are partners in a partnership;
- (c) private companies are associated persons if common shareholders have a majority interest in each private company;
- (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
- (e) a private company and a trustee are associated persons if a related body corporate of the company (as defined in the Corporations Act 2001) is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee.

entity means:

- (a) a person; or
- (b) 2 or more persons who are associated persons (as defined in this section).

private company means a company that is not limited by shares, or whose shares are not quoted on the Australian Securities Exchange or any exchange of the World Federation of Exchanges.

related person means a person who is related to another person in accordance with any of the following:

- (a) natural persons are related persons if:
 - (i) 1 is the spouse or de facto partner of the other; or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;
- (b) private companies are related persons if they are related bodies corporate as defined in the Corporations Act 2001;
- (c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the

company or of another private company that is a related body corporate of the company as defined in the Corporations Act 2001;

- (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;
- (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.

17H Smaller groups subsumed by larger groups

- (1) If a person is a member of 2 or more groups, the members of all the groups together constitute a group.
- (2) If 2 or more members of a group have together a controlling interest in a business (within the meaning of section 17F), all the members of the group and the person or persons who carry on the business together constitute a group.

Note

Section 17N allows the Commissioner, for pay-roll tax purposes, to exclude persons from a group constituted under this section in certain circumstances.

Division 3 Business groups – tracing of interests in corporations

17J Application

This Division applies for the purposes of section 17G.

17K Direct interest

- (1) An entity has a ***direct interest*** in a corporation if:
 - (a) in the case of an entity that is a person – the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation; or
 - (b) in the case of an entity that is 2 or more persons who are associated persons – each of the associated persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation.

- (2) The value of the direct interest of the entity in the corporation is the proportion (expressed as a percentage) of the voting power of all voting shares issued by the corporation that:
- (a) in the case of an entity that is a person – the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, as referred to in subsection (1); or
 - (b) in the case of an entity that is 2 or more persons who are associated persons – the associated persons can, if acting together, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, as referred to in subsection (1).

17L Indirect interest

- (1) An entity has an ***indirect interest*** in a corporation if the corporation is linked to another corporation (the ***directly controlled corporation***) in which the entity has a direct interest.
- (2) A corporation is linked to a directly controlled corporation if the corporation is part of a chain of corporations:
- (a) that starts with the directly controlled corporation; and
 - (b) in which a link in the chain is formed if a corporation has a direct interest in the next corporation in the chain.
- (3) The following are examples of how subsections (1) and (2) work (the examples are cumulative):
- (a) corporation A (a directly controlled corporation) has a direct interest in corporation B. Corporations A and B form part of a chain of corporations, and corporation B is linked to corporation A. Accordingly, an entity that has a direct interest in corporation A also has an indirect interest in corporation B;
 - (b) corporation B also has a direct interest in corporation C. In this case, corporations A, B and C form part of a chain of corporations. Both corporations B and C are linked to corporation A. The entity that has a direct interest in corporation A has an indirect interest in both corporations B and C;
 - (c) corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, 1 consisting of A, B and C, and 1 consisting of A, B and D. Corporations B, C and D are all linked to corporation A and an entity that has a direct interest in corporation A would have an indirect interest in

corporations B, C and D. An entity that has a direct interest in corporation B would have an indirect interest in corporations C and D. However, an entity that has a direct interest in corporation C only would not have an indirect interest in corporation D, as corporation D is not linked to corporation C.

- (4) The value of the indirect interest of an entity in a corporation (an **indirectly controlled corporation**) that is linked to a directly controlled corporation is calculated by multiplying together the following:
- (a) the value of the direct interest of the entity in the directly controlled corporation;
 - (b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.
- (5) The following are examples of how subsection (4) works (the examples are cumulative):
- (a) an entity has a direct interest (with a value of 80%) in corporation A. Corporation A has a direct interest (with a value of 70%) in corporation B. The value of the indirect interest of the entity in corporation B is $80\% \times 70\%$ (that is, 56%). Accordingly, in this example the entity has a controlling interest (as defined in section 17G) in corporation B;
 - (b) corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the indirect interest of the entity in corporation C is $80\% \times 70\% \times 40\%$ (that is, 22.4%). Accordingly, in this example the entity does not have a controlling interest in corporation C.
- (6) It is possible for an entity to have more than 1 indirect interest in a corporation. This may occur if the corporation is linked to more than 1 corporation in which the entity has a direct interest, or if the corporation is linked to only 1 corporation in which the entity has a direct interest but is linked through more than 1 chain of corporations. In that case, the entity has an aggregate interest in the corporation (see section 17M).

17M Aggregation of interests

- (1) An entity has an **aggregate interest** in a corporation if:
- (a) the entity has a direct interest and 1 or more indirect interests in the corporation; or
 - (b) the entity has more than 1 indirect interest in the corporation.

- (2) The value of the aggregate interest of an entity in a corporation is the sum of the following:
 - (a) the value of the direct interest (if any) of the entity in the corporation;
 - (b) the value of each indirect interest of the entity in the corporation.
- (3) For example:
 - (a) an entity has a direct interest (with a value of 40%) in corporation B; and
 - (b) the entity also has a direct interest (with a value of 25%) in corporation A, which in turn has a direct interest (with a value of 60%) in corporation B. Accordingly, the entity also has an indirect interest in corporation B with a value of 15% (that is, $25\% \times 60\%$); and
 - (c) the value of the entity's aggregate interest in corporation B is the sum of the direct interest (40%) and the indirect interest (15%), which is 55%; and
 - (d) accordingly, in this example, the entity has a controlling interest in corporation B (as defined in section 17G).

Division 4 Miscellaneous

17N Exclusion of persons from groups

- (1) The Commissioner may, by order in writing, determine that a person who would, but for the determination, be a member of a group is not a member of the group.
- (2) The Commissioner may only make such a determination if satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the Commissioner considers relevant, that a business carried on by the person, is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of that group.
- (3) The Commissioner cannot exclude a person from a group if the person is a body corporate that, by reason of section 50 of the Corporations Act 2001, is related to another body corporate that is a member of that group.
- (4) This section extends to a group constituted by reason of section 17H.

- (5) A determination can be expressed to take effect on a date that is earlier than the date of the determination (but not earlier than 1 July 2008).
- (6) The Commissioner may, by order in writing, revoke a determination that applies in respect of a person if satisfied that the circumstances in which a determination may be made do not apply to the person.
- (7) The revocation of a determination can be expressed to take effect on a date that is earlier than the date of the determination.

17P Designated group employer

- (1) The Commissioner must, on application by the members of a group, designate a member of the group as the designated group employer for the group.
- (2) The members of a group may nominate a deduction (to be calculated as specified by the Commissioner but not exceeding the prescribed amount fixed under section 8(1)) to be made from taxable wages for each return period.
- (3) The Commissioner may, by notice to the designated group employer (or the person to become the designated group employer) for a group, exercise 1 or both the following powers:
 - (a) in the absence of an application from the members of the group, the Commissioner may designate a member of the group as the designated group employer for the group;
 - (b) in the absence of a nomination made in accordance with subsection (2), the Commissioner may nominate a deduction to be made from taxable wages for each return period.
- (4) A person ceases to be the designated group employer in respect of a particular group on and from the first day of the return period during which:
 - (a) the composition of the group alters; or
 - (b) the members of the group apply to the Commissioner to have the designation revoked;whichever first occurs.
- (5) If the Commissioner exercises a power under subsection (3) in respect of a group, the Commissioner:
 - (a) may, by notice to the designated group employer, revoke the designation or nomination; and

- (b) may further exercise that power in respect of the group.
- (6) For ascertaining the tax payable by a designated group employer, subject to subsection (7), the amount nominated under subsection (2) or (3) must be deducted from the amount of taxable wages included in a return made by, or an assessment relating to, the designated group employer for the return period ending last before the nomination and any subsequent return period.
- (7) The Commissioner may, on an application in writing by or on behalf of each person known to the Commissioner to be a member of a group or on the Commissioner's own initiative, at any time, make a determination specifying an amount, not exceeding the prescribed amount as defined in section 8(1), to be deducted for any return period specified or referred to in the determination (being a return period commencing before, 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.
- (8) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subsection (7) and any such revocation has effect on and from the date the determination took effect or a specified later date.
- (9) An employer specified in a determination under subsection (7) is, on the first day of the first return period specified or referred to in the determination, taken to have been designated under subsection (1) as the designated group employer for the group of which the employer was then a member and will, subject to subsection (4), continue as the designated group employer for that group.
- (10) The Commissioner must, as soon as practicable after making a determination under subsection (7) or a revocation under subsection (8), serve notice of the determination or revocation on the designated group employer for the group concerned.

17Q Annual adjustments

- (1) This section applies in relation to a group in which:
- (a) at least 1 member of the group paid or was liable to pay, as such a member, taxable wages or interstate wages during the whole or part of a financial year; and
- (b) at least 1 member of the group (whether the same or a different member) paid or was liable to pay taxable wages on 30 June of the same financial year.

(2) In this section:

prescribed amount, in relation to a designated group employer, means the amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \left[\frac{1\,250\,000C}{D} \right]$$

where:

TW is the total of the taxable wages paid or payable by the members of the group, in respect of which that designated group employer is the designated group employer, during the financial year; and

IW is the total of the interstate wages paid or payable by the members of that group during the financial year; and

C is the number of days in the financial year in respect of which wages (disregarding foreign wages) were paid or payable by any member of the group while that designated group employer was the designated group employer in respect of that group; and

D is the number of days in the financial year.

(3) A reference in this section to the annual amount of tax paid or payable by the members of a group is a reference to the amount ascertained by applying the appropriate rate of tax prescribed by section 6 calculated in respect of the full financial year 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 1 designated group employer in respect of that group – the prescribed amount applicable to that designated group employer; or

(ii) during that year there were 2 or more designated group employers in respect of that group – the prescribed amount that, if there had been only 1 designated group employer in respect of that group during that year, would have been applicable if that designated group employer had paid all of the taxable wages referred to in

paragraph (a) paid or payable during that year.

- (4) A reference in this section to the actual amount of tax paid or payable in respect of a financial year by the members of a group is a reference to the amount of 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 subsection (3)(a) were included or required to be included.
- (5) If the amount of tax paid by way of periodic payments by the members of a group for a financial year is less than the amount payable for the financial year, the designated group employer for the group must pay to the Commissioner, within the time allowed for lodging a return for the month of June in the relevant financial year (or the return period that includes that month) the amount required to make up the difference.
- (6) If the amount of tax paid by way of periodic payments by the members of a group for a financial year exceeds the amount payable for the financial year, the Commissioner must, subject to the *Taxation Administration Act*, refund the amount of the excess to the designated group employer.

17R Adjustment if group member ceases to pay taxable wages or interstate wages

- (1) This section applies in relation to a group in which:
 - (a) at least 1 member of the group paid or was liable to pay, as such a member, taxable wages or interstate wages during a part of a financial year; and
 - (b) no member of the group paid or was liable to pay taxable wages on 30 June of the same financial year.
- (2) In this section:

prescribed amount, in relation to a designated group employer, means the amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \left[\frac{1\,250\,000C}{D} \right]$$

where:

TW is the total of the taxable wages paid or payable by the members of the group, in respect of which that designated group employer is the designated group employer, during the

prescribed period; and

- IV is the total of the interstate wages paid or payable by the members of that group during the prescribed period; and
- C is the number of days in the financial year in respect of which wages (disregarding foreign wages) were paid or payable by any member of the group while that designated group employer was the designated group employer in respect of that group, up to and including the last day on which any member of the group paid or was liable to pay taxable wages; and
- D is the number of days in the financial year.

prescribed period, in relation to a group, means part only (being a continuous part) of a financial year for which at least 1 member of the group paid or was liable to pay taxable wages or interstate wages up to and including the last day on which taxable wages were paid or payable by any member of the group.

- (3) A reference in this section to the total amount of 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 of tax prescribed by section 6 calculated in respect of the prescribed period 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 1 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 2 or more designated group employers in respect of that group – the prescribed amount that, if there had been only 1 designated group employer in respect of that group during that prescribed period, would have been applicable if that designated group employer had paid all of the wages referred to in paragraph (a) paid or payable during that prescribed period.
- (4) If the tax payable for a group for a prescribed period exceeds the amount paid by way of periodic payments for that period, the

designated group employer for the group must pay to the Commissioner, within the time allowed for lodging a return for the return period in which the prescribed period ends, the amount required to make up the difference.

- (5) Section 17Q(5) and (6) applies in relation to a group to which this section applies as if:
- (a) at least 1 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; and
 - (b) the reference in section 17Q(4) to the actual amount of tax paid or payable in respect of a financial year by the members of that group included a reference to any tax paid or payable under subsection (4) by a designated group employer in respect of that group 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 was the designated group employer in respect of that group on 30 June in that financial year.

17S Application of this Part

- (1) This Part applies only in respect of a financial year commencing on or after 1 July 2008.
- (2) The provisions of this Act replaced by this Part continue to apply in respect of earlier financial years.

17 Amendment of section 59 (Agents and trustees)

Section 59(2)

omit

Part IVA

substitute

Part 5

18 Amendment of Schedule heading

Schedule, heading

omit

Schedule

substitute

Schedule 1**19 New Schedule 2**

After Schedule 1

insert

Schedule 2 Motor vehicle allowances**1 Definition**

In this Schedule:

business journey means:

- (a) a journey undertaken in a motor vehicle by a person otherwise than in the application of the vehicle to a private use, being an application that, if the person is paid a motor vehicle allowance for that use, results in the provision of a fringe benefit (as defined in the FBTA Act) by the employer; or
- (b) a journey undertaken in a motor vehicle by a person in the course of producing assessable income of the person (as defined in the *Income Tax Assessment Act 1936* (Cth)).

2 Continuous recording method

If an employer selects the continuous recording method for the purposes of determining the number of business kilometres travelled during the financial year, the following details are required to be recorded by the employer:

- (a) the odometer readings at the beginning and end of each business journey undertaken by the person during a financial year by means of a motor vehicle provided or maintained by the person;
- (b) the specific purpose for which each such business journey was taken;

- (c) the distance travelled by the person during the financial year in the course of all such business journeys (which is taken to be the **number of business kilometres travelled during the financial year**), calculated on the basis of the odometer readings referred to in paragraph (a).

3 Averaging method

- (1) If an employer selects the averaging method for the purposes of determining the number of business kilometres travelled during the financial year, the following details are required to be recorded by the employer:

- (a) the odometer readings at the beginning and end of each business journey undertaken by the person during the relevant 12-week period by means of a motor vehicle provided or maintained by the person;

Note

Clause 4 defines the relevant 12-week period.

- (b) the specific purpose for which each such business journey was taken;
- (c) the distance travelled by the person during the relevant 12-week period in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a);
- (d) the odometer readings at the beginning and end of the relevant 12-week period for each motor vehicle provided or maintained by the person for the purpose of undertaking business journeys;
- (e) the distance travelled by each such vehicle during the relevant 12-week period, calculated on the basis of the odometer readings referred to in paragraph (d);
- (f) the distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the relevant 12-week period, calculated as a percentage of the distance travelled by that vehicle during that period (the **relevant percentage**);
- (g) the odometer readings at the beginning and end of the financial year for each vehicle provided or maintained by the person for the purpose of undertaking business journeys;
- (h) the distance travelled by each such vehicle during the financial year, calculated on the basis of the odometer readings

referred to in paragraph (g);

- (i) the distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the financial year (which is taken to be the ***number of business kilometres travelled during the financial year***), calculated on the basis that the percentage of that distance that was travelled by the person in the course of business journeys undertaken by means of each such vehicle during the financial year is the same as the relevant percentage.
- (2) For the next succeeding 4 financial years after the first financial year in which odometer details are recorded in accordance with subclause (1), an employer is not required to calculate the relevant percentage, or record the details referred to in subclause (1)(a) to (f), for the person but is required to record the other details referred to in that subclause.
- (3) Accordingly, for the next succeeding 4 financial years after the first financial year in which odometer details are recorded in accordance with subclause (1), the number of business kilometres travelled during the financial year is to be calculated (as referred to in subclause (1)(i)) on the basis of the relevant percentage calculated for the first financial year.
- (4) Despite subclauses (2) and (3), an employer is required to calculate the relevant percentage for a financial year, and record the details referred to in subclause (1)(a) to (f), if:
 - (a) the Commissioner serves a notice on the employer before the commencement of a financial year during that period directing the employer to keep the details referred to in subclause (1)(a) to (f) for that financial year; or
 - (b) the employer wishes to use the recording method referred to in this clause for 1 or more additional motor vehicles used by the person in any financial year or for any other reason.
- (5) In a situation referred to in subclause (4), the new record for the financial year replaces the relevant percentage details previously recorded and subclauses (2) and (3) apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.
- (6) An employer who has adopted and employed the method of recording referred to in subclauses (2) and (3) for a person for 4 successive financial years must, in the next succeeding financial year, make a fresh recording of all the details specified in subclause (1) if the employer intends to continue to use the same

method of recording for the person. Subclauses (2) and (3) then apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.

- (7) If the odometer of a motor vehicle is replaced or recalibrated during any period for which its readings are relevant for the purposes of this clause, the odometer readings immediately before and after the replacement or recalibration are to be recorded.

4 Meaning of *relevant 12-week period*

- (1) In clause 3, ***relevant 12-week period*** means a continuous period of at least 12 weeks, selected by the employer, throughout which a motor vehicle is provided or maintained by a person. If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.
- (2) The period may overlap the start or end of the financial year, so long as it includes part of the year.
- (3) If the averaging method is used for 2 or more motor vehicles for the same financial year, the odometer readings for those motor vehicles must cover periods that are concurrent.

5 Replacing 1 motor vehicle with another motor vehicle

- (1) For the purposes of using the averaging method, an employer may nominate 1 motor vehicle as having replaced another motor vehicle with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.
- (3) An employer must record the nomination in writing in the financial year in which the nomination takes effect.
- (4) However, the Commissioner may allow an employer to record the nomination at a later time.

6 Changing method of recording

- (1) An employer may change from using the averaging method to using the continuous recording method with effect from the beginning of a financial year if the employer complies with clause 2 in respect of the financial year.

- (2) An employer may change from using the continuous recording method to using the averaging method with effect from the beginning of a financial year if the employer complies with clause 3 in respect of the financial year.

Part 3 Amendment of laws

20 Laws amended

The Schedule amends the laws mentioned in it.

Schedule Amendment of laws

section 20

Provision	Amendment	
	Omit	Substitute
<i>Pay-roll Tax Act</i>		
Part I, heading	Part I	Part 1
Part III, heading	Part III	Part 3
Part IV, heading	Part IV	Part 4
Part IX, heading	Part IX	Part 9
<i>Pay-roll Tax Regulations</i>		
Part I, heading	Part I	Part 1
regulation 3, definition <i>employee share scheme</i>	whole definition	
Part II, heading	Part II	Part 2
Part IIIA, heading	Part IIIA	Part 3A
Part IIIB, heading	whole heading	Part 3B Fringe benefits
regulations 27A(1) and 27C	the Schedule	Schedule 1
regulation 27H	whole regulation	
Part IIIB, Division 2	whole Division	
Part IIIC, heading	Part IIIC	Part 3C
Part IV, heading	Part IV	Part 4
