

2009

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

TREASURER

**PAYROLL TAX BILL 2009**  
**SERIAL NO. 42**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The Bill repeals the *Pay-roll Tax Act* and introduces a new *Payroll Tax Act* that is almost identical to the payroll tax legislation in New South Wales, Victoria and Tasmania. It is also consistent with the payroll tax legislation in Queensland.

Harmonising payroll tax legislation is part of a national project to reduce payroll tax compliance costs for businesses by simplifying the payroll tax rules and reducing red tape for businesses that employ in more than one jurisdiction.

The most significant policy changes from the Northern Territory's existing payroll tax legislation that are being introduced by the Bill are:

- The introduction of provisions that modify how payroll tax is imposed on payments made to contractors that predominantly provide labour services. These provisions are known as the 'relevant contract' provisions.
- An extension of the payroll tax exemption for wages paid by public benevolent institutions and religious institutions so that it is also available to non-profit organisations that have a sole or dominant purpose that is a charitable, benevolent, philanthropic or patriotic purpose.
- The introduction of a payroll tax exemption for wages paid to employees participating in voluntary work for bushfire fighting or emergency relief. This exemption does not apply where the wages are paid as recreational leave, annual

leave, long service leave or sick leave.

- The introduction of a payroll tax exemption for wages paid as maternity or adoption leave for a maximum of 14 weeks.

- Not imposing payroll tax on wages paid by employment agents to temporary staff in certain circumstances where the wages would be exempt if paid directly by the client (e.g. where the client is a charitable organisation or a public hospital).

The Bill also includes other minor administrative amendments which are required to align the Northern Territory's payroll tax legislation with New South Wales, Victoria and Tasmania from 1 July 2009. These amendments relate to payroll tax registration, returns and the collection and recovery of payroll tax.

### Relevant Contract Provisions

The definition of wages in the payroll tax legislation generally requires the payment to be made to an employee for the payment to be taxable. The term "employee" is not defined in the legislation so therefore the common law employment tests apply to determine whether a worker is an employee. With changing work practices that blur the traditional distinctions between independent contractors and employees, in many cases, these tests can be difficult for businesses to apply to accurately assess their liability when they engage contractors.

The relevant contract provisions provide a set of rules that enable employers to determine whether payments to persons that they may consider contractors, rather than employees, are liable to payroll tax. Often these contractors are common law employees or persons in relation to which anti-avoidance provisions would otherwise apply to deem the payments to be wages.

### Exemption for wages paid by a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose

The Bill extends the existing payroll tax exemption for wages paid by religious institutions and public benevolent institutions so that it is also available to non-profit organisations that have a sole or dominant purpose that is a charitable,

benevolent, philanthropic or patriotic purpose.

This exemption remains conditioned on the wages being paid to a person who is exclusively engaged in work of a religious, charitable, benevolent, philanthropic or patriotic nature. Accordingly, the exemption is not available where the wages are paid in relation to a business carried on by the organisation that competes with other commercial businesses.

Exemption for wages paid to employees participating in voluntary work for bushfire fighting and emergency relief.

The Bill introduces a new payroll tax exemption for wages paid to employees who are absent from work to volunteer in bushfire fighting activities or emergency relief. Importantly, this exemption does not apply where the wages are paid as recreation leave, annual leave, long service leave or sick leave.

Exemption for wages paid as maternity and adoption leave for a maximum of 14 weeks.

The Bill also introduces a payroll tax exemption for wages that are maternity or adoption leave for a maximum period of 14 weeks of wages.

The exemption is limited to the equivalent of 14 weeks full time pay for full time employees and 14 weeks part time pay for part time employees. It does not apply to paid sick leave, recreation leave, annual leave, long service leave or similar leave taken while the employee is absent due to a pregnancy or adoption or where the leave is a fringe benefit.

The exemption applies irrespective of whether the wages relate to leave that is taken before or after the birth or adoption. Additionally, it will not matter if this leave is taken in broken periods.

Employers wanting to claim the exemption must keep a record of either a medical certificate or statutory declaration provided by the employee.

## Wages paid by employment agents to temporary staff where the client organisation is exempt from payroll tax

The Bill does not impose payroll tax on wages paid by employment agents to temporary staff who are provided to organisations that are exempt from payroll tax. This is conditioned on the employment agent obtaining a declaration from the client to that effect. Where a declaration is not made or is incomplete, the employment agent is liable for payroll tax on those wages.

An employment agent is not liable to payroll tax on wages paid to the temporary staff provided to clients such as:

- Public benevolent institutions;
- Religious institutions;
- Non profit organisations having a sole or dominant purpose that is charitable, benevolent, philanthropic or patriotic purpose;
- Certain non-profit schools providing education at or below the secondary level;
- Public or not-for-profit hospitals; and
- Local governing bodies.

## NOTES ON CLAUSES

### **PART 1 – PRELIMINARY MATTERS**

Part 1 of the Bill contains the commencement and definition provisions and other preliminary matters.

#### **Clause 1. Short title**

This is a formal clause which provides for the citation of the Act. When passed, the Act may be referred to as the *Payroll Tax Act 2009*.

#### **Clause 2. Commencement**

The new *Payroll Tax Act* commences on 1 July 2009.

#### **Clause 3. Definitions**

The clause contains many of the defined terms to be used in the new *Payroll Tax Act* or ‘signposts’ the location of definitions within the rest of the Act.

#### **Clause 4. Relationship with *Taxation Administration Act***

This clause states that the relationship between this Bill and the *Taxation Administration Act* is provided for in section 5 of the *Taxation Administration Act*.

Section 5 of the *Taxation Administration Act* provides that the *Taxation Administration Act* and this Bill (which is a taxation law as defined in the *Taxation Administration Act*) are to be read as if they are one Act. The *Taxation Administration Act* supports the operation of the Bill and other taxation laws by providing common administrative rules.

#### **Clause 5. Act binds Crown**

The Crown will be bound by the new *Payroll Tax Act*.

## **PART 2 – IMPOSITION OF PAYROLL TAX**

Part 2 of the Bill deals with the imposition of payroll tax, specifying who is liable for tax, how the tax is calculated and when the tax must be paid. It also contains the rules for determining which wages will be taxable wages in the Northern Territory.

### ***Division 1 – Imposition of tax***

#### **Clause 6. Imposition of payroll tax**

This clause outlines the basis for liability under the Bill, by stating that payroll tax is imposed on all taxable wages, being wages that are not exempt from tax, and that have the requisite connection to the Northern Territory. The definition of “taxable wages” is contained in clause 10 of the Bill.

#### **Clause 7. Who is liable for payroll tax**

This clause imposes payroll tax on employers, such that an employer is liable for payroll tax on all Northern Territory taxable wages paid or payable by that employer.

#### **Clause 8. Amount of payroll tax**

This clause states that the method for determining an employer's payroll tax liability is contained in Schedules 1 and 2 to the Bill.

#### **Clause 9. When payroll tax must be paid**

Subclause (1) provides that payroll tax for each month must be paid by the 21st day of the following month.

Subclause (2) gives the Commissioner of Territory Revenue the power to fix an alternate date for payment of payroll tax where the Commissioner believes that a person may leave Australia before their payroll tax liability arises.

### ***Division 2 – Taxable wages***

#### **Clause 10. What are taxable wages**

Subclause (1) defines taxable wages as wages, other than exempt wages, that are paid or payable by an employer for services performed, and that are:

- paid or payable in the Northern Territory (except if the relevant services are performed wholly in one State or one other Territory), or
- paid or payable outside the Northern Territory for services performed wholly in the Northern Territory, or
- paid or payable outside Australia for services performed mainly in the Northern Territory.

Taxable wages do not include wages paid or payable in respect of services which are performed wholly in another country for a continuous period of more than 6 months. Such wages are exempt from tax from the commencement of the period of overseas service.

Subclause (2) provides the method for determining the jurisdiction in which wages are payable, in instances where wages have not been paid at the time that the payroll tax liability arises.

Subclause (3) provides the method for determining the time and place of the payment of wages where the payment is made by way of an instrument (such as a cheque) or transfer of funds.

Subclause (4) provides that, in determining where services are performed in Australia, regard must be had only to the services performed in the month in respect of which the question arises.

Subclause (5) defines the term “instrument” for the purposes of subclause (3).

#### **Clause 11. Wages not referable to services performed in a particular month**

This clause provides that any wages which are not referable to services performed in a particular month are taken to be paid or payable in respect of services performed during the month in which they were in fact paid or became payable.

#### ***Division 3 – Other matters***

#### **Clause 12. Payroll tax paid under corresponding applied law**

This clause is contained in some corresponding payroll tax laws. It does not apply in the Northern Territory because the *Commonwealth Places (Mirror Taxes) Act 1998* (Cth) does not apply to the Northern Territory. This clause has been left blank in order to achieve uniform numbering with other corresponding payroll tax laws.

### **PART 3 – WAGES**

Part 3 of the Bill provides for an extended definition of “wages” for the purposes of the Bill. In addition to payments which would ordinarily be considered wages, the definition includes certain fringe benefits, superannuation contributions, grants of shares and options, payments made on termination of employment, payments

made to contractors in some cases, and payments made under employment agency agreements.

Division 6 provides that wages do not include the exempt component of a motor vehicle or accommodation allowance, as determined under that Division. Payments made by or to third parties may be wages if they are referable to an employee's services to his or her employer.

### ***Division 1 – General concept of wages***

#### **Clause 13. What are wages**

Subclause (1) sets out a general meaning to the concept of “wages” for payroll tax purposes. It provides that “wages” means wages, remuneration, salary, commission, bonuses or allowances paid or payable to an employee including:

- an amount paid or payable as remuneration to a person holding an office under the Crown;
- an amount paid or payable under any prescribed class of contract to the extent to which that payment is attributable to labour;
- an amount paid or payable by a company as remuneration to a director;
- an amount paid or payable as commission to an insurance or time-payment canvasser or collector; and
- any amount that is included as or taken to be wages by other clauses of this Bill.

Subclause (2) makes it clear that wages, remuneration, salary, commission, bonuses or allowances are “wages” for payroll tax purposes whether paid or payable at piece work rates or otherwise, and whether paid or payable in cash or in kind.

### ***Division 2 – Fringe benefits***

#### **Clause 14. Wages include fringe benefits**

This clause provides that a fringe benefit constitutes wages for payroll tax purposes, excluding certain benefits which are exempt benefits under the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

### **Clause 15. Value of wages comprising fringe benefits**

Subclause (1) provides a formula for determining the value of a fringe benefit for payroll tax purposes. This value is the taxable value of the fringe benefit grossed up using the formula for "Type 2 benefits" specified in the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

Subclause (2) and (3) detail the bases on which fringe benefits are to be included in monthly returns for payroll tax purposes. It also states that an employer must disclose the actual monthly value of the fringe benefits determined under subclause (1) unless the employer has made an election under clause 16, and that election is still in force.

### **Clause 16. Employer election regarding taxable value of fringe benefits**

This clause allows an employer to elect to declare 1/12 of the Northern Territory aggregate fringe benefits amount included in a preceding annual FBT return. The clause also provides a method for reconciling these monthly amounts at the end of the financial year with the current year's FBT return.

However, once an election has been made under this clause, it can only be terminated with the approval of the Commissioner. This clause also specifies the basis on which a final adjustment of payroll tax is to be effected by an employer who ceases to be liable to payroll tax.

### ***Division 3 – Superannuation contributions***

#### **Clause 17. Wages include superannuation contributions**

Subclause (1) states that any superannuation contributions will constitute wages for payroll tax purposes.

Subclause (2) provides that a superannuation contribution is a contribution paid or payable by an employer in respect of an employee:

- to a superannuation fund within the meaning of the *Superannuation*

*Industry (Supervision) Act 1993* of the Commonwealth;  
· as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; or  
· as a form of superannuation, provident or retirement fund or scheme, including to the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth, to a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth, and contributions, including “top up payments”, made to unfunded or partly funded superannuation schemes.

Subclause (3) ensures that a non-monetary contribution is regarded as a superannuation contribution.

Subclause (4) provides that the value of a non-monetary contribution is taken to be a contribution equal to the value of the non-monetary contribution. The value of such a contribution is to be determined in accordance with clause 43 of the Bill.

Subclause (5) outlines the extent that a superannuation, provident or retirement fund or scheme is considered unfunded.

Subclause (6) defines “employee” for the purpose of this clause to include any person to whom amounts defined as “wages” under clause 13 are paid or payable. This means for example that superannuation contributions paid or payable in respect of a company director are regarded as “wages” for the purpose of the Bill.

#### ***Division 4 – Shares and options***

This Division is identical to Part 1, Division 7 (sections 3G to 3Q) of the old *Payroll Tax Act* as in force before 1 July 2009. The Division concerns the taxing of shares and options to an employee or director.

#### **Clause 18. Inclusion of grant of shares and options as wages**

Subclause (1) specifies that shares and options granted in relation to an employee for services performed by that employee are “wages” for payroll tax purposes. This means that the value of shares and options must be included as wages and considered in determining taxable wages.

Subclause (2) specifies that shares and options are taken to be paid on the “relevant day”. The meaning of “relevant day” is detailed in subclause (3) and clause 19.

Subclause (3) provides that the “relevant day” will be the day that an employer elects in accordance with this Division and that this will be the day that the wages are taken to have been paid or payable.

Subclause (4) ensures that the grant of a share or option to or by a third party may be subject to payroll tax under the third party payment provisions in clause 46 of this Bill.

#### **Clause 19. Choice of relevant day**

Subclause (1) permits employers to elect the date on which the share or option is granted or the date on which the share or option vests in the employee as the “relevant day”. The elected “relevant day” is taken to be the date that the shares or options have been paid or become payable.

Subclause (2) provides for the circumstances in which a share or option is granted to a person, which are linked to provisions in the *Income Tax Assessment Act 1936* of the Commonwealth.

Subclause (3) defines the “vesting date” in relation to a share, as being the day on which the share actually vests in the employee. This subclause makes it clear that this is the date when all 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.

Subclause (4) defines the “vesting date” in relation to an option, as being the first of either the date on which the share relating to the option is granted to the employee or the date on which the employee exercises a right to have the share transferred to, allotted to or vested in the employee.

#### **Clause 20. Deemed choice of relevant day in special cases**

Subclause (1) deems the vesting date to be the relevant day where an employer has not included the value of a share or option as taxable wages in the financial year in which the share or option was granted unless subclause (2) applies.

Subclause (2) deems the date on which a share or option was granted to be the relevant day where the value of a share or option is nil on the date on which the share or option is granted. This means the wages constituted by the grant would not be liable to payroll tax.

### **Clause 21. Effect of rescission or cancellation of share or option**

Subclause (1) ensures that payroll tax will continue to be payable in respect of a grant of a share or option that is later withdrawn, cancelled or exchanged, if it is withdrawn, cancelled or exchanged for valuable consideration. If this clause applies, the vesting day is taken to be the day on which the share or option is withdrawn, cancelled or exchanged and the market value of the share or option to be included in taxable wages is the amount of the valuable consideration.

Subclause (2) allows an employer a reduction in its taxable wages by the value of a grant of a share or option on which it previously paid payroll tax, where the grant is subsequently rescinded because the conditions attaching to it were not met. This reduction is to occur in the financial year in which the grant of the share or option rescinded. An employer will only be entitled to a reduction if it relates to the grant of a share or option that was made to an employee on or after 1 July 2008, being the date that section 3K(2) of the old *Pay-roll Tax Act* (which is identical to clause 21(2) of this Bill) commenced.

Subclause (3) clarifies that the reduction provision in subclause (2) will not apply if an employee chooses not to exercise his or her rights in respect of a share or option.

### **Clause 22. Grant of share pursuant to exercise of option**

This clause provides that payroll tax is not payable on the grant of a share pursuant to the exercise of an option:

- on which the employer has already paid payroll tax; or
- if the option was granted before 1 July 1999 (that is, the commencement date of provisions taxing employee shares and options in the Northern Territory).

### **Clause 23. Value of shares and options**

Subclause (1) provides that the amount paid or payable as wages is taken to be the market value of the share or option. However, any consideration paid by an employee in respect of the share or option is to be deducted from the market value of the share or option for payroll tax purposes.

Subclause (2) provides that the market value of shares or options is to be determined in accordance with the “Commonwealth income tax provisions”. The term “Commonwealth income tax provisions” is defined in subclause (5).

Subclause (3) describes modifications to the “Commonwealth income tax provisions” referred to in subclause (2). Namely, the market value of an option is determined as if it were a right to acquire a share, reference to “taxpayer” in the “Commonwealth income tax provisions” is to be read as “employee” and reference to the “Commissioner of Taxation” is to be read as a reference to either that Commissioner or the Commissioner of Territory Revenue.

Subclause (4) specifies that clause 15 of this Bill, which deals with the taxing of fringe benefits, excludes the grant of a share or option even if it is also a fringe benefit. This ensures that the grant of a share or option is not subject to payroll tax twice.

Subclause (5) provides for the meaning of the term “Commonwealth income tax provisions”.

### **Clause 24. Inclusion of shares and options granted to directors as wages**

Subclause (1) ensures that the grant of a share or option to a director of a company as remuneration for the appointment or services of the director constitutes wages for payroll tax purposes.

Subclause (2) provides that other provisions in Division 4 apply as if “employer” refers to “company” and as if “employee” refers to “director” of that company.

Subclause (3) defines, for the purposes of clause 24, a “director” to include a person to be appointed as a director of a company under a contract or other arrangement and a former director of the company.

Subclause (4) provides that when shares or options are granted to a director by reason of their appointment as director, services for which the grant of the shares or options are provided are taken to have been performed by the director in the month in which the relevant day occurs. In addition, those services are taken to have been performed in the place where the director could be reasonably expected to perform them.

#### **Clause 25. When services considered to have been performed**

This clause provides that where the grant of a share or option constitutes wages, the services to which those wages relate will be taken to have been performed during the month in which the relevant day occurs.

#### **Clause 26. Place where wages are payable**

Subclause (1) provides specific rules for determining where wages constituted by the grant of shares or option will be taken to be paid or payable in the Northern Territory if the share is a share in a “local company”, as defined in subclause (3), or the option provides for the acquisition of shares in a “local company”.

Subclause (2) provides that wages constituted by the grant of a share or option will be taken to be paid outside of the Northern Territory, if subclause (1) does not apply.

Subclause (3) defines the term “local company” for the purpose of this clause.

#### ***Division 5 – Termination payments***

This Division is identical to Part 1, Division 8 (sections 3R and 3S) of the old

*Pay-roll Tax Act* as in force before 1 July 2009. The Division concerns the taxing of termination payments.

### **Clause 27. Definitions**

This clause provides definitions for the terms “employment termination payment”, “termination payment”, “unused annual leave payment” and “unused long service leave payment”.

Notably, the definition of “employment termination payment” extends the meaning of the Commonwealth *Income Tax Assessment Act 1997* by including payments that are made after 12 months of a person being terminated.

### **Clause 28. Termination payments**

This clause provides that termination payments constitute wages for payroll tax purposes.

### ***Division 6 – Allowances***

This Division is identical to Part 1, Division 6 (sections 3E and 3F) of the old *Pay-roll Tax Act* as in force before 1 July 2009. Clause 29 provides for the motor vehicle allowance exemption and clause 30 provides for accommodation allowance exemption.

### **Clause 29. Motor vehicle allowances**

Subclause (1) specifies that wages do not include the exempt component of a motor vehicle allowance. “Exempt component” is defined in subclause (4).

Subclause (2) clarifies that if the total motor vehicle allowance paid or payable to an employee in a financial year is equal to or less than the exempt component, it is not to be included as wages for payroll tax purposes.

Subclause (3) clarifies that if the total motor vehicle allowance paid or payable to an employee in a financial year is more than the exempt component, the portion

that exceeds the exempt component should be included as wages for payroll tax purposes.

Subclause (4) specifies the formula for calculating the “exempt component”.

Subclause (5) specifies the methods used to determine the number of business kilometres travelled during the financial year, which is one of the variables in the formula in subclause (4). The methods available are outlined in Part 5 of Schedule 1 to this Bill.

Subclause (6) provides the Commissioner with the discretion to approve alternative methods that an employer may use to determine the number of business kilometres that an employee travels during a financial year.

Subclause (7) sets out the exempt rate to be used to calculate the exempt component in subclause (4). This rate would usually be that set at the large car rate prescribed by regulations under sections 25-28 of the *Income Tax Assessment Act 1997* of the Commonwealth. In which case the rate to be used is that set under the *Income Tax Assessment Act 1997* for the financial year that immediately precedes the financial year in which the allowance is paid or payable. However, a rate set by regulation made under the new *Payroll Tax Act* is to be used, if no rate is prescribed under the *Income Tax Assessment Act 1997*.

### **Clause 30. Accommodation allowances**

Subclause (1) provides that wages do not include an accommodation allowance paid or payable to an employee that does not exceed the exempt rate for a night’s travel away from home. The “exempt rate” is defined in subclause (3).

Subclause (2) clarifies that wages only include the component of an accommodation allowance that exceeds the exempt rate.

Subclause (3) defines the exempt rate for accommodation allowances. The exempt rate is usually that set by Australian Taxation Office (ATO) determinations in respect of reasonable daily travel allowance expenses for the lowest capital city for the lowest salary band. If there is no determination made by the ATO, there is

provision for a rate to be prescribed by regulation made under the new *Payroll Tax Act*.

### ***Division 7 – Contractor provisions***

This Division introduces relevant contract provisions. These provisions exist in the payroll tax legislation of most other Australian jurisdictions. Under these provisions, parties to a “relevant contract” are taken to be employer and employee, and any payment made under such a contract is taken to be wages.

The relevant contract provisions provide a set of legislative rules that enable employers to determine whether payments to persons that they may consider contractors (or sub-contractors, consultants or outworkers), rather than employees, are liable to payroll tax.

#### **Clause 31. Definitions**

This clause contains definitions for terms “contract”, “relevant contract”, “re-supply”, “services” and “supply”, which have application to this Division.

#### **Clause 32. What is a relevant contract**

Subclause (1) defines a “relevant contract” as one under which a person, in the course of a business carried on that person, supplies to another person, or is supplied with persons to perform work, or gives out goods to individuals for work to be performed by those individuals and for the re-supply of those goods to the first-mentioned person.

Subclause (2) excludes various contracts from being a relevant contract for payroll tax purposes. These include contracts under which a person, in the course of a business carried on by that person, is supplied with services meeting any of the following criteria:

- the services are incidental to the supply or use of goods by the person who is supplying the services; or
- the services are of a kind not ordinarily required in the course of the person's business and which are provided by persons who are genuinely supplying services to the public generally; or

- the services are of a kind ordinarily required in the course of the person's business but are required for less than 180 days in a financial year; or
- the services are provided by a person for less than 90 days in a financial year; or
- none of the above criteria are met, but the Commissioner is satisfied that the services are supplied by a person who ordinarily supplied services of that kind to the public generally in the financial year in respect of which liability is being assessed.

Subclause (2) further provides that, in some cases, a contract is not a relevant contract where a contractor supplies services to a person, in the course of a business carried on by that person, and uses one or more additional persons to perform the work to which the services relate. Nevertheless, such a contract will be taken to be a relevant contract if the Commissioner determines that the contract or arrangement under which the services were supplied was entered into for the purposes of evading or avoiding tax.

Subclause (2) also provides that a contract is not a relevant contract if it relates to services supplied by an owner driver, insurance agent or direct selling agent, unless the Commissioner determines that the contract or arrangement under which the services were supplied was entered into for the purposes of evading or avoiding tax.

Subclause (3) clarifies that the relevant contract provisions do not apply to employment agency contracts, which are covered by Division 8 of Part 3 of this Bill.

### **Clause 33. Persons taken to be employers**

This clause provides rules for determining which of the parties to a relevant contract is taken to be the employer for payroll tax purposes.

Subclause (1) sets out who will be taken to be an employer.

Subclause (2) ensures that only one party to the contract will be taken to be an employer and clarifies which party will be taken to be the employer where both

fall within the ambit of subclause (1).

#### **Clause 34. Persons taken to be employees**

This clause provides rules for determining which of the parties to a relevant contract is taken to be the employee for payroll tax purposes.

#### **Clause 35. Amounts under relevant contracts taken to be wages**

Subclause (1) provides that amounts paid or payable by an employer under a relevant contract are taken to be wages for payroll tax purposes.

Subclause (2) provides that where only part of the amount paid or payable relates to the performance of work or re-supply of goods under the contract, the Commissioner has the power to determine how much of the overall amount paid or payable will be taken to be wages for payroll tax purposes.

Subclause (3) also provides that the following are taken to be wages:

- any payment which would amount to a superannuation contribution if the parties to the relevant contract were actually in a relationship of employer and employee; and
- the value of any grant of a share or option, provided or liable to be provided by the person taken to be the employer, that would be wages under Division 4 if the parties to the relevant contract were actually in a relationship of employer and employee.

#### **Clause 36. Liability provisions**

This clause is designed to prevent double taxation. Where a person taken to be an employer has paid payroll tax in respect of a payment taken to be wages under the contractor provisions, no other person is liable to pay payroll tax in respect of that payment, or any other payment for the same work, unless any such payment is made for the purpose of avoiding tax.

#### ***Division 8 – Employment agents***

This Division replaces the labour hire provisions contained in the old *Pay-roll Tax*

*Act* as in force before 1 July 2009. Employment agents are liable for payroll tax for their on-hired workers. A payroll tax exemption applies for wages paid in respect of workers on-hired to a client that is exempt under Part 4 of the Bill (other than under Division 4 or 5 of that Part, clause 50 or clause 17 of Schedule 2 to the Bill).

### **Clause 37. Definitions**

Subclause (1) defines an “employment agency contract” to be a contract under which a person (an employment agent) obtains the services of another person (a service provider) for a client of the agent. It is irrelevant whether the contract is formal or informal and whether express or implied. Subclause (3) provides a definition for the term “contract”. The use of the term “person”, which is a wide concept, means that an employment agent or service provider may include a company, partnership, trustee or a natural person.

Subclause (2) provides that an employment agency contract does not include arrangements under which a contract of employment results between the service provider and the client.

Subclause (3) defines the term “contract” to include an agreement, arrangement and undertaking.

### **Clause 38. Persons taken to be employers**

This clause provides that an employment agent under an employment agency contract is taken to be an employer for payroll tax purposes.

### **Clause 39. Persons taken to be employees**

This clause provides that the natural person who performs the work for the client of the employment agent is taken to be an employee of the employment agent. This will be the case whether the service provider is a company, partnership, or trustee as the clause looks to the natural person who in fact performs the work and regards that person to be the employee of the employment agent.

#### **Clause 40. Amounts taken to be wages**

Subclause (1) provides that any amount paid or payable to or in relation to the service provider in respect of the provision of services under the employment agency contract is taken to be wages paid or payable by the employment agent.

Subclause (2) provides that a payment or benefit referred to in subclause (1) is not taken to be wages if the wages would be exempt from payroll tax under Part 4 of the Bill (other than under Division 4 or 5 of that Part, clause 50 or clause 17 of Schedule 2 to the Bill) had they been paid by the client. This clause only applies if the employment agent receives a declaration to that effect from the client.

#### **Clause 41. Liability provisions**

This clause is designed to prevent double taxation. Where an employment agent has paid payroll tax in respect of an amount or benefit taken to be wages under an employment agency contract, no other person is liable to pay payroll tax in respect of wages paid or payable in respect of the provision of those services by the service provider for the client.

However, this clause is subject to clause 42 of the Bill which relates to an agreement to reduce or avoid liability to payroll tax.

#### **Clause 42. Agreement to reduce or avoid liability to payroll tax**

Subclause (1) gives the Commissioner the ability to disregard a contract in circumstances where that employment agency contract has the effect of reducing or avoiding the liability of any party to the contract to the assessment, imposition or payment of payroll tax. It also allows the Commissioner to determine that any party to the contract to be an employer and any payment in respect of the contract to be wages.

Subclause (2) requires the Commissioner to serve a notice of a determination under subclause (1) on the person taken to be an employer.

Subclause (3) requires that a notice under subclause (2) set out the facts and

reasons for the Commissioner's determination under subclause (1).

Subclause (4) clarifies that a determination under subclause (1) can be made in relation to an agreement, transaction and arrangement regardless of when it is made.

### ***Division 9 – Other matters***

#### **Clause 43. Value of wages paid in kind**

This clause sets out the method for determining the value of wages (except fringe benefits and shares and options) that are paid or payable in kind.

#### **Clause 44. GST excluded from wages**

Subclause (1) requires that GST be excluded from wages in circumstances where payment for a supply of services is taken to be wages under this Bill and the payment includes an amount of GST.

Subclause (2) qualifies that subclause (1) does not apply where those wages are fringe benefits. This makes it clear that the method for calculating the value of fringe benefits is contained in clause 15 of this Bill.

Subclause (3) defines the terms “consideration” and “relevant proportion” for the purpose of this clause.

#### **Clause 45. Wages paid by group employers**

This clause provides that a reference in the Bill to wages paid or payable by a member of a group includes wages that would be taken to be paid or payable by a member of a group if the member were the employer of the employee to whom the wages were paid.

#### **Clause 46. Wages paid by or to third parties**

Subclause (1) ensures any payment of money or provision of other valuable

consideration, which is referable to an employee's services to his or her employer, is taken to be wages paid or payable by the employer to the employee (and therefore subject to payroll tax), even if the amount is paid, or the benefit is provided, by:

- a third party to the employee; or
- the employer to a third party; or
- a third party to a third party.

Subclause (2) ensures that the principles in subclause (1) apply to any payments of money or provision of other valuable consideration by way of remuneration for the appointment or services of a company director.

Subclause (3) defines a “director” of a company, for the purpose of this clause, to include in addition to an existing director:

- a person who, under a contract or other arrangement, is to be appointed as a director of the company; and
- a former director of the company.

#### **Clause 47. Agreement etc. to reduce or avoid liability to payroll tax**

This clause is an anti-avoidance provision that relates to agreements, transactions and arrangements under which a natural person performs services for or on behalf of another person, and a payment in respect of those services is made to a person related or connected to the natural person.

Subclause (1) provides that if such an agreement has the effect of reducing or avoiding the liability of any party to the agreement to the assessment, imposition or payment of payroll tax, the Commissioner may disregard the agreement and determine any party to it to be an employer and any payment in respect of the agreement to be wages.

Subclause (2) requires the Commissioner to serve a notice of a determination under subclause (1) on the person taken to be an employer.

Subclause (3) requires that a notice under subclause (2) set out the facts and reasons for the Commissioner’s determination under subclause (1).

Subclause (4) clarifies that a determination under subclause (1) can be made in relation to an agreement, transaction and arrangement regardless of when the agreement, transaction or arrangement is made.

## **PART 4 – EXEMPTIONS**

Part 4 of the Bill contains the payroll tax exemptions, which apply to certain types of employer and certain categories of wages. These provisions replace the exemption provisions contained in the old *Pay-roll Tax Act* as in force before 1 July 2009.

The following types of employer are provided with an exemption if they meet the criteria set out in this Part:

- non-profit organisations;
- schools and certain other educational bodies;
- health care service providers, including hospitals;
- local governing bodies (and their subsidiaries in some cases), and unions or partnerships of local governing bodies;
- Governors of a State, and foreign government representatives.

The following categories of wages may also be exempt under this Part:

- paid maternity and adoption leave;
- wages paid to Aboriginal persons who are employed under an employment project of the Community Development Employment Project;
- wages paid to volunteer firefighters and emergency service volunteers when they are absent from work;
- wages paid to members of the Australian Defence Force when they are absent from work.

### ***Division 1 – Non-profit organisations***

#### **Clause 48. Non-profit organisations**

This clause provides an exemption for certain non-profit organisations.

Subclause (1) provides that wages are exempt from payroll tax if they are paid or

payable by:

- a religious institution;
- a public benevolent institution;
- a non-profit organisation that has as its sole or dominant purpose, a charitable, benevolent, philanthropic or patriotic purpose.

This exemption is not available to a school, education institution, education company or instrumentality of the Northern Territory. However, schools and persons providing educational services may be exempt from payroll tax under Part 4, Division 2 of this Bill.

Subclause (2) provides that in order to qualify for this exemption, the wages must be paid or payable for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purpose.

In addition, the wages must be paid or payable to a person engaged exclusively in that kind of work.

This means, for example, that wages paid by a public benevolent institution will only be exempt wages for the purpose of payroll tax if the wages are paid to a person who is exclusively engaged in work of a benevolent nature.

Subclause (3) defines the term “educational company” for the purpose of subclause (1)(c).

Subclause (4) outlines the situations in which an educational institution will be regarded to have a controlling interest in an educational company.

Subclause (5) defines the term “educational institution” for the purpose of this clause.

## ***Division 2 – Education and training***

### **Clause 49. Schools and educational services and training**

This clause provides a payroll tax exemption for wages paid or payable by certain

schools and colleges and other educational bodies. The content of this exemption is set out in Division 1 of Part 4 of Schedule 2 to this Bill.

### **Clause 50. Community Development Employment Project**

Subclause (1) provides that wages are exempt from payroll tax if they are paid or payable to an Aboriginal person who is employed under an employment project.

Subclause (2) defines the term “employment project”. This means that wages paid under an employment project under the Community Development Employment Project will be exempt provided the project is funded by the Department of Employment and Workplace Relations of the Commonwealth or the Torres Strait Regional Authority.

### ***Division 3 – Health care service providers***

#### **Clause 51. Health care service providers**

Subclause (1) provides an exemption for wages paid or payable by a health care service provider.

Subclause (2) provides that in order to qualify for this exemption, the wages must be paid or payable for work of a kind ordinarily performed in connection with the conduct of such an organisation.

In addition, the wages must be paid or payable to a person engaged exclusively in that kind of work.

Subclause (3) signposts that the meaning of the term “health care service provider” is provided for in Division 2 of Part 4 of Schedule 2 to this Bill.

#### **Clause 52. Division not to limit other exemptions**

Subclause (1) ensures that the payroll tax exemption for wages paid or payable by a health care service provider does not limit the application of any other payroll tax exemption. In other words, the payroll tax exemption for wages paid or

payable by a health care service provider may co-exist with other payroll tax exemptions.

Subclause (2) gives the example of where a health care service provider may also be a non-profit organisation to which the payroll tax exemption under clause 48 of this Bill applies.

#### ***Division 4 – Maternity and adoption leave***

##### **Clause 53. Maternity and adoption leave**

Subclause (1) provides an exemption from payroll tax in respect of wages that are paid maternity leave and paid adoption leave. However, this exemption is not available where those wages are sick leave, recreational leave, annual leave or any other similar leave.

Subclause (2) makes it clear that this exemption applies whether the maternity leave is taken during or after the pregnancy or whether the adoption leave is taken before or after the adoption.

Subclause (3) limits this payroll tax exemption to a maximum of 14 weeks of wages that comprise paid maternity leave or adoption leave per pregnancy or adoption.

Subclause (4) makes it clear that where the pregnant or adopting employee is a full-time employee, the period of 14 weeks referred to in subclause (3) is the period that is equivalent to 14 weeks on full pay. Likewise, where the pregnant or adopting employee is a part-time employee, the period of 14 weeks referred to in subclause (3) is the period that is equivalent to 14 weeks on part-time rates of pay.

Subclause (5) provides that this exemption does not apply to any part of wages that are paid for maternity leave or adoption leave where that leave comprises fringe benefits.

##### **Clause 54. Administrative requirements for exemption**

Subclause (1) sets out the documentation an employer must obtain and keep if they wish to claim the payroll tax exemption for paid maternity leave.

Subclause (2) sets out the documentation an employer must obtain and keep if they wish to claim the payroll tax exemption for paid adoption leave.

Section 79 of the *Taxation Administration Act* requires that employers keep these records for a period of at least 5 years unless the Commissioner authorises earlier destruction.

### ***Division 5 – Volunteer firefighters and emergency service volunteers***

#### **Clause 55. Volunteer firefighters**

This clause provides an exemption from payroll tax, subject to clause 57 of this Bill, for wages paid or payable to employees who are absent from work due to taking part in volunteer bushfire fighting activities.

#### **Clause 56. Emergency service volunteers**

This clause provides an exemption from payroll tax subject to clause 57 of this Bill, for wages paid or payable to employees who are absent from work on volunteer emergency service duty.

#### **Clause 57. Limitation of exemption**

This clause limits the payroll tax exemptions for wages paid or payable to employees on volunteer firefighter duty and emergency service duty such that the exemption is only available where the wages are not paid or payable as recreational leave, annual leave, long service leave or sick leave.

### ***Division 6 – Local government***

#### **Clause 58. Local governing bodies**

This clause provides an exemption for wages paid or payable by a local governing

body, or a union or partnership of which all the members are local governing bodies.

The term “local governing body” is defined in clause 3 of this Bill.

#### **Clause 59. Local government business entities**

This clause provides an exemption for wages paid or payable by a wholly-owned subsidiary of a local governing body, to a person for (or in connection with) an activity conducted for the local governing body under a written arrangement between the subsidiary and the local governing body.

Subclause (2) places a condition on this exemption such that it is only available where the written arrangement referred to in subclause (1)(b) includes a provision for the subsidiary to make tax-equivalent payments to the local governing body.

#### **Clause 60. Limitation on local government exemptions**

This clause provides that local governing bodies and their subsidiaries are not entitled to an exemption for wages paid or payable in respect of certain prescribed activities. This includes the construction of buildings or works, or installation of plant, machinery or equipment, for use in any such prescribed activities.

### ***Division 7 – Other government and defence***

#### **Clause 61. State Governors**

This clause provides that wages paid or payable by the Governor of a State are exempt wages.

#### **Clause 62. Defence personnel**

This clause provides an exemption for wages paid or payable to an employee who is on leave from employment by reason of being a member of the Australian Defence Force or the armed forces of any part of the Commonwealth of Nations.

### **Clause 63. War Graves Commission**

This clause provides an exemption for wages paid or payable by the Commonwealth War Graves Commission.

### ***Division 8 – Foreign government representatives and international agencies***

### **Clause 64. Consular and non-diplomatic representatives**

This clause provides an exemption for wages paid or payable by a consular or other representative in Australia to members of his or her official staff. This exemption does not apply to a diplomatic representative.

### **Clause 65. Trade Commissioners**

This clause provides an exemption for wages paid or payable by a Trade Commissioner representing any other part of the Commonwealth of Nations in Australia, to members of his or her official staff.

### **Clause 66. Australian-American Fulbright Commission**

This clause provides an exemption for wages paid or payable by the Australian-American Fulbright Commission.

## **PART 5 – GROUPING OF EMPLOYERS**

The provisions in this Part have the effect of grouping employers in certain circumstances. This prevents employers from reducing or avoiding their payroll tax liability by splitting their wages between numerous entities. Generally only one member of a group (the designated group employer) is entitled to claim the payroll tax threshold. Clauses 67 to 79 are identical to sections 17A to 17N of the old *Pay-roll Tax Act* as in force before 1 July 2009.

### ***Division 1 - Interpretation***

### **Clause 67. Definitions**

This clause defines the terms “business” and “group” for the purposes of Part 5 of this Bill.

#### **Clause 68. Grouping provisions to operate independently**

This clause provides that just because a person is not a member of a group constituted under one of the grouping provisions does not prevent them from being a member of a group constituted under any of the other grouping provisions.

### ***Division 2 – Business Groups***

#### **Clause 69. Constitution of groups**

This clause provides that when two or more groups form part of a larger group, the two or more smaller groups are not considered as groups in their own right.

#### **Clause 70. Groups of corporations**

This clause provides that corporations constitute a group if they are related bodies corporate within the meaning of the Commonwealth’s *Corporations Act 2001*. The Commissioner has no discretion to exclude such corporations from a group constituted under this clause.

#### **Clause 71. Groups arising from the use of common employees**

This clause provides for groups arising from the inter-use of employees.

Subclause (1) provides that where one or more employees of an employer perform duties for one or more businesses carried on by the employer and one or more other persons, the employer and each of those other persons constitute a group.

Subclause (2) provides that where one or more employees of an employer are employed solely or mainly to perform duties for one or more businesses carried on by one or more other persons, the employer and each of those other persons constitute a group.

Subclause (3) provides that where one or more employees of an employer perform duties for one or more businesses carried on by one 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 of those persons, the employer and each of those other persons constitute a group.

Subclause (4) ensures that subclause (3) applies to an agreement, arrangement or undertaking irrespective of whether it is formal or informal, express or implied, and whether or not it provides (or specifies) for the duties to be performed by the employees.

## **Clause 72. Groups of commonly controlled businesses**

This clause provides for groups arising through common control of two businesses. Under subclause (1), a group exists where a person, or a set of persons, has a controlling interest in each of two businesses. This means that the entities carrying on the businesses are grouped.

Subclauses (2) to (8) set out the rules for determining whether a person (or set of persons) has a controlling interest in a business. This will vary depending upon the type of entity conducting the business (e.g. a corporation, partnership or trust), and generally relate to the level of ownership or control of the business, or of the entity conducting the business.

In some circumstances, a person or set of persons will be taken to have a controlling interest in a business on the basis that a related person or entity has a controlling interest in that business. More specifically:

- if a corporation has a controlling interest in a business, any related body corporate of the corporation (within the meaning of the *Corporations Act 2001* of the Commonwealth) will also be taken to have a controlling interest in the business,
- if a person or set of persons has a controlling interest in a business, and the person or set of persons who carry on that business has a controlling interest in another business, the first-mentioned person or set of persons is taken to have a

controlling interest in the second-mentioned business,  
· if a person or set of persons has a controlling interest in the business of a trust, and the trustee(s) of the trust has a controlling interest in the business of another entity (being a trust, corporation or partnership), the person or set of persons is taken to have a controlling interest in the business of that other entity.

### **Clause 73. Groups arising from tracing of interests in corporations**

This clause provides for groups arising from the tracing of interests in a corporation. Under subclause (1) an entity (being a person or two or more associated persons) and a corporation form part of a group if the entity has a controlling interest in the corporation.

Subclause (2) explains that a controlling interest for this clause exists if the entity has a direct interest, an indirect interest, or an aggregate interest in the corporation, and the value of that interest exceeds 50 per cent.

Subclause (3) makes it clear that Part 5, Division 3 of this Bill applies in determining whether an entity has a direct interest, an indirect interest, or an aggregate interest and the value of that interest.

Subclause (4) defines the terms “associated person”, “entity”, “private company” and “related person”. These terms are relevant to this clause.

### **Clause 74. Smaller groups subsumed by larger groups**

Subclause (1) provides that, where any person is a member of two or more groups, those groups will form a single group. Under clause 69 of this Bill, the smaller groups which have been subsumed cease to exist as groups for the purposes of this Bill.

Subclause (2) provides that where two or more members of a group, when considered together, have a controlling interest in a business (within the meaning of clause 72 of this Bill) all of the members of the initial group and the person or persons who carry on the business together constitute a group.

### ***Division 3 – Business groups – tracing of interests in corporations***

This Division provides that an entity's interest in a corporation for the purpose of determining whether the entity has a controlling interest, may be a direct or an indirect interest. Indirect interests may be traced through interposed entities, and may be aggregated with direct interests for the purpose of determining whether an entity has a controlling interest. An entity is defined in clause 73 and may be a person or two or more associated persons.

#### **Clause 75. Application**

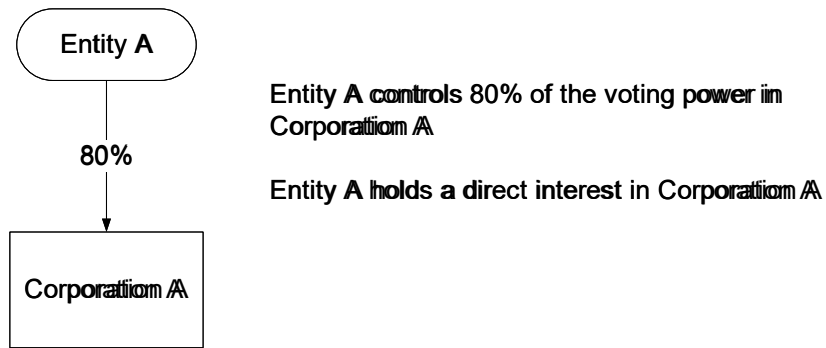
This clause provides that this Division applies for the purposes of grouping an entity with a corporation under clause 73 of this Bill.

#### **Clause 76. Direct interest**

Subclause (1) provides that an entity has a direct interest in a corporation if the entity can directly or indirectly exercise, control the exercise, or substantially influence the exercise of voting power attached to voting shares in the corporation.

Subclause (2) provides that the percentage interest of voting power which an entity controls is the percentage of the total voting power which the entity can exercise, control the exercise of, or substantially influence the exercise of. If an entity is two or more persons who are associated persons, then the percentage interest of voting power is that percentage based on the associated persons acting together.

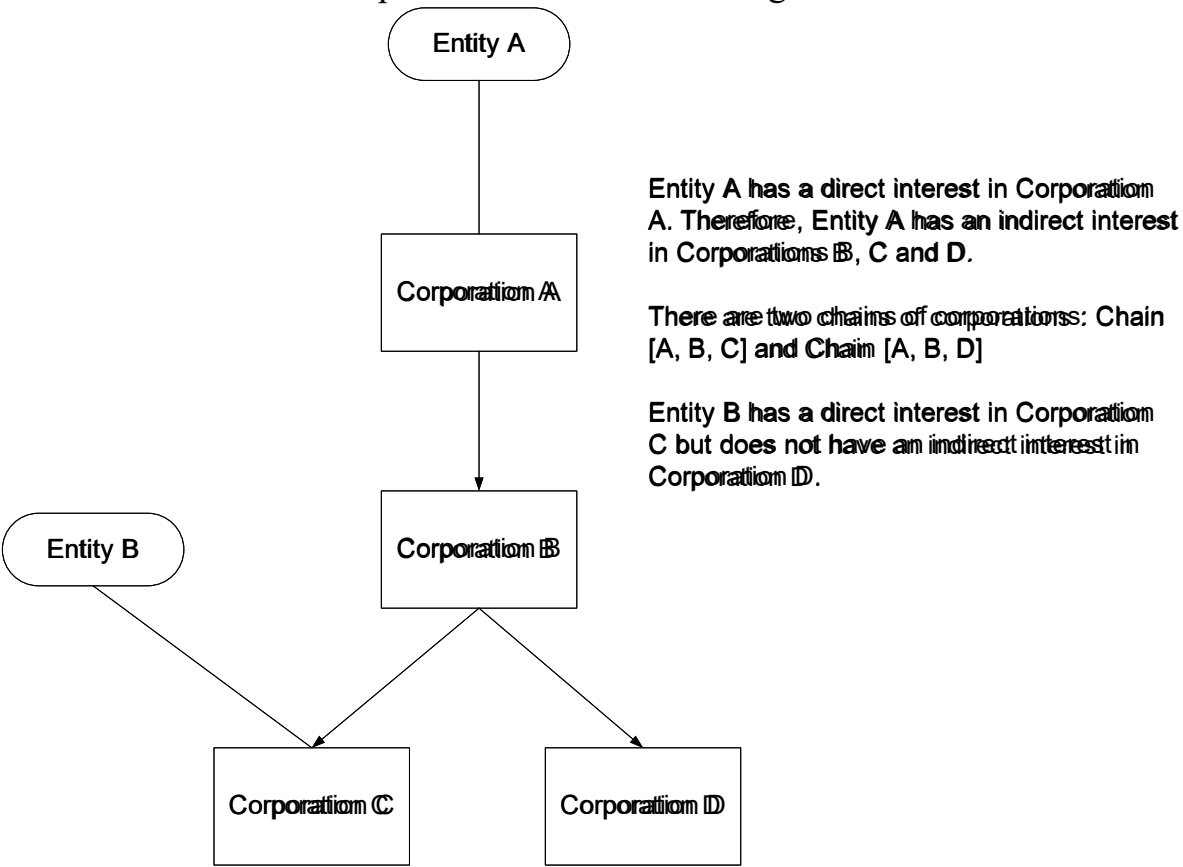
Diagram 1 below illustrates an entity holding a direct interest.



### **Clause 77. Indirect interest**

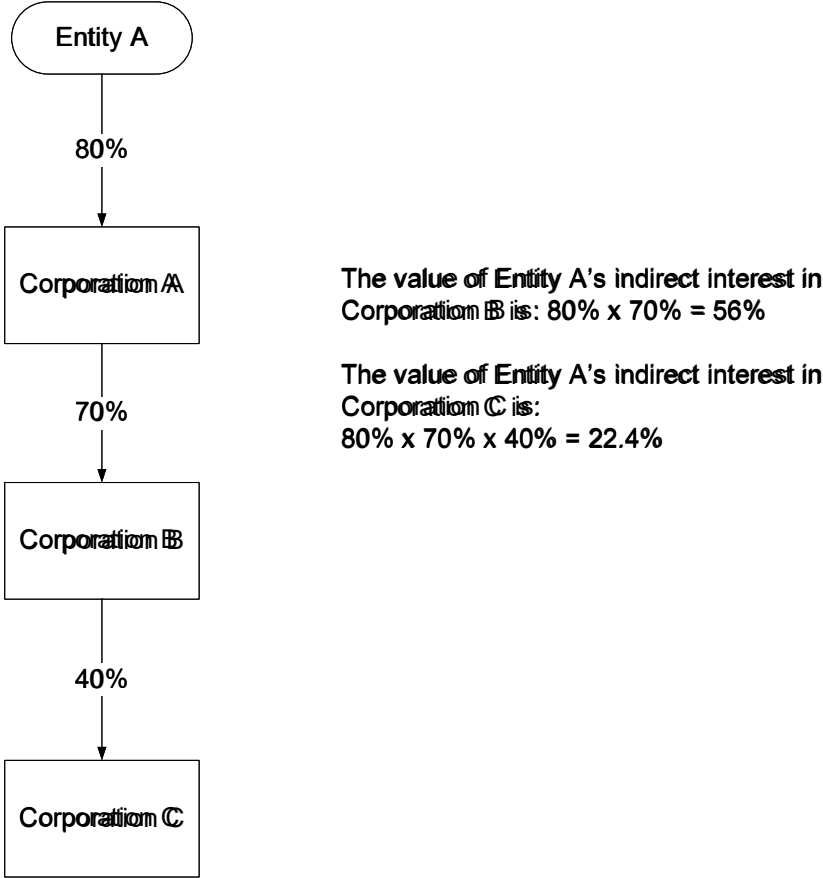
Subclause (1) and (2) provide that an entity has an indirect interest in a corporation (called the indirectly controlled corporation) if the entity is linked to that corporation by a direct interest in another corporation (called the directly controlled corporation) that has a direct and/or an indirect interest in the indirectly controlled corporation.

An example of how subclauses (1) and (2) operate is provided by subclause (3). An illustration of the example is set out below in Diagram 2.



Subclause (4) provides that the value of an indirect interest in an indirectly controlled corporation is determined by multiplying the value of the entity's direct interest in the directly controlled corporation by the value of the directly controlled corporation's interest in the indirectly controlled corporation.

An example of how the value of interests is derived is provided by subclause (5). An illustration of the example is set out below in Diagram 3.

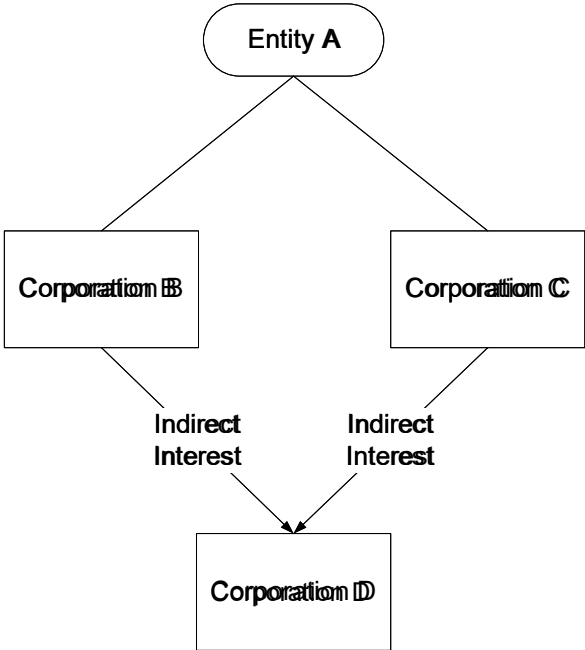


Subclause (6) provides that it is possible for an entity to have two or more indirect interests in a corporation. If there are two or more indirect interests then the entity will have an aggregate interest. Aggregate interests are dealt with in clause 78 of this Bill.

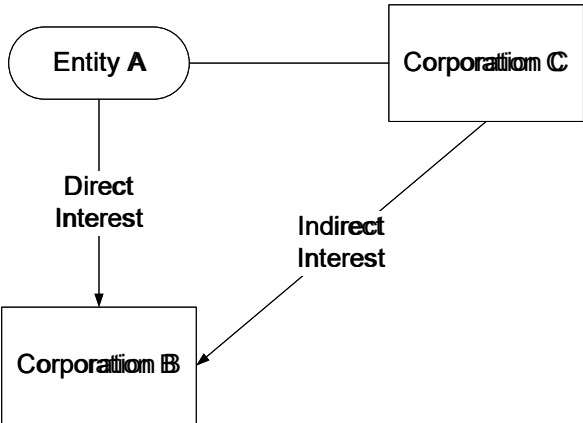
**Clause 78. Aggregation of interests**

Subclause (1) provides that an entity has an aggregate interest in a corporation when it has either a direct interest and one or more indirect interests, or two or more indirect interests in a corporation.

Diagram 4 illustrates each of these arrangements.



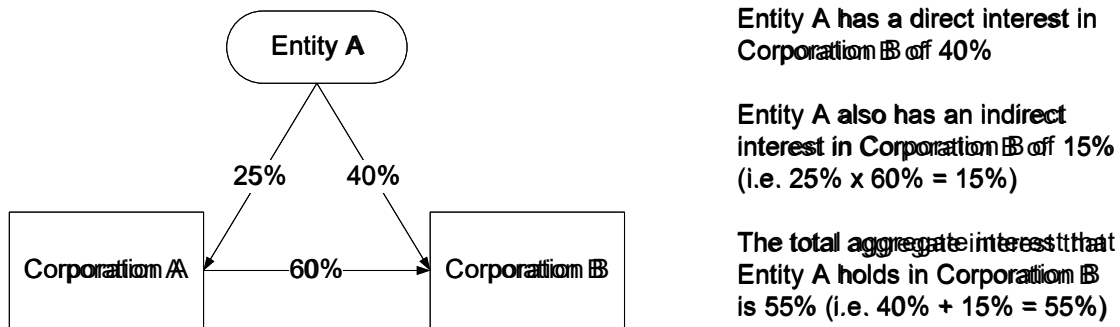
This illustrates Entity A holding two indirect interests in Corporation D.



This illustrates Entity A holding one direct interest and one indirect interest.

Subclause (2) provides that the value of an entity's aggregate interest is the sum of the entity's direct and indirect interests in that corporation.

An example of how subclauses (1) and (2) operate is provided by subclause 3. An illustration of the example is set out below in Diagram 5.



#### ***Division 4 – Miscellaneous***

#### **Clause 79. Exclusion of persons from groups**

Subclause (1) provides that the Commissioner may determine that a person is not a member of a group. A determination is to be in writing.

Subclause (2) provides that such a determination can only be made if the Commissioner is satisfied that the business conducted by that member is independent of, and not connected with, a business conducted by any other member of the group. In considering the application of this discretion, the Commissioner will have regard to the nature and degree of ownership and control of the businesses, the nature of the businesses, and any other relevant matters.

Subclause (3) provides that this discretion is not available for corporations that are related bodies corporate under section 50 of the *Corporations Act 2001* of the Commonwealth (that is the grouping occurred under clause 70 of this Bill).

Subclause (4) provides that a determination that a person is not a member of a group can be made in relation to a larger group (that is, a group where smaller groups have been subsumed into a larger group under clause 74 of this Bill).

Subclause (5) provides that the Commissioner may make a determination to exclude a person from a group that takes effect on a date earlier than the determination. However the determination cannot take effect earlier than 1 July 2008 (being the date that section 17N of the old *Pay-roll Tax Act*, which is almost identical to this clause, commenced).

Subclause (6) provides that the Commissioner may also revoke a determination if satisfied that the circumstances in which a determination may be made to exclude a person from a group do not apply to the person.

Subclause (7) provides that the revocation of a determination may take effect from a date earlier than the determination.

### **Clause 80. Designated group employers**

Subclause (1) provides that the members of a group with the approval of the Commissioner may designate one member, who is a qualified member of the group, to be the designated group employer for the group. The designated group employer is the member entitled to claim the benefit of the threshold on behalf of the group when calculating its payroll tax liability.

Subclause (2) outlines when a member of a group is regarded to be a qualified member of a group. A qualified member of a group will be a member that has either paid wages in the preceding financial year that exceed the threshold amount (which is currently \$1 250 000) or a member that is likely to pay wages during the current financial year that exceed the threshold amount.

Subclause (3) provides that where no member of a group is a qualified member, but together the members have either paid wages in the preceding financial year that exceed the threshold amount, or the members are likely to pay wages during the current financial year that exceed the threshold amount, with the approval of the Commissioner, any member of the group can be the designated group employer.

Subclause (4) provides the Commissioner with the ability (but not the obligation) to designate a member of a group to be the designated group employer in

circumstances where the members of the group have not designated a designated group employer within seven days after the end of the month in which the group is established.

Subclause (5) explains when the designated group employer ceases to be the designated group employer. This will be the earlier of the first day of a return period during which there is a change in membership of the group or the first day in the return period during which the group revoke the designation.

Subclause (6) states that the designation of a member of a group under subclause (1) or (3) as the designated group employer must be by notice in writing.

Subclause (7) states that this notice must be executed by or on behalf of all members of the group and served on the Commissioner. Reference to all members of the group in this clause is a reference to all members of the group that pay or are liable to pay wages in the Northern Territory. It is not necessary for such a notice to be executed by or on behalf of members of the group who are not liable to payroll tax in the Northern Territory.

### **Clause 81. Joint and several liability**

Subclause (1) provides for the joint and several liability of every member of a group where any one of them fails to pay an amount required under the Bill.

Subclause (2) entitles the Commissioner to recover the whole amount payable from any member of the group.

Subclause (3) provides that where two or more persons are jointly and severally liable under this clause, this joint and several liability extends to:

- any amount payable to the Commissioner in relation to the primary payroll tax liability. This includes amounts payable under this Bill as well as an amount payable under another Act (such as interest and penalty tax); and
- any costs and expenses incurred in relation to the recovery of that amount that the Commissioner is entitled to recover from a member of the group.

Subclause (4) provides that where a person pays a liability imposed under this

clause that person has rights of contribution or indemnity against the other person or persons.

Subclause (5) makes it clear that persons can be jointly and severally liable under this clause irrespective of whether or not that person was an employer during the relevant period.

## **PART 6 – ADJUSTMENTS OF TAX**

Part 6 provides for an annual adjustment of payroll tax, which gives employers the opportunity to review their tax paid for a financial year and make any necessary adjustments to correct overpayments or underpayments made during that year. Specific rules apply to an employer who changes from being a group employer to a non-group employer (or vice versa) during a financial year, to an employer who ceases to pay or be liable to pay wages during a financial year, and to an employer whose wages fluctuate with different periods of the year by reason of the nature of the employer's trade or business.

### **Clause 82. Determination of correct amount of payroll tax**

Subclause (1) signposts that the phrase “correct amount of payroll tax” as used in this Part refers to the amount of payroll tax payable by an employer in respect of a financial year determined in accordance with Schedule 1 or clause 14 of Schedule 2 of this Bill as the case requires.

Subclause (2) provides that this Part applies to both group and non-group employers. However, clause 83(1) and (2) of this Bill does not apply to group employers as clause 15 of Schedule 2 to this Bill applies instead.

Subclause (3) provides that where an employer is a group employer for parts of a financial year, and a non-group employer for other parts of the same financial year, separate adjustments are to be made in respect of any period as a group employer, and any period as a non-group employer.

Subclause (4) defines the terms “group employer” and “individual employer”, which are used in this Part.

### **Clause 83. Annual adjustment of payroll tax**

This clause provides for an annual adjustment of payroll tax at the end of each financial year in accordance with the calculations in Schedule 1 or in some cases Schedule 2 to this Bill.

Subclause (1) provides that where an employer (who is not a group employer) has paid too much payroll tax throughout a financial year, the employer may apply for a refund from the Commissioner.

Clause 15(1) of Schedule 2 to this Bill provides for the circumstance where a group has paid too much payroll tax for a financial year.

Subclause (2) provides that where an employer (who is not a group employer) has not paid enough tax throughout a financial year, the employer must make up the difference in their annual return.

Clause 15(2) of Schedule 2 to this Bill provides for the circumstance where a group has not paid enough payroll tax for a financial year.

Subclause (3) sets out the time in which an employer has to pay the difference resulting from the annual adjustment of payroll tax. In the Northern Territory any difference will be required to be paid within 21 days after the end of the month of June in the financial year to which the return relates.

Subclause (4) provides that where an employer is entitled to a refund under this clause, it is to be reduced by the amount of any other refund of payroll tax made in respect of the same financial year. This ensures that the correct amount is refunded to an employer that has overpaid payroll tax in a financial year.

### **Clause 84. Adjustment of payroll tax when employer changes circumstances**

Subclause (1) requires an employer to make an adjustment of payroll tax if they change their circumstances at any time during a financial year. Where this results in a payroll tax shortfall the employer is required to pay the difference to the

Commissioner. Where an employer changes circumstances more than once, each change requires an employer to make an adjustment of payroll tax.

Subclause (2) explains that a change of circumstances occurs if an employer ceases to pay or be liable to pay wages, becomes a member of a group, or ceases to be a member of a group.

Subclause (3) provides that the adjustment is to be made at the time that the employer's circumstances change, and relates to the period commencing from the start of the financial year (or the last change of circumstances, whichever is more recent) and ending with the change of circumstances.

Subclause (4) requires that an employer calculate their actual payroll tax liability for the period (using the annual payroll tax formulas in Schedule 1 or clause 14 of Schedule 2 as the case requires, pro-rated for the number of days in the period).

Subclause (5) requires the employer to make up any payroll tax shortfall to the Commissioner within the period that the employer is required to lodge a return relating to the month that the change in circumstance occurred. In the Northern Territory this will be 21 days after the month in which the employer had a change in circumstances.

Subclause (6) provides that any payments made under this clause are taken into account in the employer's annual adjustment calculation at the end of the financial year.

### **Clause 85. Special provision where wages fluctuate**

This clause ensures that an employer who only pays or is liable to pay wages for part of a financial year receives the benefit of the payroll tax threshold for the whole year if the Commissioner determines that, by reason of the nature of the employer's trade or business, the wages paid or payable by the employer fluctuate with different periods of the year.

If the employer only conducts that trade or business in Australia for part of the financial year, they can still seek a determination under this clause, and if

successful, will receive the benefit of the payroll tax threshold for that part of the financial year.

## **PART 7 – REGISTRATION AND RETURNS**

This Part sets out when an employer must register for payroll tax under the Bill, and requires registered employers to lodge monthly and annual payroll tax returns.

### **Clause 86. Registration**

Subclause (1) provides that an employer who pays wages in the Northern Territory must apply for registration as an employer for payroll tax if their total Australian wages exceeds the weekly exemption level during any one month. In the Northern Territory this level is \$24 030.

If the employer is a member of a group, the total Australian wages paid or payable by all members of the group determines whether the employer should register for payroll tax.

Subclause (2) provides that an application to register as an employer must be made to the Commissioner within 21 days of the end of the month concerned in a form and manner approved by the Commissioner.

Subclause (3) directs the Commissioner to register such an applicant as an employer for payroll tax purposes.

Subclause (4) allows the Commissioner to cancel an employer's registration if that registered employer's wages fall below the weekly exemption level during any one month.

Subclause (5) provides that if the Commissioner cancels an employer's registration in any financial year and that person is subsequently liable to pay taxable wages during that financial year, the person may apply to be registered (even if not required) and the Commissioner is to register that person as an employer for payroll tax purposes. The application by such a person must be in a form and manner approved by the Commissioner.

## **Clause 87. Returns**

Subclause (1) provides that every employer who is registered, or required to be registered, under the Bill must lodge a monthly return within 21 days after the end of each month (except June), and within 21 days of the month of June lodge an annual adjustment return (including the monthly return for June).

Subclause (2) provides that designated group employers may, with the Commissioner's approval, lodge joint returns on behalf of specified members of the group.

Subclause (3) clarifies that where a joint return has been lodged and the return would otherwise comply with this clause, each employer covered by the return is deemed to have complied with this clause. That is, each employer covered by the return is taken to have fulfilled the requirement to lodge that particular monthly or annual adjustment return.

## **PART 8 – COLLECTION AND RECOVERY OF TAX**

Part 8 of the Bill provides for the collection and recovery of tax from certain third parties, including agents, trustees, executors and liquidators. It also provides indemnities and rights of recovery as between third parties who are required to pay tax under this Part and the person on whose behalf the tax is paid.

### ***Division 1 – Agents and trustees generally***

#### **Clause 88. Application**

Subclause (1) provides that this Division applies to an agent of or trustee for an employer.

Subclause (2) states that nothing in the Division limits or otherwise affects the application of Part 5 of this Bill to agents and trustees.

#### **Clause 89. Agents and trustees are answerable**

This clause provides that an agent or trustee for an employer may be treated as the employer and is subject to all of the employer's obligations arising from the payment of taxable wages under the Bill.

**Clause 90. Returns by agent or trustee**

Subclause (1) provides that an agent or trustee must make returns, in its representative capacity only, and where a person is an agent or trustee for more than one employer, returns for each employer must be made separately.

Subclause (2) provides that where a return is made by an executor or administrator it must, to the extent that it is practicable, be the same as the deceased person, if living, would have made.

**Clause 91. Liability to pay tax**

Subclause (1) provides for an agent or trustee to be personally liable for payroll tax on wages referred to in clause 89 of this Bill in particular circumstances.

Subclause (2) ensures that an agent or trustee can only be personally liable to pay tax under the circumstances in subclause (1).

Subclause (3) provides that an agent or trustee must retain enough money to pay payroll tax out of any money which comes to the agent or trustee in their representative capacity.

Subclause (4) makes it clear that the Commissioner has the same remedies for ensuring the payment of tax from an agent or trustee as the Commissioner has against the property of any other person in respect of payroll tax.

**Clause 92. Indemnity for agent or trustee**

Subclause (1) provides an agent or trustee who pays payroll tax in its representative capacity with an indemnity.

Subclause (2) provides an agent or trustee who pays payroll tax in its representative capacity, a right of recovery against the employer.

### ***Division 2 – Special cases***

The clauses in this Division are contained in some corresponding payroll tax laws. They do not apply in the Northern Territory because they are inconsistent to some extent with provisions of the *Taxation Administration Act*. The matters provided for in the corresponding provisions of the payroll tax legislation of other jurisdictions are administrative in nature and do not create additional red tape for employers in the Northern Territory. Consequently, the provisions of the *Taxation Administration Act* will apply in the Northern Territory to ensure consistently with other taxation laws.

For example section 60 of the *Taxation Administration Act* provides for the recovery of tax from third parties, section 72 of the *Taxation Administration Act* provides for the death of a taxpayer and section 141 of the *Taxation Administration Act* provides for the notice of appointment of an administrator or liquidator.

**Clause 93. Tax not paid during lifetime**

**Clause 94. Payment of tax by executors or administrators**

**Clause 95. Assessment if no probate within 6 months of death**

**Clause 96. Person in receipt or control of money for absentee**

**Clause 97. Agent for absentee principal winding-up business**

**Clause 98. Recovery of tax paid on behalf of another person**

**Clause 99. Liquidator to give notice**

## **PART 9 - GENERAL**

### **Clause 100. Provisions specific to this jurisdiction**

This clause provides for the operation of Schedule 2, which contains provisions which are specific to the Northern Territory.

### **Clause 101. Regulations**

Subclauses (1) and (2) provide a general power for making regulations in respect of procedural matters and things required or permitted to be prescribed under the Bill.

## **PART 10 – REPEALS AND TRANSITIONAL PROVISIONS**

### **Clause 102. Repeals**

This clause repeals legislation specified in Schedule 3.

### **Clause 103. Definitions**

This clause contains definitions for the terms “commencement”, “old Act”, “old regulations” and “pre-existing” which only have application to this Part.

### **Clause 104. Application of this Act and old Act**

Subclause (1) provides for this Bill to apply to payroll tax on taxable wages that are paid or payable on or after 1 July 2009.

Subclause (2) ensures that the old *Pay-roll Tax Act* continues to apply to payroll tax on taxable wages paid or payable before 1 July 2009.

### **Clause 105. General saving**

This clause provides that any act, matter or thing that had effect under the old *Pay-roll Tax Act*, or a provision of another Act repealed by this Bill, continues to

have effect subject to any other provision of this Part or the regulations under this Part.

### **Clause 106. Employer election**

This clause ensures that an election by an employer under regulation 27K of the old *Pay-roll Tax Regulations* continues as if it were an election made under clause 16(1) of this Bill.

### **Clause 107. Pre-1 July 2009 taxable wages that included superannuation contributions**

Subclause (1) outlines when this clause will apply. This clause only applies if an employer's taxable wages for a financial year prior to 1 July 2009 included an amount of superannuation contribution as a result of clause 3 of Schedule 1 to the old *Pay-roll Tax Act* and that employer did not actually make the superannuation contribution until after 1 July 2009.

Subclause (2) provides for such an employer to deduct that amount from the subsequent return period in which that superannuation contribution is actually made. This ensures that payroll tax is not imposed twice on the same amount.

Subclause (3) provides that an employer must be able to provide evidence to satisfy the Commissioner the amount referred to in subclause (1) was included in the employer's taxable wages for a financial year prior to 1 July 2009.

### **Clause 108. Superannuation contributions relating to pre-1 July 1999 service**

This clause ensures that superannuation contributions made in respect of services performed before 1 July 1999 are not considered "wages" for the purpose of this Bill. This is because superannuation contributions were made liable to payroll tax in the Northern Territory from 1 July 1999.

### **Clause 109. Designated group employer**

This clause ensures that the designation of an employer as the designated

employer that had effect under the old *Pay-roll Tax Act* as in force immediately before 1 July 2009, is taken to be the designation of a designated group employer under this Bill.

#### **Clause 110. Approval relating to motor vehicle allowance**

This clause ensures that where an employer has obtained the Commissioner's approval under section 3E(6) of the old *Pay-roll Tax Act* as in force immediately before 1 July 2009, it is taken to be an approval under clause 29(6) of this Bill.

#### **Clause 111. Registration of employers**

This clause ensures that an employer registered under section 12 of the old *Pay-roll Tax Act* as in force immediately before 1 July 2009, is taken to be registered under clause 86 of this Bill.

#### **Clause 112. Delegation, authorisation and appointment**

Subclause (1) provides that this clause applies to any delegation, authorisation or appointment made under the *Taxation Administration Act* in relation to the old *Pay-roll Tax Act* and the old *Pay-roll Tax Regulations* as in force before 1 July 2009.

Subclause (2) ensures that a delegation, authorisation or appointment referred to in subclause (1) continues to have effect after 1 July 2009. This is necessary as clause 104 of the Bill ensures that the old *Pay-roll Tax Act* continues to apply to payroll tax on taxable wages paid or payable before 1 July 2009, despite its repeal.

Subclause (3) provides that a delegation, authorisation or appointment that relates to a provision of the old *Pay-roll Tax Act* as in force immediately before 1 July 2009, for which there is a corresponding clause in this Bill, has effect as if it were made in relation to the corresponding provision of this Bill.

For example, this means that an instrument delegating the Commissioner's ability to make a determination under section 11A of the old *Pay-roll Tax Act* will be taken to be a delegation of the Commissioner's ability to make a determination

under clause 47 of this Bill.

## **PART 11 – CONSEQUENTIAL AMENDMENTS**

### **Clause 113. Amendment of *Mineral Royalty Act***

This clause makes a consequential amendment to section 4B(1)(n) of the *Mineral Royalty Act* such that the word “pay-roll” is replaced with the word “payroll”.

### **Clause 114. Amendment of *Taxation Administration Act***

This clause makes a consequential amendment to the definition of “taxation law” in section 3(1) of the *Taxation Administration Act* such that the word “Pay-roll” is replaced with the word “Payroll”.

### **Clause 115. Amendment of *Totalisator Licensing and Regulation Regulations***

This clause makes a consequential amendment to regulation 2(g) of the *Totalisator Licensing and Regulation Regulations*, such that the word “pay-roll” is replaced with the word “payroll”.

### **Clause 116. Expiry**

This clause provides for Part 11 of the Bill to expire on 2 July 2009, which is the day after the *Payroll Tax Act 2009* commences.

## **SCHEDULE 1 – CALCULATION OF PAYROLL TAX LIABILITY**

Schedule 1 contains the method for calculating an employer's annual payroll tax liability (other than for some groups which are covered by clause 14 of Schedule 2). The details of the monthly payroll tax calculations are contained in Schedule 2. Schedule 1 also deals with an employer's obligation to keep certain records where the employer claims an exemption under clause 29 of the Bill for any part of a motor vehicle allowance paid or payable by the employer.

## **PART 1 – INTERPRETATION**

### **Clause 1. Definitions**

This clause contains definitions for numerous terms which are used throughout Schedule 1.

## **PART 2 – EMPLOYERS WHO ARE NOT MEMBERS OF GROUP**

### **Clause 2. Application of Part**

This clause provides that this Part only applies to an employer who is not a member of a group. This Part sets out the annual adjustment calculation of payroll tax for non-group employers. The annual adjustment gives employers the opportunity to review their tax paid for the financial year and make any necessary adjustments to correct overpayments or underpayments made during that year.

### **Clause 3. Definitions**

This clause defines the variables which are used in the annual adjustment calculations in clauses 4 and 5 of this Part.

### **Clause 4. Payroll of employer not more than threshold**

This clause provides that an employer who is not part of a group is not liable to pay payroll tax in a financial year if the total Northern Territory and other Australian taxable wages paid or payable by the employer is at or below the employer's threshold amount. This amount is the maximum threshold, adjusted by the ratio of the number of days in the financial year in which the employer was liable to pay Northern Territory or other Australian taxable wages, to the total number of days in that year.

### **Clause 5. Payroll of employer over threshold**

This clause provides the formula for calculating the payroll tax of an employer who is not part of a group and whose total Northern Territory and other Australian

taxable wages paid or payable during a financial year exceeds the employer's threshold amount. The payroll tax payable is the Northern Territory taxable wages of the employer, less the applicable deduction, multiplied by the rate of tax set out in Part 1 of Schedule 1.

The applicable deduction is the maximum threshold, adjusted by the ratio of the employer's Northern Territory taxable wages to its total Australian taxable wages, and also by the ratio of the number of days in the financial year in which the employer was liable to pay Northern Territory or other Australian taxable wages, to the total number of days in that year.

### **PART 3 – GROUPS WITH DESIGNATED GROUP EMPLOYER**

#### **Clause 6. Application of Part**

This clause explains that this Part only applies to an employer who is a member of a group for which there is a designated group employer. A designated group employer is a member designated for a group in accordance with clause 80 of this Bill. This Part sets out the annual adjustment calculation of payroll tax for employers who are part of such a group.

#### **Clause 7. Definitions**

This clause defines the variables which are used in the annual adjustment calculations in clauses 8 and 9 of this Part.

#### **Clause 8. Payroll of group not more than threshold**

This clause provides that none of the members of a group are liable to pay payroll tax in a financial year if the total Northern Territory and other Australian taxable wages paid or payable by the group during that year is at or below the group threshold amount. This amount is the maximum threshold, adjusted by the ratio of the number of days in the financial year in which at least one group member was liable to pay Northern Territory or other Australian taxable wages, to the total number of days in that year.

## **Clause 9. Payroll of group over threshold**

Subclause (1) outlines when a group can calculate payroll tax in accordance with the formulas contained in this clause.

Where a group does not have a designated group employer, payroll tax is to be calculated under clause 12 of Schedule 1.

Where a group's total taxable and interstate wages do not exceed the group threshold amount as outlined in clause 8 of Schedule 1, none of the members of the group are liable to payroll tax.

Where a group has a designated group employer and the group's total taxable and interstate wages exceed the group threshold amount as outlined in clause 8 of Schedule 1, payroll tax is to be calculated in accordance with the formula in clause 14 of Schedule 2 unless the group has the Commissioner's written permission to calculate payroll tax in accordance with the formulas in this clause.

Subclause (2) provides that the payroll tax payable by the designated group employer is the Northern Territory taxable wages of the designated group employer, less the applicable deduction, multiplied by the rate of tax set out in Part 1 of Schedule 1.

The applicable deduction is the maximum threshold, adjusted by the ratio of the group's Northern Territory taxable wages to its total Australian taxable wages, and also by the ratio of the number of days in the financial year in which at least one group member was liable to pay Northern Territory or other Australian taxable wages, to the total number of days in that year.

Subclause (3) provides that the payroll tax payable by a member of a group other than the designated group employer is the taxable Northern Territory wages of the group member multiplied by the rate of tax set out in Part 1 of Schedule 1.

## **PART 4 – GROUPS WITH NO DESIGNATED GROUP EMPLOYER**

### **Clause 10. Application of Part**

This clause provides that this Part only applies to an employer who is a member of a group for which there is no designated group employer. This Part sets out the annual adjustment calculation of payroll tax for employers who are part of such a group.

#### **Clause 11. Definition**

This clause defines the variable which is used in the annual adjustment calculation in clause 12 of this Part.

#### **Clause 12. Calculation of payroll tax**

This clause provides that the payroll tax payable by a member of a group (for which there is no designated group employer) is the Northern Territory taxable wages of the group member multiplied by the rate of tax set out in Part 1 of Schedule 1.

### **PART 5 – MOTOR VEHICLE ALLOWANCES**

#### **Clause 13. Continuous recording method**

This clause provides for certain information to be recorded by an employer if the employer elects to use the continuous recording method for determining the number of business kilometres travelled during a financial year.

#### **Clause 14. Averaging method**

This clause provides for certain information to be recorded by an employer if the employer elects to use the averaging method for determining the number of business kilometres travelled during a financial year. The averaging method allows employers to record the percentage of business kilometres travelled to total kilometres travelled in the relevant 12-week period, and then use this percentage to determine business kilometres travelled throughout the whole financial year, as well as the next four financial years.

### **Clause 15. Meaning of relevant 12-week period**

This clause defines the meaning of “relevant 12-week period” and provides specific rules for this period.

### **Clause 16. Replacing 1 motor vehicle with another motor vehicle**

This clause provides that an employer, which has elected to use the averaging method, may nominate in writing to replace one motor vehicle with another motor vehicle. This nomination must be recorded in the financial year in which the nomination is to take effect. However, the Commissioner has the discretion to allow this occur in a later year. The replacement motor vehicle will be taken to be the original motor vehicle and steps to record the average number of business kilometres travelled do not need to be repeated for the replacement motor vehicle.

### **Clause 17. Changing method of recording**

This clause provides for an employer to change from using the averaging method to the continuous recording method, or vice versa, from the beginning of a financial year. The requirements for the particular method chosen, as detailed in clauses 13 and 14 of Schedule 1, must be complied with.

### **Clause 18. Definition**

This clause defines “business journey” for the purposes of this Part of Schedule 1 to the Bill.

## **SCHEDULE 2 – TERRITORY SPECIFIC PROVISIONS**

### **PART 1 – INTRODUCTION TO SCHEDULE**

#### **Clause 1. Application of Schedule**

This clause provides that Schedule 2 sets out the payroll tax provisions which are specific to the Northern Territory.

## **Clause 2. Definitions**

This clause contains definitions for “financial year” and “group threshold amount”. These terms are used throughout Schedule 2.

## **PART 2 – CALCULATION OF MONTHLY PAYROLL TAX**

### ***Division 1 – Rate of payroll tax***

#### **Clause 3. Rate of payroll tax**

This clause provides that the rate of payroll tax in the Northern Territory is 5.9 per cent.

### ***Division 2 – Employers who are not members of a group***

#### **Clause 4. Application of Division**

This clause makes it clear that this Division sets out the monthly payroll tax calculation for employers who are not members of a group.

#### **Clause 5. Amount of payroll tax to be paid each month**

This clause provides that the monthly amount of payroll tax payable by a non-group employer is the total Northern Territory taxable wages paid or payable by the employer during the month, less a deductible amount (calculated under clause 6 or 7 of Schedule 2 as appropriate), and multiplied by the rate of tax set out in clause 3 of Schedule 2.

The deductible amount represents the payroll tax monthly threshold, or part thereof in circumstances of an employer who pays wages in more than one jurisdiction. Where the deductible amount exceeds the total Northern Territory taxable wages paid or payable, the employer is not required to pay payroll tax in respect of that month.

Any overpayment or underpayment of tax under this clause is accounted for in the

payroll tax annual adjustment contained in Schedule 1 to the Bill.

**Clause 6. Deductible amount for employer who does not pay interstate wages**

This clause provides that where an employer is only liable to pay wages during the relevant month in the Northern Territory, the deductible amount referred to in clause 5 of Schedule 2 is \$104 166.66.

**Clause 7. Deductible amount for employer who pays interstate wages**

This clause provides that where an employer is liable to pay wages during the relevant month in the Northern Territory and in at least one other Australian jurisdiction, the deductible amount referred to in clause 5 is to be determined in a manner approved by the Commissioner. The deductible amount cannot exceed \$104 166.66.

***Division 3 – Groups with designated group employer***

**Clause 8. Application of Division**

This clause makes it clear that this Division sets out the monthly payroll tax calculation for employers who are members of a group that has a designated group employer.

**Clause 9. Amount of payroll tax to be paid each month**

If the Commissioner has approved a designated group employer to lodge a joint return under clause 87 of the Bill, the monthly amount of payroll tax payable by the designated group employer is the total Northern Territory taxable wages paid or payable during the month by each of the group members covered by the return, less a deductible amount (calculated under clause 10 or 11 of Schedule 2 as appropriate), and multiplied by the rate of tax set out in clause 3 of Schedule 2.

Each group member who is not covered by the return is also liable for a monthly amount of payroll tax, calculated by multiplying the group member's total

Northern Territory wages paid or payable during the month by the rate of tax set out in clause 3.

If the Commissioner has not approved a designated group employer to lodge a joint return under clause 87 of the Bill, the designated group employer and each of the other group members are liable to pay monthly payroll tax separately on their respective Northern Territory taxable wages. Where this happens, only the designated group employer gets the benefit of the deductible amount (calculated under clause 10 or 11 of Schedule 2 as appropriate).

**Clause 10. Deductible amount for groups that do not pay interstate wages**

This clause states that where each member of a group is only liable to pay wages during the relevant month in the Northern Territory, the deductible amount referred to in clause 9 of Schedule 2 is \$104 166.66.

**Clause 11. Deductible amount for groups that pay interstate wages**

This clause provides that where at least one group member is liable to pay wages during the relevant month in the Northern Territory and in at least one other Australian jurisdiction, the deductible amount referred to in clause 9 of Schedule 2 is to be determined in a manner approved by the Commissioner but must not exceed \$104 166.66.

***Division 4 – Groups with no designated group employer***

**Clause 12. Application of Division**

This clause makes it clear that this Division sets out the monthly payroll tax calculation for employers who are members of a group which does not have a designated group employer.

**Clause 13. Amount of payroll tax to be paid each month**

This clause provides that the monthly amount of payroll tax payable by a group employer (where there is no designated group employer) is the total Northern

Territory taxable wages paid or payable by the employer during the month multiplied by the rate of tax set out in clause 3 of Schedule 2.

### **PART 3 – PAYROLL TAX FOR FINANCIAL YEAR**

#### **Clause 14. Payroll tax for financial year for group that has designated group employer**

Subclause (1) outlines when a group can calculate payroll tax in accordance with the formulas contained in this clause.

Where a group does not have a designated group employer, payroll tax is to be calculated under clause 12 of Schedule 1.

Where a group's total taxable and interstate wages do not exceed the group threshold amount as outlined in clause 8 of Schedule 1, none of the members of the group are liable to payroll tax.

Where a group has a designated group employer and the group's total taxable and interstate wages exceed the group threshold amount as outlined in clause 8 of Schedule 1, payroll tax is to be calculated in accordance with this clause 14 unless the group has the Commissioner's written permission to calculate payroll tax in accordance with the formulas in clause 9 of Schedule 1.

Subclause (2) provides that the payroll tax payable by the designated group employer is the Northern Territory taxable wages of the group, less the applicable deduction, multiplied by 5.9 per cent, which is the rate of tax set out in clause 3 of Schedule 2.

The applicable deduction is the maximum threshold, adjusted by the ratio of the group's Northern Territory taxable wages to its total Australian taxable wages, and also by the ratio of the number of days in the financial year in which at least one group member was liable to pay Northern Territory or other Australian taxable wages, to the total number of days in that year.

Under clause 81 of the Bill, each member of the group is jointly and severally

liable to pay this amount.

### **Clause 15. Adjustment of payroll tax for group**

Subclause (1) provides that where a group has overpaid payroll tax in respect of a financial year, the Commissioner is to refund an amount equal to the difference to the designated group employer. Otherwise, if the Commissioner considers it appropriate, the Commissioner may refund the overpaid amount to an alternate group member or members.

Clause 83(1) of this Bill provides for the circumstance where a non-group employer has overpaid payroll tax for a financial year.

Subclause (2) provides that where a group has underpaid payroll tax in respect of a financial year, the designated group employer is to pay an amount equal to the difference to the Commissioner. Otherwise, if the Commissioner considers it appropriate, the Commissioner may recover the underpaid amount from an alternate group member or members.

Clause 83(2) of this Bill provides for the circumstance where a non-group employer has underpaid payroll tax for a financial year.

## **PART 4 – EXEMPTIONS**

### ***Division 1 – Education and training***

#### **Clause 16. Schools and colleges**

This clause provides an exemption for wages paid or payable by a non-profit school or college (other than a technical school or technical college) which provides education that is not above secondary level of education.

#### **Clause 17. Apprentices and trainees**

This clause provides an exemption for wages paid or payable to apprentices employed in approved apprenticeships within the meaning of the *Northern*

## *Territory Employment and Training Act.*

This clause also provides an exemption for wages paid or payable to graduates of tertiary education institutions employed under approved trainee arrangements provided:

- the institutions and arrangements are approved under clause 18 of Schedule 2; and
- the exemption applies for a maximum of 6 months of employment of the employee under the arrangement; and
- the employee was not employed by the employer before graduating from the tertiary education institution, whether or not under a trainee arrangement.

### **Clause 18. Approval of tertiary education institutions and trainee arrangements**

This clause sets out the requirements for an institution and arrangement to be approved for the purpose of the exemption for wages paid or payable to graduates of tertiary education institutions. The exemption is provided in clause 17(b) of Schedule 2 to the Bill. These requirements are that:

- the employer makes application to the Commissioner in the form and way approved by the Commissioner; and
- the Commissioner provides written notice that the Commissioner approves both the tertiary educational institution of which the employee is a graduate and the training arrangements under which the employee is employed by the employer.

The clause also provides that an approval take effect on the date specified in the notice that is not earlier than 3 years before the date of the application.

It also allows the Commissioner, by notice in writing, to revoke an approval from the date specified in the notice but not earlier than the date on which the approval to which it relates took effect.

## ***Division 2 – Health care service providers***

### **Clause 19. What is a health care service provider**

This clause provides a definition of “health care service provider” for the purposes of the health care service provider exemption contained in Division 3 of Part 4 of the Bill. In the Northern Territory this is a public hospital or a non-profit hospital.

## **PART 5 – GOVERNMENT BODIES – SPECIAL PROVISIONS**

### **Clause 20. Application of Act to Government Business Divisions and statutory corporations**

This clause ensures that a Government Business Division is taken to be an employer for payroll tax purposes. It also ensures that a Government Business Division that is not a corporation is treated as a corporation for the purposes of payroll tax.

This clause provides that the where employees assigned to a Government Business Division or statutory corporation, that the Government Business Division or statutory corporation will be regarded as the employer for payroll tax purposes rather than the Commissioner for Public Employment.

A Government Business Division is defined in section 3(10) of the *Financial Management Act*.

## **SCHEDULE 3 – REPEALED ACTS**

Schedule 3 specifies the Acts that are to be repealed by this Bill.