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VICTORIA

Pay-roll Tax (Amendment) Act 1983

No. 10009

An Act to amend the *Pay-roll Tax Act 1971* and for other purposes.

[Assented to 13 December 1983]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

Short title.

1. This Act may be cited as the *Pay-roll Tax (Amendment) Act 1983*.

Principal Act No. 8154.

Reprinted to No. 9059.

Subsequently amended by Nos. 9192, 9305, 9427, 9440, 9647, 9699, 9733, 9766 and 9837.

2. In this Act the *Pay-roll Tax Act 1971* is called the Principal Act.

Commencement.

3. (1) Subject to sub-section (2), this Act shall come into operation on 1 January 1984.

(2) Section 6 shall be deemed to have come into operation on 1 January 1983.

(3) The Principal Act as amended by sections 4, 5, 7, 9 and 11 of this Act applies to and in relation to the assessing, charging, levy and

collection of pay-roll tax on taxable wages paid or payable before 1 January 1984.

4. (1) In paragraph (e) of the interpretation of "Wages" in section 3 (1) of the Principal Act for the words "premises or quarters" there shall be substituted the words "quarters or the provision of accommodation".

Amendment of
No. 8154 s. 3.
Interpretation—
wages.

(2) Section 3 (2) of the Principal Act shall be amended as follows:

- (a) For the words "One dollar fifty cents" there shall be substituted the expression "\$20";
- (b) The words "premises or" shall be repealed;
- (c) For the words "fifty cents" there shall be substituted the expression "\$15";
- (d) At the end of the sub-section there shall be inserted the expression "and the provision of accommodation shall be deemed to have a value of \$50 per week or, in any particular case or class of cases, such other value as is prescribed in respect of that case or class of cases".

5. Section 3 (1) of the Principal Act shall be amended as follows:

Amendment of
No. 8154 s. 3 (1).
Expanded
interpretations of
"employee" and
"wages".

- (a) In the interpretation of "employer" after the words "State of Victoria" there shall be inserted the expression ", any person deemed to be an employer by section 3C"; and
- (b) In the interpretation of "wages"—
 - (i) after the words "to or in relation to an employee as such" there shall be inserted the expression "or to or in relation to any person deemed by section 3C to be an employee"; and
 - (ii) after paragraph (b) there shall be inserted the following paragraph:

“(ba) any amount deemed to be wages by section 3C.”

6. After section 3B (9) of the Principal Act there shall be inserted the following sub-section:

Amendment of
No. 8154 s. 3b.

“(10) Notwithstanding anything to the contrary in the foregoing provisions of this section, the provision of a motor vehicle by an employer to or in relation to any employee where—

- (a) the employer is a licensed motor car trader within the meaning of the *Motor Car Traders Act 1973*; and
- (b) the motor vehicle forms part of the employer's stock held for sale in the course of his business as a licensed motor car trader—

is not for the purposes of this Act a benefit included in the wages paid or payable by an employer to or in relation to an employee.”.

Amendment of
No. 8154.
New s. 3c
inserted.

7. After section 3B of the Principal Act there shall be inserted the following section:

'3C. (1) For the purposes of this section, a reference to a relevant contract in relation to a financial year is a reference to a contract under which a person during that financial year, in the course of a business carried on by him—

- (a) supplies to another person services for or in relation to the performance of work;
- (b) has supplied to him the services of persons for or in relation to the performance of work; or
- (c) gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the first-mentioned person or, where that person is a member of a group within the meaning of section 9A, to another member of that group—

but does not include a reference to a contract of service or a contract under which a person during a financial year in the course of a business carried on by him—

- (d) has supplied to him services for or in relation to the performance of work that are ancillary to the supply of goods under the contract by the person by whom the services are supplied or to the use of goods which are the property of that second-mentioned person;
- (e) has supplied to him services for or in relation to the performance of work where—
 - (i) those services are of a kind not ordinarily required by that person and are rendered by a person who ordinarily renders services of that kind to the public generally;
 - (ii) those services are of a kind ordinarily required by that person for less than 180 days in that financial year;
 - (iii) those services are provided for a period that does not exceed 90 days or for periods that, in the aggregate, do not exceed 90 days in that financial year and are not services—
 - (A) provided by a person by whom similar services are provided to the first-mentioned person; or
 - (B) for or in relation to the performance of work where any of the persons who perform the work also perform similar work for the first-mentioned person—

for periods that, in the aggregate, exceed 90 days in that financial year;

- (iv) the payment of the consideration under the contract is made at a rate that is not less than \$500 000 per annum; or

- (v) those services are supplied under a contract to which sub-paragraphs (i) to (iv) do not apply and the Commissioner is satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally; or
- (f) has supplied to him by a person (in this paragraph called "the contractor") services for or in relation to the performance of work under a contract to which paragraphs (d) and (e) do not apply where the work to which the services relate is performed—
 - (i) by two or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor;
 - (ii) where the contractor is a partnership of two or more natural persons, by one or more of the members of the partnership and one or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or
 - (iii) where the contractor is a natural person, by the contractor and one or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor—

unless the Commissioner determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

(2) For the purposes of this Act—

(a) a person—

- (i) who during a financial year under a relevant contract supplies services to another person;
- (ii) to whom during a financial year, under a relevant contract, the services of persons are supplied for or in relation to the performance of work; or
- (iii) who during a financial year, under a relevant contract, gives out goods to other persons—

shall be deemed to be an employer in respect of that financial year;

(b) a person who during a financial year—

- (i) performs work for or in relation to which services are supplied to another person under a relevant contract; or
- (ii) being a natural person, under a relevant contract, re-supplies goods to an employer—

shall be deemed to be an employee in respect of that financial year;

- (c) amounts paid or payable by an employer during a financial year for or in relation to the performance of work relating to a relevant contract or the re-supply of goods by an employee under a relevant contract shall be deemed to be wages paid or payable during that financial year; and
- (d) where an amount referred to in paragraph (c) is included in a larger amount paid or payable by an employer under a relevant contract during a financial year, that part of the larger amount which is not attributable to the performance of work relating to the relevant contract or the re-supply of goods by an employee under the relevant contract may be prescribed by the regulations.

(3) Where a contract is a relevant contract pursuant to both sub-sections (1) (a) and (1) (b)—

- (a) the person to whom, under the contract, the services of persons are supplied for or in relation to the performance of work shall be deemed to be an employer; and
- (b) notwithstanding sub-section (2) (a) (i) the person who under the contract supplies the services shall not be deemed to be an employer.

(4) Where—

- (a) a contract under which a person in the course of a business carried on by him supplies to another person services for or in relation to the performance of work would, but for sub-section (1) (e) (iv), be a relevant contract; and
- (b) contracts under which the first-mentioned person in the course of the same business has supplied to him the services of persons for or in relation to the performance of work would, but for sub-section (1) (e) (ii) or (iii) be relevant contracts—

the Commissioner may, unless the first-mentioned person satisfies him that the business is carried on independently of, and is not connected with, the carrying on of a business carried on by another person or other persons and that the business is not carried on with an intention either directly or indirectly of avoiding or evading the payment of tax whether by the first-mentioned person or another person, by notice in writing given to the first-mentioned person determine that the contracts referred to in paragraph (b) are relevant contracts notwithstanding sub-section (1) (e) (ii) and (iii).

(5) Where, in respect of a payment for or in relation to the performance of work that is deemed to be wages under this section, pay-roll tax is paid by a person deemed under this section to be an employer—

- (a) no other person shall be liable to pay-roll tax in respect of that payment; and

- (b) where another person is liable to make a payment for or in relation to that work, that person shall not be liable to pay-roll tax in respect of that payment unless it or the payment by the first-mentioned person is made with an intention either directly or indirectly of avoiding or evading the payment of tax whether by the first-mentioned person or another person.
- (6) In this section—
- (a) a reference to a contract includes a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied;
- (b) a reference to supply includes a reference to supply by way of sale, exchange, lease, hire or hire-purchase, and in relation to services includes a reference to the providing, granting or conferring of services;
- (c) a reference to the re-supply of goods acquired from a person includes a reference to—
- (i) a supply to the person of goods in an altered form or condition; and
- (ii) a supply to the person of goods in which the first-mentioned goods have been incorporated;
- (d) a reference to services includes a reference to results (whether goods or services) of work performed;
- (e) subject to paragraph (f), a reference to a financial year is a reference to the period commencing on 1 January 1984 and ending on 30 June 1984 and each year thereafter commencing on 1 July; and
- (f) where, but for this paragraph, a reference in paragraph (e) of sub-section (1) to a financial year would be a reference to the period commencing on 1 January 1984 and ending on 30 June 1984, that reference is a reference to the year commencing on 1 July 1983.

8. In section 7 of the Principal Act—

- (a) for the expression “7. Subject to,” there shall be substituted the expression “7. (1) Subject to,”; and
- (b) at the end of the section there shall be inserted the following sub-section:

“(2) Where, during a month after the month of June 1984, the amount of taxable wages paid or payable by an employer is \$83 334 or more, the rate at which pay-roll tax shall be charged, levied and collected in respect of those wages is 6 per centum.”.

Amendment of
No. 8154.
Rate of pay-roll
tax.

9. (1) In section 9A (3A) of the Principal Act, for paragraph (ga) there shall be substituted the following paragraph:

Amendment of
No. 8154.
Exemption level
and reduction
amount.

- '(ga) for sub-sections (2A), (2B) and (2C) of section 11A there were substituted the following sub-sections:

"(2A) For the purposes of the financial year commencing on 1 July 1983, a reference in sections 11B and 11C to the prescribed amount is, in relation to the members of a group within the meaning of section 9A, a reference to the prescribed amount calculated for those purposes in relation to such members in accordance with Part B of Schedule One.

(2B) For the purposes of the financial year commencing on 1 July 1984 and each financial year thereafter, a reference in sections 11B and 11C to the prescribed amount is, in relation to the members of a group within the meaning of section 9A, a reference to the prescribed amount calculated for those purposes in relation to such members in accordance with Part B of Schedule Two.

(2C) For the purposes of the financial year commencing on 1 July 1984 and each financial year thereafter, a reference in sections 11B and 11C to the reduction amount is, in relation to the members of a group within the meaning of section 9A, a reference to the reduction amount calculated for those purposes in relation to such members in accordance with Schedule Eight."

- (2) In section 9B (1) of the Principal Act in the interpretation of "prescribed amount"—

- (a) for the expression "1983" (where twice occurring) there shall be substituted the expression "1984";
- (b) for the expression "\$10 416" (where three times occurring) there shall be substituted the expression "\$11 666";
- (c) for the expression "\$11 666" (where three times occurring) there shall be substituted the expression "\$16 666";
- (d) for the expression "1982" there shall be substituted the expression "1983".

- (3) In section 11A of the Principal Act—

- (a) in sub-section (2A) for the expression "1982" there shall be substituted the expression "1983";
- (b) in sub-section (2n) for the expression "1983" there shall be substituted the expression "1984"; and
- (c) after sub-section (2B) there shall be inserted the following sub-section:

"(2C) For the purposes of the financial year commencing on 1 July 1984 and each financial year thereafter, a reference in sections 11B and 11C to the reduction amount is a reference to the reduction amount calculated for those purposes in accordance with Schedule Seven."

(4) In section 11B of the Principal Act for sub-section (1) there shall be substituted the following sub-section:

'11B. (1) In this section "annual amount of pay-roll tax", in relation to an employer, means—

Annual
adjustments.

- (a) subject to paragraph (b)—the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 (1) to the difference between—
 - (i) the total of the taxable wages paid or payable by that employer during a financial year; and
 - (ii) the prescribed amount; and
- (b) where, in respect of the financial year commencing on 1 July 1984 or a subsequent financial year, the total of the taxable wages paid or payable by that employer is \$1 000 000 or more—the amount ascertained by applying the rate of 6 per centum to the difference between—
 - (i) the total of the taxable wages paid or payable by that employer during the financial year; and
 - (ii) the prescribed amount—
less the reduction amount.'

(5) In section 11C (1) of the Principal Act for the interpretation of "total amount of pay-roll tax" there shall be substituted the following interpretation:

' "total amount of pay-roll tax" in relation to an employer, means—

- (a) subject to paragraph (b)—the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 (1) to the difference between—
 - (i) the total of the taxable wages paid or payable by that employer during a prescribed period; and
 - (ii) the prescribed amount; and
- (b) where, in respect of the financial year commencing on 1 July 1984 or a subsequent financial year, the total of the taxable wages paid or payable by that employer during a prescribed period is equal to or more than the amount that bears the same proportion to \$1 000 000 as the prescribed period bears to the whole of the financial year—the amount ascertained by applying the rate of 6 per centum to the difference between—
 - (i) the total of the taxable wages paid or payable by that employer during the prescribed period; and
 - (ii) the prescribed amount—
less the reduction amount.'

(6) In section 12 of the Principal Act—

- (a) in sub-section (1) for the expression "\$2690" there shall be substituted the expression "\$3840";

- (b) in sub-section (2A) for the expression "\$2690" there shall be substituted the expression "\$3840".
- (7) In Part A of Schedule One to the Principal Act—
- (a) for the expression "1982" (where three times occurring) there shall be substituted the expression "1983";
- (b) for the expression "62 500A" (where twice occurring) there shall be substituted the expression "70 000A";
- (c) for the expression "70 000B" (where twice occurring) there shall be substituted the expression "100 000B";
- (d) for the expression "1983" (where twice occurring) there shall be substituted the expression "1984".
- (8) In Part B of Schedule One to the Principal Act—
- (a) for the expression "1982" (where three times occurring) there shall be substituted the expression "1983";
- (b) for the expression "1983" (where twice occurring) there shall be substituted the expression "1984".
- (9) In Part A of Schedule Two to the Principal Act—
- (a) for the expression "1983" there shall be substituted the expression "1984";
- (b) for the expression "140,000C" (where twice occurring) there shall be substituted the expression "200 000C";
- (10) In Part B of Schedule Two to the Principal Act for the expression "1983" there shall be substituted the expression "1984".

10. In section 16 (1) of the Principal Act for all the words and expressions after paragraph (b) there shall be substituted the following words and expressions:

"for the purpose of—

- (c) inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Act; or
- (d) ascertaining for the purposes of this Act the identity of any person who—
- (i) may have a liability or entitlement under any of the provisions of this Act; or
- (ii) may, by reason of being related to or associated or connected with another person, affect the liability or entitlement of that other person—
- and may require him to produce all books documents and other papers whatsoever in his custody or under his control relating thereto."

11. After Schedule Six to the Principal Act there shall be inserted the following Schedules:

"SCHEDULE SEVEN

Section 11A.

The reduction amount referred to in section 11A is the amount calculated in accordance with the formula—

$$\frac{TW}{TW + IW} \left[\frac{9622C}{365} - \frac{1}{10} \left((TW + IW) - \frac{1,000,000C}{365} \right) \right]$$

Where—

TW is the total of the taxable wages paid or payable by the employer otherwise than as a member of a group during that financial year;

IW is the total of the interstate wages paid or payable by the employer otherwise than as a member of a group during that financial year; and

C is the number of days in respect of which wages (disregarding foreign wages) were paid or payable by the employer otherwise than as a member of a group during that financial year.

SCHEDULE EIGHT

Section 9A.

The reduction amount referred to in section 9A (3A) (ga) is the amount calculated in accordance with the formula—

$$\frac{TW}{TW + IW} \left[\frac{9622C}{365} - \frac{1}{10} \left((TW + IW) - \frac{1,000,000C}{365} \right) \right]$$

where—

TW is the total of the taxable wages paid or payable by the members of the group as members of the group during that financial year;

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

C is the number of days in that financial year in respect of which at least one member of the group paid or was liable to pay wages (disregarding foreign wages) as a member of a group."