

2005

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

REVENUE LEGISLATION AMENDMENT BILL 2005

EXPLANATORY STATEMENT

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Revenue Legislation Amendment Bill 2005

Summary

This Bill amends: the *Duties Act 1999* (the Duties Act), the *Payroll Tax Act 1987* (the Payroll Tax Act), the *Land Tax Act 2004* (the Land Tax Act) and the *Rates Act 2004* (the Rates Act).

Overview

Chapter 9 of the Duties Act imposes duty on the transfer of motor vehicle registration and allows for certain exemptions. Current practice requires a client to obtain a certificate of exemption from the ACT Revenue Office before the ACT Government Shopfronts can process their transaction free from duty. The amendments in this Bill will allow a single point of access for clients by removing the need for an exemption certificate to be issued. The power to allow an exemption has been given to the Commissioner for ACT Revenue who may delegate this power so that staff at the Shopfront can process exemptions. These amendments commence 1 July 2005 and ACT Government Shopfront staff will undertake the processing of the delegated exemptions as soon as software changes have been made and training provided.

The Land Tax Act and the Rates Act have been amended so that the purely mechanical provisions to calculate land tax or interest on a refund are no longer required to be “worked out by the Commissioner”.

The amendments to the Payroll Tax Act impose payroll tax on employer contributions to employee share schemes (including the grant of shares or options) and any similar contributions to a director or member of the governing body of a company, to a person to be appointed such, and to a former director or member. It also imposes payroll tax on any amount paid or payable to a director or member of the governing body of a company (or former director or member) as a consequence of a termination of services or office, that would be an eligible termination payment under relevant Commonwealth legislation had it been paid as a consequence of termination of employment. Similar provisions apply in relation to shares or options paid or payable to an employee under a service contract.

The Payroll Tax amendments use the NSW legislation as a model and include the changes introduced by the NSW Variation to Statute in Revenue ruling PT 063 found to be necessary to overcome administrative and equity problems.

Financial Implications

The Duties Act amendments are aimed at improving customer service. Other than estimated implementation costs of \$7,500, there are no expected ongoing costs or savings.

The Payroll Tax Act amendments are aimed to prevent future revenue leakage. The number of corporations providing employee share schemes and the number of employees utilising these schemes is not known. Nor is the number of directors or members of governing bodies of companies receiving shares or options as part of their salary package. However, the potential increase in the value of employee share schemes is estimated to be \$2-3m per year which could now become liable to payroll tax.

The Land Tax Act and the Rates Act amendments have no financial impact.

Details of the Bill are attached.



Details of the Revenue Legislation Amendment Bill 2005

Part 1 Preliminary

Clause 1 names this Act the *Revenue Legislation Amendment Act 2005*.

Clause 2 states that Part 2 (Duties Act 1999) and part 4 (Payroll Tax Act 1987) commence on 1 July 2005; and the remaining provisions commence on the day after this Act's notification day.

Part 2 Duties Act 1999

Clause 3 Legislation amended - Pt 2. Part 2 amends the *Duties Act 1999*.

Clause 4 New section 209B. This section replaces section 222(b) and brings all exemption provisions for motor vehicle registration into Part 9.2.

Clause 5 Hospitals Schools and Charitable Organisations. A new section 210 is substituted to deal exclusively with hospitals and schools and a new section 210A provides the exemption for charitable organisations. Splitting the previous provision dealing with hospitals, schools and charitable organisations into two separate sections is for administrative reasons and will allow for separate reporting.

Clause 6 Prerequisites for registration. This clause inserts a requirement for the commissioner to be satisfied that an application under part 9.2 of the *Duties Act 1999* is exempt from duty. This replaces the need for an exemption certificate and this provision was inserted as a consequence of clause 8.

Clause 7 Section 221(3). This clause requires an applicant to provide any relevant information to the road transport authority to allow the authority to process exemptions.

Clause 8 Certificates of exemption Section 222. This clause repeals section 222, removing the need for the commissioner to issue a certificate of exemption. This amendment is to simplify processing requirements. Section 222(b) has been replaced in the Act by the new section 209B.

Clause 9 Section 223 Returns by road transport authority. This clause requires the road transport authority to report on all transactions processed during the month. It also requires the road transport authority to provide all documentation associated with an application if requested by the commissioner.

Part 3 Land Tax Act 2004

Clause 10 Legislation amended – pt 3. Part 3 amends the *Land Tax Act 2004*.

Clauses 11 to 15 omit the words “by the commissioner” from sections 9 (2) (Imposition of land tax), 15 (3) (Multiple dwellings), 16 (2) (Land partly owned by a corporation or trustee), 18 (2) (Land tax for part of a quarter), and 30 (2) (Imposition of land tax – qualifying parcels of land). These provisions all contain equations to calculate land tax in particular situations. There is no discretion and the calculation can be made by any officer as it follows a purely mathematical formula. Removing

the requirement for the commissioner to calculate land tax is consistent with the working out of rates under the *Rates Act 2004* and has no impact on tax payers.

Clause 16 Interest on refund. This omits the words “by the commissioner” from section 37 (1) (a) as a consequence of clauses 10 to 15.

Part 4 Payroll Tax Act 1987

Clause 17 Legislation amended – pt 4. Part 4 amends the *Payroll Tax Act 1987*.

Clause 18 Sections 1, 2A, 3, 3A, 3B, 3C and 4.

The Payroll Tax Act has been modernised so its presentation is now more in line with other ACT legislation. There have been some minor changes in language to conform with current standards and the order of the provisions has changed but there is no change to existing meanings, other than the new provisions explained below.

Most of the definitions in the interpretation section have been moved to a new dictionary at the end of the Act, and where it was more appropriate, others have been incorporated into other sections. The ‘Meaning of wages’ has been moved from the interpretation and become section 2. Other sections about wages have been relocated and renumbered so that all the provisions dealing with wages (including the new provisions introduced by this Act) are in the same area in the Act.

Section 3 (1) restates the previous sections 3 (5), and section 3 (2) restates the previous section 3A. This is consequential on moving the rest of the interpretation to the dictionary.

The section dealing with application of the Act to certain contracts (previous section 3B) has been updated and renumbered as section 4.

The previous sections and the equivalent new sections are in the table below:

Equivalent New Section Number	Previous Section Number
1	1
Tax law under the <i>Taxation Administration Act 1999</i>	2A
Dictionary, 1A, 2 (1), 2 (2) (a) to (i), 2 (4)	3 (1), (2) and (3)
2C (1)	3 (4)
2D	5
3 (1)	3 (5)
3 (2)	3A
4 (1) (a), (b) and (c)	3B (1) (a), (b) and (c)
4 (2) and (3)	3B (1) (d) and (e)
4 (4) (a), (b), (c) and (d)	3B (2)
4 (5)	3B (3)
4 (6)	3C
4 (7)	3B (4) (c)
4 (8)	3B (4) (a), (b) and (d), and 3B (5)
Section 74 <i>Taxation Administration Act 1999</i>	4

New provisions introduced by this amending Act are in sections 2 (2) (j), (k) and (l), 2A, 2B, 2C (2) and 4 (4) (e) and are detailed below.

Section 2 (2) (j). This new provision captures as wages the value of shares and options granted to employees, and also to directors or members of a governing body of a company, as detailed in sections 2A and 2B.

Section 2 (2) (k) and (l) are new provisions. The Act already provides that an amount that is an eligible termination payment (ETP) under the *Income Tax Assessment Act 1936* (Cwlth) is wages and is taxable accordingly. Paragraph (k) makes similar provision to capture such payments made to a director or member of the governing body of the company (or former director or member) if the amount would have been an ETP if the amount had been paid or payable in consequence of termination of any employment. Paragraph (l) makes similar provision to capture such payments made by an employer to a service contractor as a consequence of termination of the service contract.

Section 2 (3) This provision states for an amount that is, or is treated as an ETP, a liability to payroll tax occurs at the time that the ETP is paid or becomes payable (not necessarily the time in which the actual service to which the ETP relates was provided).

Section 2 (4) provides definitions of *annual leave*, *eligible termination payment* and *long service leave* which have been moved, unchanged, from interpretation to this section as they only apply in this section. A new definition of *director or member of the governing body* of a company ensures that, for this section, a former director or former member of the governing body of the company is included.

Section 2A Inclusion of grant of shares and options as wages. This section provides that the grant of a *share* or *option* (both defined in the dictionary) to an employee by an employer for services performed or provided by the employee is wages for this Act. It states when these wages are taken to be paid or payable, and how their value is ascertained on the relevant day under schedule 1.

If the value of the grant of an option is not included in the taxable wages for the year in which the option is granted to the employee, it is assumed the employer has elected to treat the grant of an option as being paid or payable on the vesting day.

The grant of a share is not wages for this Act if it is granted because of the exercise of an option that was included as wages for this Act when the option was granted (avoids double taxation), or the option was granted before the commencement of this section on 1 July 2005 (avoids retrospective liability).

The terms *granted*, *relevant day* and *vesting day* are defined here and also referred to in the dictionary.

Section 2B Inclusion of shares and options granted to directors and others as wages. This section treats a director or member of the governing body of a company as if they were an employee in relation to wages under section 2A. The grant of a share or option as remuneration for the appointment or services of the director or member is wages for this Act.

Section 2A and schedule 1 apply in relation to the grant as if a reference to the employer were a reference to the company, and a reference to the employee were a reference to the director or member of the governing body of the company.

For this section, a director or member of the governing body of a company includes a person who, under a contract or other arrangement, is to be appointed as a director or member of the governing body of the company; and a former director or former member of the governing body of the company. This captures shares and options granted as an enticement to a person before they are appointed, on and after appointment and also those granted when directors or members leave a company.

Section 2C Inclusion of wages paid by or to third parties. This section deals with amounts of money or other valuable consideration paid or payable by or to third parties. Section 2C (1) replaces previous section 3 (4) which dealt with payments to and from third parties. The new section clarifies all situations where third party payments for an employee's services are taken to be wages paid or payable by the employer to the employee.

Section 2C (2) extends the provisions in subsection (1) so that all third party payments for the appointment or services of a director or member of a governing body of a company are taken to be paid or payable by the company to the director or member of the governing body of the company.

As in section 2B (3), this captures shares and options granted as an enticement to a person before they are appointed, on and after appointment and also those granted made when directors or members leave a company.

Section 4 Application of Act to certain contracts. The previous section 3B has been reworded to create a definition of '*service contract*' which applies to the whole Act. Except for section 4 (4) (e), which is new, the remainder of the previous section 3B has been re-written to meet current drafting standards without changing the meaning. Section 4 (4) (e) is a new provision to include in the payroll tax net the value of the grant of a share or option, not otherwise included as wages in this Act (avoiding double taxation), in relation to work under a service contract, that is wages under section 2A.

Clause 19 Wages to which this Act applies

Section 5 is relocated as section 2D. This keeps all the provisions about wages together.

Clauses 20 Agreement etc to reduce or avoid liability to payroll tax

Section 5A is renumbered as section 5.

Clause 21 Payroll tax liability

Section 6 has been remade and the reference changed as a consequence of clause 19.

Clause 22 Employment of transitional staff

Section 7 is no longer required.

Clauses 23, 24 and 25 Review of decisions

Amends the cross references in sections 19 (a), (b) and (c).

Clause 26 New schedule 1

Schedule 1 Calculation of market value of contribution to share scheme

This schedule provides the methods of valuation for the shares and options which are now wages under sections 2A and 2B of the Act. The schedule includes definitions in section 1.1 of *granted*, *qualified person*, *relevant day* and *vesting day*.

Sections 1.2 and 1.3 describe how to ascertain the Market value of shares or options quoted on stock exchange and the Market value of shares or options not quoted on stock exchange.

Section 1.3 (2) requires that an approval of a general method for subsection (1) (b) is a notifiable instrument. This ensures transparency and consistency in application of such a method.

Section 1.4 requires the market value be expressed in Australian dollars.

Clause 27 New dictionary

Most provisions from the interpretation section have been transferred to the dictionary at the end of the Act. There are new definitions for *granted*, *qualified person*, *option*, *relevant day*, *stock exchange*, *share*, *unfunded* (was section 3(3)), *vesting day* and *wages*, and previous section 3(2) has been incorporated into the definition of *superannuation benefit*.

Part 5

Rates Act 2004

Clause 28 Legislation amended – pt 5. Part 5 amends the *Rates Act 2004*.

Clause 29 Interest on refund This clause omits the words “by the commissioner” from section 44 (1) (a). The working out of rates is not done by the commissioner so there is no requirement for the administrative error mentioned in section 44 (1) (a) to have been made by the commissioner. This also ensures administrative consistency with the similar change to the *Land Tax Act 2004* in clause 16 of this Bill.