

Australian Capital Territory

Taxation Administration (Payroll Tax— Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2021

Disallowable instrument DI2021–10

made under the

Taxation Administration Act 1999, s 137E (COVID-19 Exemption Scheme)

EXPLANATORY STATEMENT

Update

Taxation Administration (Payroll Tax—Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2021 (the **Determination**) follows from the operation of the *Taxation Administration (Payroll Tax—Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2020* to provide payroll tax exemption to eligible employers for the period 1 December 2020 to 30 June 2021.

There are no changes to the criteria that an employer must satisfy to be eligible for the payroll tax exemption.

Background

On 9 August 2020, the Government announced extended support for businesses to address the economic impacts of COVID-19. On 17 December 2020, the Government announced a further extension of its payroll tax exemption for businesses not permitted to operate and those permitted to operate only on a very restricted basis due to ACT Government restrictions to 30 June 2021.

As part of the extended support, the *Taxation Administration (Payroll Tax—Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2021* determines a scheme to exempt wages paid or payable by eligible employers whose business are not permitted to operate due to ACT Government restrictions over the period 1 December 2020 to 30 June 2021.

Business permitted to operate only on a very restricted basis over the same period due to ACT Government restrictions may apply separately for waivers under the *Financial Management Act 1996* of payroll tax. These applications will be considered on a case-by-case basis.

Determination

The Determination sets out, for the purposes of the exemption:

- the eligibility requirements; and
- the period of exemption.

An eligible employer is an employer controls or operates a business that is not permitted to operate due to an emergency direction or action under section 120 of the *Public Health Act 1997*.

The Determination applies to wages paid or payable by eligible employers for a specified period—any of the months in the period of 1 December 2020 to 30 June 2021.

If at any time during one of the specified months, the employer's business is not permitted to operate they will be exempt from payroll taxes on wages for that particular month. Accordingly, the exemption may apply to payroll tax ordinarily payable in the months of January to July 2021, as the payroll tax relates to wages paid or payable in the related months of December 2020 to June 2021.

Retrospectivity

This instrument commences retrospectively on 1 December 2020 to ensure application to wages paid during December 2020 and follow from the operation of *Taxation Administration (Payroll Tax—Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2020, DI2020-279*.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that it does not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person. This instrument provides a concession on the payroll tax payable for businesses affected by COVID-19 restrictions and supports economic recovery. It promotes a purpose which will be of overall benefit to the ACT community.

Expiry

This instrument expires on 31 July 2021.

Human Rights Act 2004

This instrument provides an exemption to payroll tax and does not limit, and is consistent with, human rights. By providing exemption to wages paid or payable by eligible employers, it promotes the right to work (section 27B of the *Human Rights*

Act 2004) by supporting jobs for those in ACT community affected by the COVID-19 pandemic.

In accordance with the legislation, the Determination includes a statement about whether the scheme is consistent with human rights.

The ACT Human Rights Commission has been consulted on the Determination.

Authorised by the Treasurer
Andrew Barr MLA