Queensland

Payroll Tax Act 1971

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Payroll Tax Act 1971

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Payroll Tax Act 1971

An Act to impose a tax upon employers in respect of certain wages

Part 1 Preliminary

1 Short title

This Act may be cited as the *Payroll Tax Act 1971*.

2 Dictionary

The dictionary in the schedule defines particular words used in this Act.

3 Meaning of *superannuation contribution*

(1) A ***superannuation contribution*** is a monetary or non-monetary contribution paid or payable by an employer for an employee, or by a company for a director of the company—

(a) as a superannuation guarantee charge under the Superannuation Guarantee Act; or

(b) to a superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or

(c) to another form of superannuation, provident or retirement fund or scheme, including, for example, the following—

(i) a retirement savings account under the *Retirement Savings Accounts Act 1997* (Cwlth);

(ii) a wholly or partly unfunded fund or scheme.

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Examples of non-monetary contribution—

1 marketable securities

2 real property

(2) In this section—

Superannuation Guarantee Act means the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

superannuation guarantee charge does not include the following—

(a) an additional superannuation guarantee charge under section 49 or part 7 of the Superannuation Guarantee Act;

(b) the part of a superannuation guarantee charge equal to a superannuation contribution mentioned in subsection (1)(b) or (c) that is payable, and for which payroll tax has been paid to the commissioner, to the extent the contribution would have resulted in a reduction in the charge percentage under section 23 of the Superannuation Guarantee Act if the contribution had been paid.

unfunded, for a superannuation, provident or retirement fund or scheme, means the extent that an amount paid or payable by an employer for an employee, or by a company for a director of the company, covered by the fund or scheme is not paid or payable while the employee is employed by the employer, or the director is appointed as a director of the company.

3A Meaning of *termination payment*

(1) A ***termination payment*** is—

(a) any of the following payments made because of the retirement from, or termination of, any office or employment of an employee—

(i) an unused annual leave payment under the *Income Tax Assessment Act 1997* (Cwlth), section 83-10;

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(ii) an unused long service leave payment under the *Income Tax Assessment Act 1997* (Cwlth), section 83-75;

(iii) so much of an employment termination payment paid or payable by an employer, whether paid or payable to the employee or to another entity, that would be included in the assessable income of the employee under the *Income Tax Assessment Act 1997* (Cwlth), chapter 2, part 2-40 if the whole employment termination payment had been paid to the employee; or

(b) a following amount, if the amount would be an employment termination payment had it been paid or payable because of termination of employment—

(i) an amount paid or payable by a company because of the termination of the services or office of a director of the company, whether paid or payable to the director or another entity;

(ii) an amount paid or payable by a relevant contract employer because of the termination of the supply of the services of an employee under a relevant contract, whether paid or payable to the employee or another entity.

(2) In this section—

employment termination payment means—

(a) an employment termination payment under the *Income Tax Assessment Act 1997* (Cwlth), section 82-130; or

(b) a payment that is not an employment termination payment under the *Income Tax Assessment Act 1997* (Cwlth), section 82-130 only because it is received later than 12 months after the termination of a person's employment; or

(c) a transitional termination payment under the *Income Tax (Transitional Provisions) Act 1997* (Cwlth), section 82-10.

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4 Other provisions about meaning of *wages*—superannuation contributions and GST

(1) This section applies for the definition of *wages* in the schedule.

Note—

Part 2, divisions 1A to 1D contain other provisions that apply for the definition *wages*.

(2) For paragraph (g) of the definition, a superannuation contribution paid or payable by an employer for an employee on or after 1 January 2000 is taken to be for the employee's services performed or rendered on or after 1 January 2000.

(3) However, if the commissioner is satisfied any part of a superannuation contribution mentioned in subsection (2) is for an employee's services performed or rendered before 1 January 2000, the part is not wages.

(4) Also, for paragraph (g) of the definition—

(a) a superannuation contribution paid or payable by an employer to a superannuation, provident or retirement fund or scheme and not attributed by the employer as paid or payable for a particular employee or particular employees is taken to be paid or payable for the employee or employees decided by the commissioner; and

(b) a superannuation contribution paid on or after 14 September 1999 and before 1 January 2000 for an employee's services to be performed or rendered on or after 1 January 2000 is taken to be paid on 1 January 2000.

(5) For this Act, the amount or value of wages paid or payable to a person must be reduced by the relevant proportion of the amount of any GST paid or payable by the person on the supply to which the wages relate.

(6) In this section—

relevant proportion, for GST paid or payable on a supply to which wages relate, means the proportion that the amount or

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value of the wages bears to the consideration for the supply to which the wages relate.

5 Meaning of *change of status*

(1) A ***change of status*** happens for a person who is an employer if, during a financial year—

(a) the person ceases to be an employer and does not intend to resume being an employer during the remainder of the year or the next financial year; or

Example for paragraph (a)—

There is no change of status for a fruit grower who ceases to pay wages after the fruit picking season but intends to resume paying wages later in the financial year or in the next financial year.

(b) for a person who pays, or is liable to pay, taxable wages and who is not a group member—the person becomes a group member; or

(c) for a person who pays, or is liable to pay, wages and is a non-DGE group member—

(i) the person starts paying, or becomes liable to pay, taxable wages other than as a group member; or

(ii) the person becomes the DGE for a group; or

(d) the person ceases to be the DGE for a group; or

(e) an administrator is appointed for the property of the person; or

(f) the appointment of an administrator for the person's property ceases to have effect.

(2) A change of status happens—

(a) if subsection (1)(a) applies—on the first day the person—

(i) does not pay, and is not liable to pay, wages; and

(ii) does not intend to resume paying wages for the remainder of the year or the next financial year; or

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(b) if subsection (1)(b) applies—on the first day the person is a group member; or

(c) if subsection (1)(c)(i) applies—on the first day the person pays, or is liable to pay, taxable wages other than as a group member; or

(d) if subsection (1)(c)(ii) applies—on the first day of the periodic return period in which the person becomes the DGE for the group; or

Note—

See also section 75(1) and (2).

(e) if subsection (1)(d) applies—

(i) if all the group members cease to pay, or be liable to pay, wages as members of the group during the relevant periodic return period on or before the day the person ceases to be the DGE for the group—on the first day the person is not the DGE for the group; or

(ii) otherwise—on the first day of the relevant periodic return period; or

Note—

See also section 75(3).

(f) if subsection (1)(e) applies—on the day the administrator is appointed; or

(g) if subsection (1)(f) applies—on the day after the appointment ceases to have effect.

(3) For subsection (2)(e), the relevant periodic return period is the periodic return period in which the person ceases to be the DGE for the group.

Notes—

1 If an employer who is not a group member changes status, the employer is required to lodge a final return for, and pay, payroll tax and the mental health levy for the final period.

2 If an employer who is the DGE for a group changes status, the DGE is required to lodge a final return for, and pay, payroll tax and the mental health levy for the final period.

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3 If an employer who is a non-DGE group member changes status—

(a) the employer is required to lodge a final return for, and pay, payroll tax for the final period; and

(b) the DGE for the group is required to lodge a final return for, and pay, the mental health levy for the final period.

6 Meaning of *final period*

The ***final period***, for a change of status of a person (the ***relevant change of status***) happening during a financial year, means the period—

(a) starting on the latest of the following days in the year—

(i) 1 July;

(ii) the first day on which the person is required to register as an employer under part 3, division 1;

(iii) if an earlier change of status has happened for the person during the year—the day of the change of status happening immediately before the relevant change of status; and

(b) ending on the day before the relevant change of status happens.

Example—

An employer who is a group member from 1 July in a financial year ceases to be a group member on 1 September. The final period for the change of status is 1 July to 31 August.

If the employer then ceases to pay, or be liable to pay, wages from 1 June, the final period for the second change of status is 1 September to 31 May.

6A Reference to periodic return period or return period

Despite section 59(1A), a reference in this Act, other than section 59(1), to a periodic return period or return period in relation to an employer is taken to include the last periodic return period of a financial year for the employer.

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7 Notes in text

A note in the text of this Act is part of the Act.

8 Relationship of Act with Administration Act

(1) This Act does not contain all the provisions about payroll tax or the mental health levy.

(2) The Administration Act contains provisions dealing with, among other things, each of the following—

(a) assessments of tax;

(b) payments and refunds of tax;

(c) imposition of interest and penalty tax;

(d) objections and appeals against, or reviews of, assessments of tax;

(e) record keeping obligations of taxpayers;

(f) investigative powers, offences, legal proceedings and evidentiary matters;

(g) service of documents;

(h) registration of charitable institutions.

Note—

Under the Administration Act, section 3, that Act and this Act must be read together as if they together formed a single Act.

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Part 2 Liability to taxation

Division 1 Imposition of liability

Subdivision 1 Wages liable to payroll tax and mental health levy

8A Application of sdiv 1

(1) This subdivision applies for working out the wages paid or payable by an employer for services performed or rendered by a person that are liable to payroll tax and the mental health levy under this Act.

(2) If wages are paid or payable for a person other than an employee, a reference to an employee in this subdivision includes a reference to the person.

9 Wages liable to payroll tax and mental health levy—nexus with Queensland

(1) Wages are liable to payroll tax and the mental health levy under this Act if—

(a) the wages are paid or payable by an employer in relation to services performed or rendered by an employee entirely in Queensland; or

(b) the wages are paid or payable by an employer in relation to services performed or rendered by an employee in 2 or more States, or partly in at least 1 State and partly outside all States, and—

(i) the employee is based in Queensland; or

(ii) if the employee is not based in a State—the employer is based in Queensland; or

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(iii) if both the employee and the employer are not based in a State—the wages are paid or payable in Queensland; or

(iv) if both the employee and the employer are not based in a State and the wages are not paid or payable in a State—the wages are paid or payable for services performed or rendered mainly in Queensland; or

(c) the wages are paid or payable by an employer in relation to services performed or rendered by an employee entirely outside all States and are paid or payable in Queensland.

Note—

Section 15A provides an exemption for wages paid or payable for services performed entirely in another country for a continuous period of more than 6 months.

(2) Subject to subsections (4) and (5), the question of whether wages are liable to payroll tax and the mental health levy under this Act must be decided by reference only to the services performed or rendered by the employee for the employer during the month in which the wages are paid or payable.

(3) Wages paid or payable by an employer for an employee in a particular month are taken to be paid or payable in relation to the services performed or rendered by the employee for the employer during the month.

Example—

If wages paid in a month are paid to an employee for services performed or rendered over several months, the question of whether the wages are liable to payroll tax and the mental health levy under this Act must be decided by reference only to the services performed or rendered by the employee in the month the wages are paid. The services performed or rendered in previous months are disregarded. However, the services performed or rendered in previous months are relevant to the question of whether wages paid in the previous months are liable to payroll tax and the mental health levy under this Act.

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(4) If no services are performed or rendered by an employee for an employer during the month in which wages are paid or payable in relation to the employee—

(a) the question of whether the wages are liable to payroll tax and the mental health levy under this Act must be decided by reference only to the services performed or rendered by the employee for the employer during the most recent earlier month in which the employee performed or rendered services for the employer; and

(b) the wages are taken to be paid or payable in relation to the services performed or rendered by the employee for the employer in that most recent earlier month.

(5) If no services were performed or rendered by an employee for an employer during the month in which wages are paid or payable in relation to the employee or in any earlier month—

(a) the wages are taken to be paid or payable in relation to services performed or rendered by the employee in the month in which the wages are paid or payable; and

(b) the services are taken to have been performed or rendered at a place where it may reasonably be expected that the services of the employee for the employer will first be performed.

(6) All amounts of wages paid or payable in the same month by the same employer for the same employee must be aggregated for deciding whether the wages are liable to payroll tax and the mental health levy under this Act.

Example—

If 1 amount of wages is paid by an employer in a particular month in relation to services performed or rendered in Queensland, and another amount of wages is paid by the same employer in the same month in relation to services performed or rendered by the same employee in another State, the wages paid must be aggregated as if they were paid or payable in relation to all services performed or rendered by the employee in that month. Subsection (1)(b) would be applied to decide whether the wages are liable to payroll tax and the mental health levy under this Act.

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(7) If wages are paid in a different month from the month in which they are payable, the question of whether the wages are liable to payroll tax and the mental health levy under this Act must be decided by reference to the earlier of the relevant months.

9A State in which employee is based

(1) For this Act, the State in which an employee is based is the State in which the employee's principal place of residence is located.

(2) The State in which an employee is based must be decided by reference to the state of affairs existing during the month in which the relevant wages are paid or payable.

(3) If more than 1 State would qualify as the State in which an employee is based during a month, the State in which the employee is based must be decided by reference to the state of affairs existing on the last day of that month.

(4) An employee who does not have a principal place of residence is taken, for this Act, to be an employee who is not based in a State.

(5) If wages are paid or payable to a corporate employee, the State in which the corporate employee is based must be worked out under section 9B instead of this section, as if a reference in section 9B to an employer were a reference to the employee.

(6) In this section—

corporate employee means a company—

(a) taken to be an employee under section 13D or 13I; or

(b) to whom a payment is made that is taken to be wages under section 13L or 50.

9B State in which employer is based

(1) For this Act, the State in which an employer is based is—

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(a) if the employer has an ABN—the State in which the employer's registered business address is located; or

(b) otherwise—the State in which the employer's principal place of business is located.

(2) If wages are paid or payable in connection with a business carried on by an employer under a trust, the employer's registered business address is—

(a) if the trust has an ABN—the registered business address of the trust; or

(b) otherwise—the registered business address of the trustee of the trust.

(3) If an employer has 2 or more registered business addresses located in different States at the same time, the State in which the employer is based at that time is the State in which the employer's principal place of business is located.

(4) The State in which an employer is based must be decided by reference to the state of affairs existing during the month in which the relevant wages are paid or payable.

(5) If more than 1 State would qualify as the State in which an employer is based in a month, the State in which the employer is based must be decided by reference to the state of affairs existing on the last day of that month.

(6) An employer who has neither a registered business address nor a principal place of business is taken, for this Act, to be an employer who is not based in a State.

(7) In this section—

ABN means an ABN (Australian Business Number) under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth).

registered business address means an address for service of notices under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth) as shown in the Australian Business Register kept under that Act.

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9C Place and day of payment of wages

(1) For this Act, wages are taken to have been paid at a place if, for the payment of the wages—

(a) an instrument is sent or given or an amount is transferred by an employer to a person or a person's agent at the place; or

(b) an instruction is given by an employer for the crediting of an amount to the account of a person or a person's agent at the place.

(2) The wages are taken to have been paid on the day the instrument was sent or given, the amount was transferred, or the account was credited.

(3) Subject to subsection (4), wages are taken to be payable at the place they are paid.

(4) Wages that are not paid by the end of the month in which they are payable are taken to be payable at—

(a) the place where wages were last paid by the employer for the employee; or

(b) if wages have not previously been paid by the employer for the employee—the place where the employee last performed or rendered services for the employer before the wages became payable.

(5) If wages paid or payable in the same month by the same employer for the same employee are paid or payable in more than 1 State, the wages paid or payable in that month are taken to be paid or payable in the State in which the highest proportion of the wages are paid or payable.

Note—

Section 9 requires all wages paid or payable in the same month by the same employer for the same employee to be aggregated for deciding whether the wages are liable to payroll tax or the mental health levy under this Act. Subsection (5) ensures only 1 State can be considered to be the State in which the wages are paid or payable.

(6) This section is subject to section 13W.

(7) In this section—

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instrument includes a cheque, bill of exchange, promissory note, money order, postal order issued by a post office or any other instrument.

Subdivision 2 Other provisions about imposing liability for payroll tax

10 Imposition of payroll tax on taxable wages

(1) Subject to, and in accordance with, the provisions of this Act, there shall be charged, levied and paid for the use of Her Majesty on all taxable wages payroll tax at the rate of 4.75% of the taxable wages paid or payable in the financial year ending 30 June 2020 or in a later financial year.

(2) However, the rate of payroll tax is increased for an employer to 4.95% of taxable wages for each return period during which—

(a) if the employer is a member of a group—the total of the taxable wages and interstate wages paid or payable by the members of the group is more than the threshold amount; or

(b) otherwise—the total of the taxable wages and interstate wages paid or payable by the employer is more than the threshold amount.

(3) The rate of payroll tax imposed under this section is subject to any discount that may apply under section 10A.

(4) In this section—

threshold amount means—

(a) for an annual return period—$6,500,000; or

(b) for a periodic return period that is a month—$541,666; or

(c) for any other period—the amount worked out using the following formula—

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$$\mathbf{TA} = \mathbf{PD} \times \frac{\mathbf{AA}}{\mathbf{FYD}}$$

where—

AA means $6,500,000.

FYD means the number of days in the financial year in which the period occurs.

PD means the number of days in the period.

TA means the threshold amount.

10A Discount for regional employers

(1) This section applies to the return periods occurring in the financial years ending 30 June 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029 and 2030.

(2) Subject to subsection (4), for each return period, a regional employer is entitled to a discount of 1% on the rate of payroll tax imposed on taxable wages under section 10.

(3) An employer is a ***regional employer*** for a return period if, during that period, the employer—

(a) has a principal place of employment in regional Queensland; and

(b) pays at least 85% of taxable wages to regional employees.

(4) A regional employer is not entitled to a discount under subsection (2) for a return period ending after 30 June 2024 if the total amount of taxable wages paid or payable by the employer during that return period is more than the wage threshold.

(5) In this section—

principal place of employment, of an employer, means—

(a) if the employer has an ABN—the place at which the employer's registered business address is located; or

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(b) otherwise—the place at which the employer's principal place of business is located.

regional employee means an employee whose principal place of residence is located in regional Queensland.

regional Queensland means the following areas of the State as identified under statistical area level 4 in the document Australian Statistical Geography Standard, published by the Australian Bureau of Statistics—

(a) Cairns;

(b) Central Queensland;

(c) Darling Downs Maranoa;

(d) Mackay - Isaac - Whitsunday;

(e) Queensland - Outback;

(f) Townsville;

(g) Wide Bay.

wage threshold means—

(a) for an annual return period—$350,000,000; or

(b) for a periodic return period that is a month—$29,166,666; or

(c) for any other period—the amount worked out using the following formula—

$$\mathbf{WT} = \mathbf{PD} \times \frac{\mathbf{AA}}{\mathbf{FYD}}$$

where—

AA means $350,000,000.

FYD means the number of days in the financial year in which the period occurs.

PD means the number of days in the period.

WT means the wage threshold.

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11 When liability for payroll tax arises

A liability for payroll tax imposed on taxable wages arises on the return date for lodgement by an employer of a return.

12 Employer to pay payroll tax

Payroll tax shall be paid by the employer by whom the taxable wages are paid or payable.

Subdivision 3 Other provisions about imposing liability for mental health levy

12A Imposition of mental health levy on taxable wages

(1) A mental health levy is imposed under this part on particular taxable wages paid or payable in a financial year.

(2) Amounts attributable to the levy may be used only for providing a service or infrastructure that is consistent with—

(a) the main objects stated in the *Mental Health Act 2016*, section 3(1), including the way in which the main objects of that Act are to be achieved; or

(b) the guiding principles stated in the *Queensland Mental Health Commission Act 2013*, section 5(2) to (5).

(3) A reference in subsection (2) to amounts attributable to the levy does not include amounts of penalty tax or unpaid tax interest, a penalty amount under section 90 or an amount recovered because of the imposition of a penalty for an offence.

12B When liability for mental health levy arises

Liability for the mental health levy imposed on taxable wages arises on the return date for lodgement by an employer of a return.

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12C Particular employer to pay mental health levy

The mental health levy must be paid by an employer as provided under divisions 5A, 5B and 5C.

Subdivision 4 Value of taxable wages

13 Value of taxable wages

(1) The value of taxable wages that are paid or payable in kind by an employer (other than fringe benefits under the Fringe Benefits Assessment Act) is the value under the regulations.

(2) The employer must give evidence of the value of the taxable wages to the commissioner if asked by the commissioner.

(3) If the commissioner is not satisfied with the evidence given by the employer, the commissioner may appoint a person to value the taxable wages.

(4) If the value stated by the person appointed under subsection (3) is more than the value stated by the employer, the commissioner may claim all or part of the valuation costs from the employer.

(5) The value of taxable wages comprising a fringe benefit under the Fringe Benefits Assessment Act is, unless otherwise prescribed by regulation, the value worked out using the following formula—

$$\mathbf{V} = \mathbf{TV} \times \mathbf{1} / (\mathbf{1} - \mathbf{FBT\ rate})$$

where—

FBT rate means the rate of fringe benefits tax imposed under the Fringe Benefits Assessment Act that applies when the employer's liability for payroll tax or the mental health levy on the taxable wages arises.

TV means—

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(a) if paragraph (b) does not apply—the value that would be the taxable value of the taxable wages as a fringe benefit for the Fringe Benefits Assessment Act; or

(b) if the fringe benefit is an amortised fringe benefit under the Fringe Benefits Assessment Act, section 65CA—the amortised amount of the benefit calculated under that section.

V means the value of the taxable wages.

(6) This section does not apply to taxable wages comprising the grant of a share or option to which division 1C applies.

Note—

See section 13U (Value of taxable wages).

Division 1A Contractor provisions

13A Definitions for div 1A

In this division—

contract includes an agreement, arrangement or undertaking, whether formal or informal and whether express or implied.

relevant contract employee see section 13D(2).

re-supply, in relation to goods acquired from a person, includes—

(a) supply to the person, or, if the person is a member of a group, to another group member, the acquired goods in an altered form or condition; and

(b) supply to the person, or, if the person is a member of a group, to another group member, other goods in which the acquired goods have been incorporated.

services includes results, whether goods or services, of work performed.

supply includes—

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(a) supply by way of sale, exchange, lease, hire, or hire purchase; and

(b) in relation to services, includes the providing, granting or conferring of services.

13B Meaning of *relevant contract*

(1) A ***relevant contract*** is a contract under which a person (the ***designated person***), in the course of a business carried on by the designated person—

(a) supplies to another person services in relation to the performance of work; or

(b) has supplied to the designated person the services of persons in relation to the performance of work; or

(c) gives goods to individuals for work to be performed by those individuals in respect of the goods and for the goods to be re-supplied.

(2) However, a ***relevant contract*** does not include a contract of service or a contract under which a person (the ***designated person***), in the course of a business carried on by the designated person—

(a) is supplied with services in relation to the performance of work, if the services are ancillary to—

(i) the supply of goods under the contract by the person by whom the services are supplied; or

(ii) the use of goods that are the property of the person by whom the services are supplied; or

(b) is supplied with services in relation to the performance of work, if—

(i) the services are of a kind not ordinarily required by the designated person and are performed or rendered by a person who ordinarily performs or renders services of that kind to the public generally; or

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(ii) the services are of a kind ordinarily required by the designated person for less than 180 days in a financial year; or

(iii) the 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 the relevant financial year and are not services—

(A) provided by a person by whom similar services are provided to the designated person; or

(B) in relation to the performance of work where any of the persons who perform the work also perform similar work for the designated person;

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

(iv) the services are supplied under a contract to which subparagraphs (i) to (iii) do not apply and the commissioner is satisfied the services are performed or rendered by a person who ordinarily performs or renders services of that kind to the public generally in the relevant financial year; or

(c) is supplied by a person (the ***contractor***) with services in relation to the performance of work under a contract to which paragraphs (a) and (b) do not apply, if the work to which the services relate is performed—

(i) by 2 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or

(ii) if the contractor is a partnership of 2 or more individuals—by 1 or more of the members of the partnership and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or

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(iii) if the contractor is an individual—by the contractor and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or

(d) is supplied with—

(i) services solely for or ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them; or

(ii) services solely in relation to the procurement of persons desiring to be insured by the designated person; or

(iii) services in relation to the door-to-door sale of goods solely for domestic purposes on behalf of the designated person.

(3) For subsection (2)(b), ***relevant financial year*** means the financial year during which the designated person is supplied with the services.

(3A) Subsection (2)(a), (b), (c) or (d) does not apply to a contract under which any additional services or work of a kind not covered by the relevant subsection is supplied or performed.

(4) Subsection (2) does not apply if the commissioner is satisfied the contract or arrangement under which the services are supplied was entered into with an intention either directly or indirectly of avoiding the payment of tax by any person.

(5) An employment agency contract under which services are supplied by an employment agent, or a service provider is procured by an employment agent, is not a relevant contract.

13C Persons taken to be employers

(1) For this Act, a person is taken to be an employer if, under a relevant contract—

(a) the person supplies services to another person; or

(b) the services of other persons are supplied to the person in relation to the performance of work; or

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(c) the person gives goods to individuals.

(2) However, if a contract is a relevant contract under both section 13B(1)(a) and (b)—

(a) the person to whom, under the contract, the services of persons are supplied in relation to the performance of work is taken to be an employer; and

(b) despite subsection (1)(a), the person who, under the contract, supplies the services is not taken to be an employer.

(3) A person taken to be an employer under this section is a ***relevant contract employer***.

13D Persons taken to be employees

(1) For this Act, a person is taken to be an employee if, under a relevant contract—

(a) the person performs work in relation to which services are supplied to another person; or

(b) the person is an individual who re-supplies goods to an employer.

(2) A person taken to be an employee under this section is a ***relevant contract employee***.

13E Amounts taken to be wages

(1) For this Act, the following amounts paid or payable by a relevant contract employer under a relevant contract are taken to be wages—

(a) amounts in relation to the performance of work for which services are supplied on or after 1 July 2008 under a relevant contract;

(b) amounts in relation to the performance of work relating to the re-supply of goods by a relevant contract employee under a relevant contract on or after 1 July 2008.

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Note—

Under section 132, this section applies only in relation to wages paid or payable on or after 1 July 2008.

(2) Subsection (1)(a) is taken to include the following, to the extent the following do not otherwise comprise wages under this Act—

(a) a payment—

(i) made by the relevant contract employer in relation to a relevant contract employee; and

(ii) that would be a superannuation contribution if it were made in relation to a person in the capacity of an employee;

(b) the value of a share or option—

(i) granted or liable to be granted by a relevant contract employer in relation to a relevant contract employee; and

(ii) that would comprise wages under this Act if the share or option were granted in relation to a person in the capacity of an employee.

(3) For subsection (1), an amount paid or payable on or after 1 July 2008 for the performance of work under a relevant contract is taken to be for services supplied, or goods re-supplied, on or after 1 July 2008.

(4) However, if the commissioner is satisfied any part of an amount mentioned in subsection (3) is for services supplied, or goods re-supplied, before 1 July 2008, the part is not wages.

(5) If an amount mentioned in subsection (1) is included in a larger amount paid or payable by the relevant contract employer under the relevant contract, the part of the larger amount that is not attributable to the performance of work mentioned in subsection (1)(a) or (b) is the part decided by the commissioner.

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13F Liability for payroll tax or mental health levy for payments taken to be wages

(1) If a relevant contract employer pays payroll tax on wages comprising a payment (the ***primary payment***) in relation to the performance of work—

(a) no other person is liable for payroll tax on the primary payment; and

(b) another person who is liable to pay wages comprising a payment (a ***secondary payment***) in relation to the work is not liable for payroll tax on the secondary payment.

(2) If a relevant contract employer pays the mental health levy on wages comprising a payment (the ***primary payment***) in relation to the performance of work—

(a) no other person is liable for the mental health levy on the primary payment; and

(b) another person who is liable to pay wages comprising a payment (a ***secondary payment***) in relation to the work is not liable for the mental health levy on the secondary payment.

(3) Subsection (2)(a) applies subject to part 2, divisions 5B and 5C.

(4) Subsection (1)(b) or (2)(b) does not apply if the commissioner is satisfied either the secondary payment or the primary payment is made with an intention either directly or indirectly of avoiding the payment of tax by the relevant contract employer or another person.

Division 1B Employment agents

13G Meaning of *employment agency contract*

(1) An ***employment agency contract*** is a contract under which a person (an ***employment agent***) procures the services of another person (a ***service provider***) for a client of the employment agent.

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(2) However, a contract is not an employment agency contract if it is, or results in the creation of, a contract of employment between the service provider and the client.

(3) Subsection (1) applies to a contract whether it is formal or informal, express or implied.

(4) For this section—

contract includes agreement, arrangement and undertaking.

13H Persons taken to be employers

For this Act, the employment agent under an employment agency contract is taken to be an employer.

13I Persons taken to be employees

For this Act, the person who performs work in relation to which services are supplied to the client under an employment agency contract is taken to be an employee of the employment agent under the contract.

13J Amounts taken to be wages

(1) For this Act, the following are taken to be wages paid or payable by the employment agent under an employment agency contract—

(a) an amount paid or payable in relation to the service provider in respect of the provision of services in connection with the contract;

(b) the value of a benefit provided in relation to the provision of services in connection with the contract that would be a fringe benefit if provided to a person in the capacity of an employee;

(c) a payment made in relation to the service provider that would be a superannuation contribution if made in relation to a person in the capacity of an employee.

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(2) However, subsection (1) does not apply to an amount, benefit or payment mentioned in the subsection if—

(a) the amount, benefit or payment would be exempt from payroll tax or the mental health levy under division 2, other than section 14(2)(j), (k) or (l) or 14A, if it had been paid or provided by the client in relation to the service provider as an employee; and

(b) the client has given the employment agent a declaration, in the approved form, that subsection (1) does not apply to the amount, benefit or payment.

13K Liability for payroll tax or mental health levy for payments taken to be wages

(1) This section applies if an employment agent—

(a) under an employment agency contract, procures the services of a service provider for a client of the agent; and

(b) pays payroll tax or the mental health levy on an amount, benefit or payment mentioned in section 13J(1) that is paid or payable by the employment agent in connection with that contract.

(2) No other person, including another person engaged to procure the services of the service provider for the employment agent's client, is liable for payroll tax or the mental health levy on wages paid or payable for the procurement or performance of services by the service provider for the client.

(3) This section applies subject to sections 13L and 13LA and part 2, divisions 5B and 5C.

13L Employment agency contract reducing or avoiding liability to payroll tax or mental health levy

(1) If the effect of an employment agency contract is to reduce or avoid the liability of a party to the contract to the assessment, imposition or payment of payroll tax or the mental health levy, the commissioner may—

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(a) disregard the contract; and

(b) determine that any party to the contract is taken to be an employer for this Act; and

(c) determine that any payment made in respect of the contract is taken to be wages for this Act.

(2) A reference in subsection (1) to a party to a contract includes, for a contract to which a non-DGE member of a group is a party, a reference to the DGE for the group.

(3) If the commissioner makes a determination under subsection (1), the commissioner must give written notice of the determination to the person taken to be an employer for the purposes of this Act.

(4) The notice must state the facts on which the commissioner relies and the reasons for making the determination.

13LA Particular avoidance arrangements involving employment agents

(1) This section applies if—

(a) an avoidance arrangement exists in relation to an employment agency in a return period; and

(b) the assumed non-adjusted tax and levy for the period is less than the assumed adjusted tax and levy for the period.

(2) If this section applies in a return period, for the period—

(a) if the avoidance arrangement involves an employment agent acting as trustee for a client of the employment agent under a trust or acting as agent for a client of the employment agent under an employment agency contract—section 92(1) does not apply to the trustee or agent, or in relation to the trust or employment agency contract; and

(b) if the avoidance arrangement involves a client of an employment agent acquiring, or clients of an employment agent jointly acquiring, a controlling

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interest in the business of the employment agent referable to the client or clients—the client or clients is or are taken not to have the controlling interest; and

(c) the employment agent, or each employment agent, involved in the employment agency is answerable as an employer for doing everything required to be done under this Act for the payment of wages by the employment agent that are subject to payroll tax or the mental health levy under this Act (including the giving of returns and payment of payroll tax or the mental health levy); and

(d) if the employment agency involves more than 1 employment agent—the employment agents constitute a group.

(3) For this section, a client has, or clients have, a controlling interest in a business if the client has, or the clients have, a controlling interest in the business under section 71.

(4) In subsection (1)—

(a) a reference to the assumed non-adjusted tax and levy for a return period is a reference to the total amount of payroll tax and the mental health levy that would be payable by the employment agent or agents involved in the employment agency for the period if the amount were calculated without applying any resultant provision; and

(b) a reference to the assumed adjusted tax and levy for a return period is a reference to the total amount of payroll tax and the mental health levy that would be payable by the employment agent or agents involved in the employment agency for the period if the amount were calculated applying each relevant resultant provision.

(5) To remove any doubt about the application of subsection (4)(b), it is declared that if an employment agency is involved in more than 1 avoidance arrangement in a return period, subsection (4)(b) is to be applied by first applying each relevant resultant provision to each avoidance

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arrangement and then calculating the total amount for the subsection.

(6) In this section—

avoidance arrangement means an arrangement involving an employment agency if the arrangement involves 1 or more of the following—

(a) an employment agent acting as trustee for a client of the employment agent under a trust;

(b) an employment agent acting as agent for a client of the employment agent under an employment agency contract;

(c) a client of an employment agent acquiring, or clients of an employment agent jointly acquiring, a controlling interest in the business of the employment agent referable to the client or clients.

client includes an individual or company that—

(a) under the *Duties Act 2001*, section 164, is a related person of the client; or

(b) is related to the client in another way prescribed under a regulation.

employment agency means a business enterprise involving—

(a) the business of an employment agent; or

(b) the businesses of 2 or more employment agents.

employment agency contract see the definition *employment agent* for this section.

employment agent means a person who, by a contract, agreement, arrangement or undertaking (the ***employment agency contract***), procures the services of another person (the ***worker***) for a client of the agent, if the employment agency contract is not, and does not result in the creation of, a contract of employment between the worker and the client.

resultant provision means subsection (2), paragraph (a), (b), (c) or (d).

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return period means—

(a) for an employment agent who is required to lodge periodic returns—a periodic return period or financial year; or

(b) for an employment agent who is exempt under section 62 from lodging periodic returns—a financial year.

Division 1C Shares and options

13M Application of div 1C

This division applies for paragraphs (j) and (k) of the definition of *wages* in the schedule.

13N Definitions for div 1C

In this division—

director, of a company, includes—

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

(b) a former director of the company.

granted, in relation to a share or option, see section 13O.

grantee, in relation to a grant of a share or option comprising wages for this Act, means the employee or director to whom the share or option is granted.

grantor, in relation to a grant of a share or option comprising wages for this Act, means the employer or company by whom the share or option is granted.

relevant day see section 13Q(2).

vesting day see section 13R(2).

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13O When share or option is *granted*

(1) A share is ***granted*** to a person if—

(a) another person transfers the share to the person, other than by issuing the share to the person; or

(b) another person allots the share to the person; or

(c) the requirements for the grant of a share prescribed under a regulation are satisfied.

(2) An option is ***granted*** to a person if—

(a) another person transfers the right to the share to which the option relates to the person; or

(b) another person creates the right to the share to which the option relates in the person; or

(c) the requirements for the grant of an option prescribed under a regulation are satisfied.

(3) Also, a share or an option is ***granted*** to a person if—

(a) the person acquires a legal interest in the share or right from another person other than in a way mentioned in subsection (1) or (2); or

(b) the person acquires a beneficial interest in the share or option from another person.

13P Grant of share because of exercise of option

Despite paragraphs (j) and (k) of the definition of *wages* in the schedule, the grant of a share by a grantor does not comprise wages if—

(a) the grantor is required to grant the share because a person has exercised an option; and

(b) either—

(i) the grant of the option to the person comprises wages for this Act; or

(ii) the option was granted to the person before 1 July 2008.

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13Q Day on which wages are paid or payable

(1) Wages comprising the grant of a share or option are taken to be paid or payable on the relevant day.

(2) The ***relevant day*** is the day the grantor elects under this division to treat as the day on which the wages comprising the grant of the share or option are paid or payable.

13R Election by grantor of relevant day

(1) A grantor may elect to treat either of the following as the day on which wages comprising the grant of a share or option are paid or payable—

(a) the day the share or option is granted to the grantee;

(b) the vesting day for the share or option.

(2) The ***vesting day***—

(a) for a share—is the first of the following days—

(i) the day the share vests in the grantee;

(ii) the day that is 7 years after the day the share is granted to the grantee; or

(b) for an option—is the first of the following days—

(i) the day the share to which the option relates is granted to the grantee;

(ii) the day the grantee exercises a right under the option to have the share to which it relates transferred or allotted to, or vest in, the grantee;

(iii) the day that is 7 years after the day the option is granted to the grantee.

(3) For subsection (2), a share ***vests*** in the grantee when—

(a) any conditions applying to the grant of the share have been met; and

(b) the grantee's legal or beneficial interest in the share can not be rescinded.

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13S Automatic election of relevant day

(1) This section applies if a grantor grants a share or option to a grantee and any of the following applies—

(a) the value of the grant of the share or option is not included in the taxable wages paid or payable by the grantor for a return period during which the share or option is granted;

(b) the value of the taxable wages comprising the grant of the share or option is nil;

(c) if the grantor were to elect to treat the day the share or option is granted as the relevant day, the wages would not be liable to payroll tax or the mental health levy.

(2) If subsection (1)(a) applies, the grantor is taken to have elected to treat the vesting day for the share or option as the day on which the wages comprising the grant of the share or option are paid or payable.

(3) If subsection (1)(b) or (c) applies, the grantor is taken to have elected to treat the day the share or option is granted as the day on which the wages comprising the grant of the share or option are paid or payable.

(4) This section applies despite section 13R.

13T Effect of rescission or cancellation of share or option

(1) If, before the vesting day, the grant of a share or option is withdrawn, cancelled or exchanged for consideration other than the grant of other shares or options—

(a) the date of the withdrawal, cancellation or exchange is taken to be the vesting day for the share or option; and

(b) despite section 13U(1)(a), the market value of the share or option on the vesting day is taken to be the amount of the consideration.

(2) A grantor must reduce, by the relevant amount, the taxable wages paid or payable by the grantor for a financial year or final period, if—

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(a) the grantor included the value of a grant of a share or option in the taxable wages paid or payable by the grantor for a periodic return period falling in the financial year or final period; and

(b) the grant is rescinded, during the financial year or final period, because the conditions of the grant were not met.

(3) The commissioner must make a reassessment of a grantor's liability for payroll tax and the mental health levy for a financial year or final period, to reduce the taxable wages of the grantor by the relevant amount, if—

(a) the grantor included the value of a grant of a share or option in the taxable wages paid or payable by the grantor for the financial year or final period; and

(b) the grant is rescinded, after the end of the financial year or final period, because the conditions of the grant were not met.

(4) However, if the grantor is a non-DGE group member, subsection (3) applies as if a reference to making a reassessment of a grantor's liability for the mental health levy were a reference to making a reassessment of the DGE's liability for the mental health levy.

(5) For subsections (2) and (3), the ***relevant amount*** is the value of the grant of a share or option previously included in the taxable wages of the grantor under subsection (2)(a) or (3)(a).

(6) Subsections (2) and (3) do not apply only because the grantee fails to exercise an option or otherwise exercise the grantee's rights in relation to a share or option.

13U Value of taxable wages

(1) The value of taxable wages comprising the grant of a share or option is taken to be the amount equal to—

(a) the value, in Australian currency, of the share or option on the relevant day; less

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(b) any consideration paid or given by the grantee for the share or option, other than consideration in the form of services performed.

(2) For subsection (1)(a), the ***value*** of a share or option is—

(a) the amount worked out under the regulations made under the *Income Tax Assessment Act 1997* (Cwlth), section 83A-315, as applied by subsection (3); or

Note—

See the *Income Tax Assessment Regulations 1997* (Cwlth), division 83A.

(b) if paragraph (a) does not apply—the market value of the share or option.

(3) For working out the value of a share or option under subsection (2)(a), the regulations mentioned in that subsection apply with the following changes—

(a) the value of an option is worked out as if it were a right to acquire a beneficial interest in a share;

(b) a reference to the acquisition of a beneficial interest in a share or right is taken to be a reference to the grant of a share or option;

(c) with any other necessary changes.

(4) In working out the market value of a share or option, anything that would prevent or restrict conversion of the share or option to money must be disregarded.

(5) An employer must give evidence of the value of a share or option to the commissioner if asked by the commissioner.

(6) If the commissioner is not satisfied with the evidence given by the employer under subsection (5), the commissioner may appoint a person to value the share or option.

(7) If the value stated by the person appointed under subsection (6) is more than the value stated by the employer, the commissioner may claim all or part of the valuation costs from the employer.

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13V When services are performed

(1) Wages comprising the grant of a share or option by a company to a director of the company by way of remuneration for the appointment of the director, but not for services performed, are taken to be paid or payable for services performed or rendered during the month in which the relevant day falls.

(2) Wages comprising the grant of a share or option to which subsection (1) does not apply are taken to be paid or payable for services performed or rendered during the month in which the relevant day falls.

13W Place where wages are paid or payable

(1) Wages comprising the grant of a share or option are taken to be paid or payable in Queensland if—

(a) for a share—the share is in a local company; or

(b) for an option—the option is an option to acquire a share in a local company.

(2) If subsection (1) does not apply, wages comprising the grant of a share or option are taken to be paid or payable elsewhere than in Queensland.

(3) Subsection (4) applies to wages comprising the grant of a share or option by a company to a director of the company by way of remuneration for the appointment of the director, but not for services performed or rendered.

(4) The wages are taken to be paid or payable for services performed or rendered in the place or places where it may reasonably be expected the services of the director for the company will be performed or rendered.

(5) In this section—

local company means—

(a) a company that is—

(i) registered or taken to be registered under the Corporations Act; and

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(ii) taken to be registered in Queensland for that Act; or

(b) another body corporate incorporated under an Act.

Division 1D Allowances

Subdivision 1 Motor vehicle allowances

13X Definitions for sdiv 1

In this subdivision—

averaging method means the method described in section 13ZB.

averaging period see section 13ZD(1).

business journey means—

(a) a journey undertaken in a motor vehicle by a person, other than for applying the vehicle for a use that—

(i) is a private use; and

(ii) if the person is paid a motor vehicle allowance for the use—results in a fringe benefit under the Fringe Benefits Assessment Act being provided by the employer; or

(b) a journey undertaken in a motor vehicle by a person in the course of producing assessable income of the person under the *Income Tax Assessment Act 1936* (Cwlth).

business vehicle, of an employee, means a motor vehicle provided or maintained by the employee for undertaking business journeys.

continuous recording method means the method described in section 13ZA.

number of exempt kilometres see section 13Y(4), definition *K*.

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relevant percentage see section 13ZB(4).

13Y Exempt component of motor vehicle allowance

(1) For this Act, a reference to wages, in relation to a return period, does not include a reference to the exempt component of a motor vehicle allowance paid or payable to an employee for the period.

(2) If the total motor vehicle allowance paid or payable to an employee for a return period is not more than the exempt component of the allowance, the allowance does not comprise wages for this Act.

(3) If the total motor vehicle allowance paid or payable to an employee for a return period is more than the exempt component for the allowance, if any, only the amount of the allowance exceeding the exempt component comprises wages for this Act.

(4) The ***exempt component*** of a motor vehicle allowance paid or payable to an employee for a business vehicle for a return period is the amount worked out using the following formula—

$$\mathbf{E} = \mathbf{K} \times \mathbf{R}$$

where—

E means the exempt component.

K means the number of exempt kilometres travelled by the vehicle during the return period, worked out under section 13Z (the ***number of exempt kilometres***).

R means—

(a) the rate determined under the *Income Tax Assessment Act 1997* (Cwlth), section 28-25(4) for calculating a deduction for car expenses using the ‘cents per kilometre’ method for the financial year immediately preceding the financial year in which the allowance is paid or payable; or

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(b) if there is no rate under paragraph (a)—the rate prescribed by regulation.

13Z Working out the number of exempt kilometres

(1) For section 13Y(4), the number of exempt kilometres must be worked out using either of the following chosen by the employer—

(a) the continuous recording method;

(b) the averaging method.

Note—

See section 13ZG (Switching between continuous recording and averaging methods) for requirements about switching between the continuous recording and averaging methods.

(2) However, if the commissioner gives a written approval for the employer to use another method for working out the number of exempt kilometres, the number of exempt kilometres must be worked out using the approved method.

Example of another method—

using an estimate

(3) An approval mentioned in subsection (2)—

(a) may be given by the commissioner if the commissioner is satisfied use of the other method would be more appropriate in particular circumstances; and

(b) may apply to—

(i) the employer; or

(ii) a class of employers that includes the employer.

(4) As soon as practicable after giving an approval under subsection (2), the commissioner must give a copy of the approval to the employer or, if the approval applies to a class of employers, each employer to whom it applies.

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13ZA Continuous recording method

(1) This section applies if, under section 13Z(1)(a), the employer uses the continuous recording method to work out the number of exempt kilometres for a business vehicle.

(2) The employer must keep a record of the following details—

(a) the odometer readings at the beginning and end of each business journey undertaken by the employee during the return period by means of the vehicle;

(b) the specific purpose for which the journey was undertaken;

(c) the distance travelled.

Note—

See the Administration Act, section 118 (Period for keeping records).

(3) The number of exempt kilometres is the distance of all business journeys mentioned in subsection (2)(a), worked out using the odometer readings mentioned in the subsection.

13ZB Averaging method—how it works

(1) This section applies if, under section 13Z(1)(b), the employer uses the averaging method to work out the number of exempt kilometres for a business vehicle.

(2) The employer must keep the records mentioned in section 13ZC.

Note—

See the Administration Act, section 118 (Period for keeping records).

(3) The number of exempt kilometres is the number worked out using the following formula—

$$\mathbf{K} = \mathbf{D} \times \mathbf{RP}$$

where—

D means the total distance travelled by the business vehicle during the return period, worked out using the odometer readings mentioned in section 13ZC(3)(a).

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K means the number of exempt kilometres.

RP means the relevant percentage for the vehicle.

(4) The ***relevant percentage*** for the business vehicle is the percentage worked out using the following formula—

$$\mathbf{RP = B / T \times 100}$$

where—

B means the distance travelled by the employee in the course of business journeys undertaken by means of the vehicle during the averaging period for the vehicle, worked out using the odometer readings mentioned in section 13ZC(2)(a).

RP means the relevant percentage.

T means the total distance travelled by the vehicle during the averaging period for the vehicle, worked out using the odometer readings mentioned in section 13ZC(2)(d).

(5) If a relevant percentage for the business vehicle is worked out on the basis of an averaging period for the vehicle, the number of exempt kilometres for the vehicle for a return period mentioned in subsection (6) must be worked out using that relevant percentage.

(6) For subsection (5), the return periods are—

(a) any return period falling in or comprising the financial year in which the averaging period falls or, if the averaging period falls in 2 financial years, the second financial year in which the period falls, other than a return period ending before the averaging period ends; and

(b) the return periods falling in or comprising any of the succeeding 4 financial years after the financial year mentioned in paragraph (a).

(7) Subsection (5) applies subject to section 13ZE.

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13ZC Averaging method—records to be kept by employer

(1) An employer who, under section 13Z(1)(b), works out the number of exempt kilometres for a business vehicle using the averaging method must keep a record of the details stated in this section.

(2) In relation to the averaging period for the business vehicle, the details are each of the following—

(a) the odometer readings at the beginning and end of each business journey undertaken by the employee during the averaging period by means of the vehicle;

(b) the specific purpose for which each business journey mentioned in paragraph (a) was undertaken;

(c) the distance travelled by the employee during the averaging period in the course of all business journeys mentioned in paragraph (a), worked out using the odometer readings mentioned in the paragraph;

(d) the odometer readings at the beginning and end of the averaging period;

(e) the distance travelled by the vehicle during the averaging period, worked out using the odometer readings mentioned in paragraph (d);

(f) the relevant percentage for the vehicle.

Note—

Under section 13ZB(5), the relevant percentage worked out on the basis of an averaging period must be used for the return periods mentioned in section 13ZB(6). While the employer is using that relevant percentage, the employer is not required to work out the relevant percentage again, or to make a new record of the details mentioned in subsection (2).

(3) In relation to the return period to which the number of exempt kilometres relates, the details are each of the following—

(a) the business vehicle's odometer readings at the beginning and end of the return period;

(b) the distance travelled by the vehicle during the return period, worked out using the odometer readings mentioned in paragraph (a);

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(c) the number of exempt kilometres for the vehicle for the return period.

(4) If the odometer of the business vehicle is replaced or recalibrated during a return period for which its readings are relevant for using the averaging method, the employer must keep a record of the odometer readings immediately before and immediately after the replacement or recalibration.

13ZD Averaging method—what is the *averaging period*

(1) The ***averaging period***, for a business vehicle of an employee, means a continuous period of at least 12 weeks, chosen by the employer, throughout which the vehicle is provided or maintained by the employee.

(2) The averaging period may overlap the start or end of a financial year.

Note—

See also section 13ZB(5) and (6) in relation to using a relevant percentage worked out on the basis of an averaging period that falls in 2 financial years.

(3) If the averaging method is used for more than 1 business vehicle of an employee for the same return period, the averaging period for the vehicles must be the same.

(4) This section applies subject to section 13ZE.

13ZE Averaging method—recalculation of relevant percentage

(1) This section applies to an employer who, under section 13Z(1)(b), works out the number of exempt kilometres for a business vehicle using the averaging method.

(2) The employer must recalculate the relevant percentage for the business vehicle if—

(a) the commissioner gives the employer a written notice, before the start of a return period, directing the employer to recalculate the relevant percentage for the

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vehicle on the basis of an averaging period that falls wholly or partly during the return period; or

(b) the employer wishes to start using the averaging method for 1 or more other business vehicles used by the employee.

Note—

See also section 13ZD(3).

(3) Also, the employer must recalculate the relevant percentage for the business vehicle if the employer—

(a) has used a relevant percentage worked out on the basis of an averaging period for the vehicle for the succeeding 4 financial years after the financial year mentioned in section 13ZB(6)(a); and

(b) intends to continue using the averaging method to work out the number of exempt kilometres for the vehicle.

Note—

If the employer recalculates the relevant percentage on the basis of a new averaging period, the new averaging period applies for the purposes of section 13ZB(5) and the employer must use the new relevant percentage for the return periods mentioned in section 13ZB(6).

(4) In this section—

recalculate the relevant percentage for a business vehicle means—

(a) record the details mentioned in section 13ZC(2)(a) to (e) in relation to a new averaging period for the vehicle; and

(b) work out a new relevant percentage for the vehicle using the details mentioned in paragraph (a).

13ZF Averaging method—replacing a business vehicle

(1) An employer using the averaging method may nominate 1 business vehicle (the ***replacement vehicle***) to be the replacement of another business vehicle (the ***original vehicle***).

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(2) The employer must record the nomination in writing—

(a) during the financial year in which the nomination takes effect; or

(b) if the commissioner allows the employer to record the nomination at a later time—at the later time allowed by the commissioner.

(3) The nomination takes effect on the day stated in it.

(4) After the nomination takes effect, for the employer's use of the averaging method the replacement vehicle is taken to be the original vehicle.

(5) The employer need not repeat, for the replacement vehicle, the steps already taken under this subdivision for the original vehicle.

Example—

The employer is not required to recalculate the relevant percentage worked out for the original vehicle.

(6) The employer must keep a record of—

(a) the odometer reading of the original vehicle immediately before the nomination takes effect; and

(b) the odometer reading of the replacement vehicle immediately after the nomination takes effect.

13ZG Switching between continuous recording and averaging methods

(1) An employer may change from using a recording method to using the other recording method with effect from the beginning of a financial year.

Note—

See section 13ZA(2) or 13ZC for the record keeping requirements with which the employer must comply for the financial year for the continuous recording method or averaging method.

(2) In this section—

recording method means the averaging method or continuous recording method.

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Subdivision 2 Accommodation allowances

13ZH Exempt rate for accommodation allowance

(1) For this Act, a reference to wages does not include a reference to an accommodation allowance—

(a) paid or payable to an employee for a night's absence from the employee's usual place of residence; and

(b) that is not more than the exempt rate.

(2) If an accommodation allowance paid or payable to an employee for a night's absence from the employee's usual place of residence is more than the exempt rate, the allowance comprises wages for this Act only to the extent it is more than the exempt rate.

(3) The ***exempt rate***, for a financial year, is—

(a) the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the year decided by the Commissioner of Taxation of the Commonwealth for the *Income Tax Assessment Act 1997* (Cwlth), section 900-50; or

(b) if no decision mentioned in paragraph (a) is in force—the rate prescribed under a regulation.

Division 2 Exemptions

14 Exemption from payroll tax and mental health levy

(2) The wages liable to payroll tax and the mental health levy under this Act do not include wages paid or payable—

(a) by the Governor of a State; or

(b) by a public hospital to a person during a period in respect of which the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connection with the conduct of public hospitals; or

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(c) by a charitable institution in respect of a charitable institution to a person during a period in respect of which the person is engaged exclusively—

(i) in the work of the second mentioned charitable institution for a qualifying exempt purpose; or

(ii) where that second mentioned charitable institution is—

(A) a hospital, in the work of that hospital of a kind ordinarily performed in connection with the conduct of a hospital; or

(B) a non-tertiary educational institution, in the work of that institution of a kind ordinarily performed in connection with the conduct of a non-tertiary educational institution of the relevant kind; or

(d) by a teachers' training college (that is not a college of advanced education) declared under a regulation made for the purposes of this paragraph, in respect of such period (whether commencing before or after the commencement of the *Payroll Tax Act Amendment Act 1985*, section 6) as is specified under a regulation unless within any period so specified the college becomes a college of advanced education whereupon the exemption shall cease to apply; or

(da) by the following entities—

(i) a department, except to the extent those wages are paid or payable by a commercialised business unit;

(ii) a Hospital and Health Service established for Queensland under the *Hospital and Health Boards Act 2011*, section 17; or

(e) by a local government, except to the extent that those wages are paid or payable—

(i) for or in connection with; or

(ii) for or in connection with the construction of any buildings or the construction of any works or the

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installation of plant, machinery or equipment for use in or in connection with;

electricity generation, distribution or supply, water supply, sewerage, the conduct of transport services (including ferries), of abattoirs, of public markets, of parking stations, of quarries, of cemeteries, of picture theatres, of milk supply, of hostels, of hotels or of bakeries or of any other activity that is a prescribed activity; or

(f) to members of his or her official staff by—

(i) a consular or other representative (other than a diplomatic representative) in Australia of the government of any other part of Her Majesty's dominions or of any other country; or

(ii) a trade commissioner representing in Australia any other part of Her Majesty's dominions; or

(g) by the Commonwealth War Graves Commission; or

(h) by the Australian-American Educational Foundation; or

(i) to a person who is a member of the defence force of the Commonwealth or of the armed force of any part of Her Majesty's dominions, being wages paid or payable by reason of the person being such a member by the employer from whose employment the person is on leave; or

(j) subject to subsections (3) to (7), to a person who is an apprentice or trainee under the *Further Education and Training Act 2014*, as the apprentice or trainee, for the period of the person's apprenticeship or traineeship; or

(k) subject to subsection (8), to an employee for a period when the employee is—

(i) taking part in fire fighting or fire prevention activities, or associated activities, as a rural fire brigade member under the *Fire Services Act 1990*; or

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(ii) performing SES functions under the *State Emergency Service Act 2024* as an SES volunteer under that Act; or

(iii) performing functions as an honorary ambulance officer under the *Ambulance Service Act 1991*; or

(l) to a person who is an Aboriginal person or Torres Strait Islander employed under an employment project under the Community Development Employment Project funded by the Department of Employment and Workplace Relations (Cwlth) or the Torres Strait Regional Authority; or

(m) by a medical practice to a general practitioner.

(3) The exemption given in subsection (2)(j) does not apply to wages paid or payable to a trainee under a traineeship started with the trainee's employer after the commencement of this subsection (the ***current traineeship***) if, immediately before the current traineeship starts, the trainee had been employed by the employer for a continuous period of at least—

(a) for a full-time employee—3 months; or

(b) for a part-time or casual employee—12 months.

(5) Despite subsection (3), the exemption given in subsection (2)(j) applies to wages paid or payable to the trainee under the current traineeship if—

(a) after the commencement of subsection (3), the trainee started, with the employer, a certificate II traineeship and subsection (2)(j) applied to wages paid or payable to the trainee under the certificate II traineeship; and

(b) the current traineeship is a certificate III traineeship in the same training package as the certificate II traineeship; and

(c) the trainee starts the current traineeship within 1 year after obtaining the certificate II qualification.

(6) For subsection (3), the trainee is taken to have been employed by the employer for a continuous period if, in the period, 1 of the following events is effected for the sole or dominant

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purpose of obtaining the benefit of Commonwealth or State funding, or an exemption under subsection (2)(j), in relation to the traineeship—

(a) the trainee's employment ends, and restarts, with the employer;

(b) the trainee's employer changes.

(7) For subsection (5)(a), a reference to the trainee's employer includes a reference to the former owner of the business in which the trainee is employed if—

(a) ownership of the business changes after the trainee starts the certificate II traineeship; and

(b) the certificate III traineeship is with the new owner.

(8) The exemption given in subsection (2)(k) does not apply to wages paid or payable as annual leave, long service leave, recreation leave or sick leave.

(9) In this section—

Australian Qualifications Framework has the meaning given under the *Higher Education Support Act 2003* (Cwlth), schedule 1.

certificate II traineeship means a traineeship leading to a certificate II qualification under the Australian Qualifications Framework.

certificate III traineeship means a traineeship leading to a certificate III traineeship qualification under the Australian Qualifications Framework.

charitable institution means an institution registered under the Administration Act, part 11A, other than a university or university college.

commercialised business unit means a division, branch or other part of a department carrying on a business activity included in the list published under the *Queensland Competition Authority Act 1997*, section 39(4).

department means a department under the *Financial Accountability Act 2009*, section 8.

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general practitioner means—

(a) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession in the specialty of general practice; or

(b) a medical practitioner specified in the *Health Insurance (General Medical Services Table) Regulations 2021* (Cwlth), schedule 1, part 1, clause 1.1.3; or

(c) a person—

(i) who is a prescribed medical practitioner within the meaning of the *Health Insurance (General Medical Services Table) Regulations 2021* (Cwlth); and

(ii) who predominantly provides services of the kind ordinarily provided by a general practitioner mentioned in paragraph (a).

medical practice means an entity, other than a hospital, carrying on a business at which services of the kind ordinarily provided by a person mentioned in the definition *general practitioner*, paragraph (a) are provided, whether or not the services are provided from particular premises.

non-tertiary educational institution means an institution, not carried on by or on behalf of the State, the principal object and pursuit of which is—

(a) the education of students in primary or secondary schools, or both; or

(b) the conduct of a rural training school; or

(c) the conduct of a kindergarten or preschool; or

(d) any 2 or more of those objects and pursuits.

qualifying exempt purpose means each of the following—

(a) activities of a religious nature;

(b) public benevolent purposes;

(c) educational purposes;

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(d) conducting a kindergarten;

(e) the care of sick, aged, infirm, afflicted or incorrigible people;

(f) the relief of poverty;

(g) the care of children by—

(i) being responsible for them on a full-time basis; and

(ii) providing them with all necessary food, clothing and shelter; and

(iii) providing for their general wellbeing and protection;

(h) another charitable purpose or promotion of the public good;

(i) providing a residence to a minister, or members of a religious order, who is or are engaged in an object or pursuit of a kind mentioned in any of paragraphs (a) to (h).

14A Exemption for parental, adoption, surrogacy or cultural parent leave

(1) The wages liable to payroll tax and the mental health levy under this Act do not include wages paid or payable to an employee for parental leave, adoption leave, surrogacy leave or cultural parent leave.

(2) It is immaterial whether—

(a) the parental leave is taken during or after the pregnancy; or

(b) the adoption leave is taken before or after the adoption; or

(c) the surrogacy leave is taken before or after a child starts residing with the employee under a surrogacy arrangement; or

(d) the cultural parent leave is taken before or after a cultural recognition order is made transferring the

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parental rights and responsibility for a child to the employee.

(3) The exemption under subsection (1) is limited to wages paid or payable for—

(a) not more than 14 weeks' maternity leave for any 1 pregnancy; and

(b) not more than 14 weeks' paternity leave for any 1 pregnancy; and

(c) not more than 14 weeks' adoption leave for any 1 adoption; and

(d) not more than 14 weeks' surrogacy leave for any 1 surrogacy arrangement; and

(e) not more than 14 weeks' cultural parent leave for any 1 cultural recognition order.

(4) A reference in subsection (3) to 14 weeks' leave is a reference to—

(a) for a full-time employee who takes leave on less than full pay—a period equivalent to 14 weeks' leave on full pay; or

(b) for a part-time employee—

(i) if the employee takes leave on the employee's part-time rate of pay—a period of 14 weeks' leave on that rate of pay; or

(ii) if the employee takes leave on a rate of pay that is less than the employee's part-time rate of pay—a period equivalent to 14 weeks' leave on the employee's part-time rate of pay.

(5) An employer who claims an exemption under subsection (1) must obtain and keep as a record—

(a) for wages paid or payable for maternity leave—a medical certificate for, or statutory declaration by, the employee stating—

(i) the employee is or was pregnant; or

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(ii) the employee has given birth and the date of birth; or

(b) for wages paid or payable for paternity leave—a statutory declaration by the employee stating—

(i) a female is or was pregnant with his unborn child; or

(ii) his child has been born and the date of birth; or

(c) for wages paid or payable for adoption leave—a statutory declaration by the employee stating—

(i) a child has been placed in the custody of the employee pending the making of an adoption order; or

(ii) that an adoption order has been made or recognised in favour of the employee; or

(d) for wages paid or payable for surrogacy leave—a statutory declaration by the employee stating a child has started residing with the employee under a surrogacy arrangement; or

(e) for wages paid or payable for cultural parent leave—a statutory declaration by the employee stating a child has started residing with the employee under a cultural recognition order.

Note—

Under the Administration Act, section 118, these records must be kept for at least 5 years.

(6) The exemption under subsection (1) does not apply to wages comprising a fringe benefit under the Fringe Benefits Assessment Act.

(7) In this section—

adoption leave means leave given to an employee in connection with the adoption of a child by the employee, other than annual leave, recreation leave, sick leave or similar leave.

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cultural parent see the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 10.

cultural parent leave, for a cultural parent, means leave given to an employee in connection with a cultural recognition order transferring the parental rights and responsibility for a child to the employee, other than annual leave, recreation leave, sick leave or similar leave.

cultural recognition order see the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, schedule 1.

maternity leave means leave given to a female employee in connection with her pregnancy or the birth of her child, other than annual leave, recreation leave, sick leave or similar leave.

parental leave means maternity leave or paternity leave.

paternity leave means leave given to a male employee in connection with the pregnancy of a female carrying his unborn child or the birth of his child, other than annual leave, recreation leave, sick leave or similar leave.

surrogacy arrangement has the meaning given by the *Surrogacy Act 2010*.

surrogacy leave means leave given to an employee in connection with a child residing with the employee under a surrogacy arrangement, other than annual leave, recreation leave, sick leave or similar leave.

15 Exemption from payroll tax and mental health levy—certain CWA wages

(1) CWA is not required to lodge a return.

(2) Divisions 3 to 5 apply to CWA as if—

(a) a reference in section 20 to the *periodic deduction* were a reference to the taxable wages paid or payable by CWA during the periodic return period; and

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(b) a reference in section 29 to the *annual deduction* were a reference to the taxable wages paid or payable by CWA during the financial year; and

(c) a reference in section 37 to the *final deduction* were a reference to the taxable wages paid or payable by CWA during the final period.

(3) For divisions 5A to 5C, CWA's periodic levy liability, annual levy liability and final levy liability are nil.

(4) However, CWA is required to lodge a return and subsections (2) and (3) do not apply if—

(a) wages are paid or payable by CWA in carrying on a business activity predominantly on a commercial basis (***CWA's commercial wages***); or

(b) CWA is a member of a group.

(5) If subsection (4)(a) applies and subsection (4)(b) does not apply—

(a) payroll tax payable is the amount bearing the same proportion to payroll tax payable on CWA's taxable wages as CWA's commercial wages bear to taxable wages before deducting the prescribed amount; and

(b) CWA's taxable wages are taken to include only CWA's commercial wages for the purpose of determining CWA's periodic levy liability, annual levy liability and final levy liability.

(6) If subsection (4)(b) applies—

(a) the annual amount of payroll tax payable by the members of the group must be reduced by an amount bearing the same proportion to the payroll tax payable as CWA's taxable wages (other than CWA's commercial wages) bear to the taxable wages paid or payable by the members of the group; and

(b) CWA's taxable wages are taken to include only CWA's commercial wages for the purpose of determining—

(i) CWA's periodic levy liability; and

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(ii) the DGE's annual levy liability and final levy liability.

(7) For this section, a business activity by CWA is taken to be conducted on a commercial basis if it is conducted in a similar way to similar business activities conducted by anyone else on a commercial basis.

(8) For this section, a business activity does not include—

(a) the conduct of a student hostel; and

(b) the conduct of a hostel subsidised under the *Aged or Disabled Persons Care Act 1954* (Cwlth); and

(c) an activity of a type prescribed under a regulation.

(9) In this section—

CWA means Queensland Country Women's Association.

15A Exemption for services performed or rendered entirely in another country

The wages liable to payroll tax and the mental health levy under this Act do not include wages paid or payable by an employer for an employee for services performed or rendered entirely in another country for a continuous period of more than 6 months after wages were first paid for the employee for the services.

Division 3 Periodic liability for payroll tax

Subdivision 1 Employer other than the DGE for a group

16 Application of sdiv 1

This subdivision applies to an employer who—

(a) is required under section 59 to lodge periodic returns; and

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(b) is not the DGE for a group.

17 Definitions for sdiv 1

In this subdivision—

actual periodic deduction, for the employer for a periodic return period, means the greater of zero and the amount worked out using the following formula—

$$\mathbf{APD} = \frac{\mathbf{FME}}{\mathbf{G}} - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{TW} - \frac{\mathbf{FME}}{\mathbf{G}}\right)$$

where—

APD means the actual periodic deduction in dollars.

E (maximum deduction per month) means 108,333.

F means the number of days in the period for which the employer pays, or is liable to pay, taxable wages.

G means the total number of days in the period.

M means the number of months in the period.

TW means the amount of taxable wages paid or payable in the period.

fixed periodic deduction, for the employer for a periodic return period, means—

(a) the amount of the employer's deduction for the period determined by the commissioner under section 21; or

(b) if paragraph (a) does not apply—the greater of zero and the amount worked out on the most recent calculation day using the following formula—

$$\mathbf{FPD} = \frac{\mathbf{QW}}{\mathbf{AW}}\left(\mathbf{E} - \frac{\mathbf{1}}{\mathbf{7}}\left(\frac{\mathbf{AW}}{\mathbf{12}} - \mathbf{E}\right)\right)\mathbf{M}$$

where—

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AW means the total amount of taxable wages and interstate wages estimated by the employer to be payable by the employer for the financial year in which the period falls.

E means 108,333.

FPD means the fixed periodic deduction in dollars.

M means the number of months in the period.

QW means the total amount of taxable wages estimated by the employer to be payable by the employer for the financial year in which the period falls.

18 Meaning of *calculation day*

For working out the employer's fixed periodic deduction for a periodic return period in a financial year, each of the following days in the year is a ***calculation day***—

(a) 1 July;

(b) the day the employer is first registered, or required to register, as an employer under part 3, division 1;

(c) the first day of a periodic return period during which the employer pays, or is liable to pay, interstate wages, if the employer's periodic deduction for the preceding periodic return period was, under section 20(2), the actual periodic deduction for the employer for the period;

(d) the last day of a periodic return period during which a significant wage change happens for the employer;

(e) the day a determination by the commissioner of the employer's fixed periodic deduction under section 21 ceases to have effect, if the commissioner does not make a further determination of the deduction;

(f) the day a change to the employer's periodic return period takes effect under section 60.

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19 Meaning of *significant wage change*

(1) A ***significant wage change*** happens during a periodic return period for an employer if—

(a) the employer's deduction for the period is, under section 20(2), the fixed periodic deduction; and

(b) the previous estimated wages differ by more than 30% from the current estimated wages.

(2) In this section—

current estimated wages means the total amount of taxable wages and interstate wages, or the total amount of taxable wages, for the financial year estimated by the employer at the end of the periodic return period mentioned in subsection (1).

previous estimated wages means the estimated total amount of taxable wages and interstate wages, or the estimated total amount of taxable wages, used for working out the fixed periodic deduction.

20 Amount of periodic liability

(1) The employer's liability (***periodic liability***) for payroll tax for a periodic return period is the amount worked out by applying the appropriate rate of payroll tax to—

(a) for a non-DGE group member—the total taxable wages paid or payable by the employer during the period; or

(b) for another employer—the greater of zero and the amount equal to the total taxable wages paid or payable by the employer during the period less the periodic deduction.

(2) For subsection (1)(b), the periodic deduction is—

(a) if the employer pays, or is liable to pay interstate wages during the period—the employer's fixed periodic deduction for the period; or

(b) if the employer does not pay, and is not liable to pay, interstate wages during the period and the employer is a

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previous interstate wage payer—the employer's fixed periodic deduction for the period; or

(c) if the employer does not pay, and is not liable to pay, interstate wages during the period and paragraph (b) does not apply—the employer's actual periodic deduction for the period.

(2A) Subsection (1) does not apply for the last periodic return period of a financial year for the employer.

(3) In this section—

previous interstate wage payer means an employer who—

(a) paid, or was liable to pay, interstate wages at any time during—

(i) the financial year (the ***current year***) in which the periodic return period falls; or

(ii) the most recently ended financial year; and

(b) intends to resume paying, or being liable to pay, interstate wages during the current year or the next financial year.

Note 1—

Under section 30(1)(a) of the Administration Act, an employer's liability for payroll tax for a periodic return period must be paid on the date the employer is required to lodge a periodic return for the period.

Note 2—

An employer may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of periodic liability.

21 Determination by commissioner of fixed periodic deduction

(1) The commissioner may, by written notice given to the employer, determine the amount of the employer's fixed periodic deduction for a periodic return period, if the employer—

(a) either—

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(i) pays, or is liable to pay, taxable wages and interstate wages for the period; or

(ii) is a previous interstate wage payer within the meaning of section 20; and

(b) is not a group member.

(1A) Subsection (1) does not apply for the last periodic return period of a financial year for the employer.

(2) The determination must state the periodic return periods to which it applies.

(3) The determination may apply for a periodic return period starting before or after, or the periodic return period in which, the determination is made.

(4) The commissioner may, at any time by written notice given to the employer, revoke a determination made under subsection (1) with effect from the first day of the periodic return period stated in the notice.

(5) The periodic return period stated in a notice under subsection (4) may be before or after, or the same periodic return period as, the periodic return period in which the notice is given but may not be before the date of the determination being revoked.

Subdivision 2 DGE for a group

22 Application of sdiv 2

This subdivision applies to the DGE for a group.

23 Definition for sdiv 2

In this subdivision—

fixed periodic deduction, for the DGE for a periodic return period, means—

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(a) the amount of the DGE's deduction for the period determined by the commissioner under section 27; or

(b) if paragraph (a) does not apply—the greater of zero and the amount worked out on the most recent calculation day using the following formula—

$$\mathbf{FPD} = \frac{\mathbf{QW}}{\mathbf{AW}}\left(\mathbf{E} - \frac{\mathbf{1}}{\mathbf{7}}\left(\frac{\mathbf{AW}}{\mathbf{12}} - \mathbf{E}\right)\right)\mathbf{M}$$

where—

AW means the total amount of taxable wages and interstate wages estimated by the members of the group to be payable by the members for the financial year in which the period falls.

E means 108,333.

FPD means the fixed periodic deduction in dollars.

M means the number of months in the period.

QW means the total amount of taxable wages estimated by the members of the group to be payable by the members for the financial year in which the period falls.

24 Meaning of *calculation day*

For working out the DGE's fixed periodic deduction for a periodic return period in a financial year, each of the following days in the year is a ***calculation day***—

(a) 1 July;

(b) the day the DGE first becomes the DGE for the group;

(c) the last day of a periodic return period during which a significant wage change happens for the group;

(d) the day a determination by the commissioner of the DGE's periodic deduction under section 27 ceases to have effect, if the commissioner does not make a further determination of the deduction;

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(e) the day a change in the DGE's periodic return period takes effect under section 60.

25 Meaning of *significant wage change*

(1) A ***significant wage change*** happens during a periodic return period for a group if the previous estimated wages differ by more than 30% from the current estimated wages.

(2) In this section—

current estimated wages means the total amount of taxable wages and interstate wages, or the total amount of taxable wages, for the financial year estimated by the members of the group at the end of the periodic return period mentioned in subsection (1).

previous estimated wages means the estimated total amount of taxable wages and interstate wages, or the estimated total amount of taxable wages, of the members of the group used for working out the fixed periodic deduction for the DGE for a periodic return period.

26 Amount of periodic liability

(1) The DGE's liability (***periodic liability***) for payroll tax for a periodic return period is the amount worked out by applying the appropriate rate of payroll tax to the greater of zero and the amount equal to the total taxable wages paid or payable by the DGE during the period less the DGE's fixed periodic deduction for the period.

Note 1—

Under section 30(1)(a) of the Administration Act, a DGE's liability for payroll tax for a periodic return period must be paid on the date the DGE is required to lodge a periodic return for the period.

Note 2—

A DGE may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of periodic liability.

(2) Subsection (1) does not apply for the last periodic return period of a financial year for the DGE.

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27 Determination by commissioner of fixed periodic deduction

(1) The commissioner may, by written notice given to the DGE, determine the amount of the DGE's fixed periodic deduction for a periodic return period.

(1A) Subsection (1) does not apply for the last periodic return period of a financial year for the DGE.

(2) The determination must state the periodic return periods to which it applies.

(3) The determination may apply for a periodic return period starting before or after, or the periodic return period in which, the determination is made.

(4) The commissioner may, at any time by written notice given to the DGE, revoke a determination made under subsection (1) with effect from the first day of the periodic return period stated in the notice.

(5) The periodic return period stated in a notice under subsection (4) may be before or after, or the same periodic return period as, the periodic return period in which the notice is given but may not be before the date of the determination being revoked.

(6) The commissioner may make a determination, or revoke a determination, under this section in relation to the deduction amount for a non-DGE group member.

(7) If the commissioner makes a determination mentioned in subsection (6), the group member is, on the first day of the first periodic return period to which the determination applies, taken to have been designated under section 75(1) or (2) as the DGE for the group.

Subdivision 3 Rebate

27A Rebate for periodic liability

(1) This section applies if—

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(a) wages are paid or payable during a periodic return period in an eligible year by an employer, or a DGE for a group, to a person who is an apprentice or trainee under the *Further Education and Training Act 2014*; and

(b) the wages are not taxable wages under section 14(2)(j).

(2) The employer's, or DGE's, periodic liability for payroll tax for each periodic return period is reduced by the amount of the rebate for the period.

(3) In this section—

rebate, for a periodic return period, means the lesser of the following amounts—

(a) the amount worked out using the following formula—

$$\mathbf{T} \times \frac{\mathbf{W}}{\mathbf{R}}$$

where—

R means—

(a) if the periodic return period is in an eligible year ending on 30 June 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 or 2027—2; or

(b) otherwise—4.

T means the appropriate rate of payroll tax for the periodic return period.

W means the amount of wages mentioned in subsection (1) for the periodic return period;

(b) the employer's, or DGE's, periodic liability for payroll tax for the periodic return period.

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Division 4 Annual liability for payroll tax

Subdivision 1 Employer other than the DGE for a group

28 Application of sdiv 1

This subdivision applies to an employer who—

(a) is required, under section 63, to lodge an annual return for a financial year; and

(b) is not the DGE for a group on 30 June in the year.

Note—

For provisions about a DGE's annual liability, see subdivision 2.

29 Definitions for sdiv 1

(1) In this subdivision—

annual adjustment amount, for the employer for a financial year, means the difference between—

(a) the employer's annual payroll tax amount for the year; and

(b) the employer's periodic liability for periodic return periods in the year.

annual deduction, for the employer for a financial year, means the greater of zero and the amount worked out using the following formula—

$$\mathbf{AD} = \frac{\mathbf{AW}}{\mathbf{AW} + \mathbf{IW}}\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{AW} + \mathbf{IW} - \frac{\mathbf{K(A+B)}}{\mathbf{C}}\right)\right)$$

where—

A means the number of days in the part of the year starting on 1 July and ending on 31 December for which the employer pays, or is liable to pay, wages, other than foreign wages.

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AD means the annual deduction in dollars.

AW means the employer's annual wages for the year.

B means the number of days in the part of the year starting on 1 January and ending on 30 June for which the employer pays, or is liable to pay, wages, other than foreign wages.

C means the number of days in the year.

IW means the amount of interstate wages paid or payable in the year.

K means 1,300,000.

annual payroll tax amount, for the employer for a financial year, means—

(a) if the employer is not a group member on 30 June in the year and the employer's annual deduction for the year is greater than the employer's annual wages for the year—zero; or

(b) if the employer is not a group member on 30 June in the year and paragraph (a) does not apply—the amount worked out by applying the appropriate rate of payroll tax to the employer's annual wages for the year less the employer's annual deduction for the year; or

(c) if the employer is a group member on 30 June in the year—the amount worked out by applying the appropriate rate of payroll tax to the employer's annual wages for the year.

annual wages, for the employer for a financial year, means the total taxable wages paid or payable by the employer during the year.

(2) Despite subsection (1), definition *annual deduction*, if a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the commissioner that, by reason of the nature of the person's trade or business, the taxable wages and interstate wages (if any) paid or payable by the person fluctuate with different periods of the financial year, the commissioner may treat the person—

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(a) if the person has conducted that trade or business in Australia during the whole of the financial year—as an employer throughout the financial year; or

(b) if the person has conducted that trade or business in Australia during part only of the financial year—as an employer during that lastmentioned part of the financial year.

(3) However, if under section 64(2) the person lodged, or was required to lodge, 1 or more final returns during the year, subsection (2) can apply in relation to the person only if the person did not pay, and was not liable to pay, taxable wages or interstate wages for a part of the year after the end of the last final period.

(4) Also, the commissioner may treat the person, under subsection (2), as an employer only during the part of the year after the end of the last final period.

30 Amount of annual liability

(1) The employer's liability (***annual liability***) for payroll tax for a financial year is—

(a) the employer's annual adjustment amount for the year, if—

(i) the employer lodged, or was required under section 59 to lodge, a periodic return during the year; and

(ii) the employer's annual payroll tax amount for the year is greater than the employer's periodic liability for periodic return periods in the year; or

(b) the employer's annual payroll tax amount for the year, if the employer was not required under section 59 to lodge a periodic return during the year.

Example for paragraph (b)—

The amount of an employer's annual liability would be the annual payroll tax amount if the employer was exempt, under a

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certificate issued by the commissioner under section 62, from lodging periodic returns during the financial year.

(2) However, if under section 64(2) the employer lodged, or was required to lodge, 1 or more final returns during the financial year, for working out the employer's annual liability—

(a) taxable wages and interstate wages (***final return wages***) paid or payable by the employer for a final period during the year are not included in the employer's wages for the year; and

(b) the periodic liability amount for the employer for a final period during the year (***final return liability***) is not included in the employer's periodic liability for periodic return periods in the year; and

(c) the employer's annual deduction must be worked out without having regard to the days in a final period during the year.

(3) Subsection (2) does not apply in relation to a final period during the year if—

(a) the commissioner makes an original assessment of the employer's annual liability, other than under the Administration Act, section 14(a); and

(b) the employer is not a group member on 30 June in the year; and

(c) the employer was not a group member during the final period; and

(d) the employer's annual liability would be greater if the final return wages and final return liability for the final period were not included.

Note—

See also section 78 (Reassessment—annual liability of non-group employer who has lodged a final return).

(4) If the commissioner includes final return wages and final return liability under subsection (3) for working out the employer's annual liability, the annual deduction for the employer for the financial year must be worked out having

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regard to the days in a final period mentioned in subsection (3).

Note 1—

Under section 30(1)(a) of the Administration Act, an employer's annual liability for a financial year must be paid on the date the employer is required to lodge an annual return for the financial year.

Note 2—

An employer may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of annual liability.

31 Entitlement to annual refund amount

(1) This section applies if the employer's periodic liability for periodic return periods in a financial year is greater than the employer's annual payroll tax amount for the year.

(2) The employer is entitled to a refund of the amount (the ***annual refund amount***) of the difference between the periodic liability and the annual payroll tax amount.

(3) Subsection (2) is subject to section 83.

(4) However, the employer is not entitled to a refund of the amount more than 5 years after the making of the assessment of the employer's annual liability for the year.

(5) This section does not apply in relation to a reassessment of the employer's annual liability.

Note—

Entitlement to refunds on reassessments is provided for in the Administration Act, part 4, division 2.

Subdivision 2 DGE for a group

32 Application of sdiv 2

This subdivision applies to an employer who, on 30 June in a financial year, is the DGE for a group.

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33 Definitions for sdiv 2

In this subdivision—

annual adjustment amount, for the DGE for a financial year, means the difference between—

(a) the DGE's annual payroll tax amount for the year; and

(b) the DGE's periodic liability for periodic return periods in the designated period for the DGE in the year.

annual deduction, for the DGE for a financial year, means the greater of zero and the amount worked out using the following formula—

$$\mathbf{AD} = \frac{\mathbf{TW}}{\mathbf{TW} + \mathbf{IW}}\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{TW} + \mathbf{IW} - \frac{\mathbf{K(A+B)}}{\mathbf{C}}\right)\right)$$

where—

A means the number of days in the designated period for the DGE—

(a) that are in the part of the year starting on 1 July and ending on 31 December, whether or not wholly or partly concurrent; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages.

AD means the annual deduction in dollars.

B means the number of days in the designated period—

(a) that are in the part of the year starting on 1 January and ending on 30 June, whether or not wholly or partly concurrent; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages.

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C means the number of days in the year.

IW means the amount of interstate wages paid or payable for the designated period by each relevant group employer as a member of the group.

K means 1,300,000.

TW means the amount of taxable wages paid or payable for the designated period by each relevant group employer as a member of the group.

annual payroll tax amount for the DGE for a financial year, means—

(a) if the DGE's annual deduction for the year is greater than the DGE's annual wages for the year—zero; or

(b) if paragraph (a) does not apply—the amount worked out by applying the appropriate rate of payroll tax to the DGE's annual wages for the year less the DGE's annual deduction for the year.

annual wages, for the DGE for a financial year, means the total taxable wages paid or payable by the DGE during the designated period for the DGE in the year.

relevant group employer, for the designated period for the DGE in a financial year, means an employer who was a member of the group for all or part of the period.

34 Amount of DGE's annual liability

(1) The DGE's liability (***annual liability***) for payroll tax for a financial year is—

(a) the DGE's annual adjustment amount for the year, if—

(i) the DGE lodged, or was required under section 59 to lodge, a periodic return during the designated period for the DGE in the year; and

(ii) the DGE's annual payroll tax amount for the year is greater than the DGE's periodic liability for periodic return periods in the designated period; or

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(b) the DGE's annual payroll tax amount for the year, if the DGE was not required under section 59 to lodge a periodic return during the designated period for the DGE in the year.

Example—

A group member is the DGE from 1 January to 30 June in a financial year. The DGE's annual liability for the year would be worked out without having regard to the part of the financial year before 1 January.

(2) If the DGE does not pay the DGE's annual liability for the financial year on the return date for lodgement of the DGE's annual return, every relevant group employer for the designated period is liable jointly and severally to pay the amount of the liability.

Note 1—

Under section 30(1)(a) of the Administration Act, a DGE's annual liability for a financial year must be paid on the date the DGE is required to lodge an annual return for the financial year.

Note 2—

A DGE may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of annual liability.

35 Entitlement to annual refund amount

(1) This section applies if the DGE's periodic liability for periodic return periods in the designated period for the DGE in a financial year is greater than the DGE's annual payroll tax amount for the year.

(2) The DGE is entitled to a refund of the amount (the ***annual refund amount***) of the difference between the periodic liability and the annual payroll tax amount.

(3) Subsection (2) is subject to section 83.

(4) However, the DGE is not entitled to a refund of the amount more than 5 years after the making of the assessment of the DGE's annual liability for the year.

(5) This section does not apply in relation to a reassessment of the DGE's annual liability.

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Note—

Entitlement to refunds on reassessments is provided for in the Administration Act, part 4, division 2.

Subdivision 3 Rebate

35A Rebate for annual payroll tax amount

(1) This section applies if—

(a) wages are paid or payable during an eligible year by an employer, or a DGE for a group, to a person who is an apprentice or trainee under the *Further Education and Training Act 2014*; and

(b) the wages are not taxable wages under section 14(2)(j).

(2) The employer's, or DGE's, annual payroll tax amount for the eligible year is reduced by the amount of the rebate for the eligible year.

(3) However, if under section 64(2) the employer or DGE lodged, or was required to lodge, 1 or more final returns during the eligible year, the amount of the wages mentioned in subsection (1) paid or payable for a final period during the year are not to be included in working out the amount of the rebate.

(4) In this section—

rebate, for an eligible year, means the lesser of the following amounts—

(a) the amount worked out using the following formula—

$$\mathbf{T} \times \frac{\mathbf{W}}{\mathbf{R}}$$

where—

R means—

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(a) if the eligible year ends on 30 June 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 or 2027—2; or

(b) otherwise—4.

T means the appropriate rate of payroll tax for the eligible year.

W means the amount of wages mentioned in subsection (1) for the eligible year;

(b) the employer's, or DGE's, annual payroll tax amount for the eligible year.

Division 5 Final liability for payroll tax

Subdivision 1 Employer other than the DGE for a group

36 Application of sdiv 1

This subdivision applies to an employer who—

(a) is required under section 64(2) to lodge a final return for a final period; and

(b) is not the DGE for a group on the last day of the final period.

Note—

For provisions about a DGE's final liability, see subdivision 2.

37 Definitions for sdiv 1

In this subdivision—

final adjustment amount, for the employer for a final period, means the difference between—

(a) the employer's final payroll tax amount for the period; and

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(b) the employer's periodic liability amount for the final period.

final deduction, for the employer for a final period, means the greater of zero and the amount worked out using the following formula—

$$\mathbf{FD} = \frac{\mathbf{FW}}{\mathbf{FW} + \mathbf{IW}}\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{FW} + \mathbf{IW} - \frac{\mathbf{K(A+B)}}{\mathbf{C}}\right)\right)$$

where—

A means the number of days in the part of the final period starting on 1 July and ending on 31 December for which the employer pays, or is liable to pay, wages.

B means the number of days in the part of the final period starting on 1 January and ending on 30 June for which the employer pays, or is liable to pay, wages.

C means—

(a) if the final period is within a financial year that includes 29 February—366; or

(b) otherwise—365.

FD means the final deduction in dollars.

FW means the employer's final wages for the period.

IW means the amount of interstate wages paid or payable in the period.

K means 1,300,000.

final payroll tax amount, for the employer for a final period, means—

(a) if the employer is not a group member on the last day of the period and the employer's final deduction for the period is greater than the employer's final wages for the period—zero; or

(b) if the employer is not a group member on the last day of the period and paragraph (a) does not apply—the

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amount worked out by applying the appropriate rate of payroll tax to the employer's final wages for the period less the employer's final deduction for the period; or

(c) if the employer is a group member on the last day of the period—the amount worked out by applying the appropriate rate of payroll tax to the employer's final wages for the period.

final wages, for the employer for a final period, means the total taxable wages paid or payable by the employer during the period.

wages does not include foreign wages.

38 Amount of final liability

(1) The employer's liability (***final liability***) for payroll tax for a final period is—

(a) the employer's final adjustment amount for the period, if—

(i) either—

(A) the employer lodged, or was required under section 59 to lodge, a periodic return during the period; or

(B) after the last day of the final period, the employer will be required under section 59 to lodge a periodic return for a periodic return period that is wholly or partly within the final period; and

(ii) the employer's final payroll tax amount for the period is greater than the employer's periodic liability amount for the final period; or

(b) the employer's final payroll tax amount for the period, if—

(i) the employer was not required under section 59 to lodge a periodic return during the period; and

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(ii) paragraph (a) does not apply.

Example for paragraph (b)—

The amount of an employer's final liability would be the final payroll tax amount if the employer was exempt, under a certificate issued by the commissioner under section 62, from lodging periodic returns during the final period.

(2) However, subsection (3) applies if—

(a) the employer did not pay and was not liable to pay taxable wages or interstate wages for any part of the final period; and

(b) the employer satisfies the commissioner that, because of the nature of the employer's trade or business, the taxable wages and interstate wages, if any, paid or payable by the employer fluctuate with different periods of the financial year.

(3) If this subsection applies, for working out the employer's final liability for the final period, the commissioner may treat the employer—

(a) if the employer has conducted the employer's trade or business in Australia during the whole of the final period—as an employer throughout the final period; or

(b) if the employer has conducted the employer's trade or business in Australia during part only of the final period—as an employer during that part of the final period.

Note 1—

Under section 30(1)(a) of the Administration Act, an employer's final liability for a final period must be paid on the date the employer is required to lodge a final return for the final period.

Note 2—

An employer may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of final liability.

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39 Entitlement to final refund amount

(1) This section applies if the employer's periodic liability amount for a final period is greater than the employer's final payroll tax amount for the period.

(2) The employer is entitled to a refund of the amount (the ***final refund amount***) of the difference between the periodic liability amount and the final payroll tax amount.

(3) Subsection (2) is subject to section 83.

(4) However, the employer is not entitled to a refund of the amount more than 5 years after the making of the assessment of the employer's final liability for the period.

(5) This section does not apply in relation to a reassessment of the employer's final liability.

Note—

Entitlement to refunds on reassessments is provided for in the Administration Act, part 4, division 2.

Subdivision 2 DGE for a group

40 Application of sdiv 2

This subdivision applies to an employer who is the DGE for a group on the last day of a final period.

41 Definitions for sdiv 2

In this subdivision—

final adjustment amount, for the DGE for a final period, means the difference between—

(a) the DGE's final payroll tax amount for the period; and

(b) the DGE's periodic liability amount for the final period.

final deduction, for the DGE for a final period, means the greater of zero and the amount worked out using the following formula—

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$$\mathbf{FD} = \frac{\mathbf{TW}}{\mathbf{TW} + \mathbf{IW}}\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{TW} + \mathbf{IW} - \frac{\mathbf{K(A+B)}}{\mathbf{C}}\right)\right)$$

where—

A means the number of days—

(a) that are in the part of the final period starting on 1 July and ending on 31 December; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages.

B means the number of days—

(a) that are in the part of the final period starting on 1 January and ending on 30 June; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages.

C means—

(a) if the final period is within a financial year that includes 29 February—366; or

(b) otherwise—365.

FD means the final deduction in dollars.

IW means the amount of interstate wages paid or payable for the final period by each relevant group employer as a member of the group.

K means 1,300,000.

TW means the amount of taxable wages paid or payable for the final period by each relevant group employer as a member of the group.

final payroll tax amount, for the DGE for a final period, means—

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(a) if the DGE's final deduction for the period is greater than the DGE's final wages for the period—zero; or

(b) if paragraph (a) does not apply—the amount worked out by applying the appropriate rate of payroll tax to the DGE's final wages for the period less the DGE's final deduction for the period.

final wages, for the DGE for a final period, means the total taxable wages paid or payable by the DGE during the period.

relevant group employer, for a final period for the DGE, means an employer who was a member of the group for all or part of the period.

42 Amount of DGE's final liability

(1) The DGE's liability (***final liability***) for payroll tax for a final period is—

(a) the DGE's final adjustment amount for the period, if—

(i) either—

(A) the DGE lodged, or was required under section 59 to lodge, a periodic return during the period; or

(B) after the last day of the final period, the DGE will be required under section 59 to lodge a periodic return for a periodic return period that is wholly or partly within the final period; and

(ii) the DGE's final payroll tax amount for the period is greater than the DGE's periodic liability amount for the period; or

(b) the DGE's final payroll tax amount for the period, if—

(i) the DGE was not required under section 59 to lodge a periodic return during the period; and

(ii) paragraph (a) does not apply.

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(2) If the DGE does not pay the DGE's final liability for the period on the return date for lodgement of the DGE's final return, every relevant group employer for the period is liable jointly and severally to pay the amount of the liability.

Note 1—

Under section 30(1)(a) of the Administration Act, a DGE's final liability for a final period must be paid on the date the DGE is required to lodge a final return for the final period.

Note 2—

A DGE may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of final liability.

43 Entitlement to final refund amount

(1) This section applies if the DGE's periodic liability amount for a final period is greater than the DGE's final payroll tax amount for the period.

(2) The DGE is entitled to a refund of the amount (the ***final refund amount***) of the difference between the periodic liability amount and the final payroll tax amount.

(3) Subsection (2) is subject to section 83.

(4) However, the DGE is not entitled to a refund of the amount more than 5 years after the making of the assessment of the DGE's final liability for the period.

(5) This section does not apply in relation to a reassessment of the DGE's final liability.

Note—

Entitlement to refunds on reassessments is provided for in the Administration Act, part 4, division 2.

Subdivision 3 Rebate

43A Rebate for final payroll tax amount

(1) This section applies if—

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(a) wages are paid or payable during a final period in an eligible year by an employer, or a DGE for a group, to a person who is an apprentice or trainee under the *Further Education and Training Act 2014*; and

(b) the wages are not taxable wages under section 14(2)(j).

(2) The employer's, or DGE's, final payroll tax amount for the final period is reduced by the amount of the rebate for the period.

(3) In this section—

rebate, for a final period, means the lesser of the following amounts—

(a) the amount worked out using the following formula—

$$\mathbf{T} \times \frac{\mathbf{W}}{\mathbf{R}}$$

where—

R means—

(a) if the final period is in an eligible year ending on 30 June 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 or 2027—2; or

(b) otherwise—4.

T means the appropriate rate of payroll tax for the final period.

W means the amount of wages mentioned in subsection (1) for the final period;

(b) the employer's, or DGE's, final payroll tax amount for the final period.

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Division 5A Periodic liability for mental health levy

43B Application of division

This division applies to an employer who is required under section 59 to lodge periodic returns.

43C Meaning of *adjusted primary threshold*

(1) The ***adjusted primary threshold*** for a financial year for an employer who is not a group member is the amount worked out using the following formula—

$$\mathbf{A} = \mathbf{B} \times \frac{\mathbf{C}}{\mathbf{D}}$$

where—

A means the adjusted primary threshold for the financial year for the employer.

B means $10m.

C means the amount of taxable wages estimated by the employer to be payable by the employer for the financial year.

D means the total amount of taxable wages and interstate wages estimated by the employer to be payable by the employer for the financial year.

(2) The ***adjusted primary threshold*** for a financial year for an employer who is a group member is the amount worked out using the following formula—

$$\mathbf{A} = \left(\mathbf{B} \times \frac{\mathbf{C}}{\mathbf{D}}\right) \times \left(\frac{\mathbf{E}}{\mathbf{C}}\right)$$

where—

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A means the adjusted primary threshold for the financial year for the employer.

B means $10m.

C means the total amount of taxable wages estimated to be payable by all members of the group for the financial year.

D means the total amount of taxable wages and interstate wages estimated to be payable by all members of the group for the financial year.

E means the amount of taxable wages estimated by the employer to be payable by the employer for the financial year.

43D Meaning of *adjusted additional threshold*

(1) The ***adjusted additional threshold*** for an employer who is not a group member for a financial year is the amount worked out using the following formula—

$$\mathbf{A} = \mathbf{B} \times \frac{\mathbf{C}}{\mathbf{D}}$$

where—

A means the adjusted additional threshold for the employer.

B means $100m.

C means the amount of taxable wages estimated by the employer to be payable by the employer for the financial year.

D means the total amount of taxable wages and interstate wages estimated by the employer to be payable by the employer for the financial year.

(2) The ***adjusted additional threshold*** for an employer who is a group member for a financial year is the amount worked out using the following formula—

$$\mathbf{A} = \left(\mathbf{B} \times \frac{\mathbf{C}}{\mathbf{D}}\right) \times \left(\frac{\mathbf{E}}{\mathbf{C}}\right)$$

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where—

A means the adjusted additional threshold for the employer.

B means $100m.

C means the total amount of taxable wages estimated to be payable by all members of the group for the financial year.

D means the total amount of taxable wages and interstate wages estimated to be payable by all members of the group for the financial year.

E means the amount of taxable wages estimated by the employer to be payable by the employer for the financial year.

43E Meaning of *primary periodic threshold* and *additional periodic threshold*

(1) The commissioner may, by written notice given to an employer, determine—

(a) the amount of the employer's primary periodic threshold for a periodic return period; or

(b) the amount of the employer's additional periodic threshold for a periodic return period.

(2) Subsection (1) does not apply for the last periodic return period of a financial year for the employer.

(3) The ***primary periodic threshold*** for an employer for a periodic return period is—

(a) if an amount has been determined under subsection (1)(a)—that amount; or

(b) otherwise—the amount worked out on the most recent calculation day using the following formula—

$$\mathbf{PPT} = \mathbf{A} \times \frac{\mathbf{M}}{\mathbf{12}}$$

where—

A means the adjusted primary threshold for the employer for the current financial year.

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M means the number of months in the period.

PPT means the primary periodic threshold for the employer for the periodic return period.

(4) The ***additional periodic threshold*** for an employer for a periodic return period is—

(a) if an amount has been determined under subsection (1)(b)—that amount; or

(b) otherwise—the amount worked out on the most recent calculation day using the following formula—

$$\mathbf{APT} = \mathbf{A} \times \frac{\mathbf{M}}{\mathbf{12}}$$

where—

A means the adjusted additional threshold for the employer for the current financial year.

APT means the additional periodic threshold for the employer for the periodic return period.

M means the number of months in the periodic return period.

43EA Meaning of *current financial year*

The ***current financial year*** for a periodic return period is the financial year in which the periodic return period occurs.

43EB Meaning of *calculation day*

(1) This section applies for working out an employer's primary periodic threshold or additional periodic threshold, for a periodic return period, under section 43E.

(2) Each of the following days is a ***calculation day***—

(a) 1 July in the current financial year;

(b) a day on which a change to the periodic return period takes effect under section 60;

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(c) if a relevant determination for the periodic return period has been made—a day that the relevant determination stops applying;

(d) a day, in the current financial year, that the employer is first registered, or required to register, as an employer under part 3, division 1;

(e) for an employer who is not a group member and who has paid, is liable to pay, or anticipates paying or being liable to pay, interstate wages during the current financial year—the last day of a periodic return period, in the current financial year, during which a significant wage change happens for the employer;

(f) for an employer who stops being a group member in the current financial year—the first day that the employer pays, or becomes liable to pay, taxable wages other than as a group member;

(g) for an employer who is a group member but is not the DGE for the group—the last day of a periodic return period, in the current financial year, during which the employer receives revised group wage information from the DGE for the group under section 88E;

(h) for an employer who is the DGE for a group—the last day of a periodic return period, in the current financial year, during which—

(i) a significant wage change happens for the group; or

(ii) an employer becomes a member of the group (whether or not the employer had previously been a member of the group); or

(iii) a non-DGE group member pays, or becomes liable to pay, taxable wages other than as a group member.

(3) Subsection (2)(c) does not apply if, at the time the relevant determination stops applying, another relevant determination starts to apply.

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(4) In this section—

relevant determination means—

(a) in relation to an employer's primary periodic threshold for a periodic return period—a determination under section 43E(1)(a); or

(b) in relation to an employer's additional periodic threshold for a periodic return period—a determination under section 43E(1)(b).

43EC Meaning of *significant wage change*

(1) A ***significant wage change*** happens during a periodic return period for an employer or group if the previous estimated wages for the period differ by more than 30% from the current estimated wages for the period.

(2) In this section—

current estimated wages, in relation to a periodic return period, means—

(a) for an employer—the total amount of the taxable wages and any interstate wages, for the current financial year, estimated by the employer at the end of the periodic return period; or

(b) for a group—the total amount of the taxable wages and any interstate wages, for the current financial year, estimated by the members of the group at the end of the periodic return period.

previous estimated wages, in relation to a periodic return period, means—

(a) for an employer—the total amount of the taxable wages and any interstate wages, for the current financial year, estimated by the employer at the most recent of the following days—

(i) the end of the previous periodic return period;

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(ii) the most recent calculation day for the periodic return period under section 43EB(2); or

(b) for a group—the total amount of the taxable wages and any interstate wages, for the current financial year, estimated by the members of the group at the most recent of the following days—

(i) the end of the previous periodic return period;

(ii) the most recent calculation day for the periodic return period under section 43EB(2).

43F Amount of periodic levy liability

(1) An employer's liability (***periodic levy liability***) for the mental health levy for a periodic return period is the total of—

(a) the primary periodic liability under subsection (2); and

(b) the additional periodic liability under subsection (3).

(2) For subsection (1)(a), the primary periodic liability for a periodic return period is the greater of the amount worked out using the following formula and zero—

$$\mathbf{L} = \left(\mathbf{TW} - \left(\mathbf{PPT} \times \frac{\mathbf{A}}{\mathbf{B}}\right)\right) \times \mathbf{R}$$

where—

A means the number of days the employer paid, or was liable to pay, wages in the period.

B means the number of days in the period.

L means the primary periodic liability for the period.

PPT means the primary periodic threshold for the employer for the period.

R means 0.25%.

TW means the amount of the employer's taxable wages for the period.

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(3) For subsection (1)(b), the additional periodic liability for a periodic return period is the greater of the amount worked out using the following formula and zero—

$$\mathbf{L} = \left(\mathbf{TW} - \left(\mathbf{APT} \times \frac{\mathbf{A}}{\mathbf{B}}\right)\right) \times \mathbf{R}$$

where—

A means the number of days the employer paid, or was liable to pay, wages in the period.

APT means the additional periodic threshold for the employer for the period.

B means the number of days in the period.

L means the additional periodic liability for the period.

R means 0.5%.

TW means the amount of the employer's taxable wages for the period.

(4) There is no periodic levy liability for the last periodic return period of a financial year.

Notes—

1 Under section 30(1)(a) of the Administration Act, an employer's periodic levy liability for a periodic return period must be paid on the date the employer is required to lodge a periodic return for the period.

2 An employer may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of periodic levy liability.

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Division 5B Annual liability for mental health levy

43G Application of division

This division applies to an employer who is required, under section 63, to lodge an annual return for a financial year if the employer—

(a) is not a member of a group on 30 June in the year; or

(b) is the DGE for a group on 30 June in the year.

43H Meaning of *combined periodic liability*

The ***combined periodic liability***, for the employer for the financial year, is—

(a) if the employer is not a member of a group—the total of the employer's periodic levy liability for each periodic return period in the year; or

(b) if the employer is the DGE for a group—the total of each group member's total periodic levy liability for each periodic return period in the year.

43I Definitions for division

In this division—

additional annual levy amount, for the employer for the financial year, means the greater of the amount worked out using the following formula and zero—

$$\mathbf{A} = \left(\mathbf{B} - \left(\left(\mathbf{C} \times \frac{\mathbf{B}}{\mathbf{D}}\right) \times \frac{\mathbf{E}}{\mathbf{F}}\right)\right) \times \mathbf{R}$$

where—

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A means the additional annual levy amount for the employer for the financial year.

B means—

(a) if the employer is not a member of a group—the total taxable wages paid or payable by the employer for the financial year; or

(b) if the employer is the DGE for a group—the total taxable wages paid or payable by all members of the group for the financial year.

C means $100m.

D means—

(a) if the employer is not a member of a group—the total taxable wages and interstate wages paid or payable by the employer for the financial year; or

(b) if the employer is the DGE for a group—the total taxable wages and interstate wages paid or payable by all members of the group for the financial year.

E means—

(a) if the employer is not a member of a group—the number of days the employer paid, or was liable to pay, wages for the financial year; or

(b) if the employer is the DGE for a group—the number of days in the financial year for which 1 or more relevant group employers paid, or were liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

F means the number of days in the financial year.

R means 0.5%.

annual levy adjustment amount, for the employer for the financial year, means the difference between—

(a) the employer's annual levy amount for the financial year; and

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(b) the employer's combined periodic liability for the financial year.

annual levy amount, for the employer for the financial year, means the total of—

(a) the primary annual levy amount; and

(b) the additional annual levy amount.

primary annual levy amount, for the employer for the financial year, means the greater of the amount worked out using the following formula and zero—

$$\mathbf{A} = \left(\mathbf{B} - \left(\left(\mathbf{C} \times \frac{\mathbf{B}}{\mathbf{D}}\right) \times \frac{\mathbf{E}}{\mathbf{F}}\right)\right) \times \mathbf{R}$$

where—

A means the primary annual levy amount for the employer for the financial year.

B means—

(a) if the employer is not a member of a group—the total taxable wages paid or payable by the employer for the financial year; or

(b) if the employer is the DGE for a group—the total taxable wages paid or payable by all members of the group for the financial year.

C means $10m.

D means—

(a) if the employer is not a member of a group—the total taxable wages and interstate wages paid or payable by the employer for the financial year; or

(b) if the employer is the DGE for a group—the total taxable wages and interstate wages paid or payable by all members of the group for the financial year.

E means—

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(a) if the employer is not a member of a group—the number of days the employer paid, or was liable to pay, wages for the financial year; or

(b) if the employer is the DGE for a group—the number of days in the financial year for which 1 or more relevant group employers paid, or were liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

F means the number of days in the financial year.

R means 0.25%.

relevant group employer, in relation to the DGE for a group, for a financial year, means an employer who was a member of the group for all or part of the financial year.

43J Amount of annual levy liability

(1) The employer's liability (***annual levy liability***) for the mental health levy for the financial year is—

(a) the employer's annual levy adjustment amount for the year, if—

(i) the employer (or if the employer is the DGE of a group, a group member) lodged, or was required under section 59 to lodge, a periodic return during the year; and

(ii) the employer's annual levy amount for the year is greater than the employer's combined periodic liability for the year; or

(b) the employer's annual levy amount for the year, if the employer (or if the employer is the DGE of a group, each group member) was not required under section 59 to lodge a periodic return during the year.

Example for paragraph (b)—

The amount of an employer's annual levy liability would be the annual levy amount if the employer was exempt, under a certificate issued by the commissioner under section 62, from lodging periodic returns during the financial year.

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(2) Subsection (1) applies subject to subsections (3) to (7).

(3) Subsection (4) applies if—

(a) the employer is not a group member on 30 June in the financial year; and

(b) under section 64(2) or (5), a person lodged, or was required to lodge, a final return for a final period during the financial year stating the person's final levy liability or final levy refund amount for the final period; and

(c) the stated final levy liability or final levy refund amount was calculated wholly or partly with reference to wages paid or payable by the employer during the final period (***final levy return wages***).

(4) For working out the employer's annual levy liability for the financial year—

(a) the final levy return wages are not included in the wages paid or payable for the financial year; and

(b) the part of the periodic levy liability amount attributable to the final levy return wages (the ***final levy return liability***) is not included in the employer's combined periodic liability for the financial year; and

(c) the employer is taken not to have paid, or been liable to pay, wages for the days in the final period on which the employer paid, or was liable to pay, the final levy return wages.

(5) Subsection (6) applies if—

(a) the employer is the DGE for a group on 30 June in the financial year; and

(b) under section 64(2) or (5), a person lodged, or was required to lodge, a final return for a final period during the financial year stating the person's final levy liability or final levy refund amount for the final period; and

(c) the stated final levy liability or final levy refund amount was calculated wholly or partly with reference to wages

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paid or payable by a person during the final period (***final levy return wages***).

(6) For working out the DGE's annual levy liability for the financial year—

(a) the final levy return wages are not included in the wages paid or payable by members of the group for the financial year; and

(b) the part of the periodic levy liability amount attributable to the final levy return wages (the ***final levy return liability***) is not included in the DGE's combined periodic liability for the financial year; and

(c) the person mentioned in subsection (5)(c) is taken not to have paid, or been liable to pay, taxable wages or interstate wages, or taxable wages and interstate wages, as a member of the group for the days in the final period on which the person paid, or was liable to pay, the final levy return wages.

(7) Subsections (2) to (6) do not apply in relation to a final period during the financial year if—

(a) the commissioner makes an original assessment of the employer's annual levy liability, other than under the Administration Act, section 14(a); and

(b) the employer is not a group member on 30 June in the year; and

(c) the employer was not a group member during the final period; and

(d) the employer's annual levy liability would be greater if the final levy return wages and final levy return liability for the final period were not included.

Notes—

1 Under section 30(1)(a) of the Administration Act, an employer's annual levy liability for a financial year must be paid on the date the employer is required to lodge an annual return for the financial year.

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2 An employer may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of annual levy liability.

43K Entitlement to annual levy refund amount

(1) This section applies if the employer's combined periodic liability for the financial year is greater than the employer's annual levy liability for the year.

(2) The employer is entitled to a refund of the amount (the ***annual levy refund amount***) of the difference between the combined periodic liability and the annual levy amount.

(3) Subsection (2) is subject to section 83.

(4) However, the employer is not entitled to a refund of the amount more than 5 years after the making of the assessment of the employer's annual levy liability for the financial year.

(5) This section does not apply in relation to a reassessment of the employer's annual levy liability.

Note—

Entitlement to refunds on reassessments is provided for in the Administration Act, part 4, division 2.

Division 5C Final liability for mental health levy

43L Application of division

(1) This division applies to an employer who is required under section 64 to lodge a final return for a final period if the employer—

(a) is not a member of a group on the last day of the final period; or

(b) is the DGE for a group on the last day of the final period.

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(2) For this division, a reference to the final period for an employer who is the DGE for a group is a reference to the final period for the change of status of—

(a) if the change of status happens to a group member—the group member; or

(b) if the change of status happens to the DGE—the DGE.

43M Definitions for division

In this division—

additional final levy amount, for the employer for the final period, means the greater of the amount worked out using the following formula and zero—

$$\mathbf{A} = \left(\mathbf{FW} - \left(\left(\mathbf{C} \times \frac{\mathbf{FW}}{\mathbf{D}}\right) \times \frac{(\mathbf{E} + \mathbf{F})}{\mathbf{G}}\right)\right) \times \mathbf{R}$$

where—

A means the additional final levy amount for the employer for the final period.

C means $100m.

D means—

(a) if the employer is not a member of a group—the total taxable wages and interstate wages paid or payable by the employer during the final period; or

(b) if the employer is the DGE for a group—the total taxable wages and interstate wages paid or payable by all relevant group employers during the final period.

E means—

(a) if the employer is not a member of a group—the number of days in the part of the final period starting on 1 July and ending on 31 December for which the employer paid, or was liable to pay, wages; or

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(b) if the employer is the DGE for a group—the number of days in the part of the final period starting on 1 July and ending on 31 December for which 1 or more relevant group employers paid, or were liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages during the final period.

F means—

(a) if the employer is not a member of a group—the number of days in the part of the final period starting on 1 January and ending on 30 June for which the employer paid, or was liable to pay, wages; or

(b) if the employer is the DGE for a group—the number of days in the part of the final period starting on 1 January and ending on 30 June for which 1 or more relevant group employers paid, or were liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages during the period.

FW means the employer's final wages for the final period.

G means—

(a) if the final period is within a financial year that includes 29 February—366; or

(b) otherwise—365.

R means 0.5%.

final levy adjustment amount, for the employer for the final period, means the difference between—

(a) the employer's final levy amount for the final period; and

(b) the employer's periodic levy liability amount for the final period.

final levy amount, for the employer for the final period, means the total of—

(a) the primary final levy amount; and

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(b) the additional final levy amount.

final wages, for the employer for the final period, means—

(a) if the employer is not a member of a group—the total taxable wages paid or payable by the employer during the final period; or

(b) if the employer is the DGE for a group—the total taxable wages paid or payable by all members of the group during the final period.

partial levy amount, for a periodic return period, means the amount worked out using the following formula—

$$\mathbf{P} = \mathbf{PL} \times \frac{\mathbf{X}}{\mathbf{Y}}$$

where—

P means the partial levy amount in dollars.

PL means—

(a) if the employer is not a member of a group—the employer's periodic levy liability for the period; or

(b) if the employer is a DGE for a group—the total periodic levy liability for the period for all group members.

X means the number of days in the period that are in the final period.

Y means the total number of days in the final period.

periodic levy liability amount, for an employer for the final period, means the sum of—

(a) either—

(i) if the employer is not a member of a group—the employer's periodic levy liability for a periodic return period wholly within the final period, even if the return date for lodging the periodic return is after the return date for lodging the final return; or

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(ii) if the employer is the DGE for a group—the total of each group member's total periodic levy liability for a periodic return period wholly within the final period, even if the return date for lodging the periodic return is after the return date for lodging the final return; and

(b) for a day in the final period not included in a periodic return period mentioned in paragraph (a)—the partial levy amount for the periodic return period that includes the day, even if the return date for lodging the periodic return is after the return date for lodging the final return.

primary final levy amount, for the employer for the final period, means the greater of the amount worked out using the following formula and zero—

$$\mathbf{A} = \left(\mathbf{FW} - \left(\left(\mathbf{C} \times \frac{\mathbf{FW}}{\mathbf{D}}\right) \times \frac{(\mathbf{E} + \mathbf{F})}{\mathbf{G}}\right)\right) \times \mathbf{R}$$

where—

A means the primary final levy amount for the employer for the final period.

C means $10m.

D means—

(a) if the employer is not a member of a group—the total taxable wages and interstate wages paid or payable by the employer during the final period; or

(b) if the employer is the DGE for a group—the total taxable wages and interstate wages paid or payable by all relevant group employers during the final period.

E means—

(a) if the employer is not a member of a group—the number of days in the part of the final period starting on 1 July

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and ending on 31 December for which the employer paid, or was liable to pay, wages; or

(b) if the employer is the DGE for a group—the number of days in the part of the final period starting on 1 July and ending on 31 December for which 1 or more relevant group employers paid, or were liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages.

F means—

(a) if the employer is not a member of a group—the number of days in the part of the final period starting on 1 January and ending on 30 June for which the employer paid, or was liable to pay, wages; or

(b) if the employer is the DGE for a group—the number of days in the part of the final period starting on 1 January and ending on 30 June for which 1 or more relevant group employers paid, or were liable to pay, as members of the group taxable wages or interstate wages or taxable wages and interstate wages.

FW means the employer's final wages for the final period.

G means—

(a) if the final period is within a financial year that includes 29 February—366; or

(b) otherwise—365.

R means 0.25%.

relevant group employer, for the final period in relation to the DGE for a group, means an employer who was a member of the group for all or part of the period.

43N Amount of final levy liability

(1) This section states the employer's liability (***final levy liability***) for the mental health levy for the final period.

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(2) The employer's final levy liability for the final period is the employer's final levy adjustment amount for the period if—

(a) either—

(i) the employer (or if the employer is the DGE for a group, a group member) lodged, or was required under section 59 to lodge, a periodic return during the period; or

(ii) after the last day of the final period—

(A) if the employer is not a member of a group—the employer will be required under section 59 to lodge a periodic return for a periodic return period that is wholly or partly within the final period; or

(B) if the employer is the DGE for a group—the group member whose status has changed will be required under section 59 to lodge a periodic return for a periodic return period that is wholly or partly within the final period; and

(b) the employer's final levy amount for the period is greater than the employer's periodic levy liability amount for the final period.

(3) The employer's final levy liability for the final period is the employer's final levy amount for the period, if—

(a) the employer (or if the employer is the DGE for a group, each group member) was not required under section 59 to lodge a periodic return during the period; and

(b) subsection (2) does not apply.

Example—

The amount of an employer's final levy liability would be the final levy amount if the employer was exempt, under a certificate issued by the commissioner under section 62, from lodging periodic returns during the final period.

(4) However, subsection (5) applies if—

(a) for an employer who is not a member of a group—

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(i) the employer did not pay and was not liable to pay taxable wages or interstate wages for any part of the final period; and

(ii) the employer satisfies the commissioner that, because of the nature of the employer's trade or business, the taxable wages and interstate wages, if any, paid or payable by the employer fluctuate with different periods of the financial year; or

(b) for an employer who is the DGE for a group—

(i) the group member whose status has changed did not pay and was not liable to pay taxable wages or interstate wages for any part of the final period; and

(ii) the employer satisfies the commissioner that, because of the nature of the group member's trade or business, the taxable wages and interstate wages, if any, paid or payable by the group member fluctuate with different periods of the financial year.

(5) For working out the employer's final levy liability for the final period, the commissioner may—

(a) for an employer who is not a member of a group, treat the employer—

(i) if the employer has conducted the employer's trade or business in Australia during the whole of the final period—as an employer throughout the final period; or

(ii) if the employer has conducted the employer's trade or business in Australia during part only of the final period—as an employer during that part of the final period; or

(b) for an employer who is the DGE for a group, treat the group member whose status has changed—

(i) if the group member has conducted the member's trade or business in Australia during the whole of

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the final period—as an employer throughout the final period; or

(ii) if the group member has conducted the member's trade or business in Australia during part only of the final period—as an employer during that part of the final period.

Notes—

1 Under section 30(1)(a) of the Administration Act, an employer's final levy liability for a final period must be paid on the date the employer is required to lodge a final return for the final period.

2 An employer may be required, under the Administration Act, to include assessed interest or penalty tax in an assessment of final levy liability.

43O Entitlement to final levy refund amount

(1) This section applies if the employer's periodic levy liability amount for the final period is greater than the employer's final levy amount for the period.

(2) The employer is entitled to a refund of the amount (the ***final levy refund amount***) of the difference between the periodic levy liability amount and the final levy amount.

(3) Subsection (2) is subject to section 83.

(4) However, the employer is not entitled to a refund of the amount more than 5 years after the making of the assessment of the employer's final levy liability for the final period.

(5) This section does not apply in relation to a reassessment of the employer's final levy liability.

Note—

Entitlement to refunds on reassessments is provided for in the Administration Act, part 4, division 2.

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Division 6 Sharing of excess deduction by group members

44 Definitions for div 6

In this division—

entitled group member, for an excess deduction, means a non-DGE group member who—

(a) is nominated by the DGE for the group under section 46, or determined by the commissioner under section 47, as a group member to share in the excess deduction; and

(b) if the excess deduction is shared by the entitled group members at the end of the relevant financial year under section 48—is a member of the group on 30 June in the year and has an annual liability for the year.

order of entitled group members means the order in which entitled group members are to share in an excess deduction under a nomination made by the DGE for the group under section 46, or a determination made by the commissioner under section 47, for the assessment of the DGE's annual liability or final liability.

relevant financial year, for an excess deduction, means—

(a) if the excess deduction relates to an assessment of annual liability of the DGE for the group—the financial year to which the assessment relates; or

(b) if the excess deduction relates to an assessment of final liability of the DGE for the group—the financial year that includes the final period to which the assessment relates.

45 Meaning of *excess deduction*

(1) Subsection (2) applies—

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(a) for an assessment of the annual liability of the DGE for a group, if the DGE's annual deduction for the financial year is greater than the DGE's annual wages for the year; or

(b) for an assessment of the final liability of the DGE for a group, if the DGE's final deduction for the final period is greater than the DGE's final wages for the period.

(2) The amount of the difference is the ***excess deduction*** for the assessment.

(3) In this section—

annual deduction see section 33.

annual wages see section 33.

final deduction see section 41.

final wages see section 41.

46 Nomination by DGE of group members to share in excess deduction

The DGE for a group may nominate, in an annual return or a final return lodged under section 64(2)—

(a) 1 or more group members to share in any excess deduction for the assessment of the DGE's annual liability or final liability; and

(b) the order in which the members are to share in the excess deduction.

47 Determination by commissioner of group members to share in excess deduction

(1) This section applies, for an assessment of annual liability or final liability of the DGE for a group, if—

(a) the DGE does not make a nomination under section 46; and

(b) there is an excess deduction.

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(2) The commissioner may make a determination of—

(a) 1 or more non-DGE group members to share in the excess deduction; and

(b) the order in which the members are to share in the excess deduction.

(3) The determination may apply in relation to an assessment of the DGE's annual liability or final liability made before or after the determination is made.

48 Sharing of excess deduction by entitled group members at end of financial year

(1) This section applies if—

(a) there is an excess deduction for an assessment of the annual liability or final liability of the DGE for a group; and

(b) if the excess deduction is for an assessment of the DGE's final liability—at least 1 member of the group continues to pay, or be liable to pay, wages as a member of the group for the period—

(i) starting on the day the DGE's change of status happens; and

(ii) ending on 30 June in the relevant financial year.

(2) An entitled group member for the excess deduction is, after the end of the relevant financial year, entitled to the following share of the excess deduction—

(a) if the member is first in the order of entitled group members—the lesser of the following amounts—

(i) the excess deduction;

(ii) the member's annual wages for the year;

(b) for another entitled group member, the lesser of the following amounts—

(i) so much of the excess deduction remaining after the preceding entitled group member in the order

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of entitled group members has received the preceding member's share;

(ii) the member's annual wages for the year.

(3) The commissioner must make an assessment or reassessment of an entitled group member's annual liability for the year.

(4) An assessment or reassessment mentioned in subsection (3) must be made on the basis that, for part 2, division 4, subdivision 1, the member's ***annual payroll tax amount*** for the year is the amount worked out by applying the appropriate rate of payroll tax to the member's annual wages for the year less the member's share of the excess deduction under subsection (2).

(5) In this section—

annual wages see section 29(1).

49 Sharing of excess deduction by entitled group members on group ceasing to exist

(1) This section applies if—

(a) there is an excess deduction for an assessment of final liability of the DGE for a group; and

(b) all members of the group cease to pay, or be liable to pay, wages as members of the group before 30 June in the relevant financial year.

(2) An entitled group member for the excess deduction is, after all group members have ceased to pay, or be liable to pay, wages as members of the group, entitled to the following share of the excess deduction—

(a) if the member is first in the order of entitled group members—the lesser of the following amounts—

(i) the excess deduction;

(ii) the member's final wages for the relevant final period; or

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(b) for another entitled group member, the lesser of the following amounts—

(i) so much of the excess deduction remaining after the preceding entitled group member in the order of entitled group members has received the preceding member's share;

(ii) the member's final wages for the relevant final period.

(3) The commissioner must make an assessment or reassessment of an entitled group member's final liability for the relevant final period.

(4) An assessment or reassessment mentioned in subsection (3) must be made on the basis that, for part 2, division 5, subdivision 1, the member's ***final payroll tax amount*** for the relevant final period is the amount worked out by applying the appropriate rate of payroll tax to the member's final wages for the period less the member's share of the excess deduction under subsection (2).

(5) In this section—

final wages see section 37.

relevant final period, for an entitled group member, means the final period for the change of status of the member happening at the time the member ceases to pay, or be liable to pay, wages as a member of the group.

Division 6A Sharing of excess rebate by group members

49A Definitions for div 6A

In this division—

entitled group member, for an excess rebate, means a group member who—

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(a) is nominated by the DGE for the group under section 49C, or determined by the commissioner under section 49D, as a group member to share in the excess rebate; and

(b) if the excess rebate is shared by the entitled group members at the end of the relevant financial year under section 49E—is a member of the group on 30 June in the year and has an annual liability for the year.

order of entitled group members means the order in which entitled group members are to share in an excess rebate under a nomination made by the DGE for the group under section 49C, or a determination made by the commissioner under section 49D, for an assessment of the annual liability or final liability relating to the relevant financial year of a member of the group.

relevant financial year, for an excess rebate, means—

(a) if the excess rebate relates to an assessment of annual liability—the eligible year to which the assessment relates; or

(b) if the excess rebate relates to an assessment of final liability—the eligible year that includes the final period.

49B Meaning of *excess rebate*

(1) Subsection (2) applies—

(a) for an assessment of the annual liability relating to the relevant financial year of a non-DGE group member, if the relevant annual amount for the member for the year is greater than the member's annual payroll tax amount for the year; or

(b) for an assessment of the annual liability relating to the relevant financial year of a DGE, if the relevant annual amount for the DGE for the year is greater than the DGE's annual payroll tax amount for the year; or

(c) for an assessment of the final liability relating to the relevant financial year of a non-DGE group member, if

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the relevant final amount for the member for the final period is greater than the member's final payroll tax amount; or

(d) for an assessment of the final liability relating to the relevant financial year of a DGE, if the relevant final amount for the DGE for the final period is greater than the DGE's final payroll tax amount.

(2) The amount of the difference is the ***excess rebate*** for the assessment.

(3) In this section—

annual payroll tax amount, for a DGE, see section 33.

annual payroll tax amount, for a non-DGE group member, see section 29(1).

final payroll tax amount, for a DGE, see section 41.

final payroll tax amount, for a non-DGE group member, see section 37.

relevant annual amount means the amount worked out under section 35A(4), definition *rebate*, paragraph (a).

relevant final amount means the amount worked out under section 43A(3), definition *rebate*, paragraph (a).

49C Nomination by DGE of group members to share in excess rebate

The DGE for a group may nominate, in an annual return or a final return lodged under section 64(2)—

(a) 1 or more group members, including the DGE, to share in any excess rebate for the assessment of a group member's annual liability or final liability relating to the relevant financial year; and

(b) the order in which the members are to share in the excess rebate.

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49D Determination by commissioner of group members to share in excess rebate

(1) This section applies, for an assessment of annual liability or final liability relating to the relevant financial year of a group member (the ***first member***), if—

(a) the DGE for the group does not make a nomination under section 49C; and

(b) there is an excess rebate.

(2) The commissioner may make a determination of—

(a) 1 or more group members to share in the excess rebate; and

(b) the order in which the members are to share in the excess rebate.

(3) The determination may apply in relation to an assessment of the first member's annual liability or final liability relating to the relevant financial year made before or after the determination is made.

49E Sharing of excess rebate by entitled group members at end of relevant financial year

(1) This section applies if—

(a) there is an excess rebate for an assessment of the annual liability or final liability relating to the relevant financial year of a group member; and

(b) if the excess rebate is for an assessment of the member's final liability—at least one other member of the group continues to pay, or be liable to pay, wages as a group member for the period—

(i) starting on the day the member's change of status happens; and

(ii) ending on 30 June in the relevant financial year.

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(2) An entitled group member for the excess rebate is, after the end of the relevant financial year, entitled to the following share of the excess rebate—

(a) if the member is first in the order of entitled group members, the lesser of the following amounts—

(i) the excess rebate;

(ii) the member's annual payroll tax amount relating to the relevant financial year;

(b) for another entitled group member, the lesser of the following amounts—

(i) so much of the excess rebate remaining after the preceding entitled group member in the order of entitled group members has received the preceding member's share;

(ii) the member's annual payroll tax amount relating to the relevant financial year.

(3) The commissioner must make an assessment or reassessment of an entitled group member's annual liability for the year.

(4) An assessment or reassessment mentioned in subsection (3) must be made on the basis that, for part 2, division 4, subdivision 1 or 2, the member's annual payroll tax amount for the year is the amount worked out by applying the appropriate rate of payroll tax to the member's annual wages for the year less the member's share of the excess rebate under subsection (2).

(5) In this section—

annual wages see section 29(1) or 33.

49F Sharing of excess rebate by entitled group members on group ceasing to exist

(1) This section applies if—

(a) there is an excess rebate for an assessment of final liability relating to the relevant financial year of a group member; and

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(b) all members of the group cease to pay, or be liable to pay, wages as members of the group before 30 June in the relevant financial year.

(2) An entitled group member for the excess rebate is, after all group members have ceased to pay, or be liable to pay, wages as members of the group, entitled to the following share of the excess rebate—

(a) if the member is first in the order of entitled group members, the lesser of the following amounts—

(i) the excess rebate;

(ii) the member's final payroll tax amount for the relevant final period relating to the relevant financial year; or

(b) for another entitled group member, the lesser of the following amounts—

(i) so much of the excess rebate remaining after the preceding entitled group member in the order of entitled group members has received the preceding member's share;

(ii) the member's final payroll tax amount for the relevant final period relating to the relevant financial year.

(3) The commissioner must make an assessment or reassessment of an entitled group member's final liability for the relevant final period.

(4) An assessment or reassessment mentioned in subsection (3) must be made on the basis that, for part 2, division 5, subdivision 1 or 2, the member's final payroll tax amount for the relevant final period is the amount worked out by applying the appropriate rate of payroll tax to the member's final wages for the period less the member's share of the excess rebate under subsection (2).

(5) In this section—

final wages see section 37 or 41.

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relevant final period, for an entitled group member, means the final period for the change of status of the member happening at the time the member ceases to pay, or be liable to pay, wages as a member of the group.

Division 7 Avoidance arrangements

50 Arrangements for avoidance of tax may be disregarded

(1) Where any person enters into any agreement, transaction, or arrangement, whether in writing or otherwise, whereby a natural person performs or renders, for or on behalf of another person, services in respect of which any payment is made to some other person related or connected to the natural person performing or rendering the services and the effect of such agreement, transaction or arrangement is to reduce or avoid the liability of any person to the assessment, imposition or payment of payroll tax or the mental health levy, the commissioner may—

(a) disregard such agreement, transaction, or arrangement; and

(b) determine that any party to such agreement, transaction or arrangement shall be deemed to be an employer for the purposes of this Act; and

(c) determine that any payment made in respect of such agreement, transaction or arrangement shall be deemed to be wages for the purposes of this Act.

(2) Where the commissioner makes a determination under subsection (1), the commissioner shall serve a notice to that effect on the person deemed to be an employer for the purposes of this Act and shall set out in the notice the facts on which the commissioner relies and the commissioner's reasons for making the determination.

Note—

See also sections 13L and 13LA for particular provisions about avoidance arrangements relating to employment agency contracts.

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Division 8 Miscellaneous provisions

51 Wages paid by or to third parties

(1) Subsection (2) applies if money or other consideration—

(a) for an employee's services as an employee of an employer, is paid or given or to be paid or given—

(i) to the employee, by a person other than the employer; or

(ii) to a person other than the employee, by the employer; or

(iii) to a person other than the employee, by a person other than the employer; and

(b) had it been paid or given, or to be paid or given, directly by the employer to the employee, would be wages paid or payable by the employer to the employee for this Act.

Example of other consideration—

the grant of a share or option

(2) The money or other consideration is taken to be wages paid or payable by the employer to the employee.

(3) Subsection (4) applies if money or other consideration—

(a) by way of remuneration for the appointment or services of a director of a company to the company, is paid or given or to be paid or given—

(i) to the director by a person other than the company; or

(ii) to a person other than the director by the company; or

(iii) to a person other than the director by a person other than the company; and

(b) had it been paid or given, or to be paid or given, directly by the company to the director, would comprise wages paid or payable by the company for this Act.

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Example of other consideration—

the grant of a share or option

(4) The money or other consideration is taken to be wages paid or payable by the company to the director.

(5) In this section—

director of a company includes—

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

(b) a former director of the company.

51A Joint and several liability of group members

(1) This section applies if a member of a group fails to pay an amount the member is required to pay under this Act in respect of a period.

(2) Every member of the group is liable jointly and severally to pay the amount, whether or not the member was an employer during the period to which the amount relates.

(3) This section is subject to sections 34(2) and 42(2).

Part 3 Registration and returns

Division 1 Registration

52 Meaning of *criteria for registration*

For this division, the ***criteria for registration*** are that, during a month, an employer pays, or is liable to pay, taxable wages and the employer—

(a) pays, or is liable to pay, wages anywhere of more than $25,000 a week; or

(b) is a group member.

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53 Application for registration

(1) An employer who is not already registered as an employer under this division and who meets the criteria for registration must, within 7 days after the end of the month during which the employer meets the criteria, give the commissioner an application for registration as an employer.

Maximum penalty—100 penalty units.

(2) The application must be made in the approved form.

(3) If—

(a) the commissioner cancels the registration of a person as an employer in a financial year; and

(b) the person subsequently pays or is liable to pay taxable wages (otherwise than as a member of a group) during the financial year;

the person may give the commissioner an application, in the approved form, for registration as an employer, even though the person is not required under subsection (1) to apply for registration as an employer.

(4) If an employer applies under subsection (1) or (3) for registration as an employer, the commissioner must register the employer.

54 Registration of employer without application

The commissioner may, by written notice given to a person who meets the criteria for registration, register the person as an employer.

55 Notice of registration

(1) On registration of a person as an employer, the commissioner must give written notice to the person of the registration.

(2) The notice must state each of the following—

(a) the date of registration;

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(b) the types of reassessments the employer is required or permitted to make;

(c) whether the employer is permitted to remit the whole or part of unpaid tax interest or penalty tax.

56 Amendment of registration

(1) The commissioner may amend an employer's registration by written notice given to the employer.

(2) The notice must state the particulars of the employer's notice of registration that are amended.

57 Cancellation of registration

(1) The commissioner must cancel the registration of a person as an employer if—

(a) the person has—

(i) ceased to be an employer; and

(ii) lodged a final return and paid the person's final liability and final levy liability, if any, for the final period; or

(b) each of the following applies—

(i) the person is not a group member;

(ii) the person has lodged an annual return and paid the person's annual liability and annual levy liability, if any, for a financial year;

(iii) before lodging the annual return, the person ceased to be an employer paying, or being liable to pay, wages mentioned in section 52(a);

(iv) the commissioner is satisfied the person will not pay, or be liable to pay, wages mentioned in section 52(a) during the next financial year.

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(2) If the commissioner cancels the registration of a person as an employer, the commissioner must give written notice of the cancellation to the person.

Division 2 Returns

58 Definition for div 2

In this division—

relevant employer means an employer who is—

(a) registered as an employer under division 1; or

(b) required to apply for registration as an employer under division 1.

59 Periodic returns

(1) A relevant employer must, not later than 7 days after the last day of each periodic return period for all or part of which the employer is a relevant employer, lodge a return for taxable wages paid or payable by the employer for the period.

Note—

Failure to lodge a periodic return is an offence under section 121 of the Administration Act.

(1A) Subsection (1) does not apply for the last periodic return period of a financial year for the employer.

(2) However, if the commissioner considers it would be unduly onerous to require the employer to lodge periodic returns within the 7-day period required under subsection (1), the commissioner may, by written notice, vary the time within which the employer is required to lodge returns under this section.

(3) The commissioner may revoke a notice given under subsection (2) at any time by written notice.

(4) The return must—

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(a) be in the approved form; and

(b) state the employer's periodic liability for the periodic return period; and

(c) state the employer's periodic levy liability for the periodic return period.

(5) This section is subject to sections 60 to 62.

Note—

Lodgement of an annual return or final return does not, of itself, affect a relevant employer's obligation to lodge periodic returns.

60 Duration of periodic return period

(1) Subject to subsection (2), a periodic return period is the period—

(a) starting on the first day of a month; and

(b) ending on the last day of the month.

(2) However, if the commissioner considers it would be unduly onerous to require the employer to lodge periodic returns for each month, the commissioner may, by written notice, authorise the employer to lodge periodic returns for the periods stated in the notice.

(3) A period stated in the notice must be less than 1 year.

(4) The commissioner may revoke a notice given under subsection (2) at any time by written notice.

61 Deemed lodgement of periodic return—payment by electronic transfer of funds

(1) This section applies if—

(a) an amount of payroll tax or mental health levy may be or is required to be, under the Administration Act, section 29 or 29A, paid by the electronic transfer of funds; and

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(b) an employer makes a payment of periodic liability or periodic levy liability for a periodic return period by an electronic transfer of funds as required under that Act; and

(c) using an approved information system, the employer gives the commissioner a breakdown of the payment between primary tax and assessed interest.

(2) The employer is taken to have lodged a periodic return for the periodic return period to which the payment relates.

(3) The amount of the payment is, for the Administration Act, section 14(a), taken to be the amount of the employer's periodic liability and periodic levy liability stated in the return.

(4) However, if the employer makes more than 1 payment for a periodic return period by the electronic transfer of funds, subsections (2) and (3) apply only to the first payment made by the employer for the period.

(5) In this section—

primary tax see the Administration Act, schedule 2.

62 Exemption from requirement to lodge periodic returns

(1) If the commissioner considers that no tax will be payable by a relevant employer or, if paid, would be refunded, the commissioner may issue a certificate to the employer exempting the employer from the requirement under section 59 to lodge periodic returns.

(2) An employer to whom a certificate is issued under subsection (1) is not required to lodge periodic returns.

Note—

An employer who is not required to lodge periodic returns is subject to a notification requirement under section 87 and is not exempt from the requirement to lodge an annual return or final return.

(3) A certificate issued under subsection (1) may be either unconditional or subject to such conditions as are prescribed or as the commissioner thinks fit.

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(4) The commissioner may, at any time by notice in writing, revoke any certificate issued under subsection (1).

(5) The issue of a certificate under subsection (1) shall not exempt an employer from the payment of any payroll tax or mental health levy, notwithstanding that it may have the effect of postponing the time for payment of any payroll tax or mental health levy.

63 Annual return

(1) This section applies to an employer who is a relevant employer on 30 June in a financial year.

(2) The employer must, not later than 21 July immediately after the end of the year, lodge a return for taxable wages paid or payable by the employer for the year.

Note—

Failure to lodge an annual return is an offence under section 121 of the Administration Act.

(3) The return must—

(a) be in the approved form; and

(b) state—

(i) if the employer is the DGE for a group—the wages that were paid or payable during the designated period for the DGE in the year, as a member of the group, by each employer who was a member of the group for all or part of the designated period; or

(ii) for another employer, the wages that were paid or payable during the year by the employer, other than wages that were included, or required to be included, in a final return for a final period for the employer during the year; and

(c) state the employer's annual liability or annual refund amount for the year; and

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(d) if the employer is not a group member or is the DGE for a group—state the employer's annual levy liability or annual levy refund amount for the year.

(4) Despite subsection (2), an employer is not required to lodge an annual return for a financial year if the employer—

(a) under section 64(2), lodged or was required to lodge a final return during the year; and

(b) did not pay, and was not liable to pay, taxable wages during the financial year after the last day of the final period for which the final return was lodged or required to be lodged.

Note—

Lodgement of a final return does not, of itself, affect a relevant employer's obligation to lodge an annual return.

64 Final return

(1) Subsection (2) applies if, during a financial year, a change of status happens for a relevant employer.

(2) The employer must, not later than 21 days after the change of status happens, lodge a return for taxable wages paid or payable by the employer for the final period for the change of status.

Note—

Failure to lodge a final return is an offence under section 121 of the Administration Act.

(3) The return must—

(a) be in the approved form; and

(b) state—

(i) if the employer is the DGE for a group—the wages that were paid or payable during the period, as a member of the group, by each employer who was a member of the group for all or part of the period; or

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(ii) for another employer, the wages that were paid or payable during the period by the employer; and

(c) state the employer's final liability or final refund amount for the period; and

(d) if the employer is not a member of a group on the last day of the final period—state the employer's final levy liability or final levy refund amount for the period.

(4) Subsection (5) applies if, during a financial year, a change of status happens for a relevant employer who is a member of a group (the ***relevant group member***).

(5) The employer who is the DGE for the group on the last day of the final period for the change of status must lodge a return for taxable wages paid or payable by the group members for the final period.

Note—

Failure to lodge a final return is an offence under section 121 of the Administration Act.

(6) The return must—

(a) be lodged within 21 days after the end of the periodic return period in which the last day of the final period occurs; and

(b) be in the approved form; and

(c) state the wages that were paid or payable during the period, as a member of the group, by each employer who was a member of the group for all or part of the period; and

(d) state the DGE's final levy liability or final levy refund amount for the period.

65 Further returns

The commissioner may, by notice in writing, call upon any employer or person to lodge, within the time specified in the notice, such return or such further or fuller return, as the

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commissioner requires, whether on the employer's or person's own behalf or as an agent or a trustee.

Part 4 Grouping provisions

Division 1 Interpretation

66 Definitions for pt 4

In this part—

business includes any of the following, whether carried on by 1 person or 2 or more persons together—

(a) a profession or trade;

(b) any other activity carried on for fee, gain or reward;

(c) the activity of employing 1 or more persons who perform duties in connection with another business;

(d) the carrying on of a trust, including a dormant trust;

(e) the activity of holding money or property used in connection with another business.

related body corporate see the Corporations Act, section 9.

67 Grouping provisions to operate independently

The fact that a person is not a member of a group constituted under a provision of this part does not prevent the person being a member of a group constituted under another provision of this part.

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Division 2 Business groups

68 Constitution of groups

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

69 Groups of corporations

Corporations constitute a group if they are related bodies corporate.

70 Groups arising from the use of common employees

(1) If 1 or more employees of an employer perform duties in connection with 1 or more businesses carried on by the employer and 1 or more other persons, the employer and each of those other persons constitute a group.

(2) If 1 or more employees of an employer are employed solely or mainly to perform duties in connection with 1 or more businesses carried on by 1 or more other persons, the employer and each of those other persons constitute a group.

(3) If 1 or more employees of an employer perform duties—

(a) in connection with 1 or more businesses carried on by 1 or more other persons; and

(b) in connection with, or in fulfilment of the employer's obligation under, a relevant agreement;

the employer and each of those other persons constitute a group.

(4) In this section—

relevant agreement means an agreement, arrangement or undertaking for services to be provided to 1 or more of the other persons in connection with the business or those businesses carried on by the other person or persons—

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(a) whether the agreement, arrangement or undertaking is formal or informal, express or implied; and

(b) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the employees or states the duties to be performed by them.

Note—

Section 74 allows the commissioner to exclude, for payroll tax and mental health levy purposes, a person or set of persons from a group constituted under this section in some circumstances.

71 Groups of commonly controlled businesses

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

Note—

Section 74 allows the commissioner to exclude, for payroll tax and mental health levy purposes, a person or set of persons from a group constituted under this section in some circumstances.

(2) For this section, a person or set of persons has a ***controlling interest*** in a business if any of the following applies—

(a) for 1 person—the person is the sole owner of the business, whether or not as trustee;

(b) for a set of persons—together the persons are the sole owners of the business as trustees;

(c) for a business carried on by a corporation—

(i) the person or each person in the set of persons is a director of the corporation, and the person or set of persons is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or

(ii) a director or set of directors of the corporation that is entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation is under an obligation, whether formal or informal, to act in accordance with the direction,

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instruction or wishes of the person or set of persons;

(d) for a business carried on by a body corporate or unincorporate—the person or set of persons constitute more than 50% of, or control the composition of, the board of management, by whatever name called, of the body;

(e) for a business carried on by a corporation with a share capital—the person or set of persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to the voting shares, or a class of voting shares, issued by the corporation;

(f) for a business carried on by a partnership—the person or set of persons—

(i) own, whether beneficially or not, more than 50% of the capital of the partnership; or

(ii) is entitled, whether beneficially or not, to more than 50% of the profits of the partnership;

(g) for a business carried on under a trust—the person or set of persons, whether or not as the trustee or beneficiary of another trust, is the beneficiary in respect of more than 50% of the value of the interests in the trust under which the business is carried on.

(3) If—

(a) 2 corporations are related bodies corporate; and

(b) 1 of the corporations has a controlling interest in a business;

the other corporation has a controlling interest in the business.

(4) If—

(a) a person or set of persons has a controlling interest in a business; and

(b) a person or set of persons who carry on the business has a controlling interest in another business;

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the person or set of persons mentioned in paragraph (a) has a controlling interest in the other business.

(5) If—

(a) a person or set of persons is the beneficiary of a trust in respect of more than 50% of the value of the interests in the trust; and

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

the person or set of persons has a controlling interest in the business.

(6) A person who may benefit from a discretionary trust as a result of the trustee or another person, or the trustee and another person, exercising or failing to exercise a power or discretion, is taken for this part to be a beneficiary of the trust in respect of more than 50% of the value of the interests in the trust.

(7) If—

(a) a person or set of persons has a controlling interest in the business of a trust; and

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

the person or set of persons has a controlling interest in the business of the corporation.

(8) If—

(a) a person or set of persons has a controlling interest in the business of a trust; and

(b) the trustee of the trust, whether alone or together with 1 or more other trustees, has a controlling interest in the business of a partnership;

the person or set of persons has a controlling interest in the business of the partnership.

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72 Groups arising from tracing of interests in corporations

(1) A relevant entity and a corporation constitute a group if the entity has a controlling interest in the corporation.

Note—

Section 74 allows the commissioner to exclude, for payroll tax and mental health levy purposes, a person or set of persons from a group constituted under this section in some circumstances.

(2) For this section, a relevant entity has a ***controlling interest*** in a corporation if—

(a) the corporation has share capital; and

(b) the entity has an interest in the corporation; and

(c) the value of the interest is more than 50%.

(3) In this section—

interest means a direct interest, indirect interest or aggregate interest under section 74B.

relevant entity see section 74B.

73 Smaller groups subsumed into larger groups

(1) If a person is a member of 2 or more groups, the members of all the groups together constitute a group.

(2) If 2 or more members of a group have together a controlling interest in a business within the meaning of section 71, all the members of the group and the person or persons who carry on the business together constitute a group.

Note 1—

Section 74 allows the commissioner to exclude, for payroll tax and mental health levy purposes, a person or set of persons from a group constituted under this section in some circumstances.

Note 2—

See also section 68.

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74 Exclusion of persons from groups

(1) The commissioner may, by order in writing (an ***exclusion order***), exclude a person, or 2 or more persons (a ***set of persons***), from a group.

(2) The commissioner may make an exclusion order only if the commissioner is satisfied—

(a) for excluding a person—a business carried on by the person is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of the group; or

(b) for excluding a set of persons—a business carried on by any person in the set of persons is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of the group who is not a member of the set of persons.

(3) For deciding whether to make an exclusion order, the commissioner must have regard to—

(a) the nature and degree of ownership and control of the businesses carried on by—

(i) for excluding a person—the person and other members of the group; or

(ii) for excluding a set of persons—the set of persons and any other member of the group who is not a member of the set of persons; and

(b) the nature of the businesses; and

(c) any other matters the commissioner considers relevant.

(4) Despite subsection (1), the commissioner can not make an exclusion order if—

(a) for excluding a person—the person and another body corporate that is a member of the group are related bodies corporate; or

(b) for excluding a set of persons—any person in the set of persons and any other member of the group who is not a

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member of the set of persons are related bodies corporate.

(5) The commissioner may, by order in writing, revoke an exclusion order if the commissioner is satisfied the circumstances in which an exclusion order may be made do not apply to the person or set of persons.

(6) An exclusion order or order revoking an exclusion order takes effect on the date stated in it, which may be a date earlier than the date of the exclusion order.

Division 2A Business groups—interpretation provisions for tracing of interests in corporations

74A Application of div 2A

This division applies for interpreting section 72.

74B Definitions for div 2A

In this division—

aggregate interest see section 74G(1).

associated persons see section 74C.

direct interest see section 74E.

indirect interest see section 74F.

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

related persons see section 74D.

relevant entity means—

(a) a person; or

(b) 2 or more associated persons.

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74C Who are *associated persons*

Persons are ***associated persons*** if they are any of the following—

(a) related persons;

(b) individuals who are partners in a partnership;

(c) private companies in which common shareholders have a majority interest;

(d) trustees of trusts, other than public unit trust schemes, of which there is a common beneficiary;

(e) a private company and a trustee of a trust, other than a public unit trust scheme, if a related body corporate of the company is a beneficiary of the trust.

74D Who are *related persons*

(1) Persons are ***related persons*** if they are any of the following—

(a) individuals, if—

(i) 1 is the spouse of the other; or

(ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;

(b) private companies that are related bodies corporate;

(c) an individual and a private company, if the individual is a majority shareholder or director of—

(i) the company; or

(ii) another private company that is a related body corporate of the company;

(d) an individual and a trustee of a trust, other than a public unit trust scheme, of which the individual is a beneficiary;

(e) a private company and a trustee of a trust, other than a public unit trust scheme, if the company, or a majority shareholder or director of the company, is a beneficiary of the trust.

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(2) In this section—

de facto partner means 1 of 2 persons who is a de facto partner within the meaning of the *Acts Interpretation Act 1954*, section 32DA, if—

(a) the persons are living, and for at least 2 years have lived, together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA; or

(b) the persons are not living, but for at least 2 years were living, together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA.

spouse includes a de facto partner and a civil partner.

74E Direct interest

(1) A relevant entity has a ***direct interest*** in a corporation if—

(a) for a relevant entity that is a person—the person can, directly or indirectly, exercise the voting power attached to any voting shares issued by the corporation; or

(b) for a relevant entity that is 2 or more associated persons—each of the associated persons can, directly or indirectly, exercise the voting power attached to any voting shares issued by the corporation.

(2) The value of the relevant entity's direct interest in the corporation is the percentage equivalent to the proportion of the voting power of all voting shares issued by the corporation that—

(a) for a relevant entity that is a person—the person can, directly or indirectly, exercise; or

(b) for a relevant entity that is 2 or more associated persons—the associated persons can, if acting together, directly or indirectly exercise.

(3) In this section—

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exercise, in relation to voting power attached to voting shares issued by a corporation, includes control the exercise of, or substantially influence the exercise of, the voting power.

74F Indirect interest

(1) A relevant entity has an ***indirect interest*** in a corporation if the corporation is linked to another corporation (the ***directly controlled corporation***) in which the entity has a direct interest.

Note—

It is possible for a relevant entity to have more than 1 indirect interest in a corporation. In that case, the relevant entity has an aggregate interest in the corporation under section 74G(1)(b).

Examples—

1 The relevant entity has a direct interest in corporations A and B. Both corporations A and B have a direct interest in corporation C.

2 The relevant entity has a direct interest in corporation A. Corporation A is linked to another corporation through more than 1 chain of corporations.

(2) A corporation is linked to the directly controlled corporation if the corporation is part of a chain of corporations—

(a) that starts with the directly controlled corporation; and

(b) in which a link is formed if a corporation has a direct interest in the next corporation in the chain.

Examples—

1 A relevant entity has a direct interest in corporation A (the directly controlled corporation). Corporation A has a direct interest in corporation B. Corporations A and B are linked and form part of a chain of corporations. Therefore, the relevant entity has a direct interest in corporation A, and an indirect interest in corporation B.

2 Corporation B also has a direct interest in corporation C. Corporations B and C are linked to corporation A, and corporations A, B and C form part of a chain of corporations. The relevant entity has a direct interest in corporation A, and an indirect interest in corporations B and C.

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3 Corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, 1 consisting of corporations A, B and C and the other consisting of corporations A, B and D. Corporations B, C and D are all linked to corporation A. The relevant entity has a direct interest in corporation A, and an indirect interest in corporations B, C and D. However, if a relevant entity had a direct interest in corporation C only, the entity would not have an indirect interest in corporation D because corporation D is not linked to corporation C.

(3) The value of a relevant entity's indirect interest in a corporation (the ***indirectly controlled corporation***) that is linked to a directly controlled corporation is the percentage worked out by multiplying the following amounts—

(a) the value of the relevant entity's direct interest in the directly controlled corporation;

(b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.

Examples—

1 A relevant entity has a direct interest (with a value of 80%) in corporation A. Corporation A has a direct interest (with a value of 70%) in corporation B. The value of the relevant entity's indirect interest in corporation B is 80% x 70% = 56%. For section 72, the relevant entity has a controlling interest in corporation B.

2 Corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the relevant entity's indirect interest in corporation C is 80% x 70% x 40% = 22.4%. For section 72, the relevant entity does not have a controlling interest in corporation C.

74G Aggregate interest

(1) A relevant entity has an ***aggregate interest*** in a corporation if—

(a) the entity has a direct interest and 1 or more indirect interests in the corporation; or

(b) the entity has more than 1 indirect interest in the corporation.

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(2) The value of a relevant entity's aggregate interest in a corporation is the sum of the following amounts—

(a) the value of the direct interest, if any, of the entity in the corporation;

(b) the value of each indirect interest of the entity in the corporation.

Example—

A relevant entity has a direct interest (with a value of 40%) in corporation B. The relevant entity also has a direct interest (with a value of 25%) in corporation A. Corporation A has a direct interest (with a value of 60%) in corporation B. Accordingly, the relevant entity also has an indirect interest in corporation B with a value of 15% (25% x 60%). The value of the relevant entity's aggregate interest in corporation B is 40% + 15% = 55%. For section 72, the relevant entity has a controlling interest in corporation B.

Division 3 Designated group employer

75 Designation of group member as DGE

(1) The members of a group may, by an instrument in writing in the approved form executed by or on behalf of each member of the group and served on the commissioner, designate 1 of its members to be the DGE in respect of the group for the purposes of this Act.

(2) If the members of a group do not in accordance with subsection (1) designate 1 of the members of the group to be the DGE in respect of the group for the purposes of this Act, the commissioner may exercise in respect of the group the powers of designation conferred on members of the group by that subsection and for the purposes of this Act such a designation by the commissioner shall be by instrument in writing served on the member of the group designated as the DGE and shall have the same effect and give rise to the same consequences as if validly made by the members of the group.

(3) Subject to subsection (4), the DGE in respect of a group ceases to be the DGE in respect of that group on and from the

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first day of the periodic return period relating to the DGE during which—

(a) the composition of the group alters; or

(b) the members of the group, by an instrument in writing in the approved form executed by or on behalf of each of them who is known to the commissioner to be a member of the group and served on the commissioner, revoke the designation;

whichever occurs the earlier.

(4) The members of a group may exercise the power of revoking a designation conferred by subsection (3) only with the prior written consent of the commissioner or, if at the same time as revoking the designation, the members make a further designation of 1 of their members to be the DGE in substitution for the member whose designation is revoked.

(5) Where the commissioner has exercised the powers conferred on the commissioner by subsection (2), the commissioner may, by instrument in writing served on the member of the group designated as the DGE, revoke the commissioner's designation of that member as the DGE and thereafter may further exercise the powers conferred on the commissioner by that subsection.

Part 5 Provisions about assessments

Division 1 Reassessments

76 When registered employer may make reassessment

(1) An employer who is registered as an employer under part 3, division 1 may make a reassessment of the employer's periodic liability, annual liability or final liability only if—

(a) the employer is required or permitted under the employer's notice of registration; and

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(b) the employer is satisfied the amount assessed is not correct; and

(c) the commissioner has not made an assessment of the liability, other than under the Administration Act, section 14(a).

Note—

See, also, section 24 (Reassessment by self assessors) of the Administration Act.

(2) A registered employer must not make a self assessment of a reassessment made by the commissioner.

77 Reassessment—determination of periodic deduction

(1) This section applies if—

(a) the commissioner—

(i) makes a determination under section 21(1) or 27(1) of the amount of an employer's deduction for a periodic return period; or

(ii) revokes a determination mentioned in subparagraph (i); and

(b) the making or revocation of the determination—

(i) relates to a periodic return period for which an assessment of the employer's periodic liability has been made; and

(ii) would change the amount of the employer's periodic liability for the period.

(2) A reassessment of the employer's periodic liability for the periodic return period must be made to give effect to the making or revocation of the determination.

(3) If a reassessment required under subsection (2) would change the amount of the employer's annual liability for a financial year, or final liability for a final period, for which an assessment has been made, a reassessment of the employer's annual liability or final liability must be made to take into account the making or revocation of the determination.

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77A Reassessment—determination of primary periodic threshold or additional periodic threshold

(1) This section applies if—

(a) the commissioner makes or revokes a determination under section 43E(1); and

(b) the making or revocation of the determination—

(i) relates to a periodic return period for which an assessment of the employer's periodic levy liability has been made; and

(ii) would change the amount of the employer's periodic levy liability for the period.

(2) A reassessment of the employer's periodic levy liability for the periodic return period must be made to give effect to the making or revocation of the determination.

(3) Subsection (4) applies if a reassessment required under subsection (2) would change the amount of any of the following (each an ***affected liability***) for which an assessment has been made—

(a) the employer's annual levy liability for a financial year;

(b) the employer's final levy liability for a final period;

(c) for an employer who is a non-DGE group member—

(i) the DGE's annual levy liability for a financial year; or

(ii) the DGE's final levy liability for a final period.

(4) A reassessment of the affected liability must be made to take into account the making or revocation of the determination.

78 Reassessment—annual liability of non-group employer who has lodged a final return

(1) This section applies if—

(a) an employer is not a group member on 30 June in a financial year; and

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(b) under section 64(2), the employer lodged, or was required to lodge, a final return for a final period during the year, and the employer was not a group member during the final period; and

(c) the original assessment of the employer's annual liability for the year—

(i) was not made by the commissioner; and

(ii) was made as required under section 30(2); and

(d) the employer's annual liability for the year worked out as required under section 30(2) is greater than it would be if the final return wages and final return liability for a final period mentioned in paragraph (b) were included for working out the liability.

(2) Despite section 30(2), the commissioner must make a reassessment of the employer's annual liability for the year to include the final return wages and final return liability mentioned in subsection (1)(d) for working out the liability.

(3) If the commissioner includes final return wages and final return liability under subsection (2) for working out the employer's annual liability, the employer's annual deduction for the financial year must be worked out having regard to the days in a final period mentioned in subsection (1)(b).

(4) In this section—

final return liability means the employer's periodic liability amount for a final period mentioned in subsection (1)(b).

final return wages means taxable wages paid or payable by the employer for a final period mentioned in subsection (1)(b).

78A Reassessment—annual levy liability of non-group employer who has lodged a final return

(1) This section applies if—

(a) an employer is not a group member on 30 June in a financial year; and

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(b) under section 64(2), the employer lodged, or was required to lodge, a final return for a final period during the year, and the employer was not a group member during the final period; and

(c) the original assessment of the employer's annual levy liability for the year—

(i) was not made by the commissioner; and

(ii) was made as required under section 43J(4); and

(d) the employer's annual levy liability for the year worked out as required under section 43J(4) is greater than it would be if the final return wages and final return liability for a final period mentioned in paragraph (b) were included for working out the liability.

(2) Despite section 43J(4), the commissioner must make a reassessment of the employer's annual levy liability for the year to include the final return wages and final return liability mentioned in subsection (1)(d) for working out the liability.

(3) In this section—

final return liability means the employer's periodic liability amount for a final period mentioned in subsection (1)(b).

final return wages means taxable wages and interstate wages paid or payable by the employer for a final period mentioned in subsection (1)(b).

79 Reassessment of payroll tax liability—change of DGE

(1) This section applies for an employer who is a group member if—

(a) the DGE for the group changes; and

Note—

See section 75 (Designation of group member as DGE).

(b) the change of DGE—

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(i) relates to a periodic return period for which an assessment of the employer's periodic liability has been made; and

(ii) would change the amount of the employer's periodic liability for the period.

(2) A reassessment of the employer's periodic liability for the periodic return period must be made to give effect to the change of DGE.

(3) If a reassessment required under subsection (2) would change the amount of the employer's annual liability for a financial year, or final liability for a final period, for which an assessment has been made, a reassessment of the employer's annual liability or final liability must be made to take into account the change of DGE.

79A Reassessment of levy liability—change of DGE

(1) This section applies for an employer who is a group member if—

(a) the DGE for the group changes; and

Note—

See section 75 (Designation of group member as DGE).

(b) the change of DGE—

(i) relates to a periodic return period for which an assessment of the employer's periodic levy liability has been made; and

(ii) would change the amount of the employer's periodic levy liability for the period.

(2) A reassessment of the employer's periodic levy liability for the periodic return period must be made to give effect to the change of DGE.

(3) Subsection (4) applies if a reassessment required under subsection (2) would change the amount of any of the following (each an ***affected liability***) for which an assessment has been made—

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(a) the employer's annual levy liability for a financial year;

(b) the employer's final levy liability for a final period;

(c) if the employer is not the DGE—

(i) the DGE's annual levy liability for a financial year; or

(ii) the DGE's final levy liability for a final period.

(4) A reassessment of the affected liability must be made to take into account the change of DGE.

80 Reassessment of payroll tax liability—making or revocation of order excluding a person from a group

(1) This section applies if—

(a) the commissioner—

(i) makes an order under section 74 excluding a person or set of persons from a group; or

(ii) revokes an order mentioned in subparagraph (i); and

(b) the making or revocation of the order—

(i) relates to a periodic return period for which an assessment of a person's periodic liability has been made; and

(ii) would change the amount of the person's periodic liability for the period.

(2) A reassessment of the person's periodic liability for the periodic return period must be made to give effect to the making or revocation of the order.

(3) If a reassessment required under subsection (2) would change the amount of the person's annual liability for a financial year, or final liability for a final period, for which an assessment has been made, a reassessment of the person's annual liability or final liability must be made to take into account the making or revocation of the order.

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80A Reassessment of levy liability—making or revocation of order excluding a person from a group

(1) This section applies if—

(a) the commissioner—

(i) makes an order under section 74 excluding a person or set of persons from a group; or

(ii) revokes an order mentioned in subparagraph (i); and

(b) the making or revocation of the order—

(i) relates to a periodic return period for which an assessment of a person's periodic levy liability has been made; and

(ii) would change the amount of the person's periodic levy liability for the period.

(2) A reassessment of the person's periodic levy liability for the periodic return period must be made to give effect to the making or revocation of the order.

(3) Subsection (4) applies if a reassessment required under subsection (2) would change the amount of any of the following (each an ***affected liability***) for which an assessment has been made—

(a) the person's annual levy liability for a financial year;

(b) the person's final levy liability for a final period;

(c) if subsection (1)(a)(ii) applies and, immediately after the revocation, the person is not the DGE—

(i) the DGE's annual levy liability for a financial year; or

(ii) the DGE's final levy liability for a final period.

(4) A reassessment of the affected liability must be made to take into account the making or revocation of the determination.

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Division 2 Provisions about particular assessments made by the commissioner

81 Provision about payroll tax assessments made by commissioner—employer who is required to lodge periodic returns

(1) Subsection (2) applies if an employer lodged, or was required under section 59 to lodge, a periodic return during all or part of a financial year (the ***relevant period***).

(2) In making an assessment or reassessment of the employer's annual liability for the year, the commissioner may treat the employer as if the employer had been exempt under section 62 from lodging periodic returns during all or part of the relevant period.

(3) Subsection (4) applies if an employer lodged, or was required under section 59 to lodge, a periodic return during all or part of a final period (also the ***relevant period***).

(4) In making an assessment or reassessment of the employer's final liability for the final period, the commissioner may treat the employer as if the employer had been exempt under section 62 from lodging periodic returns during all or part of the relevant period.

(5) If subsection (2) or (4) applies—

(a) the employer must be treated for this Act and the Administration Act as if the employer did not have periodic liability, and had been exempt under section 62 from lodging periodic returns, for periodic return periods during all or part of the relevant period; and

(b) any assessment of periodic liability for a periodic return period mentioned in paragraph (a) is taken not to have been made; and

(c) the commissioner may apply, in the order required under the Administration Act, section 42, the whole or part of an amount paid or payable by the employer for periodic

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liability for a periodic return period mentioned in paragraph (a) as payment for a prescribed payroll tax liability of the employer; and

(d) the commissioner is not prevented from making a subsequent reassessment of the employer's periodic liability, annual liability or final liability under section 82.

(6) For this section, the circumstances in which an employer was required under section 59 to lodge a periodic return during the relevant period include an assessment or reassessment mentioned in section 82(2) or (4) being made by the commissioner in relation to the period.

81A Provision about levy assessments made by commissioner—employer who is required to lodge periodic returns

(1) Subsection (2) applies if an employer lodged, or was required under section 59 to lodge, a periodic return during all or part of a financial year (the ***relevant period***).

(2) In making an annual levy liability assessment for the employer for the year, the commissioner may treat the employer as if the employer had been exempt under section 62 from lodging periodic returns during all or part of the relevant period.

(3) Subsection (4) applies if an employer lodged, or was required under section 59 to lodge, a periodic return during all or part of a final period (also the ***relevant period***).

(4) In making a final levy liability assessment for the employer for the final period, the commissioner may treat the employer as if the employer had been exempt under section 62 from lodging periodic returns during all or part of the relevant period.

(5) If subsection (2) or (4) applies—

(a) the employer must be treated for this Act and the Administration Act as if the employer did not have

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periodic levy liability, and had been exempt under section 62 from lodging periodic returns, for periodic return periods during all or part of the relevant period; and

(b) any assessment of periodic levy liability for a periodic return period mentioned in paragraph (a) is taken not to have been made; and

(c) the commissioner may apply, in the order required under the Administration Act, section 42, the whole or part of an amount paid or payable by the employer for periodic levy liability for a periodic return period mentioned in paragraph (a) as payment for—

(i) for an employer who is a non-DGE group member—a prescribed levy liability of the employer; or

(ii) for an employer who is a group member (whether or not the employer is the DGE)—a prescribed levy liability of another group member; and

(d) the commissioner is not prevented from making a subsequent reassessment under section 82A of—

(i) for an employer who is not a group member or who is the DGE for a group—the employer's periodic levy liability, annual levy liability or final levy liability; or

(ii) for an employer who is a non-DGE group member—the employer's periodic levy liability or the DGE's annual levy liability or final levy liability.

(6) For this section, the circumstances in which an employer was required under section 59 to lodge a periodic return during the relevant period include an assessment or reassessment mentioned in section 82A(2) or (5) being made by the commissioner in relation to the period.

(7) In this section—

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annual levy liability assessment, for a year, for an employer, means—

(a) if the employer is not a group member or is the DGE for a group—an assessment or reassessment of the employer's annual levy liability for the year; or

(b) if the employer is a non-DGE group member—an assessment or reassessment of the DGE's annual levy liability for the year.

final levy liability assessment, for a final period, for an employer, means—

(a) if the employer is not a group member or is the DGE for a group—an assessment or reassessment of the employer's final levy liability for the final period; or

(b) if the employer is a non-DGE group member—an assessment or reassessment of the DGE's final levy liability for the final period.

82 Provision about payroll tax assessments made by commissioner—employer who is exempt from lodging periodic returns

(1) Subsection (2) applies if—

(a) an employer was exempt under section 62 from lodging a periodic return during all or part of a financial year (the ***exemption period***); or

(b) the commissioner authorised the employer, under section 60, to lodge periodic returns for periods other than a month during all or part of a financial year (also the ***exemption period***).

(2) In making an assessment or reassessment of the employer's periodic liability for a periodic return period during the exemption period, and the employer's annual liability for the year, the commissioner may treat the employer as if the employer had been required under section 59 to lodge a periodic return for each month during all or part of the exemption period.

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(3) Subsection (4) applies if—

(a) an employer was exempt under section 62 from lodging a periodic return during all or part of a final period (also the ***exemption period***); or

(b) the commissioner authorised the employer, under section 60, to lodge periodic returns for periods other than a month during all or part of a final period (also the ***exemption period***).

(4) In making an assessment or reassessment of the employer's periodic liability for a periodic return period during the exemption period, and the employer's final liability for the final period, the commissioner may treat the employer as if the employer had been required under section 59 to lodge a periodic return for each month during all or part of the exemption period.

(5) The commissioner may make an assessment or reassessment mentioned in subsection (2) or (4) only if—

(a) the employer contravenes section 87 or 87A during the exemption period; or

(b) the employer gave the commissioner false or misleading information in contravention of the Administration Act, section 122 or 123, and the commissioner relied on the information in—

(i) granting an exemption under section 62; or

(ii) authorising the employer, under section 60, to lodge periodic returns for periods other than a month; or

(c) the commissioner has made an assessment or reassessment mentioned in section 81(2) or (4) in relation to the exemption period.

(6) If the commissioner makes an assessment or reassessment mentioned in subsection (2) or (4)—

(a) the employer must be treated for this Act and the Administration Act, other than the Administration Act, section 121, as if the employer had been required under

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section 59 to lodge, on the return date, a periodic return for each month during all or part of the exemption period; and

(b) the commissioner is not prevented from making a subsequent reassessment of the employer's annual liability or final liability under section 81.

(7) For this section, the circumstances in which an employer was exempt under section 62 from lodging a periodic return during the exemption period include an assessment or reassessment mentioned in section 81(2) or (4) being made by the commissioner in relation to the period.

82A Provision about levy assessments made by commissioner—employer who is exempt from lodging periodic returns

(1) Subsection (2) applies if—

(a) an employer was exempt under section 62 from lodging a periodic return during all or part of a financial year (the ***exemption period***); or

(b) the commissioner authorised the employer, under section 60, to lodge periodic returns for periods other than a month during all or part of a financial year (also the ***exemption period***).

(2) In making a relevant assessment for the employer for the exemption period, the commissioner may treat the employer as if the employer had been required under section 59 to lodge a periodic return for each month during all or part of the exemption period.

(3) For subsection (2), a ***relevant assessment*** is—

(a) if the employer is not a group member or is the DGE for a group—

(i) an assessment or reassessment of the employer's periodic levy liability for a periodic return period during the exemption period; or

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(ii) an assessment or reassessment of the employer's annual levy liability for the year; or

(b) if the employer is a non-DGE group member—

(i) an assessment or reassessment of the employer's periodic levy liability for a periodic return period during the exemption period; or

(ii) an assessment or reassessment of the DGE's annual levy liability for the year.

(4) Subsection (5) applies if—

(a) an employer was exempt under section 62 from lodging a periodic return during all or part of a final period (also the ***exemption period***); or

(b) the commissioner authorised the employer, under section 60, to lodge periodic returns for periods other than a month during all or part of a final period (also the ***exemption period***).

(5) In making a relevant assessment, the commissioner may treat the employer as if the employer had been required under section 59 to lodge a periodic return for each month during all or part of the exemption period.

(6) For subsection (5), a ***relevant assessment*** is—

(a) if the employer is not a group member or is the DGE for a group—

(i) an assessment or reassessment of the employer's periodic levy liability for a periodic return period during the exemption period; or

(ii) an assessment or reassessment of the employer's final levy liability for the final period; or

(b) if the employer is a non-DGE group member—

(i) an assessment or reassessment of the employer's periodic levy liability for a periodic return period during the exemption period; or

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(ii) an assessment or reassessment of the DGE's final levy liability for the final period.

(7) The commissioner may make an assessment or reassessment mentioned in subsection (2) or (5) only if—

(a) the employer contravenes section 87 or 87A during the exemption period; or

(b) the employer gave the commissioner false or misleading information in contravention of the Administration Act, section 122 or 123, and the commissioner relied on the information in—

(i) granting an exemption under section 62; or

(ii) authorising the employer, under section 60, to lodge periodic returns for periods other than a month; or

(c) the commissioner has made an assessment or reassessment mentioned in section 81A(2) or (4) in relation to the exemption period.

(8) If the commissioner makes an assessment or reassessment mentioned in subsection (2) or (5)—

(a) the employer must be treated for this Act and the Administration Act, other than the Administration Act, section 121, as if the employer had been required under section 59 to lodge, on the return date, a periodic return for each month during all or part of the exemption period; and

(b) the commissioner is not prevented from making a subsequent reassessment of—

(i) for an employer who is not a group member or who is the DGE for a group—the employer's annual levy liability or final levy liability under section 81A; or

(ii) for an employer who is a non-DGE group member—the DGE's annual levy liability or final levy liability under section 81A.

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(9) For this section, the circumstances in which an employer was exempt under section 62 from lodging a periodic return during the exemption period include an assessment or reassessment mentioned in section 81A(2) or (4) being made by the commissioner in relation to the period.

Part 6 Miscellaneous

Division 1 Refund provisions

83 Application of annual refund amount, annual levy refund amount, final refund amount or final levy refund amount

(1) This section applies if an employer is entitled to an annual refund amount, annual levy refund amount, final refund amount or final levy refund amount on an original assessment of the employer's annual liability, annual levy liability, final liability or final levy liability.

Note—

See the Administration Act, part 4, division 2, for provisions about entitlement to refunds on a reassessment of an employer's annual liability, annual levy liability, final liability or final levy liability.

(2) The commissioner may apply the amount wholly or partly as payment for—

(a) a tax law liability of the employer; or

(b) if the employer is a group member—a prescribed payroll tax liability or prescribed levy liability of another member of the group; or

(c) a liability mentioned in paragraph (a) or (b) that the commissioner reasonably believes will become payable within 60 days after the entitlement to the refund arises.

(3) If the commissioner does not apply any part of the amount as payment for a liability mentioned in subsection (2) within the 60 day period mentioned in subsection (2)(c), the

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commissioner must refund immediately to the employer the amount not applied.

(4) However subsections (2) and (3) do not prevent the commissioner from holding the amount for any period, or applying the amount for any purpose, at the employer's request or with the employer's consent.

(5) This section applies despite the Administration Act, section 36.

(6) The Administration Act, section 39, applies to a refund of an amount to the employer, or an application of an amount as payment for an employer, under this section.

(7) For subsection (6), a reference to a taxpayer in the Administration Act, section 39, includes a reference to—

(a) the employer; and

(b) if the employer is a group member—another member of the group.

84 Provision for refunds under Administration Act to group members

(1) This section applies if a group member is entitled to a refund, under the Administration Act, section 37, of an amount paid by the group member under this Act or the Administration Act in relation to payroll tax or the mental health levy.

(2) The commissioner may apply all or part of the amount as payment for—

(a) a prescribed payroll tax liability or prescribed levy liability of another member of the group; or

(b) a liability mentioned in paragraph (a) that the commissioner reasonably believes will become payable within 60 days after the entitlement to the refund arises.

(3) Subsection (2) applies in addition to the Administration Act, section 38(2).

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(4) If the commissioner applies any part of the amount held to a liability mentioned in subsection (2) within the 60 day period mentioned in subsection (2)(b)—

(a) the Administration Act, section 38(3) does not apply; and

(b) the commissioner must refund immediately to the employer any part of the amount not applied under subsection (2) or the Administration Act, section 38(2).

(5) This section has effect subject to the Administration Act, section 39.

(6) For subsection (5)—

(a) the Administration Act, section 39 applies to an amount applied under subsection (2) as a payment for a group member; and

(b) a reference to a taxpayer in the Administration Act, section 39, includes a reference to a group member.

85 Entitlement to a refund

(1) An employer is not entitled to a refund of an amount of payroll tax paid, or purportedly paid, by the employer other than under—

(a) section 31, 35, 39 or 43; or

(b) the Administration Act, part 4, division 2.

(2) An employer is not entitled to a refund of an amount of the mental health levy paid, or purportedly paid, by the employer other than under—

(a) section 43K or 43O; or

(b) the Administration Act, part 4, division 2.

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Division 2 Notification requirements

87 Notification requirement—employers exempt from lodging periodic returns

(1) This section applies if—

(a) an employer is exempt under section 62 from lodging periodic returns; and

(b) the total taxable wages paid or payable by the employer for a month is greater than $108,333 in each of 3 consecutive months.

(2) Within 28 days of the last day of the third month mentioned in subsection (1)(b), the employer must give written notice to the commissioner stating that the event mentioned in the subsection has happened.

Note—

Failure to give the notice is an offence under the Administration Act, section 120.

87A Notification requirement—employers authorised to lodge periodic returns for periods other than a month

(1) This section applies if—

(a) the commissioner authorised an employer, under section 60(2), to lodge periodic returns for periods other than a month during all or part of a financial year; and

(b) there has been a relevant wage change during a periodic return period for the employer.

(2) For subsection (1)(b), a ***relevant wage change*** happens during a periodic return period for the employer if the employer's current estimated wages is more than 30% more than the employer's previous annual wages.

(3) Within 28 days after the last day of the periodic return period, the employer must give written notice to the commissioner stating that a relevant wage change has happened during the period for the employer.

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Note—

Failure to give the notice is an offence under the Administration Act, section 120.

(4) In this section—

current estimated wages, of the employer, means the total amount of taxable wages and interstate wages, or the total amount of taxable wages, for the financial year estimated by the employer at the end of the periodic return period.

previous annual wages, of the employer, means the total amount of taxable wages and interstate wages, or the total amount of taxable wages, paid or payable by the employer during the previous financial year.

88 Notification requirement—particular group members

(1) This section applies to an employer who is a non-DGE group member—

(a) at any time during the designated period for the employer who is the DGE for the group on 30 June in a financial year; or

(b) at any time during a final period for the DGE for the group.

(2) The employer must, within 7 days after the last day, notify the DGE of the taxable wages and interstate wages that were paid or payable by the employer, as a member of the group, during—

(a) if subsection (1)(a) applies—the designated period for the DGE in the year; or

(b) if subsection (1)(b) applies—the final period for the DGE.

Note—

See also section 126 (Application of s 88 notification requirement in relation to a transitional year).

Maximum penalty—100 penalty units.

(3) In this section—

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last day means—

(a) if subsection (1)(a) applies—

(i) if the employer is not a member of the group on 30 June in the year—the last day of the final period for the employer ending on the day the employer ceases to pay, or be liable to pay, wages as a member of the group; or

(ii) otherwise—30 June in the year; or

(b) if subsection (1)(b) applies—

(i) if the employer is not a member of the group on the last day of the final period for the DGE—the last day of the final period for the employer ending on the day the employer ceases to pay, or be liable to pay, wages as a member of the group; or

(ii) otherwise—the last day of the final period for the DGE.

88A Notification requirements—annual information for groups

(1) This section provides for the giving of—

(a) particular information relating to each financial year (the ***relevant financial year***); and

(b) particular information relating to the financial year immediately following the relevant financial year (the ***following financial year***).

(2) On or before 7 July in the relevant financial year, an employer who was a non-DGE group member on 1 July of the relevant financial year must give the following information to the DGE for the group—

(a) the employer's name and ABN;

(b) an estimate of the total amount of the taxable wages, and the total amount of any interstate wages, that will be payable by the employer as a member of the group for the relevant financial year.

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(3) On or before 28 July in the relevant financial year, the DGE for a group must give the following information to each employer who was a group member on 1 July in the relevant financial year—

(a) an estimate of the total amount of the taxable wages that will be payable by all group members for the relevant financial year;

(b) an estimate of the total amount of the interstate wages that will be payable by all group members for the relevant financial year.

(4) The information given under subsection (3) may be determined from the information received under subsection (2)(b).

(5) On or before 7 July in the following financial year, an employer who was a non-DGE group member at any time during the relevant financial year must give the following information to the DGE for the group—

(a) the employer's name and ABN;

(b) the total amount of the taxable wages, and the total amount of any interstate wages, paid or payable by the employer as a member of the group for the relevant financial year;

(c) the employer's periodic levy liability as a member of the group for each periodic return period in the relevant financial year.

(6) A person must not fail, without reasonable excuse, to comply with subsection (2), (3) or (5).

Maximum penalty—100 penalty units.

88B Notification requirements—final return information for non-DGE group member

(1) This section applies if a change of status happens for an employer (the ***affected employer***) who is a non-DGE group member.

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(2) Within 7 days after the end of the final periodic return period, the affected employer must give the following information to the DGE for the group—

(a) the total amount of the taxable wages, and the total amount of any interstate wages, paid or payable by the affected employer as a member of the group during the nominated final period;

(b) the affected employer's total periodic levy liability amount for the nominated final period.

(3) On or before the due day, an employer who is a non-DGE group member, other than the affected employer, must give the following information to the DGE for the group—

(a) the total amount of the taxable wages, and the total amount of any interstate wages, paid or payable by the employer as a member of the group during the nominated final period;

(b) the employer's total periodic levy liability amount for the nominated final period.

(4) A person must not fail, without reasonable excuse, to comply with subsection (2) or (3).

Maximum penalty—100 penalty units.

(5) In this section—

due day, for an employer to give information to the DGE under subsection (3), means the day that is 7 days after the later of—

(a) the last day of the final periodic return period; and

(b) the day on which the DGE asks the employer for the information.

final periodic return period means the periodic return period in which the last day of the nominated final period occurs.

nominated final period means the final period for the change of status mentioned in subsection (1).

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partial levy amount, for an employer for a periodic return period, means the amount worked out using the following formula—

$$\mathbf{P} = \mathbf{PL} \times \frac{\mathbf{X}}{\mathbf{Y}}$$

where—

P means the partial levy amount in dollars.

PL means the employer's periodic levy liability for the periodic return period.

X means the number of days in the periodic return period that are in the nominated final period.

Y means the total number of days in the nominated final period.

total periodic levy liability amount, for an employer, for the nominated final period, means the sum of the following amounts—

(a) the employer's periodic levy liability for each periodic return period wholly within the nominated final period (irrespective of the return date for lodgement of the periodic return for the periodic return period);

(b) the partial levy amount for each periodic return period (irrespective of the return date for lodgement of the periodic return for the periodic return period) that includes a day that is—

(i) in the nominated final period; and

(ii) not in a periodic return period mentioned in paragraph (a).

88C Notification requirements—final return information for DGE

(1) This section applies if a change of status happens for the DGE for a group.

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(2) On or before the due day, each employer who is a non-DGE group member must give the following information to the DGE—

(a) the total amount of the taxable wages, and the total amount of any interstate wages, paid or payable by the employer as a member of the group during the nominated final period;

(b) the employer's total periodic levy liability amount for the nominated final period.

(3) A person must not fail, without reasonable excuse, to comply with subsection (2).

Maximum penalty—100 penalty units.

(4) In this section—

due day, for an employer to give information to the DGE, means the day that is 7 days after the later of—

(a) the last day of the final periodic return period; and

(b) the day on which the DGE asks the employer for the information.

final periodic return period means the periodic return period in which the last day of the nominated final period occurs.

nominated final period means the final period for the change of status mentioned in subsection (1).

partial levy amount, for an employer for a periodic return period, means the amount worked out using the following formula—

$$\mathbf{P} = \mathbf{PL} \times \frac{\mathbf{X}}{\mathbf{Y}}$$

where—

P means the partial levy amount in dollars.

PL means the employer's periodic levy liability for the periodic return period.

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X means the number of days in the periodic return period that are in the nominated final period.

Y means the total number of days in the nominated final period.

total periodic levy liability amount, for an employer who is a non-DGE group member, for the nominated final period, means the sum of the following amounts—

(a) the employer's periodic levy liability for each periodic return period wholly within the nominated final period (irrespective of the return date for lodgement of the periodic return for the periodic return period);

(b) the partial levy amount for each periodic return period (irrespective of the return date for lodgement of the periodic return for the periodic return period) that includes a day that is—

(i) in the nominated final period; and

(ii) not in a periodic return period mentioned in paragraph (a).

88D Notification requirements—employer joining a group

(1) This section applies if an employer becomes a group member and does not become the DGE for the group at the same time.

(2) Within 7 days after the day the employer joins the group, the employer must give the following information to the DGE—

(a) an estimate of the total amount of the taxable wages paid or payable by the member, as a member of the group, from the day of becoming a member until the end of the current financial year;

(b) an estimate of the total amount of the interstate wages paid or payable by the member, as a member of the group, from the day of becoming a member until the end of the current financial year.

(3) A person must not fail, without reasonable excuse, to comply with subsection (2).

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Maximum penalty—100 penalty units.

(4) In this section—

current financial year means the financial year in which the employer becomes a group member.

88E Notification requirements—revised group wage information

(1) This section applies if—

(a) the DGE for a group becomes aware that a significant wage change has happened during a periodic return period for the group; or

(b) the DGE for a group receives information from an employer under section 88D; or

(c) an employer joins a group and becomes the DGE for the group at the same time; or

(d) the DGE for a group becomes aware that a group member has started paying, or become liable to pay, taxable wages other than as a member of the group; or

(e) the DGE for a group starts paying, or becomes liable to pay, taxable wages other than as a member of the group.

(2) Within 7 days after the thing mentioned in subsection (1)(a) to (e) happens, the DGE must give the following information to each non-DGE group member—

(a) an estimate of the total amount of the taxable wages that will be payable by all group members for the current financial year;

(b) an estimate of the total amount of the interstate wages that will be payable by all group members for the current financial year.

(3) A person must not fail, without reasonable excuse, to comply with subsection (2).

Maximum penalty—100 penalty units.

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(4) It is sufficient compliance with a requirement under subsection (2)(a) or (b) to give an estimate of an amount if the DGE gives the estimate based on the latest information held by the DGE at the time the requirement arises.

(5) In this section—

current financial year means the financial year in which the thing mentioned in subsection (1)(a) to (e) happens.

significant wage change see section 43EC.

89 Notification requirement—liquidators and other administrators

(1) This section applies to a person who—

(a) becomes the liquidator of a company that is—

(i) being wound up; and

(ii) an employer registered, or required to be registered, as an employer under part 3, division 1; or

(b) is appointed as administrator for the property of a person who is registered, or required to be registered, as an employer under part 3, division 1.

(2) The person must, within 14 days of becoming the liquidator or being appointed as the administrator, give written notice to the commissioner stating the person has become the liquidator or been appointed as the administrator.

Maximum penalty—40 penalty units.

(3) The Administration Act, section 48, does not apply to the person.

(4) In this section—

administrator does not include a liquidator.

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Division 3 Other provisions

89A Commissioner may give group information to incoming DGE

(1) This section applies if an employer becomes the DGE for a group.

(2) The commissioner may give the DGE any information relating to the group that was received from a previous DGE for the group under part 3, division 2 or part 6, division 2.

90 Commissioner may require payment of penalty

(1) This section applies if an employer—

(a) does not lodge a periodic return, annual return or final return in contravention of this Act; or

(b) does not pay, in contravention of this Act, an amount of the employer's liability for payroll tax or the mental health levy in relation to a return; or

(c) gives the commissioner a return containing false or misleading information in contravention of the Administration Act, section 122 or 123.

(2) The commissioner may, by written notice given to the employer, require the employer to pay a penalty of an amount (the ***penalty amount***) that is not more than the greater of the following amounts—

(a) 75% of the relevant liability amount;

(b) $100.

(3) The notice must state—

(a) the date for payment of the penalty amount, being a day that is at least 30 days after the employer receives the notice; and

(b) the reasons for the decision to require payment of the penalty amount.

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(4) The commissioner may enter into an arrangement for payment of the penalty amount by instalments.

(5) The arrangement may include provision for the payment of interest calculated at the rate for unpaid tax interest for the period starting on the start day and ending on the day the penalty amount is paid in full, both days inclusive.

(6) For this section—

levy liability means the employer's liability for the mental health levy in relation to the return.

payroll tax liability means the employer's liability for payroll tax in relation to the return.

relevant liability amount means—

(a) if subsection (1)(a) applies—the total amount of the employer's payroll tax liability and levy liability; or

(b) if subsection (1)(b) applies and the unpaid amount is an amount of the employer's payroll tax liability—the total amount of the payroll tax liability; or

(c) if subsection (1)(b) applies and the unpaid amount is an amount of the employer's levy liability—the total amount of the levy liability; or

(d) if subsection (1)(b) applies and the unpaid amount is an amount of the employer's payroll tax liability and levy liability—the total amount of the liabilities; or

(e) if subsection (1)(c) applies and the false or misleading information relates to the calculation of the employer's payroll tax liability—the total amount of the payroll tax liability; or

(f) if subsection (1)(c) applies and the false or misleading information relates to the calculation of the employer's levy liability—the total amount of the levy liability; or

(g) if subsection (1)(c) applies and the false or misleading information relates to the calculation of the employer's payroll tax liability and levy liability—the total amount of the liabilities.

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start day means the day after the failure or contravention mentioned in subsection (1).

Note—

The penalty amount is a debt payable to the commissioner and may be recovered in a court of competent jurisdiction, see the Administration Act, section 45.

91 Period for keeping particular records relating to fringe benefits tax

(1) This section applies to an employer who elects under a regulation to include in returns estimated value amounts for fringe benefits.

(2) The employer must keep a record of the fringe benefits paid or payable by the employer during the financial year in which the election is made.

(3) The person must keep the record until 5 years has elapsed after the earlier of the following—

(a) the employer lodges a final return;

(b) the employer elects under a regulation to include in returns actual value amounts for fringe benefits.

Maximum penalty—100 penalty units.

(4) The Administration Act, section 118, does not apply to the keeping of the record.

92 Application of Act to trustees

(1) If an employer pays, or is liable to pay, wages as trustee of a trust—

(a) the employer must lodge returns, and pay payroll tax and the mental health levy, as required under this Act in the employer's capacity as trustee; and

(b) except as otherwise provided under this Act, each return mentioned in paragraph (a) must be separate and distinct from any return lodged by the employer for wages paid or payable—

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(i) other than as trustee; or

(ii) as trustee of another trust; and

(c) the employer must do all other things required under this Act in relation to wages paid by the employer.

Example—

An employer, Company X, pays wages in its personal capacity and also as a trustee of Trust Y and Trust Z. The company and trusts are not members of a group and all are registered or required to register as employers under part 3, division 1. The employer must lodge 3 separate returns: for Company X in its personal capacity, as trustee of Trust Y and as trustee of Trust Z.

(2) Subsection (1) does not exclude, limit or otherwise affect the operation of part 4 to the extent the part applies to—

(a) a trustee; or

(b) 2 or more persons, 1 or more of whom is a trustee.

93 Avoiding taxation

Any person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid payroll tax or mental health levy imposed under this Act, shall be guilty of an offence.

Maximum penalty—20 penalty units and treble the amount of payroll tax avoided or attempted to be avoided and treble the amount of mental health levy avoided or attempted to be avoided.

Note—

This provision is an executive liability provision under the *Taxation Administration Act 2001*, section 140.

94 Notice of change of address for service

(1) An employer who is registered as an employer under part 3, division 1 must give the commissioner written notice of a change of the employer's address for service within 1 month after each change.

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Note—

Failure to give the notice is an offence under the Administration Act, section 120.

(2) In this section—

address for service, for an employer, means—

(a) the employer's address for service shown in the last return lodged by the employer; or

(b) if the employer has given the commissioner a notice under this section, the address stated in the last notice given.

95 Cents to be disregarded for calculations

(1) This section applies if—

(a) for this Act, it is necessary to do any of the following—

(i) reduce an amount by a fixed sum for each other fixed sum by which another amount exceeds another amount or a certain proportion of a third amount;

(ii) calculate the proportion that 1 amount bears to another amount;

(iii) calculate an amount using a formula; and

(b) if subsection (2) did not apply, 1 or more of the amounts mentioned in paragraph (a), or an amount included in a formula, would be amounts of dollars and cents.

(2) The cents must be disregarded.

96 Approval of forms

The commissioner may approve forms for use under this Act.

97 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

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(2) Regulations may be made with respect to—

(a) the way of making an application to the commissioner under this Act; and

(b) the evidence the commissioner may require to decide whether or not—

(i) an employer was an employer for part only of a financial year; or

(ii) a person was a member of a group; or

(iii) a notice under section 59(2) or 60(2) or a certificate under section 62(1) should be given; and

(c) providing that a return, application, notice, statement or form signed on behalf of an employer is taken to have been signed by the employer; and

(d) in relation to fringe benefits, what is to be included in a return as the value of fringe benefits paid or payable by an employer; and

(e) any other matter for the application of this Act to a fringe benefit.

(3) A regulation may impose a penalty of not more than 20 penalty units for a contravention of the regulation.

97A Application of particular amendments

This Act, as amended by the *Revenue Legislation Amendment Act 2022*, part 8, division 3, subdivisions 1 and 2, applies in relation to taxable wages paid or payable from 1 January 2023 in the financial year starting on 1 July 2022 and each later financial year.

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Part 7 Savings and transitional provisions for Payroll Tax Administration Amendment Act 2004

Division 1 Preliminary

98 Definitions for pt 7

In this part—

amended, for a provision of this Act, means the provision as amended or inserted by the amending Act.

amended Act means this Act as amended by the amending Act.

amending Act means the *Payroll Tax Administration Amendment Act 2004*.

commencement means the commencement of section 38 of the amending Act.

post-commencement liability means a liability for payroll tax arising on or after the commencement, other than a liability relating to a transitional return period.

Example—

The commencement is on 1 March 2005.

For an employer who is required under previous section 13 to lodge returns for quarterly periods starting on 1 July, 1 October, 1 January and 1 April, the employer's liability for payroll tax for the return period ending on 30 June 2005 would be a post-commencement liability.

An employer's liability for payroll tax for the 2004/2005 financial year would be a post-commencement liability.

pre-commencement act or omission means an act or omission done or omitted to be done for this Act before the commencement.

pre-commencement liability means a liability for payroll tax arising before the commencement.

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Example—

The commencement is on 1 March 2005.

For an employer who is required under previous section 13 to lodge returns for each month, the employer's liability for payroll tax for the previous return period ending on 28 February 2005 would be a pre-commencement liability.

For an employer who is required under previous section 13 to lodge returns for quarterly periods starting on 1 July, 1 October, 1 January and 1 April, the employer's liability for payroll tax for the previous return period ending on 31 December 2004 would be a pre-commencement liability.

prescribed period means a prescribed period under previous section 11C or 16L.

previous, for a provision of this Act, means the provision as in force before the commencement.

previous return period means a return period within the meaning of previous section 3(1) ending before the commencement.

transitional final period means the final period for the first change of status happening for an employer on or after the commencement during a transitional year.

transitional return period means a return period within the meaning of previous section 3(1) that has started but not ended before the commencement.

Example—

The commencement is on 1 March 2005. For an employer who is required under previous section 13 to lodge returns for quarterly periods starting on 1 July, 1 October, 1 January and 1 April, the return period ending on 31 March 2005 would be a transitional return period. However, for an employer required to lodge monthly returns, there would not be a transitional return period.

transitional year means the financial year during which the commencement falls, except if the commencement is on the first day of the year.

Example—

The commencement is on 1 March 2005. The 2004/2005 financial year would be a transitional year.

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The commencement is on 1 July 2005. There would not be a transitional year.

Division 2 Application of amended Act and Administration Act

99 Application of amended Act in relation to liabilities etc. arising on or after commencement

(1) The amended Act applies in relation to—

(a) a post-commencement liability; and

(b) an act or omission done or omitted to be done for this Act on or after the commencement.

Example for subsection (1)(b)—

The commencement is on 1 March 2005. After the commencement, it is discovered that a person was required to apply for registration as an employer from 1 July 2004. After 1 March 2005, the continuing failure to apply for registration is, although it may also relate to a pre-commencement liability, an act or omission done or omitted to be done for this Act after the commencement.

(2) Subsection (1) has effect subject to division 4.

100 Registration under s 54 of person required to register before commencement

(1) This section applies if a person was required to apply for registration as an employer under previous section 12 but did not do so before the commencement.

(2) The commissioner may register the person under section 54.

(3) If the commissioner registers the person under section 54, a reference in the previous provisions of this Act to an employer registered under section 12 is taken to include a reference to the person.

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101 Application of amended ss 58–62 for previous return periods

(1) This section applies if an employer was required under previous section 13 or 14 to furnish a return for a previous return period but did not do so before the commencement.

(2) Amended sections 58 to 62 apply in relation to the employer for the previous return period.

(3) For subsection (2), the employer is taken to be a relevant employer for the return period.

(4) Previous sections 13 and 14 do not apply to the employer for the previous return period.

(5) However, subsection (4) does not affect the employer's liability for contravening previous section 13 or 14 before the commencement.

102 Assessment under amended s 81 in relation to particular pre-commencement liabilities

(1) The commissioner may make an assessment under section 81(2) in relation to an employer's liability for payroll tax for a financial year ending before the commencement.

(2) For subsection (1), a reference in section 81(5)(c) to a prescribed payroll tax liability of the employer is taken to be a reference to tax, within the meaning of previous section 3, payable by the employer.

(3) Section 81(5)(d) does not apply if the commissioner makes an assessment mentioned in subsection (1).

(4) This section applies subject to section 104.

(5) In this section—

assessment means an assessment under previous part 5.

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103 Application of amended s 95 to calculations made under previous provisions

(1) Amended section 95 applies for a calculation made under the previous provisions of this Act.

(2) Previous section 3(3) does not apply for the calculation.

104 This Act as a revenue law for the Administration Act

(1) This section provides for how the Administration Act applies to this Act, in relation to particular liabilities, acts and omissions, as a revenue law under the Administration Act.

Note—

The Administration Act applies to this Act, as a revenue law, except to the extent its application is limited or modified under this section or section 105 or 106.

Editor's note—

The Administration Act, section 6 (Revenue laws), declares this Act to be a revenue law.

(2) The provisions of the Administration Act mentioned in subsection (3) do not apply in relation to—

(a) a pre-commencement liability; or

(b) a liability for payroll tax for a transitional return period.

(3) For subsection (2), the provisions of the Administration Act that do not apply are each of the following—

(a) part 3 (Assessments of tax);

(b) part 4 (Payments and refunds of tax and other amounts), other than sections 29, 34, 40(1)(a) and (b) and (2), 41 and 42, division 4, division 5, subdivision 1 and sections 49 to 53;

(c) part 5 (Interest and penalty tax);

(d) sections 124, 125 and 132.

(4) To remove doubt, it is declared that the Administration Act applies in relation to an act or omission done or omitted to be

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done on or after the commencement, even if the act or omission relates to a liability mentioned in subsection (2).

Example—

The commencement is on 1 March 2005. During an audit in July 2005 in relation to the 2003/2004 financial year, a taxpayer fails to provide wage details for the financial year as required under the Administration Act, part 7. Failure to provide the information would be an omission after the commencement, even though it relates to a pre-commencement liability.

(5) However, the Administration Act, sections 124, 125 and 132 do not apply in relation to an act or omission mentioned in subsection (4) if the act or omission relates to a liability mentioned in subsection (2).

(6) For applying the Administration Act, part 4, in relation to a liability, act or omission mentioned in subsection (2) or (4)—

(a) a liability mentioned in subsection (2)(a) or (b) is taken to be an assessment liability for the Administration Act, sections 41 and 42; and

(b) penal tax and additional tax are not primary tax for the Administration Act, section 42; and

(c) an assessment of further tax under previous part 5 is taken to be a reassessment for the Administration Act, section 46.

(7) Subsection (4) applies subject to subsection (8).

(8) However, to the extent this Act applies to an act or omission mentioned in subsection (4), the application of the Administration Act, section 136 is subject to previous section 38.

(9) If, under this section, a provision of the Administration Act relating to a particular matter applies to this Act and this Act contains provision about the same matter, this Act does not apply to the matter.

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105 Application of Administration Act, s 38

An amount relating to a post-commencement liability may be applied under the Administration Act, section 38, as payment for a pre-commencement liability or a liability for payroll tax for a transitional return period.

106 Second or subsequent offences

(1) For applying the Administration Act, section 138 to this Act, the reference in subsection (1)(b) of that section to a further offence is a reference to an offence committed on or after the commencement.

(2) If the Administration Act, section 138(1)(a), applies for an offence against a previous provision of this Act that is repealed by the amending Act, the reference in subsection (1)(b) of that section to a further offence against the provision includes a reference to an offence against a provision of the amended Act or the Administration Act that corresponds to the previous provision.

Division 3 Application of previous provisions

107 Application of previous provisions to particular liabilities etc.

(1) Despite their amendment or repeal by the amending Act, the previous provisions of this Act continue to apply in relation to—

(a) a pre-commencement liability; and

(b) a liability for payroll tax in relation to a transitional return period; and

(c) a pre-commencement act or omission.

(2) However, previous section 16L(5) does not apply.

(3) Also, subsection (1) has effect subject to sections 100, 101, 103 and 104(9).

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Division 4 Provisions about periodic liability after commencement

108 Fixed periodic deduction for periodic return periods after commencement—existing determination

(1) This section applies if—

(a) there is a transitional year; and

(b) a determination by the commissioner of the amount of an employer's deduction for a return period, made under previous section 9(7) or 16I(4), is in effect immediately before the commencement.

(2) The amount determined is, for part 2, division 3, the employer's fixed periodic deduction for each periodic return period in the transitional year.

(3) However, if the commissioner determines the employer's fixed periodic deduction under amended section 21 or 27 on or after the commencement during the transitional year, the amount determined under the section is the employer's fixed periodic deduction.

109 Fixed periodic deduction for periodic return periods after commencement—existing nomination

(1) This section applies if—

(a) there is a transitional year; and

(b) immediately before the commencement—

(i) a nomination made by an employer under previous section 9(5) is in effect; or

(ii) a nomination made by the members of a group or the commissioner under previous section 16I(1) or (1A) of the amount of the DGE's deduction is in effect.

(2) The amount nominated is, for part 2, division 3, the employer's fixed periodic deduction for each periodic return

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period in the transitional year until the earlier of the following—

(a) there is a calculation day;

(b) the commissioner determines the employer's fixed periodic deduction under amended section 21 or 27.

(3) Subsection (2) applies subject to section 110.

110 Application of fixed periodic deduction to particular non-group employers after commencement

(1) This section applies to an employer—

(a) who is not a member of a group on the commencement; and

(b) whose deduction for the last previous return period ending before the commencement was an amount worked out under previous section 9(3).

(2) For section 20, the employer can not be a previous interstate wage payer for a periodic return period unless the employer has paid, or been liable to pay, interstate wages on or after the commencement.

Division 5 Provisions for annual liability for transitional year

111 Purpose of div 5

This division provides for working out an employer's annual liability for a transitional year.

112 Basic principles for working out employer's annual liability

(1) This section applies if there was a prescribed period during the year for—

(a) the employer; or

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(b) if the employer was a member of a group during the year—the group.

(2) For working out the employer's annual liability for the transitional year—

(a) taxable wages paid or payable by the employer for the prescribed period are not included in the employer's annual wages for the year; and

(b) payroll tax paid or payable by the employer for the prescribed period is not included in the employer's periodic liability for periodic returns during the year; and

(c) the employer's annual deduction must be worked out without having regard to the days in the prescribed period.

(3) This section applies subject to sections 113, 114, 118 and 119.

113 Employer who was not a group member for a prescribed period during the transitional year

(1) This section applies if—

(a) the employer is not a member of a group on 30 June in the transitional year; and

(b) there was a prescribed period for the employer during the year; and

(c) the employer was not a member of a group for the prescribed period; and

(d) the employer's annual liability for the transitional year worked out as required under section 112(2) is greater than it would be if the section did not apply to the employer.

(2) If the commissioner makes an original assessment of the employer's annual liability for the year, other than under the Administration Act, section 14(a), section 112(2) does not apply to the employer.

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(3) If the original assessment of the employer's annual liability for the year was made by the commissioner under the Administration Act, section 14(a), the commissioner must make a reassessment of the liability on the basis that section 112(2) does not apply to the employer.

114 Employer who is a DGE on 30 June in the transitional year

(1) This section applies if—

(a) the employer became the DGE for a group—

(i) during the transitional year; and

(ii) before the commencement; and

(b) the employer is the DGE for the group continuously until 30 June in the year; and

(c) immediately before becoming the DGE for the group, the employer was a member of the group.

(2) For working out the employer's annual liability for the transitional year—

(a) taxable wages paid or payable by the employer for the period (the ***group member period***) in the year during which the employer was a member of the group must be included in the employer's annual wages for the year; and

(b) payroll tax paid or payable by the employer for the group member period must be included in the employer's periodic liability for periodic return periods during the designated period; and

(c) the employer's annual deduction must be worked out having regard to each of the following—

(i) the days in the year on which any employer paid, or was liable to pay, wages as a member of the group, even if the days are not included in the designated period for the DGE for the year; and

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(ii) the taxable wages and interstate wages paid or payable by any employer, as a member of the group, on the days mentioned in subparagraph (i); and

(d) even if section 34(1)(a) does not apply, the employer's liability is the annual adjustment amount if the employer was required, under previous part 3, to furnish a return during the year when the employer was a member of the group.

(3) The employer's annual return for the transitional year must state the wages that were paid or payable, as a member of the group, by an employer—

(a) during the designated period for the DGE in the year; and

(b) on the days in the year mentioned in subsection (2)(c)(i).

(4) Subsection (3) applies despite section 63(3)(b).

Division 6 Provisions for final liability for transitional final period

115 Purpose of div 6

This division provides for working out an employer's final liability for a transitional final period.

116 When transitional final period starts

(1) A transitional final period starts on the latest of the following days in the transitional year—

(a) 1 July;

(b) the first day on which the person is required to register as an employer under previous part 4;

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(c) if there was a prescribed period for the employer during the transitional year—the day after the last day of the latest prescribed period for the employer during the year.

(2) This section applies despite section 6(a).

Example—

The commencement is on 1 March 2005. An employer who has been a member of a group from 1 July 2004 becomes the DGE for the group on 1 May 2005. This is the first change of status for the employer on or after the commencement. The final period for the change of status is a transitional final period starting on 1 July 2004.

117 Employer who is a DGE on the last day of a transitional final period

(1) This section applies if—

(a) the employer became the DGE for a group—

(i) during a transitional year; and

(ii) before the commencement; and

(b) the employer is the DGE for the group continuously until the last day of the transitional final period; and

(c) immediately before becoming the DGE for the group, the employer was a member of the group.

(2) For working out the employer's final liability for the transitional final period—

(a) taxable wages paid or payable by the employer for the period (the ***group member period***) in the year during which the employer was a member of the group must be included in the employer's final wages for the final period; and

(b) payroll tax paid or payable by the employer for the group member period must be included in the employer's periodic liability amount for the final period; and

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(c) the employer's final deduction must be worked out having regard to each of the following—

(i) the days in the year before the final period starts on which any employer paid, or was liable to pay, wages as a member of the group, even if the employer to whom this section applies was not a member of the group on those days;

(ii) the taxable wages and interstate wages paid or payable by any employer, as a member of the group, on the days mentioned in subparagraph (i); and

(d) even if section 42(1)(a) does not apply, the employer's liability is the final adjustment amount if the employer was required, under previous part 3, to furnish a return during the year when the employer was a member of the group.

(3) The employer's final return for the transitional final period must state the wages that were paid or payable, as a member of the group, by an employer—

(a) during the final period; and

(b) on the days in the transitional year mentioned in subsection (2)(c)(i).

(4) Subsection (3) applies despite section 64(3)(b).

Division 7 Miscellaneous provisions

118 Commissioner assessment—employer who becomes a DGE in a transitional year before commencement

(1) This section applies in relation to an employer if—

(a) the employer becomes the DGE for a group—

(i) during a transitional year; and

(ii) before the commencement; and

(b) either—

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(i) the employer—

(A) lodges, or is required under section 64 to lodge, a final return for a change of status happening in the transitional year after the commencement; and

(B) is the DGE for the group on the last day of the final period; or

(ii) if subparagraph (i) does not apply, the employer—

(A) lodges, or is required under section 63 to lodge, an annual return for the transitional year; and

(B) is the DGE for the group on 30 June in the year.

(2) The commissioner must make a reassessment of the employer's final liability or annual liability, as applicable, to reduce the relevant deduction by the total amount of the deductions claimed during the year under previous section 16I by any earlier DGE for the group.

(3) Also, in making an original assessment of the employer's final liability or annual liability, as applicable, the commissioner must reduce the relevant deduction by the total amount of the deductions claimed during the year under previous section 16I by any earlier DGE for the group.

(4) In this section—

earlier DGE, for the group, means an employer who was the DGE for the group at any time during the transitional year before the employer to whom this section applies becomes the DGE for the group.

relevant deduction means—

(a) for an employer to whom subsection (1)(b)(i) applies—the employer's final deduction for the final period; or

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(b) for an employer to whom subsection (1)(b)(ii) applies—the employer's annual deduction for the transitional year.

119 Commissioner assessment—employer who ceases to be a DGE in a transitional year before commencement

(1) This section applies in relation to an employer who—

(a) ceases to be the DGE for a group—

(i) during a transitional year; and

(ii) before the commencement; and

(b) either—

(i) the employer lodges, or is required under section 64 to lodge, a final return for a change of status happening in the transitional year after the commencement; or

(ii) if subparagraph (i) does not apply—lodges, or is required under section 63 to lodge, an annual return for the transitional year.

(2) The commissioner must make a reassessment of the employer's final liability or annual liability, as applicable, to reduce the relevant wages by the total amount of the deductions claimed by the employer under previous section 16I during the year.

(3) Also, in making an original assessment of the employer's final liability or annual liability, as applicable, the commissioner must reduce the relevant wages by the total amount of the deductions claimed by the employer under previous section 16I during the year.

(4) In this section—

relevant wages means—

(a) for an employer to whom subsection (1)(b)(i) applies—the employer's final wages for the final period; or

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(b) for an employer to whom subsection (1)(b)(ii) applies—the employer's annual wages for the transitional year.

120 Delegations under previous s 4A

A delegation under previous section 4A in force immediately before the commencement continues in force.

121 Employers registered under previous s 12 immediately before commencement

An employer who is registered as an employer under previous section 12 immediately before the commencement is, on and from the commencement, taken to be registered under part 3, division 1.

122 Notices given by commissioner under previous s 13

(1) A notice given by the commissioner under previous section 13(2)(a) and in force immediately before the commencement is, on and from the commencement, taken to be a notice given under section 59(2).

(2) A notice given by the commissioner under previous section 13(2)(b) and in force immediately before the commencement is, on and from the commencement, taken to be a notice given under section 60(2).

123 Continuing effect of exemptions given by commissioner under previous s14

(1) This section applies if—

(a) the commissioner issued a certificate (an ***existing exemption***), under previous section 14, exempting an employer from lodging monthly returns; and

(b) the existing exemption was in force immediately before the commencement.

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(2) The existing exemption is, on the commencement, taken to be a certificate exempting the employer from the requirement under section 59 to lodge periodic returns.

(3) To remove doubt, it is declared that the employer is required to lodge annual returns under section 63 even if the existing exemption states the employer is not required to lodge returns for each financial year.

124 Continuing use of particular forms

A form approved before the commencement relating to a provision of this Act repealed by the amending Act may continue to be used after the commencement to facilitate the operation of this part.

125 Application of ss 83 and 84

A refund to which section 83 or 84 applies may be applied under the section as payment for a liability mentioned in section 83(2) or 84(2), as applicable, even if the liability—

(a) arose before the commencement; or

(b) is for a transitional return period.

126 Application of s 88 notification requirement in relation to a transitional year

(1) This section applies to an employer who is a non-DGE group member—

(a) at any time during a transitional year, if the employer who is the DGE for the group on 30 June in the year became the DGE before the commencement; or

(b) if there is a transitional final period for the DGE for the group—at any time in the transitional year on or before the last day of the final period.

(2) If subsection (1)(a) applies, the wages the employer must notify to the DGE under section 88(2) are the taxable wages

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and interstate wages paid or payable by the employer, as a member of the group, during the transitional year.

(3) If subsection (1)(b) applies, the wages the employer must notify to the DGE under section 88(2) are the taxable wages and interstate wages paid or payable by the employer, as a member of the group, at any time in the transitional year on or before the last day of the DGE's transitional final period.

(4) Subsections (2) and (3) apply despite section 88(2)(a) and (b).

127 Application of s 89 to particular liquidators

(1) This section applies to a person who—

(a) becomes a liquidator within 14 days before the commencement; and

(b) does not give notice of the matter under previous section 25 before the commencement.

(2) Section 89 applies to the liquidator as if the time within which the person is required to give notice under section 89(2) were 14 days after the commencement.

128 Application of s 94 to particular employers

(1) This section applies to an employer—

(a) whose address for service changes within 1 month before the commencement; and

(b) who does not give notice of the change under the *Payroll Tax Regulation 1999*, section 26, before the commencement.

(2) Section 94 applies to the employer as if the time within which the person is required to give notice under section 94 were 1 month after the commencement.

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129 References in amended Act

For the application of this part, if the context permits, a reference in the amended Act—

(a) to periodic liability includes a reference to liability for payroll tax under previous part 3; and

(b) to a periodic return includes a reference to a return under previous section 13; and

(c) to a periodic return period includes a reference to a previous return period or a transitional return period; and

(d) to a return date includes a reference to the date by which a return is required to be furnished under previous section 13; and

(e) to an employer required under section 59 to lodge a periodic return includes a reference to an employer required under previous section 13 to furnish a return; and

(f) to an employer authorised under section 60 to lodge periodic returns for periods other than a month includes a reference to an employer authorised under previous section 13(2)(b) to furnish returns for periods other than a month; and

(g) to unpaid tax interest includes a reference to penal tax under previous section 22; and

(h) to penalty tax includes a reference to additional tax under previous section 18.

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Part 8 Transitional provisions for Payroll Tax (Harmonisation) Amendment Act 2008

131 Interpretation of amended provisions

(1) The amendments made to this Act by the *Payroll Tax (Harmonisation) Amendment Act 2008* are intended to enhance the consistency of this Act with the *Payroll Tax Act 2007* (NSW) and the *Payroll Tax Act 2007* (Vic).

Note—

Minor variations in language used in some of the amended provisions are not intended to alter their meaning from the corresponding provisions in the New South Wales and Victorian Acts. For example—

- the phrase "in relation to" used in sections 13B to 13D, 13E(1), 13F, 13I and 13J(1) and (2)(a), is intended to have the same meaning as the phrase "for or in relation to", or "to or in relation to", used in the corresponding provisions; and
- the phrase "in connection with" used in sections 66 and 70(1), (2) and (3)(a) is intended to have the same meaning as the phrase "for or in connection with" used in the corresponding provisions.

(2) However, this section does not apply to the extent—

(a) the *Payroll Tax (Harmonisation) Amendment Act 2008* inserted section 14(2)(k)(iii) of this Act; or

(b) section 14A, as inserted by the *Payroll Tax (Harmonisation) Amendment Act 2008*, section 11, applies to paternity leave.

132 Application of amended Act

This Act, as amended by the *Payroll Tax (Harmonisation) Amendment Act 2008*, applies in relation to wages paid or payable on or after 1 July 2008.

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133 Application of avoidance provision for employment agency contracts

Section 13L applies to employment agency contracts made before, on or after the commencement of this section.

134 Continuation of orders excluding person from group

(1) This section applies if—

(a) an order excluding a person from a group, made by the commissioner under section 68, 69, 70 or 71, as it was in force before 1 July 2008, is in effect immediately before 1 July 2008; and

(b) the composition of the group is not changed, other than the order mentioned in paragraph (a) no longer having effect, because of the commencement of the *Payroll Tax (Harmonisation) Amendment Act 2008*.

(2) The order mentioned in paragraph (a) is taken to be an exclusion order made by the commissioner under section 74(1).

Part 9 Transitional provisions for Revenue and Other Legislation Amendment Act 2010

Division 1 Interpretation

135 Definitions for pt 9

In this part—

amended Act means this Act as amended by the amending Act.

amending Act means the *Revenue and Other Legislation Amendment Act 2010*, part 8, other than section 97.

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pre-amended Act means this Act as it was in force from time to time before the commencement of this section.

relevant employer means an employer by whom relevant wages are paid or payable and who—

(a) if the employer lodged a final return before 1 July 2010 and paid, in compliance with the pre-amended Act, the employer's liability for payroll tax in relation to the return—notifies the commissioner in writing of the amount of the relevant wages no later than 21 July 2010; or

(b) otherwise—includes the relevant wages in a return lodged no later than 21 July 2010.

relevant wages means wages—

(a) paid or payable by an employer on or after 1 July 2009 but before 1 July 2010; and

(b) that are not taxable wages under the pre-amended Act and are taxable wages under the amended Act.

Division 2 Application of amended Act and Administration Act

136 Application of amended Act

The amended Act applies, and is taken on and from 1 July 2009 to have applied, to wages paid or payable on or after 1 July 2009.

137 Exemption of penalty under s 90

Section 90(2) does not apply in relation to a relevant employer's liability for payroll tax under the amended Act for relevant wages.

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138 Remission of unpaid tax interest and penalty tax under the Administration Act

The commissioner must remit the whole of any unpaid tax interest and penalty tax in relation to a relevant employer's liability for payroll tax under the amended Act for relevant wages.

Note—

For the commissioner's power to remit unpaid tax interest and penalty tax, see the Administration Act, section 60.

139 Exemption for offences

(1) This section applies if a relevant person does not comply with a requirement under this Act or the Administration Act in relation to relevant wages.

(2) The relevant person does not commit an offence against this Act or the Administration Act if—

(a) for a relevant person who lodged a final return before 1 July 2010 and paid, in compliance with the pre-amended Act, the relevant person's liability for payroll tax in relation to the return—the relevant person notifies the commissioner in writing of the amount of the relevant wages no later than 21 July 2010; or

(b) otherwise—the relevant person includes the relevant wages in a return lodged no later than 21 July 2010.

(3) In this section—

relevant person means—

(a) an employer by whom relevant wages were paid or payable; or

(b) an administrator for an employer mentioned in paragraph (a).

140 Reassessment—final return included excluded wages

(1) This section applies if—

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(a) excluded wages are paid or payable by an employer; and

(b) before 21 July 2010, the employer lodges a final return including all taxable wages under the pre-amended Act paid or payable by the employer for the final period.

(2) The employer may lodge a written application for a reassessment.

(3) If the employer lodges an application under subsection (2), the commissioner must make a reassessment of the employer's final liability disregarding the excluded wages for working out the liability.

Note—

The Administration Act, sections 18 and 21 and part 4, division 2 apply for the reassessment and the refund of any excess tax paid by the employer.

(4) In this section—

excluded wages means wages—

(a) paid or payable by an employer on or after 1 July 2009 but before 1 July 2010; and

(b) that are taxable wages under the pre-amended Act and are not taxable wages under the amended Act.

Part 10 Transitional provisions for Revenue and Other Legislation Amendment Act 2011

141 Assessment and payment of payroll tax for shares and options

(1) This section applies to an act or omission of an employer if—

(a) the act or omission relates to the assessment or payment of payroll tax for wages paid or payable by the employer on or after 1 July 2009 but before 1 July 2011; and

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(b) the act or omission would have been valid if the following provisions as in force on the commencement of this section applied to the act or omission—

(i) section 13;

(ii) part 2, division 1C;

(iii) schedule, definition *share*;

(iv) schedule, definition *wages*, other than paragraph 2.

(2) The act or omission is taken to have been valid.

142 Application of pt 2, div 1C for granting of particular shares or options

(1) This section applies if—

(a) a share or option was granted under section 13O before 1 July 2011; and

(b) the relevant day under section 13Q for the grant of the share or option was not before 1 July 2011; and

(c) the grant constituted wages under the former Act, schedule, definition *wages*, paragraph (j), whether or not the grant constitutes wages under the amended Act, schedule, definition *wages*, paragraph (j) or (k).

(2) Sections 13R and 13U, as in force on the commencement of this section, apply for the share or option.

(3) In this section—

amended Act means this Act as amended by the *Revenue and Other Legislation Amendment Act 2011*.

former Act means this Act as in force before the commencement of this section.

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Part 11 Transitional provision for Revenue Amendment and Trade and Investment Queensland Act 2013

143 Exemption under s 14A

Section 14A(4)(b), as amended by the *Revenue Amendment and Trade and Investment Queensland Act 2013*, is taken to have had effect on and from 16 April 2011.

Part 12 Transitional provision for Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015

144 Application of s 13B

(1) Section 13B, as amended by the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015*, applies in respect of work performed on or after the commencement, regardless of when amounts are paid or become payable for the performance of the work.

(2) To remove any doubt, it is declared that section 13B as in force immediately before the commencement continues to apply in respect of work performed before the commencement, regardless of when amounts are paid or become payable for the performance of the work.

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Part 13 Transitional provision for Revenue Legislation Amendment Act 2018

145 Retrospective application of increased rebate under ss 27A, 35A and 43A

Sections 27A, 35A and 43A as amended by the *Revenue Legislation Amendment Act 2018*—

(a) apply, and are taken to have applied from 1 July 2016, in relation to wages paid or payable in the financial year ending on 30 June 2017; and

(b) apply, and are taken to have applied from 1 July 2017, in relation to wages paid or payable in the financial year ending on 30 June 2018.

Part 14 Transitional provision for Revenue and Other Legislation Amendment Act 2018

146 Retrospective operation of amended s 13Y

Section 13Y, as amended by the *Revenue and Other Legislation Amendment Act 2018*, is taken to have had effect since 1 July 2016.

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Part 15 Transitional provisions for Revenue Legislation Amendment Act 2022

Division 1 Extension of apprentice and trainee rebate

147 Retrospective application of particular provisions

(1) Sections 27A, 35A and 43A, as amended by the *Revenue Legislation Amendment Act 2022*, apply, and are taken to have applied from 1 July 2021, in relation to wages paid or payable in the financial year ending on 30 June 2022.

(2) Schedule, definition *eligible year*, as amended by the *Revenue Legislation Amendment Act 2022*, applies, and is taken to have applied from 1 July 2021, in relation to an assessment of a person's annual liability or final liability relating to the financial year ending on 30 June 2022 for the purposes of part 2, division 6A.

Division 2 Provisions about changes to deductions for financial year ending 30 June 2023

Subdivision 1 Preliminary

148 Purpose of division

This division provides for transitional arrangements, for the financial year ending on 30 June 2023, in relation to the amendment of this Act by the *Revenue Legislation Amendment Act 2022*, part 8, division 3.

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Note—

See also the repealed *Payroll Tax (Transitional) Regulation 2022*, made under section 148 as it was in force before its replacement by the *Revenue Legislation Amendment Act 2023*.

148A Definitions for division

In this division—

first half, of the transitional financial year, means the period starting on 1 July 2022 and ending on 31 December 2022.

second half, of the transitional financial year, means the period starting on 1 January 2023 and ending on 30 June 2023.

transitional financial year means the financial year ending on 30 June 2023.

Subdivision 2 Working out payroll tax for transitional financial year

148B Working out fixed periodic deductions for transitional financial year

(1) This section applies for working out a fixed periodic deduction under section 17 or 23 for the transitional financial year.

(2) A calculation day under sections 18 and 24 is taken to include 1 January in that year.

148C Working out annual deduction for transitional financial year—employer other than the DGE for a group

(1) This section applies to an employer—

(a) who is required, under section 63, to lodge an annual return for the transitional financial year; and

(b) who is not the DGE for a group on 30 June 2023.

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(2) Despite section 29, definition *annual deduction*, the annual deduction for the employer for the transitional financial year is the greater of zero and the amount worked out by adding the deduction (first half) and deduction (second half) for the employer.

(3) For subsection (2), the employer's ***deduction (first half)*** is the amount worked out using the following formula—

$$\mathbf{D_1} = \frac{\mathbf{AW_1}}{\mathbf{AW_1} + \mathbf{IW_1}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{4}}\left(\mathbf{AW_1} + \mathbf{IW_1} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

where—

A means the number of days in the first half of the transitional financial year for which the employer pays, or is liable to pay, wages, other than foreign wages.

AW_1 means the amount of the employer's annual wages that are paid or payable for the first half of the transitional financial year.

B means the number of days in the second half of the transitional financial year for which the employer pays, or is liable to pay, wages, other than foreign wages.

C means the number of days in the transitional financial year.

D_1 means the employer's deduction (first half) in dollars.

IW_1 means the amount of interstate wages paid or payable by the employer for the first half of the transitional financial year.

K means 1,300,000.

X see subsection (5).

(4) Also, for subsection (2), the employer's ***deduction (second half)*** is the amount worked out using the following formula—

where—

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$$\mathbf{D_2} = \frac{\mathbf{AW_2}}{\mathbf{AW_2 + IW_2}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{AW_2 + IW_2} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

A means the number of days in the first half of the transitional financial year for which the employer pays, or is liable to pay, wages, other than foreign wages.

AW₂ means the amount of the employer's annual wages that are paid or payable for the second half of the transitional financial year.

B means the number of days in the second half of the transitional financial year for which the employer pays, or is liable to pay, wages, other than foreign wages.

C means the number of days in the transitional financial year.

D₂ means the employer's deduction (second half) in dollars.

IW₂ means the amount of interstate wages paid or payable by the employer for the second half of the transitional financial year.

K means 1,300,000.

X see subsection (5).

(5) For subsections (3) and (4), the amount for ***X*** is to be worked out using the following formula—

$$\mathbf{X} = \frac{\mathbf{AW_{half} + IW_{half}}}{\mathbf{AW + IW}}$$

where—

AW means the amount of the employer's annual wages for the transitional financial year.

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AW_{half} means the amount of annual wages paid or payable by the employer—

(a) in relation to the deduction (first half)—for the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the second half of the transitional financial year.

IW means the amount of interstate wages paid or payable by the employer for the transitional financial year.

IW_{half} means the amount of interstate wages paid or payable by the employer—

(a) in relation to the deduction (first half)—for the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the second half of the transitional financial year.

(6) In this section—

annual wages see section 29(1).

148D Working out annual deduction for transitional financial year—DGE for a group

(1) This section applies to an employer if on 30 June 2023 the employer is the DGE for a group.

(2) Despite section 33, definition *annual deduction*, the annual deduction for the DGE for the transitional financial year is the greater of zero and the amount worked out by adding the deduction (first half) and deduction (second half) for the DGE.

(3) For subsection (2), the DGE's ***deduction (first half)*** is the amount worked out using the following formula—

$$\mathbf{D_1} = \frac{\mathbf{TW_1}}{\mathbf{TW_1 + IW_1}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{4}}\left(\mathbf{TW_1 + IW_1} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

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where—

A means the number of days in the designated period for the DGE—

(a) that are in the first half of the transitional financial year, whether or not wholly or partly concurrent; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

B means the number of days in the designated period for the DGE—

(a) that are in the second half of the transitional financial year, whether or not wholly or partly concurrent; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

C means the number of days in the transitional financial year.

D_1 means the DGE's deduction (first half) in dollars.

IW_1 means the amount of interstate wages paid or payable for the part of the designated period for the DGE occurring in the first half of the transitional financial year by each relevant group employer as a member of the group.

K means 1,300,000.

TW_1 means the amount of taxable wages paid or payable for the part of the designated period for the DGE occurring in the first half of the transitional financial year by each relevant group employer as a member of the group.

X see subsection (5).

(4) For subsection (2), the DGE's ***deduction (second half)*** is the amount worked out using the following formula—

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$$\mathbf{D_2} = \frac{\mathbf{TW_2}}{\mathbf{TW_2 + IW_2}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{TW_2 + IW_2} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

where—

A means the number of days in the designated period for the DGE—

(a) that are in the first half of the transitional financial year, whether or not wholly or partly concurrent; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

B means the number of days in the designated period for the DGE—

(a) that are in the second half of the transitional financial year, whether or not wholly or partly concurrent; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

C means the number of days in the transitional financial year.

$\boldsymbol{D_2}$ means the DGE's deduction (second half) in dollars.

$\boldsymbol{IW_2}$ means the amount of interstate wages paid or payable for the part of the designated period for the DGE occurring in the second half of the transitional financial year by each relevant group employer as a member of the group.

K means 1,300,000.

$\boldsymbol{TW_2}$ means the amount of taxable wages paid or payable for the part of the designated period for the DGE occurring in the second half of the transitional financial year by each relevant group employer as a member of the group.

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X see subsection (5).

(5) For subsections (3) and (4), the amount for ***X*** is to be worked out using the following formula—

$$\mathbf{X} = \frac{\mathbf{TW_{half} + IW_{half}}}{\mathbf{TW + IW}}$$

where—

IW means the amount of interstate wages paid or payable by each relevant group employer as a member of the group during the designated period for the DGE.

IW$_{half}$ means the amount of interstate wages paid or payable by each relevant group employer as a member of the group—

(a) in relation to the deduction (first half)—for the part of the designated period for the DGE occurring in the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the part of the designated period for the DGE occurring in the second half of the transitional financial year.

TW means the amount of taxable wages paid or payable by each relevant group employer as a member of the group during the designated period for the DGE.

TW$_{half}$ means the amount of taxable wages paid or payable by each relevant group employer as a member of the group—

(a) in relation to the deduction (first half)—for the part of the designated period for the DGE occurring in the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the part of the designated period for the DGE occurring in the second half of the transitional financial year.

(6) In this section—

relevant group employer, for the designated period for the DGE for a group in the transitional financial year, means an

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employer who was a member of the group for all or part of the designated period.

148E Working out final deduction for transitional financial year—employer other than the DGE for a group

(1) This section applies to an employer if—

(a) the employer is required, under section 64, to lodge a final return for a final period; and

(b) the employer is not the DGE for a group on the last day of the final period; and

(c) all or part of the final period occurs in the second half of the transitional financial year.

(2) Despite section 37, definition *final deduction*, the final deduction for the employer for the final period is the greater of zero and the amount worked out by adding the deduction (first half) and deduction (second half) for the employer.

(3) For subsection (2), the employer's ***deduction (first half)*** is the amount worked out using the following formula—

$$\mathbf{D_1} = \frac{\mathbf{FW_1}}{\mathbf{FW_1} + \mathbf{IW_1}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{4}}\left(\mathbf{FW_1} + \mathbf{IW_1} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

where—

A means the number of days in the part of the final period occurring in the first half of the transitional financial year for which the employer pays, or is liable to pay, wages.

B means the number of days in the part of the final period occurring in the second half of the transitional financial year for which the employer pays, or is liable to pay, wages.

C means the number of days in the transitional financial year.

$\boldsymbol{D_1}$ means the employer's deduction (first half) in dollars.

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FW_1 means the amount of the employer's final wages that are paid or payable for the part of the final period occurring in the first half of the transitional financial year.

IW_1 means the amount of interstate wages paid or payable by the employer for the part of the final period occurring in the first half of the transitional financial year.

K means 1,300,000.

X see subsection (5).

(4) Also, for subsection (2), the employer's ***deduction (second half)*** is the amount worked out using the following formula—

$$\mathbf{D_2} = \frac{\mathbf{FW_2}}{\mathbf{FW_2 + IW_2}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{FW_2 + IW_2} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

where—

A means the number of days in the part of the final period occurring in the first half of the transitional financial year for which the employer pays, or is liable to pay, wages.

B means the number of days in the part of the final period occurring in the second half of the transitional financial year for which the employer pays, or is liable to pay, wages.

C means the number of days in the transitional financial year.

D_2 means the employer's deduction (second half) in dollars.

FW_2 means the amount of the employer's final wages that are paid or payable for the part of the final period occurring in the second half of the transitional financial year.

IW_2 means the amount of interstate wages paid or payable by the employer for the part of the final period occurring in the second half of the transitional financial year.

K means 1,300,000.

X see subsection (5).

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(5) For subsections (3) and (4), the amount for ***X*** is to be worked out using the following formula—

$$\mathbf{X} = \frac{\mathbf{FW_{half} + IW_{half}}}{\mathbf{FW + IW}}$$

where—

FW means the amount of the employer's final wages for the final period.

$\boldsymbol{FW_{half}}$ means the amount of final wages paid or payable by the employer—

(a) in relation to the deduction (first half)—for the part of the final period occurring in the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the part of the final period occurring in the second half of the transitional financial year.

IW means the amount of interstate wages paid or payable by the employer for the final period.

$\boldsymbol{IW_{half}}$ means the amount of interstate wages paid or payable by the employer—

(a) in relation to the deduction (first half)—for the part of the final period occurring in the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the part of the final period occurring in the second half of the transitional financial year.

(6) In this section—

final wages see section 37.

wages does not include foreign wages.

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148F Working out final deduction for transitional financial year—DGE for a group

(1) This section applies to an employer if—

(a) on the last day of a final period, the employer is the DGE for a group; and

(b) all or part of the final period occurs in the second half of the transitional financial year.

(2) Despite section 41, definition *final deduction*, the final deduction for the DGE for the final period is the greater of zero and the amount worked out by adding the deduction (first half) and deduction (second half) for the DGE.

(3) For subsection (2), the DGE's ***deduction (first half)*** is the amount worked out using the following formula—

$$\mathbf{D_1} = \frac{\mathbf{TW_1}}{\mathbf{TW_1} + \mathbf{IW_1}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{4}}\left(\mathbf{TW_1} + \mathbf{IW_1} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

where—

A means the number of days—

(a) that are in the part of the final period occurring in the first half of the transitional financial year; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

B means the number of days—

(a) that are in the part of the final period occurring in the second half of the transitional financial year; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

C means the number of days in the transitional financial year.

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D_1 means the DGE's deduction (first half) in dollars.

IW_1 means the amount of interstate wages paid or payable for the part of the final period occurring in the first half of the transitional financial year by each relevant group employer as a member of the group.

K means 1,300,000.

TW_1 means the amount of taxable wages paid or payable for the part of the final period occurring in the first half of the transitional financial year by each relevant group employer as a member of the group.

X see subsection (5).

(4) Also, for subsection (2), the DGE's ***deduction (second half)*** is the amount worked out using the following formula—

$$\mathbf{D_2} = \frac{\mathbf{TW_2}}{\mathbf{TW_2 + IW_2}}\left(\left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right) - \frac{\mathbf{1}}{\mathbf{7}}\left(\mathbf{TW_2 + IW_2} - \left(\frac{\mathbf{K(A+B)}}{\mathbf{C}} \times \mathbf{X}\right)\right)\right)$$

where—

A means the number of days—

(a) that are in the part of the final period occurring in the first half of the transitional financial year; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

B means the number of days—

(a) that are in the part of the final period occurring in the second half of the transitional financial year; and

(b) for which 1 or more relevant group employers pay, or are liable to pay, as members of the group taxable wages or interstate wages, or taxable wages and interstate wages.

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C means the number of days in the transitional financial year.

$\boldsymbol{D_2}$ means the DGE's deduction (second half) in dollars.

$\boldsymbol{IW_2}$ means the amount of interstate wages paid or payable for the part of the final period occurring in the second half of the transitional financial year by each relevant group employer as a member of the group.

K means 1,300,000.

$\boldsymbol{TW_2}$ means the amount of taxable wages paid or payable for the part of the final period occurring in the second half of the transitional financial year by each relevant group employer as a member of the group.

X see subsection (5).

(5) For subsections (3) and (4), the amount for ***X*** is to be worked out using the following formula—

$$\mathbf{X} = \frac{\mathbf{TW_{half} + IW_{half}}}{\mathbf{TW + IW}}$$

where—

IW means the amount of interstate wages paid or payable for the final period by each relevant group employer as a member of the group.

$\boldsymbol{IW_{half}}$ means the amount of interstate wages paid or payable by each relevant group employer as a member of the group—

(a) in relation to the deduction (first half)—for the part of the final period occurring in the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the part of the final period occurring in the second half of the transitional financial year.

TW means the amount of taxable wages paid or payable for the final period by each relevant group employer as a member of the group.

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TW_{half} means the amount of taxable wages paid or payable by each relevant group employer as a member of the group—

(a) in relation to the deduction (first half)—for the part of the final period occurring in the first half of the transitional financial year; or

(b) in relation to the deduction (second half)—for the part of the final period occurring in the second half of the transitional financial year.

(6) In this section—

relevant group employer, for a final period for the DGE for a group, means an employer who was a member of the group for all or part of the final period.

Subdivision 3 Provisions for returns

148G Additional information required for particular annual returns

(1) This section applies in relation to an annual return for the transitional financial year if a provision under subdivision 2, or the repealed *Payroll Tax (Transitional) Regulation 2022*, part 2, applies for working out the annual deduction for the taxable wages the subject of the annual return.

(2) In addition to the requirements under section 63(3), the return must also state—

(a) if the employer is the DGE for a group—the wages that were paid or payable by each relevant group employer as a member of the group for the part of the designated period for the DGE occurring in the second half of the transitional financial year; or

(b) for another employer—the wages that were paid or payable by the employer for the second half of the transitional financial year, other than wages that were included, or required to be included, in a final return for a final period for the employer during the financial year.

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(3) In this section—

relevant group employer, for the designated period for the DGE for a group in the transitional financial year, means an employer who was a member of the group for all or part of the designated period.

148H Additional information required for particular final returns

(1) This section applies in relation to a final return for the transitional financial year if a provision under subdivision 2, or the repealed *Payroll Tax (Transitional) Regulation 2022*, part 2, applies for working out the final deduction for taxable wages the subject of the final return.

(2) In addition to the requirements under section 64(3), the return must also state—

(a) if the employer is the DGE for a group—the wages that were paid or payable by each relevant group employer as a member of the group for the part of the final period occurring in the second half of the transitional financial year; or

(b) for another employer—the wages that were paid or payable by the employer for the part of the final period occurring in the second half of the transitional financial year.

(3) In this section—

relevant group employer, for a final period for the DGE for a group, means an employer who was a member of the group for all or part of the final period.

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Part 16 Transitional provisions for Betting Tax and Other Legislation Amendment Act 2022

149 Imposition and calculation of mental health levy for 2022–23 financial year

(1) The mental health levy is not imposed on taxable wages paid or payable before 1 January 2023.

(2) A reference in part 2, division 5A to 5C to taxable wages or interstate wages paid or payable by a person for a financial year is, for the financial year ending 30 June 2023, taken to be a reference to taxable wages or interstate wages paid or payable by a person for the period from 1 January to 30 June 2023.

(3) For the application of part 2, division 5A to the financial year ending 30 June 2023, 1 January 2023 is taken to be a calculation day under section 43EB.

(4) For the application of part 2, division 5A to 5C to the financial year ending 30 June 2023—

(a) a reference in section 43C(1) or (2) to $10m is taken to be a reference to $5m; and

(b) a reference in section 43D(1) or (2) to $100m is taken to be a reference to $50m; and

(c) a reference in section 43I, definition *additional annual levy amount* to $100m is taken to be a reference to $50m; and

(d) a reference in section 43I, definition *primary annual levy amount* to $10m is taken to be a reference to $5m; and

(e) a reference in section 43M, definition *additional final levy amount* to $100m is taken to be a reference to $50m; and

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(f) a reference in section 43M, definition *primary final levy amount* to $10m is taken to be a reference to $5m.

150 Notification requirements for groups in January 2023

(1) An employer who is a non-DGE group member on 1 January 2023 must, on or before 9 January 2023, give the following information to the DGE for the group—

(a) the employer's name and ABN;

(b) an estimate of the total amount of the taxable wages, and the total amount of any interstate wages, that will be payable by the employer as a member of the group for the period from 1 January to 30 June 2023.

(2) An employer who is the DGE for a group on 9 January 2023 must, on or before 30 January 2023, give the following information to each employer who was a non-DGE group member on 1 January 2023—

(a) an estimate of the total amount of the taxable wages that will be payable by all group members for the period from 1 January to 30 June 2023;

(b) an estimate of the total amount of the interstate wages that will be payable by all group members for the period from 1 January to 30 June 2023.

(3) The information given under subsection (2) may be determined from the information received under subsection (1).

(4) A person must not fail, without reasonable excuse, to comply with subsection (1) or (2).

Maximum penalty—100 penalty units.

151 Notification requirements under s 88A for 2022–23 financial year

Section 88A applies to the financial year ending 30 June 2023 as a relevant financial year as follows—

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(a) to remove any doubt, it is declared that—

(i) section 88A(2) to (4) does not apply to the relevant financial year; and

(ii) a reference in section 88A(5) to the following financial year is a reference to the financial year starting 1 July 2023;

(b) a reference in section 88A(5) to the relevant financial year is taken to be a reference to the period from 1 January to 30 June 2023.

Part 17 Transitional provision for Home Ownership and Other Legislation Amendment Act 2026

152 Retrospective effect of s 74

(1) New section 74 and each consequentially amended provision is taken to have had effect from 31 October 2018.

(2) In this section—

consequentially amended provision means new sections 70, 71, 72, 73, 80 and 80A.

new, in relation to a provision of this Act, means the provision as in force from the commencement.

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Schedule Dictionary

section 2

actual periodic deduction, for part 2, division 3, subdivision 1, see section 17.

additional annual levy amount, for part 2, division 5B, see section 43I.

additional final levy amount, for part 2, division 5C, see section 43M.

additional periodic threshold, for part 2, division 5A, see section 43E.

adjusted additional threshold, for part 2, division 5A, see section 43D.

adjusted primary threshold, for part 2, division 5A, see section 43C.

Administration Act means the *Taxation Administration Act 2001*.

administrator see the Administration Act, schedule 2.

aggregate interest, for part 4, division 2A, see section 74B.

amended, for part 7, see section 98.

amended Act—

(a) for part 7, see section 98; and

(b) for part 9, see section 135.

amending Act—

(a) for part 7, see section 98; and

(b) for part 9, see section 135.

annual adjustment amount—

(a) for part 2, division 4, subdivision 1, see section 29(1); and

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(b) for part 2, division 4, subdivision 2, see section 33.

annual deduction—

(a) for part 2, division 4, subdivision 1, see section 29(1); and

(b) for part 2, division 4, subdivision 2, see section 33.

annual levy adjustment amount, for part 2, division 5B, see section 43I.

annual levy amount, for part 2 division 5B, see section 43I.

annual levy liability see section 43J.

annual liability—

(a) for an employer other than the DGE for a group—see section 30(1); and

(b) for the DGE for a group—see section 34(1).

annual payroll tax amount—

(a) for part 2, division 4, subdivision 1, see sections 29(1) and 48(4); and

(b) for part 2, division 4, subdivision 2, see section 33.

annual refund amount—

(a) for an employer other than the DGE for a group—see section 31(2); or

(b) for the DGE for a group—see section 35(2).

annual return means a return mentioned in section 63.

annual wages—

(a) for part 2, division 4, subdivision 1, see section 29(1); and

(b) for part 2, division 4, subdivision 2, see section 33.

approved form see section 96.

approved information system see the Administration Act, schedule 2.

assessed interest, see the Administration Act, section 54(4).

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assessment see the Administration Act, schedule 2.

associated persons, for part 4, division 2A, see section 74B.

Australia means the States.

averaging method, for part 2, division 1D, subdivision 1, see section 13X.

averaging period, for part 2, division 1D, subdivision 1, see section 13X.

business, for part 4, see section 66.

business journey, for part 2, division 1D, subdivision 1, see section 13X.

business vehicle, for part 2, division 1D, subdivision 1, see section 13X.

calculation day—

(a) for part 2, division 3, subdivision 1, see section 18; and

(b) for part 2, division 3, subdivision 2, see section 24; and

(c) for part 2, division 5A, see section 43EB.

change of status see section 5(1).

combined periodic liability, for part 2, division 5B, see section 43H.

commencement, for part 7, see section 98.

commissioner means the Commissioner of State Revenue appointed under the Administration Act.

company includes all bodies and associations (corporate and unincorporate) and partnerships.

continuous recording method, for part 2, division 1D, subdivision 1, see section 13X.

contract, for part 2, division 1A, see section 13A.

corporation see the Corporations Act.

corresponding law means—

(a) in relation to Queensland—a law in force in Queensland imposing on employers a tax on wages paid or payable

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by them and the assessment and collection of the tax, but does not include this Act; and

(b) in relation to another State—means a law in force in the State imposing on employers a tax on wages paid or payable by them and the assessment and collection of the tax.

criteria for registration, for part 3, division 1, see section 52.

current financial year, for a periodic return period, for part 2, division 5A, see section 43EA.

designated group employer, in relation to a group, means the member of that group who under section 75 is for the time being the designated group employer in respect of that group.

designated period, for an employer who is the DGE for a group on 30 June in a financial year—

(a) means the part of the year for which the employer was the DGE for the group; but

(b) does not include a part of the year for which the DGE lodged, or was required under section 64(2) to lodge, a final return.

DGE means designated group employer.

direct interest, for part 4, division 2A, see section 74B.

director—

(a) of a company, includes a member of the governing body of the company; and

(b) for part 2, division 1C, see section 13N.

eligible year means a financial year ending 30 June 2010, 2011, 2012, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 or 2027.

employer means any person who pays or is liable to pay any wages and includes the Crown in right of the State of Queensland and any person taken to be an employer under another provision of this Act.

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Note—

For provisions under which persons are taken to be employers, see, for example, sections 13C (relevant contract employers) and 13H (employment agents under employment agency contracts).

employment agency contract see section 13G(1).

employment agent, under an employment agency contract, see section 13G(1).

entitled group member, for part 2, division 6, see section 44.

excess deduction, for part 2, division 6, see section 45(2).

false or misleading includes false or misleading because of the omission of a statement.

final adjustment amount—

(a) for part 2, division 5, subdivision 1, see section 37; and

(b) for part 2, division 5, subdivision 2, see section 41.

final deduction—

(a) for part 2, division 5, subdivision 1, see section 37; and

(b) for part 2, division 5, subdivision 2, see section 41.

final levy adjustment amount, for part 2, division 5C, see section 43M.

final levy amount, for part 2, division 5C, see section 43M.

final levy liability see section 43N.

final liability—

(a) for an employer other than the DGE for a group—see section 38(1); and

(b) for the DGE for a group—see section 42(1).

final payroll tax amount—

(a) for part 2, division 5, subdivision 1, see sections 37 and 49(4); and

(b) for part 2, division 5, subdivision 2, see section 41.

final period see section 6.

final refund amount—

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(a) for an employer other than the DGE for a group—see section 39(2); or

(b) for the DGE for a group—see section 43(2).

final return means a return mentioned in section 64.

final wages—

(a) for part 2, division 5, subdivision 1, see section 37; and

(b) for part 2, division 5, subdivision 2, see section 41; and

(c) for part 2, division 5C, see section 43M.

fixed periodic deduction—

(a) for part 2, division 3, subdivision 1, see section 17; and

(b) for part 2, division 3, subdivision 2, see section 23.

foreign wages means wages that are not taxable wages and are not interstate wages.

fringe benefit means—

(a) a benefit that, in relation to an employee, or an employer of an employee, is a fringe benefit under the Fringe Benefits Assessment Act; or

(b) anything prescribed by regulation to be a fringe benefit;

but does not include—

(c) a car parking fringe benefit within the meaning of that Act; or

(d) anything prescribed by regulation not to be a fringe benefit.

Fringe Benefits Assessment Act means the *Fringe Benefits Tax Assessment Act 1986* (Cwlth).

granted, for part 2, division 1C, see section 13N.

grantee, for part 2, division 1C, see section 13N.

grantor, for part 2, division 1C, see section 13N.

group means a group constituted under part 4.

group member means a person who is a member of a group.

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indirect interest, for part 4, division 2A, see section 74B.

interstate wages means wages that are taxable wages within the meaning of a corresponding law.

liquidator means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company.

mental health levy means mental health levy imposed under section 12A.

non-DGE group member means a group member, other than the DGE for the group.

number of exempt kilometres, for part 2, division 1D, subdivision 1, see section 13X.

option means an option or right, whether actual, prospective or contingent, of a person to—

(a) acquire a share; or

(b) have a share transferred or allotted to the person.

order of entitled group members, for part 2, division 6, see section 44.

original assessment see the Administration Act, schedule 2.

paid or payable, in relation to wages that are fringe benefits, means—

(a) paid;

(b) if another meaning is prescribed by regulation—that meaning.

partial amount, for a periodic return period, means the amount worked out using the following formula—

$$\mathbf{PA} = \mathbf{PL} \times \frac{\mathbf{X}}{\mathbf{Y}}$$

where—

PA means the partial amount in dollars.

PL means the employer's periodic liability for the period.

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X means the number of days in the period that are in the final period.

Y means the total number of days in the period.

partial levy amount, for part 2, division 5C, see section 43M.

pay, in relation to wages, includes provide, confer and assign.

payroll tax means payroll tax chargeable under section 10.

penalty tax see the Administration Act, section 58(1).

periodic levy liability see section 43F(1).

periodic levy liability amount see section 43M.

periodic liability—

(a) for an employer other than the DGE for a group, see section 20(1); or

(b) for the DGE for a group, see section 26.

periodic liability amount, for an employer for a final period, means the sum of—

(a) the employer's periodic liability for a periodic return period wholly within the final period, even if the return date for lodging the periodic return is after the return date for lodging the final return; and

(b) for a day in the final period not included in a periodic return period mentioned in paragraph (a)—the partial amount for the periodic return period that includes the day, even if the return date for lodging the periodic return is after the return date for lodging the final return.

periodic return means a return mentioned in section 59.

periodic return period, for lodgement of periodic returns by an employer, means the period under section 60 for which the employer is required to lodge periodic returns.

post-commencement liability, for part 7, see section 98.

pre-amended Act, for part 9, see section 135.

pre-commencement act or omission, for part 7, see section 98.

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pre-commencement liability, for part 7, see section 98.

prescribed levy liability means a liability for any of the following—

(a) the mental health levy;

(b) unpaid tax interest in relation to an assessment of liability for the mental health levy;

(c) penalty tax in relation to an assessment of liability for the mental health levy;

(d) any other amount payable under this Act or the Administration Act, or a liability to pay costs ordered by a court or QCAT, in relation to the mental health levy.

prescribed payroll tax liability means a liability for any of the following—

(a) payroll tax;

(b) unpaid tax interest in relation to an assessment of liability for payroll tax;

(c) penalty tax in relation to an assessment of liability for payroll tax;

(d) any other amount payable under this Act or the Administration Act, or a liability to pay costs ordered by a court or QCAT, in relation to payroll tax.

prescribed period, for part 7, see section 98.

previous, for part 7, see section 98.

previous return period, for part 7, see section 98.

primary annual levy amount, for part 2, division 5B, see section 43I.

primary final levy amount, for part 2, division 5C, see section 43M.

primary periodic threshold, for part 2, division 5A, see section 43E.

private company, for part 4, division 2A, see section 74B.

reasonably believes see the Administration Act, schedule 2.

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reassessment see the Administration Act, schedule 2.

related body corporate, for part 4, see section 66.

related persons, for part 4, division 2A, see section 74B.

relevant contract see section 13B.

relevant contract employee see section 13A.

relevant contract employer see section 13C(3).

relevant day, for part 2, division 1C, see section 13N.

relevant employer—

(a) for part 3, division 2, see section 58; and

(b) for part 9, see section 135.

relevant entity, for part 4, division 2A, see section 74B.

relevant financial year means—

(a) for part 2, division 6, see section 44; or

(b) for part 2, division 6A, see section 49A.

relevant group employer—

(a) for part 2, division 4, subdivision 2, see section 33; and

(b) for part 2, division 5, subdivision 2, see section 41; and

(c) for part 2, division 5C, see section 43M.

relevant percentage, for part 2, division 1D, subdivision 1, see section 13X.

relevant wages, for part 9, see section 135.

re-supply, for part 2, division 1A, see section 13A.

return means a form approved for lodgement by an employer.

return date, for lodgement of a periodic return, annual return or final return by an employer, means the date by which the employer is required under part 3, division 2 to lodge the return and pay tax.

return period, in relation to an employer, means each of the following periods for which the employer is required under this Act to lodge a return—

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(a) a periodic return period;

(b) a financial year;

(c) a final period.

self assessment see the Administration Act, schedule 2.

service provider, in relation to an employment agency contract, see section 13G(1).

services, for part 2, division 1A, see section 13A.

share means a share in a company and includes a stapled security.

significant wage change—

(a) for part 2, division 3, subdivision 1, see section 19; and

(b) for part 2, division 3, subdivision 2, see section 25; and

(c) for part 2, division 5A, see section 43EC.

State includes a Territory.

superannuation contribution see section 3.

supply, for part 2, division 1A, see section 13A.

tax see the Administration Act, schedule 2.

taxable wages means wages that, under section 9, are liable to payroll tax and the mental health levy.

tax law liability see the Administration Act, schedule 2.

termination payment see section 3A.

transitional final period, for part 7, see section 98.

transitional return period, for part 7, see section 98.

transitional year, for part 7, see section 98.

trustee, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, includes—

(a) an executor or administrator, guardian, committee, receiver or liquidator; and

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(b) every person having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of any real or personal property of a person under any legal or other disability.

unpaid tax interest see the Administration Act, section 54(1).

vesting day, for part 2, division 1C, see section 13N.

voting share see the Corporations Act, part 1.2, section 9.

wages, for part 2, division 5, subdivision 1, see section 37.

wages—

1 means any wages, remuneration, salary, commission, bonuses or allowances paid or payable (whether at piecework rates or otherwise and whether paid or payable in cash or in kind) to an employee as an employee, and, without limiting the generality of the foregoing, includes—

(a) any amount paid or payable by way of remuneration to a person holding office under the Crown in right of the State of Queensland or in the service of the Crown in right of the State of Queensland; and

(b) any amount paid or payable under any prescribed classes of contracts to the extent to which that payment is attributable to labour; and

(c) any amount paid or payable by a company by way of remuneration to a director of that company; and

(d) any amount paid or payable by way of commission to an insurance or time payment canvasser or collector; and

(e) the provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee's services; and

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(f) fringe benefits; and

(g) a superannuation contribution, other than a superannuation contribution—

(i) paid or payable by a company for a director of the company before 1 July 2008; or

(ii) for services performed or rendered by an employee before 1 January 2000; and

(h) a termination payment; and

(i) an amount taken to be wages under another provision of this Act; and

Note—

See, for example, sections 13E (amounts paid or payable under a relevant contract), 13J (amounts paid or payable under an employment agency contract) and 51 (amounts paid or payable by or to third parties).

(j) a share or option granted by an employer to an employee in relation to services performed or rendered by the employee, if the share or option is—

(i) an ESS interest under the *Income Tax Assessment Act 1997* (Cwlth), section 83A-10; and

(ii) granted to the employee under an employee share scheme within the meaning of that section; and

Note—

See part 2, division 1C for provisions that apply for interpreting this paragraph.

(k) a share or option granted by a company to a director of the company by way of remuneration for the appointment or services of the director.

Note—

See part 2, division 1C for provisions that apply for interpreting this paragraph.

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2 However, *wages* does not include a benefit that is an exempt benefit under the Fringe Benefits Assessment Act.

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