

1978-79-80

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PAY-ROLL TAX (TERRITORIES) ASSESSMENT
AMENDMENT BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. John Howard, M.P.)

Introductory Note

The purpose of this memorandum is to explain the features of the amending Bill. The Bill relates to pay-roll tax in the Australian Capital Territory and will amend the Pay-roll Tax (Territories) Assessment Act 1971 to increase the annual general exemption from \$66,000 to \$72,000, with the higher level to apply from 1 January 1980.

General Exemption
(Clause 3)

The amount that may be deducted by way of general exemption in monthly or other periodical returns is to be increased from \$5,500 per month to \$6,000 per month. As a general rule, the higher exemption is to first apply in respect of the month during which the Bill receives the Royal Assent but end of the year adjustments will back-date the benefits to 1 January 1980. Where a return is lodged on an annual basis the increased general exemption is to apply from 1 January 1980. The exemption will, as previously, be reduced by an amount of \$2 for every \$3 by which the amount of the pay-roll for the month or period exceeds the general exemption.

Adjustment of liabilities on annual basis
(Clause 4)

A refund or rebate is made of the whole of the pay-roll tax paid or payable by an employer over the course of a financial year if the total wages included in returns required

to be furnished under the Commonwealth Act or corresponding State or Northern Territory laws do not exceed the relevant annual exemption.

A refund or rebate is also made if, over the course of a financial year, there has not been deducted in returns furnished by an employer under the Commonwealth Act or corresponding State or Northern Territory laws an amount equal to the annual exemption that would have been allowable if the total Australia-wide pay-roll was related to the Australian Capital Territory.

Correspondingly, additional tax is payable where there has been deducted in monthly or other periodical returns lodged for a financial year an amount in excess of the exemption entitlement calculated on an annual basis.

For the year that commenced on 1 July 1979 any refund or rebate or any additional tax payable by a full year employer will be calculated by reference to an annual exemption of \$69,000 reduced by \$2 for every \$3 by which the Australia-wide pay-roll exceeds that amount. The exemption limit of \$69,000 represents \$33,000 (one-half of the present \$66,000) for the period 1 July 1979 to 31 December 1979 and \$36,000 (one-half of the proposed \$72,000) for the period 1 January 1980 to 30 June 1980. Where an employer is an employer for part only of the financial year any refund or rebate or additional tax will be calculated by reference to an amount determined by appropriate apportionment of the relevant amounts for each half of the year.

Employers who lodge returns otherwise than on an annual basis (most lodge on a monthly basis) will not have received the benefit of the higher monthly exemption in returns covering months prior to the one during which the Bill receives the Royal Assent. The annual adjustment provisions will allow these employers to obtain the full benefit of the 1 January 1980 starting date for the higher annual exemption.

For the year commencing on 1 July 1980 and each subsequent year, any refund or rebate or any additional tax payable will be calculated by reference to an annual exemption of \$72,000 reduced by \$2 for every \$3 by which the Australia-wide pay-roll exceeds that amount, or a proportion of the amount of \$72,000 similarly reduced, where the employer was an employer in Australia for only part of the financial year.

Registration (Clause 5)

It will not be necessary for an employer to register as an employer for pay-roll tax purposes after the day on which the Bill comes into operation unless the employer's Australia-wide wages exceed \$1,350 per week.

Notes on each clause of the Bill are set out hereunder.

Clause 1 : Short title

This clause formally provides for the short title of the amending Act and for the Pay-roll Tax (Territories) Assessment Act 1971 to be referred to as the Principal Act.

Clause 2 : Commencement

Section 5(1A) of the Acts Interpretation Act 1901 provides that every Act shall come into operation on the 28th day after the day on which it receives the Royal Assent, unless the contrary intention appears in the Act. By this clause, the amending Act will come into operation or be deemed to have come into operation, as the case requires, on the first day of the month in which it receives the Royal Assent.

Clause 3 : General exemption

Under the provisions of the Principal Act an employer who pays wages, either wholly in the Australian Capital Territory or partly in the Australian Capital Territory and partly in one or more States or the Northern Territory, at a rate in excess of \$1,250 per week is required to lodge a pay-roll tax return. Sub-section 12(1) of the Principal Act provides for a deduction of an amount, determined by reference to a "prescribed amount", from the amount of wages included in a return for a month or such other period as has been approved.

In the case of an employer who pays wages only in the Australian Capital Territory, the amount of the monthly deduction entitlement is \$5,500 - the prescribed amount - reduced by an amount of \$2 for every \$3 by which the wages included in the return exceed \$5,500.

In the case of an employer who pays wages in the Australian Capital Territory and also in one or more States or the Northern Territory no amount is allowable as a deduction unless a nomination has been served on the Commissioner of Taxation nominating an amount not exceeding \$5,500 as the amount the employer claims to be entitled to deduct for a month from wages related to the Australian Capital Territory.

Where a nomination is served on the Commissioner, the deduction is generally, by virtue of paragraph (3)(b) of section 12 and succeeding provisions of section 12 of the Principal Act, an amount that bears to the maximum monthly entitlement (\$5,500 reduced by \$2 for every \$3 by which the Australia-wide wages exceeds that amount) the same proportion as the wages paid by the employer in respect of the Australian Capital Territory bears to his Australia-wide wages.

Sub-clause (1) of clause 3 proposes amendments of sub-sections 12(3), 12(4) and 12(7) of the Principal Act to increase the prescribed amount and the maximum amount able to be nominated by an employer from \$5,500 to \$6,000 per month to accord with the proposal to increase the annual exemption from \$66,000 to \$72,000.

By sub-clause (2) of clause 3 the amendments to section 12 of the Principal Act made by sub-clause (1) will apply to a return or assessment in respect of a month or period that commences on or after the first day of the month in which the amending Bill receives the Royal Assent, or which commences before that day but ends on or after that day. Where a return or assessment is in the latter category then, for the application of section 12 as amended, the return or assessment will be taken to relate to two periods, one period ending on the last day of the month prior to the month in which the Bill receives the Royal Assent and the other period commencing on the day the Bill comes into operation.

Sub-clause (3) of clause 3 proposes that in respect of a return or assessment covering the whole of the financial year ending on 30 June 1980 the amendments made by sub-clause (1) apply as if the amending Act had come into operation on 1 January 1980.

Clause 4 : Refund or rebate of tax
on annual adjustment

The adjustments of pay-roll tax liabilities on an annual basis, as outlined in the explanations in the Introductory Note that relate to clause 4, are governed by provisions in section 14 of the Principal Act (as regards entitlements to refunds or rebates) and in section 15A (as regards liabilities to pay further tax). The extent of the adjustment in each case is to be determined by reference to the amount that is the "prescribed amount" in relation to the employer concerned.

The methods of ascertaining the prescribed amounts for various financial years are laid down -

- (a) for an employer who was an employer in Australia during the whole of the financial year concerned - in sub-section (4A) of section 14; and
- (b) for an employer who was an employer in Australia during only a part of a financial year - in sub-section (4B) of that section.

In relation to each of those cases, the method of ascertaining the prescribed amount for 1979-80 and each subsequent financial year is set out in paragraph (d) of the relevant sub-section. The amendments to be effected by clause 4 will provide for the basis of operation of sub-sections (4A) and (4B) in ascertaining the prescribed amounts for 1979-80 and each subsequent year. The amendments will be explained in more detail later.

Sub-section (1A) of section 14 authorises the refund or rebate of all of the Australian Capital Territory pay-roll tax paid during a year where an employer's Australia-wide wages do not exceed the prescribed amount (known as the "general

exemption") applicable in the particular circumstances of his own case.

Sub-section (2) provides that the total deductions allowed in an employer's monthly or other periodic pay-roll tax returns lodged in a Territory or State should be compared with the prescribed amount, determined by reference to Australia-wide wages, applicable in the particular circumstances of his own case. If the total deductions in the returns for a financial year are less than the prescribed amount, a refund or rebate of the pay-roll tax paid or payable is allowable.

The refund or rebate allowable in the case of an employer who pays wages only in respect of the Australian Capital Territory is an amount equal to the tax on the amount by which the deductions allowed in Australian Capital Territory returns for the financial year fall short of the prescribed amount.

In the case of an employer who pays wages in the Australian Capital Territory and also in one or more States or the Northern Territory, the refund or rebate allowable is an amount equal to the tax on the lesser of the amount by which the deductions allowed on an Australia-wide basis for the financial year fall short of the prescribed amount and the amount by which deductions allowed in Australian Capital Territory returns fall short of the amount of "calculated deductions". The amount of "calculated deductions" is ascertained, in accordance with sub-section (5) of section 14, by applying to the prescribed amount the fraction that the amount of the Australian Capital Territory wages bears to the employer's Australia-wide wages.

A refund or rebate under sub-section (1A) or (2) may be made only on the application of the employer in accordance with sub-section 14(3), which requires that the application be made in the financial year following that in respect of which the refund or rebate is claimed.

Clause 4 proposes amendments of sub-section (4A) of section 14, which applies to employers who are employers in Australia during the whole of the relevant financial year, to increase, with effect from 1 January 1980, the level of the annual general exemption from the existing level of \$66,000 (reduced by \$2 for every \$3 by which the Australia-wide pay-roll exceeds that amount) to \$72,000, similarly reduced. For the financial year 1979-80 an exemption level of \$69,000 is proposed representing \$33,000 (one-half of the present \$66,000) for the period 1 July 1979 to 31 December 1979 and \$36,000 (one-half of the proposed \$72,000) for the period 1 January 1980 to 30 June 1980.

Clause 4 also proposes amendments of sub-section (4B), which applies to employers who are employers in Australia during only part of the relevant financial year, to allow their

proportionate entitlement to be determined by reference to the higher general exemption.

Paragraph (a) of clause 4 is a drafting measure relating to the proposed inclusion of an additional paragraph in sub-section (4A).

Paragraph (b) will substitute a new paragraph (d) for the existing paragraph (d) of sub-section (4A) to provide, where an employer is an employer in Australia for the whole of the financial year which commenced on 1 July 1979, for an exemption level of \$69,000 - expressed as the aggregate of \$33,000 and \$36,000 to secure proper inter-action with the proposed new paragraph (d) of sub-section (4B) - reducing by \$2 for each \$3 by which the employer's Australia-wide wages for that year exceed \$69,000. Paragraph (b) will also introduce a new paragraph (e) into sub-section (4A). It will apply where an employer is an employer in Australia for the whole of the financial year and will provide for the prescribed amount (i.e., the amount of the general exemption calculated by reference to the employer's Australia-wide wages) for the financial year commencing on 1 July 1980 and each subsequent financial year to be the amount of \$72,000 reduced by \$2 for every \$3 by which the employer's Australia-wide wages for the relevant financial year exceed \$72,000.

Paragraph (c) is another drafting measure relating on this occasion to the proposed inclusion of an additional paragraph in sub-section (4B) of section 14.

Paragraph (d) will substitute a new paragraph (d) for the existing paragraph (d) of sub-section (4B) to provide, where an employer is an employer in Australia for only part of the financial year which commenced on 1 July 1979, for a prescribed amount calculated by reference to the same proportion of the relevant amounts of \$33,000 for the period 1 July 1979 to 31 December 1979 and \$36,000 for the period 1 January 1980 to 30 June 1980, as the period of employment during each of those six month periods bears to six months. Paragraph (d) of clause 4 will also introduce a new paragraph (e) into sub-section (4B). It will apply where an employer is an employer in Australia for only part of the financial year and will provide for the prescribed amount for the financial year commencing on 1 July 1980 and each subsequent financial year to be ascertained by scaling down the amount of \$72,000 referred to in paragraph (e) of sub-section (4A) on a time basis by reference to the actual period during which the employer was an employer in Australia during the relevant financial year and reducing the resultant amount by \$2 for every \$3 by which the Australia-wide wages exceed the resultant amount.

The effects of amendments to section 14 of the Principal Act proposed by clause 4 to provide the higher level of exemption for 1979-80 and subsequent years will be reflected in the operation of section 15A. That section applies to

employers who furnish returns otherwise than on an annual basis and provides for the payment of further tax on the basis of an adjustment at the end of a financial year where there has been deducted in monthly or other periodical returns lodged by an employer in the Australian Capital Territory an amount in excess of the exemption entitlement calculated on an annual basis. In the case of an employer who pays wages only in respect of the Australian Capital Territory, the exemption entitlement is the prescribed amount applicable in his own particular circumstances as determined under section 14. In the case of an employer who pays wages in the Australian Capital Territory and also in one or more States or the Northern Territory, the exemption entitlement is the amount of calculated deductions applicable in his own circumstances, also as determined under section 14.

Clause 5 : Registration

By clause 5 it is proposed to amend section 16 of the Principal Act which requires an employer to register as an employer for territory pay-roll tax purposes where wages are paid during a month, either wholly or partly in the Australian Capital Territory, at a rate in excess of \$1,250 per week on an Australia-wide basis. In line with the proposal to increase the general exemption level to \$72,000 it is proposed by clause 5 that there should be no liability to register as an employer for pay-roll tax purposes on or after the day on which the Bill comes into operation unless the Australia-wide wages payable by the employer exceed \$1,350 per week.