

1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PAY-ROLL TAX (TERRITORIES) ASSESSMENT AMENDMENT ACT 1982

EXPLANATORY MEMORANDUM

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

General outline

This Bill will amend the Pay-roll Tax (Territories) Assessment Act 1971 to increase the level of exemption from pay-roll tax in the Australian Capital Territory from \$80,000 to \$120,000 per annum with effect from 1 September 1981 and to provide for future increases to be prescribed by regulation.

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 \$6,700 per month to \$10,000 per month. As a general rule, the higher exemption is to first apply in this way in respect of the month during which the Bill receives the Royal Assent but end of the year adjustments will reflect the commencement date of 1 September 1981. 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. Future increases in the general exemption will be capable of being prescribed by regulation.

Adjustment of liabilities on annual basis

(Clauses 4 and 6)

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 does 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.

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 commencing on 1 July 1981 any refund or rebate or any additional tax payable will be calculated by reference to an annual exemption of \$113,400 reduced by \$2 for every \$3 by which the Australia-wide pay-roll exceeds that amount. The exemption limit of \$113,400 represents \$13,400 (one-sixth of the present \$80,400) for the period 1 July 1981 to 31 August 1981 and \$100,000 (five-sixths of the proposed \$120,000) for the period 1 September 1981 to 30 June 1982. 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 a proportion of the relevant amount, having regard to the level of exemption applicable during the period that the employer was an employer.

Employers who have lodged returns, including on an annual basis, in respect of the 1981-82 financial year will not have received the benefit of the higher monthly exemption. The annual adjustment provisions will allow these employers to obtain the full benefit of the 1 September 1981 starting date for the higher annual exemption.

For the year commencing 1 July 1982 and each subsequent year, any refund or rebate or any additional tax payable will, subject to any future increase in the annual exemption, be calculated by reference to an annual exemption of \$120,000 reduced by \$2 for every \$3 by which the Australia-wide pay-roll exceeds that amount, or a proportion of the amount of \$120,000 similarly reduced, where the employer was an employer in Australia for only part of the financial year.

Employers who lodge returns otherwise than on an annual basis (normally on a monthly basis) in respect of the 1982-83 financial year 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 benefit of the new annual exemption for the full year.

Future increases in the level of the annual exemption are to be capable of being prescribed by regulation.

Registration (Clauses 5 and 6)

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 wage exceeds \$2,250 per week or such higher amount as is prescribed by regulation.

Formal amendments (Clause 7)

Formal amendments to the Pay-roll Tax (Territories) Assessment Act 1971 are proposed to effect changes in drafting style. The amendments will not affect the operation of the Act.

Notes on individual clauses of the Bill follow.

Clause 1 : Short title etc.

By sub-clause (1) of this clause the amending Act is to be cited as the Pay-roll Tax (Territories) Assessment Amendment Act 1982. By sub-clause (2), the Pay-roll Tax (Territories) Assessment Act 1971 is to be referred to in the amending Act as the "Principal Act".

Clause 2 : Commencement

By this clause the amending Act is to come into operation on the first day of the month in which it receives the Royal Assent. But for this clause the amending Act would, by reason of sub-section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent. In conjunction with clause 3, the effect of clause 2 will be to ensure that the increase in the general exemption, as it applies to monthly returns, will first apply to returns for the month in which the amending Act 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 \$1,500 per week is required to lodge a pay-roll tax return. For the purposes of determining the amount of the wages included in a return for a month or other period in which pay-roll tax is payable, sub-section 12(1) of the Principal Act authorises a deduction from those wages of an amount, determined by reference to a "prescribed amount".

In the case of an employer who pays wages only in the Australian Capital Territory, the amount of the monthly deduction entitlement is \$6,700. This "prescribed amount" is reduced by \$2 for every \$3 by which the wages included in the return exceed \$6,700.

Where an employer 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 \$6,700 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) and succeeding provisions of section 12 of the Principal Act, an amount that bears to the maximum monthly entitlement (\$6,700 reduced by \$2 for every \$3 by which the Australia-wide wages exceed that amount) the same proportion as the wages paid by the employer in respect of the Australian Capital Territory bear to the employer's Australia-wide wages.

Sub-clause 3(1) 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 that an employer may nominate from \$6,700 to \$10,000 per month to accord with the proposal to increase the annual exemption from \$80,400 to \$120,000.

Further amendments proposed by sub-clause 3(1) will insert new sub-section 12(9) in the Principal Act which will apply, in conjunction with amendments proposed by clause 6, to enable future increases in the level of the general exemption to be prescribed by regulation.

By sub-clause 3(2) the amendments made by sub-clause (1) will apply, subject to sub-clause (3), 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 following day.

Sub-clause 3(3) proposes that in respect of a return or assessment covering the whole of the financial year ending on 30 June 1982 the amendments made by sub-clause (1) apply as if the amending Act had come into operation on 1 September 1981.

Sub-clause 3(4) ensures that, for a return or assessment covering the whole of the financial year ending on 30 June 1983, the higher general exemption is taken to apply for the whole of the financial year.

Clause 4 : Refund or rebate of tax
on annual adjustment

Adjustments of pay-roll tax liabilities on an annual basis 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 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 a financial year are laid down -

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

The amendments to be effected by clause 4 will provide for the basis of operation of sub-sections 14(4A) and 14(4B) in ascertaining the prescribed amounts for 1981-82 and each subsequent year.

Sub-section 14(1A) of the Principal Act 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 the case.

Sub-section 14(2) covers the situation where the total deductions allowed in an employer's monthly, or other periodic, pay-roll tax returns lodged in a Territory or State are less than the prescribed amount, determined by reference to Australia-wide wages, applicable in the particular circumstances. Where that occurs and the employer makes the necessary application to the Commissioner, an appropriate refund or rebate of pay-roll tax is allowable.

The refund or rebate allowable for 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, 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 14(5) 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 14(1A) or 14(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 will amend sub-section 14(4A) of the Principal Act - which applies to employers who are employers in Australia during the whole of the relevant financial year - to increase, with effect from 1 September 1981, the level of the annual general exemption from the existing level of \$80,400 (reduced by \$2 for every \$3 by which the Australia-wide pay-roll exceeds that amount) to \$120,000, similarly reduced. For the financial year 1981-82 an exemption level of \$113,400 is proposed representing \$13,400 (one-sixth of the present \$80,400) for the period 1 July 1981 to 31 August 1981 and \$100,000 (five-sixths of the proposed \$120,000) for the period 1 September 1981 to 30 June 1982.

Clause 4 will also amend 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.

Further amendments proposed by clause 4 will operate, in conjunction with amendments proposed by clause 6, to enable future increases in the level of the exemption to be prescribed by regulation.

Paragraph (a) of clause 4 is a drafting measure consequential on the inclusion of additional paragraphs in sub-section 14(4A).

Paragraph (b) will substitute a new paragraph for the existing paragraph 14(4A)(f) of the Principal Act. New paragraph (f) will authorise, for an employer who is an employer in Australia for the whole of the 1981-82 financial year, an exemption level of \$113,400 - expressed as the aggregate of \$13,400 and \$100,000 to secure proper inter-action with the proposed new paragraph (f) of sub-section 14(4B) - reducing by \$2 for each \$3 by which the employer's Australia-wide wages for that year exceed \$113,400.

Paragraph (b) will also insert new paragraphs (g) and (h) in sub-section 14(4A). New paragraphs 14(4A)(g) and (h) operate in conjunction with amendments proposed by paragraph (e) of clause 4 and clause 6 to specify for 1982-83 and subsequent years the amount of the annual general exemption.

The broad basis of operation of those paragraphs is that paragraph (g) will apply in a year where no amount is prescribed by regulation in relation to the particular year or where an amount is prescribed by regulation to be applicable for the whole of the particular year. Where the former applies, the amount of the annual general exemption for the year is to be \$120,000. In the latter case the amount prescribed by regulation is to be the amount of the general annual exemption.

Paragraph (h) applies in circumstances where an amount is prescribed by regulation to be applicable for a part only of the particular year. In these circumstances the amount of the annual general exemption is the sum of the appropriate proportions of any amounts prescribed in relation to a period in the year and, in relation to a period during the year in which no amount is prescribed as being applicable, the appropriate proportion of \$120,000.

The amount determined on the above basis under either paragraph 14(4A)(g) or 14(4A)(h) in relation to a particular year will be subject to reduction by an amount of \$2 for every \$3 by which the Australia-wide wages exceed the amount so determined.

Paragraph (c) of clause 4 is another drafting measure consequential on the inclusion of additional paragraphs in sub-section 14(4B).

Paragraph (d) will substitute a new paragraph (f) for the existing paragraph (f) of sub-section 14(4B) of the Principal Act. The effect will be that an employer who is an employer in Australia for only part of the 1981-82 financial year, will be entitled to have his or her prescribed amount for pay-roll tax purposes calculated pro-rata as a proportion of the relevant amounts of \$13,400 (for the period 1 July 1981 to 31 August 1981) and \$100,000 (for the period 1 September 1981 to 30 June 1982) on a time basis.

Paragraph (d) of clause 4 will also insert new paragraphs (g) and (h) into sub-section 14(4B) for cases where an employer is an employer in Australia for only part of the 1982-83 financial year or of a subsequent year.

Paragraph 14(4B)(g) will apply in circumstances to which paragraph 14(4A)(g) applies and the amount of the annual general exemption will be ascertained by scaling down the amount applicable for that year (i.e., \$120,000 or such higher amount as is prescribed by regulation to be applicable for that year) on a time basis by reference to the actual period during which the employer was an employer in Australia during the relevant financial year.

New paragraph 14(4B)(h) will apply in circumstances to which paragraph 14(4A)(h) applies and the amount of the annual general exemption will be calculated pro-rata as a proportion of amounts determined under that paragraph to be applicable to particular periods during the year on a time basis, having regard to when during the year the employer was an employer in Australia.

The amount determined on the above basis under either paragraph 14(4B)(g) or 14(4B)(h) in relation to a particular year will be subject to reduction by an amount of \$2 for every \$3 by which the Australia-wide wages exceed the amount so determined.

Paragraph (e) of clause 4 will insert new sub-sections (4C) to (4F) in section 14 of the Principal Act to specify the amount that is to be taken to be applicable in relation to a period for the purposes of the operation of paragraphs 14(4A)(g) and (h) and, consequently, for the purposes of the operation of paragraphs 14(4B)(g) and (h). The broad effect of the new sub-sections is that the amount applicable in relation to any period will be \$120,000 or such greater amount as is prescribed by regulation as being applicable to that period.

The effects of the amendments to section 14 will be reflected in the operation of section 15A of the Principal Act. 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 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, the exemption entitlement is the amount of calculated deductions applicable in the employer's circumstances, also as determined under section 14.

Clause 5 : Registration

Clause 5 will 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 \$1,500 per week on an Australia-wide basis. In line with the proposal to increase the general exemption level to \$120,000, by clause 5 there will 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 \$2,250 per week. The amendments will, in

conjunction with the amendments proposed by clause 6, also enable future increases in the minimum registration to be prescribed by regulation.

Clause 6 : Regulations

Clause 6 proposes amendments to section 70 of the Principal Act to formally empower the Governor-General to make regulations prescribing increases in the general (monthly) exemption for the purposes of section 12 of the Principal Act (see notes on clause 3), the annual exemption for the purposes of section 14 of the Principal Act (see notes on clause 4) and the minimum registration level for the purposes of section 16 of the Principal Act (see notes on clause 5).

When making regulations for these purposes, the amendments proposed by clause 6 require the Governor-General to take into consideration any recommendation made to the Treasurer by the Minister for the Capital Territory with respect to exemption levels applying in the A.C.T.

Clause 7 : Formal Amendments

Clause 7 proposes a number of formal amendments to the Principal Act to effect changes in drafting style, including, in references to other provisions of the Act, the adoption of a "forward referencing" style. These amendments will not affect the operation of the Act.

