

**EXPLANATORY MEMORANDUM**  
**PAY-ROLL TAX ASSESSMENT AMENDMENT**  
**(EXEMPTION FOR TRAINEES) BILL 2018**

**Clause 1: Short title**

This clause provides that the short title of this Act is the *Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018*.

**Clause 2: Commencement**

This clause provides the commencement dates for the Act.

Paragraph (a) provides that sections 1 and 2 come into operation on the day on which the Royal Assent is received.

Paragraph (b) provides that the rest of the Act is deemed to have come into operation on 1 December 2017.

**Clause 3: Act amended**

This clause provides the amendments in this Act are to the *Pay-roll Tax Assessment Act 2002*.

**Clause 4: Section 40 amended**

This clause deletes section 40(2)(m) and (o).

Section 40(2)(m) currently provides an unconditional exemption for wages paid to apprentices under training contracts registered under the *Vocational Education and Training Act 1996*. In this context an apprentice includes a trainee.

The provision is being replaced by new section 41D, inserted by clause 5 below.

Section 40(2)(o) relates to an exemption for trainees employed under a training agreement as part of the Australian Traineeship System. This system was discontinued in 1995, and the redundant exemption is being removed.

**Clause 5:**

**Section 41D inserted**

This clause inserts section 41D at the end of Part 5, containing new provisions relating to exemptions for wages paid to apprentices and trainees under registered training contracts.

**41D. Exempt wages: apprentices and trainees under training contracts**

Subsection (1) contains self-explanatory definitions of the terms *apprentice*, *class A or class B qualification*, *initial employer*, *group member*, *nominal period*, *registered training contract*, *training contract* and *VET Act*.

Subsection (2) provides an exemption for wages paid to an employee who is referred to as an apprentice in accordance with the VET Act and is registered under a training contract for a class A or class B qualification. Class A and B qualifications are qualifications available to apprentices and trainees under a training contract.

Subsection (3) provides an exemption subject to certain criteria being met, for wages paid to an employee who is referred to as a trainee in accordance with the VET Act and is registered under a training contract for a class A or class B qualification.

Pursuant to paragraph (a)(iii), the exemption will only apply for the nominal period of a training qualification for which an employee is employed under a training contract. A nominal period is specified for each training qualification as the time that should be taken to complete the training course.

For example, if the nominal period for a particular qualification is 18 months, an exemption is only available in respect of wages payable for 18 months. This is subject to any periods of suspension – see subsection (6).

Paragraph (b) provides the employee must be an eligible new employee. The meaning of this is explained in subsection (4).

Paragraph (c)(i) requires there has not been any previous registered training contract between the employee and the employer who enters into the contract, or any other employer in the same payroll tax group, as defined in Part 4 of the Pay-roll Tax Assessment Act.

This means an exemption is only available in respect of one registered training contract between a particular employee and their employer (or other employer in the same group).

For example, if an employee who is employed by employer 'A' registers a training contract, and that employee had previously had a registered training contract with employer 'B', and employers A and B are in the same payroll tax group, then the wages payable by employer A in respect of the second training contract will not be exempt. However, this does not preclude an exemption being available where an employee had previously entered into a training contract with a former employer who is not in the same group as the current employer.

Paragraph (c)(ii) requires that, on the day the training contract is lodged for registration, the employee's pay entitlement does not exceed the threshold amount calculated under subsection (5).

Subsection (4) defines an eligible new employee for the purposes of subsection (3)(b).

An employee will not be an eligible new employee if, immediately before the commencement date of the training contract, they had been continuously employed by the employer, or by the employer and other group member employer, for longer than:

- three months full-time employment; or
- 12 months part-time or casual employment, or a combination of both; or
- a combination of full-time and part-time/casual employment that equates to more than three months full-time employment, calculated on a 4:1 basis.

For example, a term of eight months previous part-time employment followed by two months full-time employment, would exclude a person from qualifying as an eligible new employee, as this is the equivalent of four months full-time employment.

Although casual employees cannot enter into training contracts, casual employment history is taken into account for the purpose of determining whether a person is an eligible new employee.

Subsection (5) describes when an employee's pay entitlement exceeds the threshold amount for the purposes of subsection (3)(c)(ii).

The threshold amount will be exceeded if the employee's rate of pay for ordinary hours of work exceeds, on an annualised basis, \$100,000 for a full-time employee or a pro-rata amount for a part-time employee.

For example, if a part-time employee works at 50 per cent of the hours normally applicable to a full-time employee in that occupation, the pro-rata threshold would be \$50,000 per annum.

The reference to the rate of pay does not carry the same meaning as the term 'wages' under the Pay-roll Tax Assessment Act and does not include components such as superannuation, bonuses, overtime, allowances etc. However, where an employee under a registered training contract qualifies for an exemption, it is the wages paid or payable to that employee that are exempt, as that is what would otherwise be subject to payroll tax.

Subsection (6) provides that, if a training contract is suspended:

- an exemption is not available during the period of suspension for either apprentices or trainees; and
- in respect of trainees only, the period of suspension is not taken into account for the purposes of determining whether a training contract has been in effect for longer than its nominal period.

For example, if a training contract for a trainee has a nominal period of 24 months and, after commencement, training is suspended for six months then recommenced:

- the exemption will not apply during the six-month period of suspension; and
- the exemption will apply for the remainder of the nominal period following recommencement, with a maximum of 24 months allowed for the exemption.

**Clause 6: Schedule 1 Division 6 inserted**

This clause inserts a new Division 6 in Schedule 1 to provide transitional arrangements for training contracts entered into prior to 1 December 2017.

**Division 6 – Provisions for the *Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018***

**15. Terms used**

This clause contains self-explanatory definitions of the terms apprentice, commencement day and existing training contract, which are used in this Division.

**16. Modification of section 41D for existing training contracts**

This clause provides that sections 41D(3)(b) and (c)(i) do not apply to training contracts that were lodged for registration before the day these amendments came into effect, that is, 1 December 2017.

This means existing training contracts relating to trainees will continue to be exempt, regardless of whether the employee would have qualified as an eligible new employee when their training contract commenced [section 41D(3)(b)], or whether there had been a previous registered training contract between the employee and employer [section 41D(3)(c)(i)].

However, the provisions relating to the requirements for a training contract to not have been in effect for longer than the nominal period [section 41D(3)(a)(iii)], and for the pay entitlement to not exceed the threshold amount [section 41D(3)(c)(ii)], will apply. As a result, any existing training contracts relating to trainees that have exceeded the nominal period or where the employee's pay entitlement exceeds the threshold amount will no longer qualify for the exemption.

For example, wages payable to a trainee whose pay entitlement when their contract was lodged for registration was \$140,000 per annum will cease to be exempt as and from 1 December 2017.

## **17. Reassessment**

This clause provides the Commissioner must make any reassessment necessary as a result of these amendments coming into effect on 1 December 2017, subject only to the reassessment time limits set out in section 17 of the *Taxation Administration Act 2003*.