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Mr Jeremy Hanson MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

CANBERRA ACT 2601

Dear Mr Hanson

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in Scrutiny Report 2 of 24 March 2021 sought clarification of the retrospective commencement of *Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2021*, DI2021-11.

I thank the Committee for its consideration of DI2021-11. The Committee notes that DI2021-11 does not expressly provide for a retrospective commencement.

As part of the Youth Support Package to address the economic impacts of COVID-19 on young people, the Government initially determined a scheme to exempt payroll tax on wages paid or payable to eligible apprentices or trainees for the period 1 August 2020 to 31 January 2021. This scheme was determined under the *Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2020*, DI2020-276.

The Government announced an extension of this exemption on 17 December 2020. DI2021-11 was made to implement the extension of the payroll tax exemption to 30 June 2021. DI2021-11 did so by revoking DI2020-276 and replacing it. Because DI2021-11 commenced prior to 31 January 2021 (when the exemption provided under DI2020-276 would have ceased), it did not need to be commenced retrospectively.

I note that in revoking DI2020-276 and replacing it with DI2021-11, the intention was that taxpayers would be able to locate provisions relating to the period of payroll tax exemptions in the one instrument rather than having to consider two different instruments to find out the period for which the exemption had been given.

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When considered together with DI2020-276 (which it repealed), DI2021-11 does not have retrospective effect. This is because DI2020-276 already provided for the exemption of wages paid or payable from 1 August 2020. DI2021-11 seeks to replace DI2020-276 by maintaining the start date of the exemption to wages paid or payable from 1 August 2020 and extending the period of exemption to 30 June 2021. In doing so, DI2021-11 does not alter any rights or liabilities by reference to past events. Section 84(1) of the *Legislation Act 2001* provides that the repeal of a law (in this case, DI2020-276) does not affect an existing right, privilege or liability acquired, accrued or incurred under the law. That is, notwithstanding its repeal DI2020-276 operated in relation to those eligible from its commencement (1 August 2020) until the date of repeal. DI2021-11 operates in relation to those eligible from that instrument's date of commencement. While DI2021-11 did not need to have retrospective commencement, I acknowledge that it can be considered to have retrospective effect if considered on its own.

In any event, by providing for the start date of the exemption to wages paid or payable from 1 August 2020, DI2021-11 does not have any prejudicial effect, as it does not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person. Rather, it provides a concession on the payroll tax payable on wages paid or payable to new employees who are apprentices or trainees as a broader incentive to any employers who take on apprentices and trainees.

The Committee compared the commencement of DI2021-11 with *Taxation Administration (Payroll Tax – Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2021*, DI2021-10. DI2021-10 determines a scheme to provide an exemption from payroll tax to eligible employers whose businesses are not permitted to operate due to ACT Government restrictions for the period 1 December 2020 to 30 June 2021. DI2021-10 acts as an extension to an exemption under *Taxation Administration (Payroll Tax – Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2020*, DI2020-279.

DI2020-279 was only effective until 8 December 2020 and applied to eligible wages paid between September to November 2020. Because DI2021-10 was not signed until 12 January 2021, DI2021-10 had to be commenced retrospectively (on 1 December 2020) to ensure the exemption applied to wages paid during December 2020 and January 2021.

I trust that this response addresses the Committee's concerns.

Yours sincerely


Andrew Barr MLA
Chief Minister
23 April 2021