

PAY-ROLL TAX (AMENDMENT) ACT 1989 No. 221

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Pay-roll Tax Act 1971 No. 22
4. Transitional arrangements relating to fringe benefits
5. Saving of certain regulation
6. Pending objections

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE BENEFITS
SCHEDULE 2 - OTHER AMENDMENTS

PAY-ROLL TAX (AMENDMENT) ACT 1989 No. 221

NEW SOUTH WALES



Act No. 221, 1989

An Act to amend the Pay-roll Tax Act 1971 in order to tax fringe benefits; to make further provision with respect to objections and appeals; and for other purposes. [Assented to 21 December 1989]

See also Land Tax Management (Amendment) Act 1989; Stamp Duties (Further Amendment) Act 1989.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Pay-roll Tax (Amendment) Act 1989.

Commencement

2. This Act commences, or is to be taken to have commenced, on 1 January 1990.

Amendment of Pay-roll Tax Act 1971 No. 22

3. The Pay-roll Tax Act 1971 is amended as set out in Schedules 1 and 2.

Transitional arrangements relating to fringe benefits

4. (1) In this section:

"fringe benefits taxable amount" has the same meaning as in the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth;
"return" means a return required to be furnished under section 13 of the Pay-roll Tax Act 1971.

(2) Without affecting the liability of an employer to pay-roll tax, an employer is not required to specify taxable wages, comprising fringe benefits, in a return relating to the month of January, February or March 1990.

(3) The taxable wages, comprising fringe benefits, to be specified in a return relating to the month of April, May or June 1990 are to be determined in accordance with this section.

(4) The amount of taxable wages, comprising fringe benefits, required to be specified in the return relating to the month of April 1990 is:

- (a) the value of the fringe benefits paid or payable by the employer during the months of January, February, March and April 1990;
or
- (b) if the employer has made an election under subsection (5), the amount calculated in accordance with that subsection.

Pay-roll Tax (Amendment) 1989

(5) An employer who has paid or is liable to pay fringe benefits tax imposed by the Fringe Benefits Tax Act 1986 of the Commonwealth in relation to each quarter during the year of tax (within the meaning of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth) ending on 31 March 1990 may elect to include in the return relating to the month of April 1990 as the value of the fringe benefits paid or payable by the employer during that month one-third of the fringe benefits taxable amount, or that part of that amount as, in accordance with section 6 of the Pay-roll Tax Act 1971, comprises wages liable to pay-roll tax, for that year of tax ending on 31 March 1990.

(6) The amount of taxable wages, comprising fringe benefits, required to be specified in a return relating to the month of May or June 1990 is:

- (a) the value of the fringe benefits paid or payable by the employer during the relevant month; or
- (b) if the employer has made an election under subsection (5), one-twelfth of the fringe benefits taxable amount, or that part of that amount as, in accordance with section 6 of the Pay-roll Tax Act 1971, comprises wages liable to pay-roll tax, for the year of tax ending on 31 March 1990, unless the employer is able to satisfy the Chief Commissioner that the employer did not pay any fringe benefits during the month concerned.

(7) An employer may not include in a return relating to the month of July 1990, or any subsequent month, as the value of fringe benefits paid or payable by the employer during that month an amount calculated in accordance with section 13A (2) of the Pay-roll Tax Act 1971, as amended by this Act, unless the employer has made an election under that subsection which is in force under section 13A of that Act, as so amended.

Saving of certain regulation

5. Regulation 2A of the Pay-roll Tax Regulations 1971 continues in force despite the omission of section 3 (5) of the Pay-roll Tax Act 1971 by this Act and is to be taken to have been made for the purposes of section 3AA (7) of that Act, as amended by this Act.

Pending objections

6. (1) In this section:

"**former appeal provisions**" means the provisions of Part 6 of the Pay-roll Tax Act 1971 as in force immediately before the commencement of section 32 (5) of that Act, as amended by this Act;

"**new appeal provisions**" means the provisions of Part 6, as amended by this Act.

(2) An objection made under the former appeal provisions before the commencement of the new appeal provisions is to be dealt with as an objection under the new appeal provisions, unless subsection (3) otherwise provides.

(3) Subsection (2) does not apply to an objection made under the former appeal provisions if an objector has required a case to be stated to the Supreme Court, or the time for requiring a case to be stated has expired, before the commencement of the new appeal provisions.

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE BENEFITS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) After the definition of "foreign wages" in section 3 (1), insert:

"**fringe benefit**" has the same meaning as in the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth, but does not include:

- (a) a tax-exempt body entertainment fringe benefit within the meaning of that Act; or
- (b) anything that is prescribed by the regulations not to be a fringe benefit for the purposes of this definition;

Pay-roll Tax (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE
BENEFITS - *continued*

- (b) From the definition of "pay" in section 3 (1), omit "salary, commission, bonuses or allowances,".
- (c) Omit the definition of "wages" in section 3 (1), insert instead:
 "wages" has the meaning given by section 3AA.
- (d) Omit section 3 (2), (2A) and (5).

(2) Section 3AA:

After section 3, insert:

Wages

3AA (1) In this Act, "wages" means (subject to this section) any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to an employee as such.

(2) Wages 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 New South Wales or in the service of the Crown in right of the State of New South Wales; and
- (b) any amount paid or payable under any prescribed classes of contracts to the extent to which the payment is attributable to labour; and
- (c) any amount paid or payable by a company by way of remuneration to a director or member of the governing body of the company; and
- (d) any amount paid or payable by way of commission to an insurance or time-payment canvasser or collector; and
- (e) any amount deemed by or under a provision of this Act to be wages.

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE
BENEFITS - *continued*

(3) Wages includes fringe benefits.

(4) Wages includes a benefit (within the meaning of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth) constituted by the making of a payment of money by an employer on behalf of an employee to, or the setting apart of money by an employer on behalf of an employee as, a superannuation fund within the meaning of the Occupational Superannuation Standards Act 1987 of the Commonwealth, but does not include a payment to a superannuation fund by the employer for which the employer is, or would be, if the employer were liable to pay tax in accordance with the Income Tax Assessment Act 1936 of the Commonwealth, entitled to a deduction under section 82AAC of the Income Tax Assessment Act 1936 of the Commonwealth.

(5) Wages includes, subject to subsection (6), a payment made in consequence of the retirement from, or termination of, any office or employment of an employee, being:

- (a) a lump sum payment paid before or after that retirement or termination in respect of unused annual leave, or unused annual leave and a bonus, loading or other additional payment relating to that leave; or
- (b) an amount paid in respect of unused long service leave; or
- (c) an amount paid in respect of unused sick leave.

(6) A payment referred to in subsection (5) is not wages if the leave to which the payment relates accrued before 1 January 1990.

(7) An allowance of the kind prescribed by the regulations which is paid or payable to an employee is to be regarded as an allowance to which subsection (1) applies only to the extent to which it exceeds:

Pay-roll Tax (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE
BENEFITS - *continued*

- (a) the prescribed amount; or
- (b) an amount calculated at the prescribed rate; or
- (c) an amount calculated in the prescribed manner,

that is applicable to the particular case.

(8) Wages does not include anything that is prescribed by the regulations not to be wages for the purposes of this section.

(9) In this section:

"**annual leave**" has the same meaning as in section 26AC of the Income Tax Assessment Act 1936 of the Commonwealth;

"**long service leave**" has the same meaning as in section 26AD of the Income Tax Assessment Act 1936 of the Commonwealth.

(3) **Section 3A (Application of this Act to certain contracts):**

In section 3A(2)(c), after "employer", insert ", and benefits paid or payable by an employer and received by a person that would be fringe benefits if they were paid or payable to the person in the capacity of an employee of the employer,".

(4) **Section 9:**

After section 8, insert:

Taxable value of fringe benefits

9. For the purposes of this Act, the value of taxable wages, comprising a fringe benefit, is the value that would be the taxable value of the benefit as a fringe benefit for the purposes of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth.

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE
BENEFITS - *continued*

(5) Section 13A:

After section 13, insert:

Inclusion of fringe benefits in returns etc.

13A (1) In this Act, a reference to taxable wages that were paid or payable by an employer during a month is, in relation to taxable wages, being fringe benefits:

- (a) a reference to the value of the fringe benefits paid or payable by the employer during the month; or
- (b) if the employer has made an election under subsection (2) which is in force under this section, a reference to an amount calculated in accordance with that subsection.

(2) An employer who has paid or is liable to pay fringe benefits tax imposed by the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of a period of not less than 15 months before 30 June in any year may elect to include as the value of the fringe benefits paid or payable by the employer during the month concerned:

- (a) in a return furnished in relation to each of the first 11 months occurring after 30 June in that year - one-twelfth of the fringe benefits taxable amount (within the meaning of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth) or that part of that amount as, in accordance with section 6, comprises wages liable to pay-roll tax, for the year of tax (within the meaning of that Act) ending on 31 March preceding the commencement of the current financial year; and
- (b) in the return furnished in relation to the twelfth month - the fringe benefits taxable amount (within the meaning of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth) or that part of that amount as, in accordance with section 6, comprises wages liable to pay-roll tax, for the year of tax (within the meaning of that Act) ending on 31 March preceding that month less the total of the

Pay-roll Tax (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE
BENEFITS - *continued*

amounts of fringe benefits included in the returns for each of the preceding 11 months.

(3) In this Act, a reference to taxable wages that were paid or payable by an employer during a year is, in relation to taxable wages comprising fringe benefits, a reference to an amount calculated by adding together the amounts under subsection (1) (a) or (b) (or subsection (1) (a) and (b)), as the case requires, for the months of that year.

(4) An election under subsection (2) takes effect when it is notified to the Chief Commissioner in the form approved by the Chief Commissioner.

(5) After an employer has made an election under subsection (2), the employer must furnish returns containing amounts calculated in accordance with the election unless the Chief Commissioner approves, by notice in writing given to the employer, the termination of the election and allows the employer to include the value referred to in subsection (1) (a).

(6) If an employer ceases to be liable to pay-roll tax, the value of taxable wages, comprising fringe benefits, to be included in the employer's final return is (irrespective of whether or not the employer has made an election under subsection (2) which is in force under this section) the value of the fringe benefits paid or payable by the employer for the period on and from the preceding 1 July until the date on which the employer ceases to be liable to pay-roll tax less the value of the fringe benefits paid or payable by the employer during that period on which pay-roll tax has been paid.

(6) Section 10 (Exemption from pay-roll tax):

- (a) From section 10 (1) (1) (ii), omit "this paragraph.", insert instead "this paragraph; or".

SCHEDULE 1 - AMENDMENTS RELATING TO FRINGE
BENEFITS - *continued*

- (b) From section 10 (1) (m), omit "Employment; or", insert instead "Employment".
- (c) Omit section 10 (1) (n).

SCHEDULE 2 - OTHER AMENDMENTS

(Sec. 3)

(1) **Section 3 (Definitions):**

From the definition of "tax" in section 3 (1), omit ", and includes pay-roll tax payable under Schedule 1".

(2) **Section 16DA:**

After section 16D, insert:

Grouping of government departments

16DA. (1) For the purposes of this Act, the persons, groups of persons and bodies specified for the time being in Column 1 of Schedule 3 to the Public Finance and Audit Act 1983 together constitute a group.

(2) Section 16H does not apply to or in respect of the group constituted by this section.

(3) **Section 16H (Exclusion of persons from groups):**

Omit section 16H (1), insert instead:

(1) Where the Chief Commissioner is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters that the Chief Commissioner considers relevant, that businesses carried on by members of a group are carried on substantially independently of, and are not substantially connected with, the carrying on of a business or businesses of another member or other members of the group, the Chief Commissioner may, by order in writing served on those firstmentioned members, exclude them from that group.

Pay-roll Tax (Amendment) 1989

SCHEDULE 2 - OTHER AMENDMENTS - *continued*

(4) Section 18A:

After section 18, insert:

Chief Commissioner may compromise a claim for tax

18A. (1) Where by reason of the complexity or uncertainty of the facts or from any other cause it is difficult or impracticable to ascertain exactly the amount of tax or to ascertain the amount of tax without undue delay or expense, the Chief Commissioner may assess as the tax so payable such sum as the Chief Commissioner thinks proper under the circumstances and may accept payment of the sum so assessed in full discharge of all claims for the tax.

(2) Such an assessment does not constitute a good discharge from tax if it is procured by fraud or by a wilful failure to disclose material facts.

(5) Section 32 (**Objections and appeals**):

(a) From section 32 (1) (b), omit "refunding of the whole or any part of the tax", insert instead "amount of tax refunded under section 19".

(b) Omit section 32 (5)-(13), insert instead:

(5) An objector dissatisfied with the decision of the Chief Commissioner on an objection may request the Chief Commissioner to approve in writing of an appeal by the objector to the Supreme Court against the decision.

(6) Such a request must be in writing and be lodged with the Chief Commissioner within 30 days (or such longer period as the Chief Commissioner may allow for reasonable cause shown) after the objector is informed of the Chief Commissioner's decision on the objection.

(7) If the Chief Commissioner does not comply with a request under subsection (5) within 60 days after it is made and the objector:

(a) has provided the Chief Commissioner with any information required by the Chief Commissioner in

SCHEDULE 2 - OTHER AMENDMENTS - *continued*

relation to the assessment or decision with respect to a refund concerned; and

- (b) lodges with the Chief Commissioner a notice in writing requiring the Chief Commissioner to comply with the request,

the Chief Commissioner must comply with the request not later than 30 days after the notice is lodged.

(8) The objector may appeal to the Supreme Court against the decision within 14 days after the Chief Commissioner grants approval under this section to the appeal.

(6) Sections 32A-32F:

After section 32, insert:

Nature of appeal

32A. (1) An appeal to the Supreme Court under this Part is by way of rehearing of the original objection to the Chief Commissioner and is limited to the grounds of the original objection.

(2) On giving its decision, the Court may determine the amount of any tax payable as a result of the decision (including any additional or penal tax).

(3) This Act applies to the Court's assessment of tax or decision with respect to the refunding of tax in the same way as it applies to the assessment of tax, or calculation of the amount of tax to be refunded, by the Chief Commissioner.

Onus on objector

32B. On an objection or appeal under this Part, the objector bears the onus of establishing on the balance of probabilities that the tax in question was incorrectly assessed or the amount of refund was incorrectly calculated.

Pay-roll Tax (Amendment) 1989

SCHEDULE 2 - OTHER AMENDMENTS - *continued*

Payment of tax assessed and calculation of refund by Supreme Court

32C. (1) If the tax assessed by the Supreme Court under this Part:

- (a) is greater than the amount paid by the objector, the objector is liable to pay the difference; or
- (b) is less than the amount paid by the objector, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the prescribed rate.

(2) If the refund calculated by the Supreme Court under this Part:

- (a) is greater than the amount calculated by the Chief Commissioner, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the prescribed rate; or
- (b) is less than the amount calculated by the Chief Commissioner, the objector is liable to pay the difference.

(3) Interest payable under subsection (1) (b) or (2) (a) is payable from the date on which the amount concerned was paid by the objector until the date it is refunded.

Liability not affected by objection etc.

32D. (1) Except to the extent otherwise permitted by the Chief Commissioner, the lodging of an objection or an appeal to the Supreme Court does not affect any liability of an objector to pay tax in accordance with this Act.

(2) A permission under this section must be in writing.

Lodgment with Chief Commissioner

32E. For the purposes of this Part, something is lodged with the Chief Commissioner by being addressed to the Chief Commissioner and lodged at or sent by post to any office of the Chief Commissioner.

SCHEDULE 2 - OTHER AMENDMENTS - *continued*

Commissioner may state case

32F. (1) The Chief Commissioner may, if the Chief Commissioner thinks fit, state a case on any question of law arising with regard to the assessment or refund of tax and forward that case to the Supreme Court for its opinion.

(2) The Supreme Court is to give its opinion on any case forwarded to it and cause the Chief Commissioner to be notified of that opinion.

*[Minister's second reading speech made in -
Legislative Assembly on 21 November 1989
Legislative Council on 29 November 1989]*