

[Act 2002 No 121]



New South Wales

Pay-roll Tax Legislation Amendment (Avoidance) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Pay-roll Tax Act 1971* and the *Taxation Administration Act 1996* as follows:

- (a) to tax as wages trust distributions that are made in lieu of wages in certain circumstances,
 - (b) to remove an exemption for lump sum payments made in lieu of unused leave entitlements (where the leave accrued before 1 January 1990),
 - (c) to tax the fringe benefits taxable amount of fringe benefits as wages,
 - (d) to extend and simplify grouping provisions, and move those provisions from the *Pay-roll Tax Act 1971* to the *Taxation Administration Act 1996*,
 - (e) to extend the power of the Chief Commissioner to exclude persons from groups,
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- (f) to make principal contractors liable for unpaid pay-roll tax that is payable in connection with work done by employees of their subcontractors in certain circumstances.

The Bill also makes other minor and consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *Pay-roll Tax Act 1971* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Taxation Administration Act 1996* set out in Schedule 2.

Schedule 1 Amendment of Pay-roll Tax Act 1971

Trust distributions

Pay-roll tax is payable on wages paid to employees. The amendments extend the definition of *wages* to include any distribution to a person as beneficiary under a trust in lieu of wages for work done by the person for the trust. Work that constitutes the provision of services to the trustee of the trust or for the purposes of a business conducted by the trustee of the trust will be considered to be work done for the trust. If the total wages payable to the person for that work is less than the market rate payable for the work, and a distribution from the trust is made to the person in the financial year in which the work is done or the following financial year, the distribution will be considered to be wages. Market rates payable for work will be determined by reference to the minimum wage rate applicable in respect of the work under a State industrial instrument or a Commonwealth industrial instrument or by reference to the regulations. See **Schedule 1 [3] and [7]**.

Removal of exemption

At present certain payments made in consequence of retirement or termination of employment are excluded from the definition of *wages* in the Act if they relate to leave accrued before 1 January 1990. **Schedule 1 [5]** removes that exemption. Accordingly, such payments will be taxable as wages. **Schedule 1 [4]** is a consequential amendment. **Schedule 1 [14]** includes a transitional provision.

Fringe benefits

Wages is defined in the Act to include fringe benefits. An amendment is made to the Act to provide that the taxable value of wages, comprising a fringe benefit, is the fringe benefits taxable amount for the purposes of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth. See **Schedule 1 [8]**. **Schedule 1 [6]** is a consequential amendment.

Grouping provisions

At present the *Pay-roll Tax Act 1971* allows certain employers to be grouped together for pay-roll tax purposes, if the employers or the businesses that they conduct are in some way related or controlled by the same person or set of persons. The grouping provisions are an anti-avoidance measure. Those provisions are moved to the *Taxation Administration Act 1996* (see **Schedule 2**).

The *Pay-roll Tax Act 1971* also allows the Chief Commissioner of State Revenue to exclude persons from a group in certain circumstances if satisfied that the business carried on by the person is carried on substantially independently of other members of the group. At present, the power to exclude a member from a group is limited to cases where the employer is grouped with another because of the use of common employees. The amendments extend this power to situations where a person who carries on a business as a trustee of a trust is grouped with another person because of the grouping provisions relating to businesses that are controlled by the same person or set of persons. See **Schedule 1 [9]**.

Consequential amendments are set out in **Schedule 1 [1], [10] and [12]**. A transitional provision is included in **Schedule 1 [14]**.

Liability of principal contractor for pay-roll tax debts

A new Part, similar to section 127 of the *Industrial Relations Act 1996*, will make principal contractors jointly and severally liable with their subcontractors for unpaid pay-roll tax in certain circumstances. The provisions will apply if:

- (a) a person (the *principal contractor*) has entered into a contract for the carrying out of work by another person (the *subcontractor*), and
- (b) employees of that subcontractor are engaged in carrying out the work, and
- (c) the work is carried out in connection with a business undertaking of the principal contractor.

If the pay-roll tax payable by the subcontractor in respect of wages paid to the employees for work done in connection with the contract is not paid within 60 days after the end of the financial year in which the wages were paid or payable, the principal contractor will be jointly and severally liable with the subcontractor for

payment of the pay-roll tax. (This means that, under the provisions of the *Taxation Administration Act 1996*, the principal contractor will also be liable for any interest or penalty tax payable.)

The principal contractor is relieved of liability for payment of any pay-roll tax payable in respect of any period for which the principal contractor has been given a written statement by the subcontractor which, among other things, verifies that the pay-roll tax has been paid. The principal contractor will not be relieved of liability by such a statement if he or she knows the statement is false.

See **Schedule 1 [11]**. **Schedule 1 [14]** includes a transitional provision.

Other amendments

An amendment is made to allow notes to be included in the Act. See **Schedule 1 [2]**.

Schedule 1 [13] makes provision for savings and transitional regulations.

Schedule 2 Amendment of Taxation Administration Act 1996

Grouping provisions

New Part 10A re-enacts and simplifies certain provisions currently contained in Part 4A of the *Pay-roll Tax Act 1971*.

The following changes are also made to those provisions:

- (a) the definition of *business* is extended to the carrying on of a trust,
- (b) provision is made for the business of a trust and the business of a partnership to be included in the same group if the trustee of the trust has a controlling interest in the business of the partnership,
- (c) provision is made for the business of a trust and the business of a corporation to be included in the same group if the trustee of the trust has a controlling interest in the business of the corporation.

See **Schedule 2 [1]**.

Explanatory note

The more extensive grouping provisions in relation to trusts are supplemented by the amendments to the *Pay-roll Tax Act 1971* that give the Chief Commissioner more extensive powers to exclude persons from groups in cases where the business of a trust is grouped with another business. See **Schedule 1 [9]** (as referred to above).

Schedule 2 [2] makes provision for savings and transitional regulations.