

## PAY-ROLL TAX (AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Land Tax Management (Amendment) Bill 1989 and the Stamp Duties (Further Amendment) Bill 1989 are cognate with this Bill.

The object of this Bill is to amend the Pay-roll Tax Act 1971:

- (a) to include as from 1 January 1990, as wages for the purposes of that Act, fringe benefits within the meaning of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth; and
- (b) to update the objection and appeal provisions of the Act to provide for appeals by summons along the lines of the Business Franchise Licences (Petroleum Products) Act 1987; and
- (c) to make other minor amendments.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 January 1990.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 contains certain transitional arrangements consequent on the inclusion of fringe benefits in the tax base as from 1 January 1990. The effect of the clause is summarised below.

Clause 5 saves a regulation made for the purposes of section 3 (5) of the Principal Act despite the repeal of that subsection by the proposed Act.

Clause 6 provides that the new provisions of Part 6 relating to objections and appeals will apply to objections made before the commencement of the provisions unless a case has already been stated to the Supreme Court or the time for stating a case has expired.

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

Schedule 1 (1) (a) inserts a definition of "fringe benefit". With a minor exception, the term is defined to have the same meaning as in the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth.

Schedule 1 (1) (c) and (d) and (2) substitute the definition of "wages" by omitting the existing definition and supporting provisions and by inserting a new definition as proposed section 3AA. The meaning of "wages" is extended by the addition of:

- \* fringe benefits
- \* non-income tax deductible employer contributions to superannuation funds
- \* lump sum payments of leave on termination of employment (except in so far as the payments are referable to entitlements accruing before 1 January 1990)

Schedule 1 (1) (b) makes a consequential amendment.

Schedule 1 (3) amends section 3A to extend the liability to tax on fringe benefits to fringe benefits provided under certain contracts for the supply of services.

Schedule 1 (4) inserts proposed section 9 which provides that the taxable value of a fringe benefit is the taxable value determined under the Commonwealth Act.

Schedule 1 (5) inserts proposed section 13A which specifies the bases on which fringe benefits are to be included in monthly returns of wages for pay-roll tax purposes. An employer must include the actual monthly value of the fringe benefits unless, for ease of administration, the employer elects to include one-twelfth of the New South Wales fringe benefit taxable amount in a preceding annual Commonwealth return. The proposed section provides for an annual reconciliation to be made against the most recent annual Commonwealth return furnished before the close of the pay-roll tax year. An election, once made, may only be terminated with the approval of the Chief Commissioner of Pay-roll Tax. The proposed section also specifies the basis on which a final adjustment of pay-roll tax is to be effected by an employer who ceases to be liable to pay-roll tax.

Clause 4 provides for the inclusion of fringe benefits in monthly returns furnished in relation to the first 6 months of 1990. Without affecting an employer's liability to pay pay-roll tax, fringe benefits are not required to be included in returns relating to the months of January, February or March 1990. (By 28 April 1990, an employer is required, under the Commonwealth Act, to furnish a fringe benefits tax return for the Commonwealth's tax year which ends on 31 March 1990.) For the pay-roll tax return for the month of April 1990, an employer must include the actual monthly value of fringe benefits provided during the months of January, February, March and April 1990 unless, for ease of administration, the employer elects to include one-third of the New South Wales fringe benefits taxable amount in its last annual Commonwealth return. For the pay-roll tax returns for the months of May and June, an employer must include the actual monthly value of the fringe benefits provided during those months or, if the employer has elected to pay tax on the fringe benefits taxable amount shown in its last annual Commonwealth return, one-twelfth of that amount for each month.

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Schedule 1 (6) makes an amendment consequential on the inclusion of fringe benefits as wages for the purposes of the Principal Act.

**SCHEDULE 2 - OTHER AMENDMENTS**

Schedule 2 (1) makes an amendment by way of statute law revision to the definition of "tax" to remove an obsolete reference.

Schedule 2 (2) inserts proposed section 16DA which constitutes Government Departments as a group of employers for pay-roll tax purposes.

Schedule 2 (3) amends section 16H to further enable the Chief Commissioner to exclude from a group of employers constituted under the Principal Act for pay-roll tax purposes an employer whose business is not substantially connected with the business of another employer who is a member of the group. The amendment gives effect to the construction given to the section by the Supreme Court in *Baxter and Assoc v Chief Commissioner of Pay-roll Tax* (No. 783 of 1985).

Schedule 2 (4) inserts proposed section 18A which enables the Chief Commissioner to make a compromise assessment of tax under the Principal Act where it is particularly difficult or impracticable to make an exact assessment. The proposed section is modelled on section 129 of the Stamp Duties Act 1920.

Schedule 2 (5) and (6) relate to objections and appeals.

The proposed Act updates provisions dealing with objections and appeals against assessment of tax and calculation of tax refunds under the Act. Currently, a dissatisfied objector has a right to require the Chief Commissioner to state a case for decision by the Supreme Court. Under the new provisions, a dissatisfied objector can appeal directly to the Supreme Court by filing a summons as provided in Part 51A of the Supreme Court Rules. The appeal cannot proceed unless the objector has given the Chief Commissioner the information requested in connection with the matter. If the objector is successful, the Chief Commissioner is required to pay interest on any tax that was overpaid or refund that was underpaid.

The onus of establishing that tax is incorrectly assessed or a refund incorrectly calculated is placed on the objector.

Provision is also made to enable the Chief Commissioner to state a case on a question of law for decision by the Supreme Court.

Schedule 2 (5) also amends section 32 (1) (b) to make it clear that an objection with respect to the refunding of tax may be made only with respect to the amount of the refund calculated by the Chief Commissioner, and not in respect of the assessment to which the refund relates. (Section 32 (1) (a) provides for a right to object against the assessment.)