



Queensland

# Payroll Tax Regulation 2009

## Subordinate Legislation 2009 No. 175

made under the

*Payroll Tax Act 1971*

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	3
2	Commencement . . . . .	3
3	Definitions . . . . .	3
<b>Part 2</b>	<b>Liability to taxation</b>	
4	Value of taxable wages—Act, s 13 . . . . .	3
<b>Part 3</b>	<b>Fringe benefits</b>	
<b>Division 1</b>	<b>Preliminary</b>	
5	Things that are not fringe benefits . . . . .	4
6	Amended assessments under the Fringe Benefits Assessment Act . . . . .	4
7	Calculation of fringe benefits on same basis . . . . .	4
<b>Division 2</b>	<b>Value of Queensland fringe benefits</b>	
8	Definition for div 2 . . . . .	4
9	Value of Queensland fringe benefits for estimated value amount . . . . .	5
10	Value of Queensland fringe benefits for reconciliation amount or final return . . . . .	5
<b>Division 3</b>	<b>Basis for calculation of fringe benefits</b>	
<b>Subdivision 1</b>	<b>Electing to calculate fringe benefits on estimated value basis</b>	
11	Employers to which sdiv 1 applies . . . . .	5

Contents

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12	Election in first periodic return period for a financial year—estimated value basis . . . . .	5
13	Election during financial year—estimated value basis . . . . .	6
<b>Subdivision 2</b>	<b>Electing to calculate fringe benefits on actual value basis</b>	
14	Election in annual return—actual value basis . . . . .	8
15	Election during financial year—actual value basis . . . . .	9
<b>Division 4</b>	<b>Value of fringe benefits calculated on estimated value basis</b>	
<b>Subdivision 1</b>	<b>Periodic and annual returns</b>	
16	Application of sdiv 1 . . . . .	11
17	Monthly periodic return on estimated value basis . . . . .	11
18	Quarterly periodic return on estimated value basis . . . . .	11
19	Biannual periodic return on estimated value basis . . . . .	11
20	Annual return on estimated value basis . . . . .	11
<b>Subdivision 2</b>	<b>Final returns</b>	
21	Final return on estimated value basis . . . . .	12
<b>Part 4</b>	<b>Transitional provisions</b>	
22	Definitions for pt 4. . . . .	12
23	Continuation of election under s 15 of the expired regulation . . .	13
24	Application, consent and continuation of election under s 16 of the expired regulation . . . . .	13
25	Continuation of election under s 17 of the expired regulation . . .	14
26	Application, consent and continuation of election under s 18 of the expired regulation . . . . .	14
<b>Schedule</b>	<b>Dictionary</b> . . . . .	15

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## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Payroll Tax Regulation 2009*.

### **2 Commencement**

This regulation commences on 2 September 2009.

### **3 Definitions**

The dictionary in the schedule defines particular words used in this regulation.

## **Part 2 Liability to taxation**

### **4 Value of taxable wages—Act, s 13**

For the Act, section 13(1), the value of taxable wages paid or payable in kind (other than fringe benefits under the Fringe Benefits Assessment Act) is the higher of the following—

- (a) the amount agreed under arrangements between the employer and employee as the value of the taxable wages;
- (b) the amount attributed by the employer as the value of the taxable wages having regard to arrangements between the employer and employee;
- (c) the amount the commissioner works out is the value of the taxable wages having regard to arrangements between the employer and employee.

[s 5]

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## **Part 3                      Fringe benefits**

### **Division 1                Preliminary**

#### **5                      Things that are not fringe benefits**

- (1) For the schedule of the Act, definition *fringe benefit*, paragraph (d), a tax-exempt body entertainment fringe benefit is not a fringe benefit.
- (2) In this section—  
*tax-exempt body entertainment fringe benefit* see section 136 of the Fringe Benefits Assessment Act.

#### **6                      Amended assessments under the Fringe Benefits Assessment Act**

An employer must, within 30 days of receiving an amended assessment under the Fringe Benefits Assessment Act, give a copy of the amended assessment to the commissioner.

Maximum penalty—20 penalty units.

#### **7                      Calculation of fringe benefits on same basis**

- (1) An employer must calculate fringe benefits on the same basis for each periodic, annual or final return for a financial year.
- (2) This section is subject to sections 13 and 15.

### **Division 2                Value of Queensland fringe benefits**

#### **8                      Definition for div 2**

In this division—

*grossed-up value*, of a fringe benefit, means the value of the benefit worked out using the formula stated in section 13(5) of the Act.

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**9 Value of Queensland fringe benefits for estimated value amount**

For calculating the estimated value amount for a financial year, the value of Queensland fringe benefits for the previous or last year of tax is the grossed-up value of the benefits.

**10 Value of Queensland fringe benefits for reconciliation amount or final return**

- (1) This section applies for calculating a reconciliation amount or the value of fringe benefits to be included in an employer's final return under section 21.
- (2) The value of Queensland fringe benefits for the last year of tax is the grossed-up value of the benefits.
- (3) The value of Queensland fringe benefits for the year of tax ending in an employer's election year is the grossed-up value of the benefits.

**Division 3 Basis for calculation of fringe benefits**

**Subdivision 1 Electing to calculate fringe benefits on estimated value basis**

**11 Employers to which sdiv 1 applies**

This subdivision applies to an employer who has paid, or is liable to pay, fringe benefits tax for at least 15 consecutive months immediately before the start of a financial year.

**12 Election in first periodic return period for a financial year—estimated value basis**

- (1) An employer may elect to use estimated value amounts to work out the employer's periodic and annual liability.

[s 13]

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- (2) The employer makes an election under subsection (1) by using an estimated value amount to work out the employer's periodic liability for the first periodic return period for the financial year (the *current financial year*).
- (3) An election under subsection (1) continues to apply until the employer elects to use actual value amounts to work out the employer's periodic and annual liability.
- (4) If an election under subsection (1) applies to the employer on 30 June in a financial year, the employer's annual return for the financial year must include an estimated value amount as part of the wages paid or payable during that year by the employer.
- (5) An election under subsection (1) applies to working out—
  - (a) periodic liability for the first periodic return period for the current financial year; and
  - (b) all subsequent periodic and annual liabilities while the election continues to apply.

### **13 Election during financial year—estimated value basis**

- (1) This section applies if—
  - (a) an employer wants to elect to use estimated value amounts to work out the employer's periodic and annual liability for a financial year; and
  - (b) the employer has not made an election under section 12(1) for the financial year.
- (2) The employer must apply to the commissioner for consent to make the election.
- (3) An application under subsection (2) must be in writing.
- (4) The commissioner must consider the employer's application and decide whether or not to give the consent.
- (5) The commissioner may only give the consent if the commissioner is reasonably satisfied that—

- (a) the main purpose for the employer's election is not to avoid or reduce the amount of payroll tax payable for the financial year that would otherwise be payable if calculated on an actual value basis; and
  - (b) the employer, because of the employer's circumstances, has compelling reasons for making the election.
- (6) The commissioner must give the employer written notice of the commissioner's decision.
- (7) If the commissioner consents to the election, the employer must elect to use estimated value amounts to work out the employer's periodic and annual liability.
- (8) An election under subsection (7)—
  - (a) is made by the employer using an estimated value amount to work out the employer's periodic liability for the first periodic return period after receiving the consent; and
  - (b) continues to apply until the employer elects to use actual value amounts to work out the employer's periodic and annual liability; and
  - (c) applies to working out—
    - (i) periodic liability for the periodic return period for which the election is made; and
    - (ii) all subsequent periodic and annual liabilities while the election continues to apply.
- (9) If the employer makes an election under subsection (7), the employer must—
  - (a) use the value of the employer's Queensland fringe benefits for the last year of tax to work out the employer's annual liability for the financial year in which the election is made; and
  - (b) include in the employer's annual return the value of the employer's Queensland fringe benefits for the last year of tax as part of the wages paid or payable during the financial year by the employer.

[s 14]

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- (10) If the election applies to the employer on 30 June in another financial year following the financial year (a *subsequent financial year*), the employer must include in the employer's annual return for the subsequent financial year an estimated value amount as part of the wages paid or payable during that year by the employer.
- (11) An employer must not make an election under subsection (7) unless the employer has received a consent under this section.  
Maximum penalty for subsection (11)—20 penalty units.

## **Subdivision 2      Electing to calculate fringe benefits on actual value basis**

### **14      Election in annual return—actual value basis**

- (1) An employer, having made an election under subdivision 1 that still applies, may elect to use actual value amounts to work out the employer's periodic and annual liability.
- (2) An employer makes an election under subsection (1) by using a reconciliation amount to work out the employer's annual liability for a financial year.
- (3) If an employer makes an election under subsection (1), the employer must include a reconciliation amount as part of the wages paid or payable during the financial year by the employer.
- (4) An election under subsection (1) continues to apply until the employer elects to use estimated value amounts to work out the employer's periodic and annual liability.
- (5) An election under subsection (1) applies to working out—
  - (a) periodic liability for the first periodic return period for the financial year immediately following the financial year in which the employer uses a reconciliation amount to work out the employer's annual liability; and
  - (b) all subsequent periodic, annual and final liabilities while the election continues to apply.



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**15 Election during financial year—actual value basis**

- (1) This section applies if—
  - (a) an employer wants to elect to use actual value amounts to work out the employer's periodic and annual liability; and
  - (b) the employer made an election under subdivision 1 that still applies; and
  - (c) the employer has not, since making the election under subdivision 1, made an election under section 14.
- (2) The employer must apply to the commissioner for consent to make the election.
- (3) An application under subsection (2) must be in writing.
- (4) The commissioner must consider the employer's application and decide whether or not to give the consent.
- (5) The commissioner may only give the consent if the commissioner is reasonably satisfied that—
  - (a) the main purpose for the employer's election is not to avoid or reduce the amount of payroll tax payable for the financial year that would otherwise be payable if calculated on an estimated value basis; and
  - (b) the employer, because of the employer's circumstances, has compelling reasons for making the election.
- (6) The commissioner must give the employer written notice of the commissioner's decision.
- (7) If the commissioner consents to the election, the employer must elect to use actual value amounts to work out the employer's periodic and annual liability.
- (8) An election under subsection (7)—
  - (a) is made by the employer using an actual value amount to work out the employer's periodic liability for the first periodic return period after receiving the consent; and

[s 15]

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- (b) continues to apply until the employer elects to use estimated value amounts to work out the employer's periodic and annual liability; and
  - (c) applies to working out—
    - (i) periodic liability for the periodic return period for which the election is made; and
    - (ii) all subsequent periodic, annual and final liabilities while the election continues to apply.
- (9) If an employer makes an election under subsection (7), the employer must—
  - (a) use a reconciliation amount to work out the employer's annual liability for the financial year in which the election is made; and
  - (b) include in the employer's annual return the reconciliation amount as part of the wages paid or payable during the financial year by the employer.
- (10) However, if a change of status happens for an employer after the employer makes an election under subsection (7) and during the financial year in which the election is made, the employer must—
  - (a) use a reconciliation amount to work out the employer's final liability for the final period for the change of status; and
  - (b) include in the employer's final return the reconciliation amount as part of the wages paid or payable during the final period by the employer.
- (11) An employer must not make an election under subsection (7) unless the employer has received a consent under this section.  
Maximum penalty for subsection (11)—20 penalty units.

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## **Division 4                    Value of fringe benefits calculated    on estimated value basis**

### **Subdivision 1            Periodic and annual returns**

#### **16            Application of sdiv 1**

This subdivision applies to an employer who, under an election under division 3, subdivision 1, uses estimated value amounts to work out the employer's periodic and annual liability.

#### **17            Monthly periodic return on estimated value basis**

The estimated value amount for the employer, for a periodic return period of 1 month for a financial year, is one-twelfth of the value of the employer's Queensland fringe benefits for the previous year of tax.

#### **18            Quarterly periodic return on estimated value basis**

The estimated value amount for the employer, for a periodic return period of 3 months for a financial year, is one-quarter of the value of the employer's Queensland fringe benefits for the previous year of tax.

#### **19            Biannual periodic return on estimated value basis**

The estimated value amount for the employer, for a periodic return period of 6 months for a financial year, is one-half of the value of the employer's Queensland fringe benefits for the previous year of tax.

#### **20            Annual return on estimated value basis**

The estimated value amount for the employer, for the employer's annual return and annual liability for a financial

[s 21]

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year, is the value of the employer's Queensland fringe benefits for the last year of tax.

## **Subdivision 2      Final returns**

### **21      Final return on estimated value basis**

- (1) This section applies if, at the time of making a final return, an employer has made an election under division 3, subdivision 1 that still applies.
- (2) The value of fringe benefits to be included as part of the wages paid or payable during the final period for the final return by the employer, and used to work out the employer's final liability, is the difference between the following amounts—
  - (a) the total of—
    - (i) the value of the employer's Queensland fringe benefits for the last year of tax; and
    - (ii) the value of any Queensland fringe benefits paid or payable by the employer in April, May or June of the final period;
  - (b) one-quarter of the value of the employer's Queensland fringe benefits for the year of tax ending in the employer's election year.

## **Part 4                      Transitional provisions**

### **22      Definitions for pt 4**

In this part—

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*expired regulation* means the *Payroll Tax Regulation 1999* as in force immediately before the expiry.

*expiry* means the expiry of the *Payroll Tax Regulation 1999*.

**23 Continuation of election under s 15 of the expired regulation**

- (1) This section applies to an election, made by an employer under section 15(1) of the expired regulation, that still applied in relation to the employer immediately before the expiry.
- (2) The election is taken to be an election by the employer under section 12(1).

**24 Application, consent and continuation of election under s 16 of the expired regulation**

- (1) Subsection (2) applies to an application for a consent under section 16(1) of the expired regulation that has not been decided under that section by the commissioner before the expiry.
- (2) The application is taken to be an application for consent under section 13(2).
- (3) Subsection (4) applies to a consent given by the commissioner under section 16 of the expired regulation if, immediately before the expiry, an election has not been made under the section in relation to the consent.
- (4) The consent is taken to be a consent given by the commissioner under section 13.
- (5) Subsection (6) applies to an election, made by an employer under section 16(6) of the expired regulation, that still applied in relation to the employer immediately before the expiry.
- (6) The election is taken to be an election by the employer under section 13(7).

[s 25]

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**25 Continuation of election under s 17 of the expired regulation**

- (1) This section applies to an election, made by an employer under section 17(1) of the expired regulation, that still applied in relation to the employer immediately before the expiry.
- (2) The election is taken to be an election by the employer under section 14(1).

**26 Application, consent and continuation of election under s 18 of the expired regulation**

- (1) Subsection (2) applies to an application for a consent under section 18(2) of the expired regulation that has not been decided under that section by the commissioner before the expiry.
- (2) The application is taken to be an application for consent under section 15(2).
- (3) Subsection (4) applies to a consent given by the commissioner under section 18 of the expired regulation if, immediately before the expiry, an election has not been made under the section in relation to the consent.
- (4) The consent is taken to be a consent given by the commissioner under section 15.
- (5) Subsection (6) applies to an election, made by an employer under section 18(7) of the expired regulation, that still applied in relation to the employer immediately before the expiry.
- (6) The election is taken to be an election by the employer under section 15(7).

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# Schedule                      Dictionary

## section 3

***actual value amount*** means an amount for Queensland fringe benefits calculated on an actual value basis.

***election year***, for an employer, means the financial year in which the employer last made an election under part 3, division 3, subdivision 1.

***estimated value amount*** means an amount for Queensland fringe benefits calculated on an estimated value basis.

***expired regulation***, for part 4, see section 22.

***expiry***, for part 4, see section 22.

***fringe benefits tax*** means the tax imposed on fringe benefits under the *Fringe Benefits Tax Act 1986* (Cwlth).

***grossed-up value***, for part 3, division 2, see section 8.

***last year of tax***, for a financial year, means the year of tax ending on 31 March of the financial year.

***previous year of tax***, for a financial year, means the year of tax ending on 31 March before the start of the financial year.

***Queensland fringe benefits*** means fringe benefits, whether calculated on an actual value or estimated value basis—

- (a) that are taxable wages; and
- (b) for which fringe benefits tax is paid or payable.

***reconciliation amount***, for a financial year for an employer, means the difference between the following—

- (a) the total of—
  - (i) the value of the employer's Queensland fringe benefits for the last year of tax; and
  - (ii) the value of any Queensland fringe benefits paid or payable by the employer in April, May and June of the financial year;

Schedule

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- (b) one-quarter of the value of the employer's Queensland fringe benefits for the year of tax ending in the employer's election year.

***year of tax*** see section 136 of the Fringe Benefits Assessment Act.

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ENDNOTES

- 1 Made by the Governor in Council on 27 August 2009.
- 2 Notified in the gazette on 28 August 2009.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Treasury Department.

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