

Payroll Tax Regulation 2019

Explanatory notes for SL 2019 No. 147

made under the

Payroll Tax Act 1971

General Outline

Short title

Payroll Tax Regulation 2019

Authorising law

Sections 13, 91, 97 and Schedule of the *Payroll Tax Act 1971*

Policy objectives and the reasons for them

The *Payroll Tax Regulation 2009* contains provisions which are necessary to support the proper administration and determination of payroll tax under the *Payroll Tax Act 1971*, including for determining the value of taxable wages and for calculating the value of fringe benefits.

The *Payroll Tax Regulation 2009* automatically expires on 1 September 2019 in accordance with section 54 of the *Statutory Instruments Act 1992*, which provides for the automatic expiry of subordinate legislation on 1 September first occurring after the 10th anniversary of the day of its making.

The Office of State Revenue conducted a sunset review of the *Payroll Tax Regulation 2009* in accordance with *The Queensland Government Guide to Better Regulation*. The sunset review confirmed that the provisions of the *Payroll Tax Regulation 2009* are still necessary and appropriate for the proper determination and administration of payroll tax under the *Payroll Tax Act 1971*. No substantive changes were identified in the review. Therefore, the *Payroll Tax Regulation 2009* is to be remade as the *Payroll Tax Regulation 2019*, with minor changes necessary to facilitate the remake.

Achievement of policy objectives

The *Payroll Tax Act 1971* imposes payroll tax on taxable wages paid or payable by an employer in a financial year once the annual payroll tax threshold (\$1.3 million) is exceeded. Payroll tax is self-assessed by employers. Employers that meet the criteria

for registration are required to register with the Office of State Revenue for payroll tax and lodge periodic, annual and final returns.

'Taxable wages' are defined generally under the *Payroll Tax Act 1971* as wages paid or payable by an employer in relation to services performed or rendered by an employee in Queensland. Relevantly, taxable wages include fringe benefits.

The *Payroll Tax Act 1971* authorises regulations to be made with respect to a number of matters. Relevantly, regulations can be made with respect to:

- prescribing anything that is, or is not, a fringe benefit;
- the value of taxable wages that are paid or payable in kind (other than fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (Cth));
- the value of taxable wages comprising fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (Cth);
- what is to be included in a return as the value of fringe benefits paid or payable by an employer; and
- any other matter for the application of the *Payroll Tax Act 1971* to a fringe benefit.

Additionally, the *Payroll Tax Act 1971* authorises a regulation to impose a penalty of not more than 20 penalty units for a contravention of the regulation.

The *Payroll Tax Regulation 2009* provides for matters authorised under the regulation making heads of power identified above. The *Payroll Tax Regulation 2019* remakes the provisions of the *Payroll Tax Regulation 2009*, to:

- prescribe the method for determining the value of taxable wages paid or payable in kind (other than fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (Cth));
- prescribe things that are not fringe benefits;
- require employers to provide the Commissioner of State Revenue with an amended assessment received under the *Fringe Benefits Tax Assessment Act 1986* (Cth);
- generally require employers to calculate fringe benefits on the same basis for each periodic, annual or final return for a financial year;
- allow employers to elect to calculate fringe benefits on an estimated value basis or an actual value basis at the beginning of a financial year, and to apply to the Commissioner of State Revenue for consent to change the basis for calculating fringe benefits during a financial year; and
- prescribe the value of fringe benefits calculated on an estimated value basis.

The *Payroll Tax Regulation 2019* also remakes offences in the *Payroll Tax Regulation 2009* relating to:

- a failure by an employer to give to the Commissioner of State Revenue a copy of an amended assessment notice under the *Fringe Benefits Tax Assessment Act 1986* (Cth) within 30 days of receiving the notice;
- an employer making an election to calculate fringe benefits on an estimated value basis during a financial year without the Commissioner of State Revenue's consent; and
- an employer making an election to calculate fringe benefits on an actual value basis during a financial year without the Commissioner of State Revenue's consent.

The *Payroll Tax Regulation 2019* will also contain transitional provisions to ensure that elections made, consents applied for, and consents given under the expired *Payroll Tax Regulation 2009* relating to the basis for calculating fringe benefits will continue under the *Payroll Tax Regulation 2019*.

Consistency with policy objectives of authorising law

The *Payroll Tax Regulation 2019* is consistent with the policy objectives of the *Payroll Tax Act 1971*, to impose a tax upon employers in respect of certain wages. Additionally, the *Payroll Tax Act 1971* authorises the making of regulations relating to determining the value of taxable wages and fringe benefits.

Inconsistency with policy objectives of other legislation

The *Payroll Tax Regulation 2019* is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

An alternative way of achieving the policy objectives is to let the *Payroll Tax Regulation 2009* expire and instead enact its provisions in the *Payroll Tax Act 1971*. This alternative was not adopted as the provisions are of a technical or administrative nature which are more appropriately contained in a regulation.

Benefits and costs of implementation

The *Payroll Tax Regulation 2019* supports the proper determination and administration of payroll tax under the *Payroll Tax Act 1971*. The provisions contained in the *Payroll Tax Regulation 2019* ensure that employers can properly calculate the value of their taxable wages, for the purposes of calculating their payroll tax liabilities.

As the *Payroll Tax Regulation 2019* remakes the *Payroll Tax Regulation 2009* with only minor changes necessary to facilitate the remake, implementation costs for Government are not expected to be significant and can be met within existing allocations.

Consistency with fundamental legislative principles

The *Payroll Tax Regulation 2019* is consistent with fundamental legislative principles. Its provisions are consistent with the objectives of, and are within the scope of the regulation making powers in, the *Payroll Tax Act 1971*.

The *Payroll Tax Regulation 2019* remakes offences contained in the *Payroll Tax Regulation 2009* relating to:

- a failure by an employer to give to the Commissioner of State Revenue a copy of an amended assessment notice under the *Fringe Benefits Tax Assessment Act 1986* (Cth) within 30 days of receiving the notice;
- an employer making an election to calculate fringe benefits on an estimated value basis during a financial year without the Commissioner of State Revenue's consent; and

- an employer making an election to calculate fringe benefits on an actual value basis during a financial year without the Commissioner of State Revenue's consent.

A maximum penalty of 20 penalty units is prescribed for these offences, consistent with the penalties under the *Payroll Tax Regulation 2009*. The penalty amount is considered appropriate to provide a deterrent against non-compliance with the requirements. Additionally, the *Payroll Tax Act 1971* authorises a regulation to impose a penalty of not more than 20 penalty units for a contravention of the regulation.

Consultation

The Office of Best Practice Regulation, Queensland Productivity Commission, was consulted and advised that the sunset review of the *Payroll Tax Regulation 2009* satisfied the requirements under *The Queensland Government Guide to Better Regulation*. The Office of Best Practice Regulation also advised that no further regulatory impact analysis was required as the remake of the *Payroll Tax Regulation 2009* is of a machinery nature.