Revenue Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 168

made under the

Duties Act 2001
Payroll Tax Act 1971

General Outline

Short title

Revenue Legislation Amendment Regulation 2022

Authorising law

Sections 79 and 508(1) of the *Duties Act 2001*
Sections 13, 91 and 97 of the *Payroll Tax Act 1971*

Policy objectives and the reasons for them

The policy objective of the Regulation is to amend:

- the *Duties Regulation 2013* to update the name of the QIC Growth Fund to QIC Long Term Diversified Fund on the list of declared public unit trusts in schedule 1, part 2 and remove several other funds from the list; and
- the *Payroll Tax Regulation 2019* from 1 January 2023 to apply relevant existing provisions to the mental health levy to be imposed under the *Payroll Tax Act 1971* from that date.

***Duties Regulation 2013* – declared public unit trusts**

The *Duties Act 2001* imposes transfer duty on the dutiable value of dutiable transactions. Among other things, a dutiable transaction includes the acquisition or surrender of an interest in a trust that directly or indirectly holds dutiable property in Queensland. However, unit dealings in public unit trusts that hold Queensland dutiable property do not usually attract duty as it is recognised that investments in these trusts are more akin to shareholdings rather than beneficial interests in the underlying trust property.

Chapter 2, part 8, division 7 of the *Duties Act 2001* contains provisions relating to public unit trusts. There are five categories of public unit trusts, including declared public unit trusts. Section 79 of the *Duties Act 2001* states that a declared public unit trust is a trust declared under a regulation. Section 4 of the *Duties Regulation 2013* provides that unit trusts listed in schedule 1 are declared public unit trusts for chapter 2, part 8, division 7 of the *Duties Act 2001*. For a trust to become a declared public unit trust, it must meet and maintain certain conditions set out in section 4(2) of the *Duties Regulation 2013*.

The QIC Growth Fund is currently included on the list of declared public unit trusts. However, the fund was renamed QIC Long Term Diversified Fund, with effect from 1 May 2020. The fund, as renamed, still satisfies the conditions in section 4(2) of the *Duties Regulation 2013* and therefore it is considered appropriate that it retain its status as a declared public unit trust.

Several of the funds on the list have been wound up. Additionally, there are funds on the list which either no longer require declared public unit trust status or do not continue to satisfy the conditions in section 4(2) of the *Duties Regulation 2013.* It is necessary these funds are removed from the list to ensure the *Duties Regulation 2013* remains current.

The relevant funds are:

- QIC Australian Credit Fund
- QIC Australian Equities Fund No. 2
- QIC Australian Venture Capital Fund
- QIC Emerging Equity Markets Fund
- QIC General Fund No. 1
- QIC General Fund No. 2
- QIC Growth Fund No. 2
- QIC High Growth Fund
- QIC Hi-Yield Trust
- QIC Implemented Australian Equities Fund
- QIC Implemented Australian Equities Fund No. 2
- QIC Industrial Equities Fund
- QIC International Equities Fund No. 2
- QIC Premium Equities Fund
- QIC Resources Equities Fund
- QIC Small Companies Fund
- QIC Special Purpose Trust No. 1
- QIC Special Purpose Trust No. 2
- QIC Stable Fund
- Queensland BioCapital Fund
- Queensland Investment Trust No. 1

***Payroll Tax Regulation 2019* – application to mental health levy**

The *Revenue Legislation Amendment Act 2022* amended the *Payroll Tax Act 1971* with effect from 1 January 2023 to impose a mental health levy in relation to taxable wages (for payroll tax purposes) paid or payable from that date. The *Betting Tax and Other Legislation Amendment Act 2022* made further amendments to the *Payroll Tax Act 1971* with effect from 1 January 2023 to support an orderly transition to, and appropriate ongoing administration of, the mental health levy.

Section 13 of the *Payroll Tax Act 1971* contemplates that the value of taxable wages:

- that are paid or payable in kind (other than fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth)) is the value under a regulation; or
- comprising a fringe benefit under the *Fringe Benefits Tax Assessment Act 1986 (Cwlth)* is the value worked out using the formula contained in section 13(5), unless otherwise prescribed by a regulation.

Section 91 of the *Payroll Tax Act 1971* contemplates that a regulation may authorise an employer to include estimated value amounts for fringe benefits, and allow the employer to make an election to include actual value amounts for fringe benefits, in returns lodged by the employer under the *Payroll Tax Act 1971*.

Section 97 of the *Payroll Tax Act 1971* contemplates that a regulation may be made with respect to (amongst other things) what is to be included in a return as the value of fringe benefits paid or payable by an employer, or any other matter for the application of the *Payroll Tax Act 1971* to a fringe benefit.

The *Payroll Tax Regulation 2019* currently provides for the matters identified above. Although taxable wages are to be determined in the same way for the purposes of payroll tax and the mental health levy, particular drafting adopted in the *Payroll Tax Regulation 2019* necessitates amendments being made to ensure the existing provisions apply appropriately for the mental health levy.

Achievement of policy objectives

Duties Regulation 2013 – declared public unit trusts

The objective will be achieved by amending the *Duties Regulation 2013* to change the name of the QIC Growth Fund to the QIC Long Term Diversified Fund on the list of declared public unit trusts in schedule 1, part 2 and removing the various funds mentioned above from the list of declared public unit trusts.

The amendments will ensure the QIC Long Term Diversified Fund has declared public unit trust status with retrospective effect from 1 May 2020, being the day the name change took effect. As the fund qualified as a declared public unit trust prior to the name change and continues to qualify, this is necessary to ensure any trust dealings in the fund occurring on or after the name change on 1 May 2020 are not dutiable.

Payroll Tax Regulation 2019 – application to mental health levy

The objective will be achieved by amending the *Payroll Tax Regulation 2019* to ensure that existing provisions in relation to the valuation of, and reporting options in relation to, taxable wages that are fringe benefits (as defined in the *Payroll Tax Act 1971*) apply appropriately to the mental health levy as well as to payroll tax.

Consistency with policy objectives of authorising law

***Duties Regulation 2013* – declared public unit trusts**

The amendments are consistent with the policy objectives of the *Duties Act 2001*, which contemplates unit trusts that satisfy certain conditions to be public unit trusts for chapter 2, part 8, division 7 of the *Duties Act 2001* be declared under a regulation. This necessarily includes that the list be updated from time to time to ensure the list of declared public unit trusts remains current.

***Payroll Tax Regulation 2019* – application to mental health levy**

The amendments are consistent with the policy objectives of the *Payroll Tax Act 1971*, which contemplate a regulation may be made in relation to various matters, including what is to be included in a return as the value of fringe benefits paid or payable by an employer.

Inconsistency with policy objectives of other legislation

The amendments are not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

***Duties Regulation 2013* – declared public unit trusts**

Any change to the list of declared public unit trusts can only be effected by amendment of the *Duties Regulation 2013*.

***Payroll Tax Regulation 2019* – application to mental health levy**

Application of the existing provisions of the *Payroll Tax Regulation 2019* to the mental health levy can only be effected by amendment of the *Payroll Tax Regulation 2019*.

Benefits and costs of implementation

***Duties Regulation 2013* – declared public unit trusts**

Once a trust is a declared public unit trust, unit dealings in it are not dutiable. As the amendments are not adding any new trusts to the list of declared public unit trusts, they will not result in any additional costs to Government. In relation to the QIC Long Term Diversified Fund, it already qualified as a declared public unit trust under its former name so ensuring its declared public unit trust status continues will not result in any costs to Government. Further, it is not intended duty be imposed on dealings in units of trusts that qualify for declared public unit trust status.

To the extent any of the funds removed from the list continue to exist, acquisitions or surrenders of trust interests in those funds may be subject to duty if the fund directly or indirectly holds dutiable property in Queensland. However, it is intended that duty be imposed in these circumstances.

***Payroll Tax Regulation 2019* – application to mental health levy**

The amendments will ensure that consistent rules apply to the valuation of fringe benefits, and the inclusion of fringe benefits in returns to be lodged under the *Payroll Tax Act 1971*, for both the mental health levy and payroll tax. This is consistent with the position under the *Payroll Tax Act 1971* (as amended by the *Revenue Legislation Amendment Act 2022* and the *Betting Tax and Other Legislation Amendment Act 2022*) that the mental health levy and payroll tax are both to be determined with reference to taxable wages (as defined).

The amendments will not result in any additional costs to Government.

Consistency with fundamental legislative principles

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, sections 4(2)(a) and 4(3)(g)

<u>QIC Growth Fund name change</u>

Section 34 of the *Statutory Instruments Act 1992* provides that a beneficial provision of a statutory instrument may be given retrospective operation if the statutory instrument expressly provides for that operation. Under section 34(2) of the *Statutory Instruments Act 1992*, a 'beneficial provision' means a provision that does not operate to disadvantage a person (other than the State, a State authority or a local government) by decreasing a person's rights or imposing liabilities on the person.

The amendments to the *Duties Regulation 2013* to replace 'QIC Growth Fund' with 'QIC Long Term Diversified Fund' will ensure that the QIC Long Term Diversified Fund has declared public unit trust status with retrospective effect from 1 May 2020 when the fund's name change took effect.

This does not breach fundamental legislative principles as it ensures dealings in units in the QIC Long Term Diversified Fund continue to be exempt from duty despite the change of name. In this regard it is considered this amendment would be a beneficial provision as it would not operate to disadvantage a person by decreasing their rights or imposing liabilities on them.

Consultation

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted. The amendments to the *Duties Regulation 2013* and the *Payroll Tax Regulation 2019* are excluded from regulatory impact analysis as they fall within an agency-assessed exclusion category.

Further consultation was not considered necessary. It was assessed that these amendments fall within agency-assessed exclusion category (b) – regulatory proposals that impose taxation or a royalty (excluding administration of taxation or a royalty). The amendments to the *Duties Regulation 2013* are necessary to ensure the list of declared public unit trusts remains current, which relates to the imposition of taxation as dealings in trusts that have declared public unit trust status are not liable for transfer duty. The amendments to the *Payroll Tax Regulation 2019* are necessary as the existing provisions that are being amended are relevant to the determination of taxable wages for a return period, which is a component of the calculation of the mental health levy (i.e. the amendments are not merely administrative). Further, the amendments do not involve introducing a new levy, fee or charge, or changing an existing one.