



Queensland

# Payroll Tax Regulation 2019

## Subordinate Legislation 2019 No. 147

made under the

*Payroll Tax Act 1971*

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## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Payroll Tax Regulation 2019*.

### 2 Commencement

This regulation commences on 2 September 2019.

### 3 Definitions

The dictionary in schedule 1 defines particular words used in this regulation.

## Part 2 Liability to taxation

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

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

- (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 worked out by a person appointed by the commissioner under section 13(3) of the Act as the value of the taxable wages having regard to arrangements between the employer and employee.

## **Part 3                      Fringe benefits**

### **Division 1                Preliminary**

#### **5            Things that are not fringe benefits—Act, sch, definition *fringe benefit***

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

#### **6            Notice of amended assessments under the Fringe Benefits Assessment Act**

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

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.

*Note—*

Non-compliance with subsection (1) may affect the employer's liability for payroll tax.

- (2) This section is subject to sections 11 to 13.

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## **Division 2            Basis for calculating fringe benefits—Act, s 91**

### **Subdivision 1        Preliminary**

#### **8            Purpose of division**

This division provides, for section 91(1) and (3)(b) of the Act, for the election by an employer to include in returns an estimated value amount, or an actual value amount, for fringe benefits.

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

#### **9            Application of subdivision**

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 (a *relevant financial year*).

#### **10          Election in first periodic return period for relevant financial year**

- (1) The employer may elect to include in returns estimated value amounts and use those amounts to work out the employer's periodic and annual liability.
- (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 relevant financial year.
- (3) An election under subsection (1) continues to apply until the employer elects, under subdivision 3, to use actual value amounts to work out the employer's periodic and annual liability.

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- (4) If an election under subsection (1) applies to the employer on 30 June in the relevant financial year or a later 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 for working out—
  - (a) periodic liability for the periodic return period mentioned in subsection (2); and
  - (b) all subsequent periodic and annual liabilities while the election continues to apply.

## **11 Election during relevant financial year**

- (1) This section applies if—
  - (a) the employer wants to elect to include in returns estimated value amounts and use those amounts to work out the employer's periodic and annual liability for the relevant financial year; and
  - (b) the employer has not made an election under section 10(1) for the relevant 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 application and decide whether or not to give the consent.
- (5) The commissioner may give the consent only if reasonably satisfied—
  - (a) the main purpose for the employer's election is not to avoid or reduce the amount of payroll tax that would otherwise be payable for the relevant financial year if the payroll tax were calculated on an actual value basis; and
  - (b) the employer, because of the employer's circumstances, has compelling reasons for making the election.

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- (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 include in returns estimated value amounts and use those 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, under subdivision 3, to use actual value amounts to work out the employer's periodic and annual liability; and
    - (c) applies for working out—
      - (i) periodic liability for the periodic return period mentioned in paragraph (a); 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 relevant financial year; 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 relevant financial year by the employer.
  - (10) If the election applies to the employer on 30 June in a financial year after the relevant 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.

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- (11) The employer must not purport to 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 3      Electing to calculate fringe benefits on actual value basis**

#### **12      Election in annual return**

- (1) An employer, who has made an election under subdivision 2 that continues to apply, may elect to include in returns actual value amounts and use those 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, under subdivision 2, to use estimated value amounts to work out the employer's periodic and annual liability.
- (5) An election under subsection (1) applies for working out—
- (a) periodic liability for the first periodic return period for the financial year immediately after 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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### **13 Election during financial year**

- (1) This section applies if—
  - (a) an employer wants to elect to include in returns actual value amounts and use those amounts to work out the employer's periodic and annual liability; and
  - (b) the employer has made an election under subdivision 2 that continues to apply.
- (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 application and decide whether or not to give the consent.
- (5) The commissioner may give the consent only if reasonably satisfied—
  - (a) the main purpose for the employer's election is not to avoid or reduce the amount of payroll tax that would otherwise be payable for the financial year if the payroll tax were 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 include in returns actual value amounts and use those 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
  - (b) continues to apply until the employer elects, under subdivision 2, to use estimated value amounts to work out the employer's periodic and annual liability; and

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- (c) applies for working out—
  - (i) periodic liability for the periodic return period mentioned in paragraph (a); and
  - (ii) all subsequent periodic, annual and final liabilities while the election continues to apply.
- (9) If the 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 the employer makes an election under subsection (7) and a change of status happens for the employer 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) The employer must not purport to 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 3            Value of fringe benefits—Act, s 97**

### **Subdivision 1        Preliminary**

#### **14        Purpose of division**

This division prescribes, for section 97(2)(d) of the Act, what is to be included in a return as the value of fringe benefits paid or payable by an employer.

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

#### **15        Definition for subdivision**

In this subdivision—

*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.

#### **16        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 year of tax or the last year of tax is the grossed-up value of the benefits.

#### **17        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 22.
- (2) The value of Queensland fringe benefits for the last year of tax is the grossed-up value of the benefits.

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- (3) The value of Queensland fringe benefits for the year of tax ending in the employer's election year is the grossed-up value of the benefits.

### **Subdivision 3      Value of fringe benefits calculated on estimated value basis in periodic and annual returns**

#### **18      Application of subdivision**

This subdivision applies to an employer for whom an election under division 2, subdivision 2 applies.

#### **19      Periodic return on estimated value basis**

- (1) The estimated value amount for the employer to be included in a periodic return for a periodic return period of 1 month in a financial year is one-twelfth of the value of the employer's Queensland fringe benefits for the previous year of tax.
- (2) The estimated value amount for the employer to be included in a periodic return for a periodic return period of 3 months in a financial year is one-quarter of the value of the employer's Queensland fringe benefits for the previous year of tax.
- (3) The estimated value amount for the employer to be included in a periodic return for a periodic return period of 6 months in 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 to be included in the employer's annual return is the value of the employer's Queensland fringe benefits for the last year of tax.

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## **Subdivision 4 Value of fringe benefits calculated on estimated value basis in final returns**

### **21 Application of subdivision**

This subdivision applies to an employer if, when a change of status happens for the employer, an election under division 2, subdivision 2 applies.

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

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 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**

### **23 Definition for part**

In this part—

*expired regulation* means the *Payroll Tax Regulation 2009* as in force immediately before the commencement.

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**24 Continuation of election under s 12 of expired regulation**

An election made by an employer under section 12(1) of the expired regulation, that applies immediately before the commencement, is taken to be an election by the employer under section 10(1).

**25 Application, consent and continuation of election under s 13 of expired regulation**

- (1) An application for consent made by an employer under section 13(2) of the expired regulation, that has not been decided by the commissioner before the commencement, is taken to be an application for consent under section 11(2).
- (2) Consent given by the commissioner under section 13 of the expired regulation is taken to be consent given by the commissioner under section 11.
- (3) An election made by an employer under section 13(7) of the expired regulation, that applies immediately before the commencement, is taken to be an election by the employer under section 11(7).

**26 Continuation of election under s 14 of expired regulation**

An election made by an employer under section 14(1) of the expired regulation, that applies immediately before the commencement, is taken to be an election by the employer under section 12(1).

**27 Application, consent and continuation of election under s 15 of expired regulation**

- (1) An application for consent made by an employer under section 15(2) of the expired regulation, that has not been decided by the commissioner before the commencement, is taken to be an application for consent under section 13(2).
- (2) Consent given by the commissioner under section 15 of the expired regulation is taken to be consent given by the commissioner under section 13.

- (3) An election made by an employer under section 15(7) of the expired regulation, that applies immediately before the commencement, is taken to be an election by the employer under section 13(7).

## Schedule 1      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 2, subdivision 2.

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

***fringe benefits tax*** means the tax imposed on fringe benefits under the Fringe Benefits Assessment Act.

***grossed-up value***, of a fringe benefit, for part 3, division 3, subdivision 2, see section 15.

***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 the employer's Queensland fringe benefits for April, May and June of the financial year;



- (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.

*relevant financial year*, for part 3, division 2, subdivision 2, see section 9.

*year of tax* see the Fringe Benefits Assessment Act, section 136(1).

ENDNOTES

- 1 Made by the Governor in Council on 8 August 2019.
- 2 Notified on the Queensland legislation website on 9 August 2019.
- 3 The administering agency is Queensland Treasury.

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