Payroll Tax (Transitional) Regulation 2022

Explanatory notes for SL 2022 No. 169

made under the

Payroll Tax Act 1971

General Outline

Short title

Payroll Tax (Transitional) Regulation 2022

Authorising law

Section 148 of the *Payroll Tax Act 1971*

Policy objectives and the reasons for them

The policy objective of the *Payroll Tax (Transitional) Regulation 2022* is to provide for a transitional framework to support the change to the payroll tax deduction phase out rate progressed in the *Revenue Legislation Amendment Act 2022* for the 2022-23 financial year.

Under the *Payroll Tax Act 1971,* payroll tax is imposed on taxable wages paid or payable by an employer in a financial year. Payroll tax is chargeable when the total annual Australian taxable wages of an employer, or group of employers, exceed the exemption threshold.

Where an employer, or group of employers, exceed the exemption threshold, they are entitled to a reducing deduction. This deduction currently phases out at a rate of $1 for every $4 of taxable wages above the exemption threshold and reduces to zero for employers or groups with total annual Australian taxable wages of $6.5 million or more (determined in a financial year basis).

From 1 January 2023, the *Payroll Tax Act 1971* will be amended to extend the benefit of the payroll tax deduction from the current ceiling of $6.5 million in total annual Australian taxable wages up to $10.4 million.

Payroll tax is imposed on taxable wages paid or payable in a financial year. As the change to the deduction phase out rate will commence part way through the 2022-23 financial year, different deduction phase out rates will apply for the first and second half of that financial year. A transitional framework is necessary to provide for how the deduction formulas will operate to apply these different deduction phase out rates.

Section 79 of the *Revenue Legislation Amendment Act 2022,* which commences on 1 January 2023, amends the *Payroll Tax Act 1971* to insert new section 148 on that date. Section 148 of the *Payroll Tax Act 1971* will authorise the making of a regulation (a transitional regulation) to make provision about a matter for which:

- it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the *Payroll Tax Act 1971* as in force before its amendment by the *Revenue Legislation Amendment Act 2022*, part 8, division 3, subdivision 1 to the operation of the *Payroll Tax Act 1971* as in force from the commencement; and
- the *Payroll Tax Act 1971* does not provide or sufficiently provide.

Section 17 of the *Acts Interpretation Act 1954* authorises a transitional regulation to be made prior to 1 January 2023 pursuant to new section 148 of the *Payroll Tax Act 1971* with respect to the transition from the existing payroll tax deduction phase out rate to the payroll tax deduction phase out rate as amended by the *Revenue Legislation Amendment Act 2022.*

Achievement of policy objectives

The *Payroll Tax (Transitional) Regulation 2022* achieves its policy objective by providing a transitional framework that sets out how an employer's deduction will be calculated for the 2022-23 financial year.

The transitional framework provides that:
- an employer's periodic deduction is calculated by reference to the existing deduction formulas for periodic return periods in the first half of the 2022-23 financial year and the amended deduction formulas for periodic return periods in the second half;
- an employer's annual deduction is calculated using the existing deduction formulas for the first half of the 2022-23 financial year and the amended deduction formulas for the second half; and
- an employer's final deduction is calculated using the existing deduction formulas for days in the final period which are in the first half of the 2022-23 financial year and the amended deduction formulas for days in the final period which are in the second half.

It also adjusts the existing and amended deduction formulas for calculating annual and final deductions so each relates to the relevant 6-month period, rather than a 12-month period, for the 2022-23 financial year.

This transitional framework enables an employer's periodic, annual and final deductions to be worked out using the appropriate formula or formulas for the 2022-23 financial year. This is necessary to ensure their liability for payroll tax in relation to wages paid or payable for the 2022-23 financial year is calculated as intended and that employers can receive the benefit of the increased deduction phase out rate contemplated in the *Revenue Legislation Amendment Act 2022* for that financial year.

In accordance with new subsection 148(4) of the *Payroll Tax Act 1971*, the *Payroll Tax (Transitional) Regulation 2022* expires one year after new section 148 of the *Payroll Tax Act 1971* commences (i.e. on 1 January 2024).

Consistency with policy objectives of authorising law

The *Payroll Tax (Transitional) Regulation 2022* is consistent with the objects of the *Payroll Tax Act 1971.* Additionally, the *Payroll Tax Act 1971*, as amended by the *Revenue Legislation Amendment Act 2022* and in accordance with section 17 of the *Acts Interpretation Act 1954,* authorises the making of a transitional regulation with respect to matters included in the *Payroll Tax (Transitional) Regulation 2022.*

Inconsistency with policy objectives of other legislation

The *Payroll Tax (Transitional) Regulation 2022* is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

An alternative way of achieving the policy objectives would be to provide for these matters in the *Payroll Tax Act 1971*. To ensure the amendments to the *Payroll Tax Act 1971* to increase the payroll tax deduction phase out rate are properly supported when they commence on 1 January 2023, the *Payroll Tax (Transitional) Regulation 2022* will provide for these matters from this date, as contemplated by new section 148 of the *Payroll Tax Act 1971*.

Benefits and costs of implementation

The *Payroll Tax (Transitional) Regulation 2022* does not impose any appreciable costs on government, non-government organisations or the public.

The matters provided for in the *Payroll Tax (Transitional) Regulation 2022* support the proper operation of the *Payroll Tax Act 1971.* In particular, the transitional regulation contains a transitional framework to enable the payroll tax deduction formulas to operate appropriately for the 2022-23 financial year. This is necessary to ensure an employer’s liability for payroll tax in relation to wages paid or payable for that financial year is calculated as intended.

The *Payroll Tax (Transitional) Regulation 2022* also delivers benefits for employers, as it ensures that the increased deduction phase out rate is available in relation to wages paid or payable from 1 January 2023.

There will be no additional costs to Government to implement the matters provided for in the *Payroll Tax (Transitional) Regulation 2022*. Administration of this regulation will be within existing processes, systems and staffing for payroll tax generally. Implementation of the change to the deduction phase out rate will involve updates to forms, systems and websites, which will be carried out under the existing budget.

Consistency with fundamental legislative principles

The *Payroll Tax (Transitional) Regulation 2022* is consistent with fundamental legislative principles under the *Legislative Standards Act 1992.*

The *Payroll Tax (Transitional) Regulation 2022* provides for how an employer's periodic, annual and final deductions will be calculated for the 2022-23 financial year, as the change to the payroll tax deduction phase out rate commences part way through the financial year.

In particular, to ensure an employer's annual and/or final liability for payroll tax in relation to wages paid or payable in the 2022-23 financial year is calculated as intended, the *Payroll Tax (Transitional) Regulation 2022* provides that an employer's annual or final deduction is to be calculated by reference to two different deduction phase out rates for the first and second half of the 2022-23 financial year.

While the *Payroll Tax (Transitional) Regulation 2022* relates to the calculation of payroll tax for the financial year that is currently underway, it facilitates the implementation of the increased deduction phase out rate, which is beneficial for employers. In addition, it is being made prior to (and commences on) 1 January 2023, when the amendments to the *Payroll Tax Act 1971* to increase the phase out rate commence, providing certainty regarding the calculation of payroll tax for employers in advance of commencement of the change.

Consultation

In accordance with *The Queensland Government Guide to Better Regulation,* the Office of Best Practice Regulation was not consulted in relation to the *Payroll Tax (Transitional) Regulation 2022* as it was assessed that this regulation falls within an agency-assessed exclusion category.

It was assessed that this regulation falls within agency-assessed exclusion category (b) – regulatory proposals that impose taxation or a royalty (excluding administration of taxation or a royalty), on the basis that the matters provided for in the *Payroll Tax (Transitional) Regulation 2022* affect the payroll tax deduction available and ensure payroll tax is calculated appropriately in relation to wages paid or payable for the 2022-23 financial year, and, as such, relate directly to the imposition of payroll tax.