

NORTHERN TERRITORY OF AUSTRALIA

PAY-ROLL TAX REGULATIONS

As in force at 1 July 2008

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2008

PAY-ROLL TAX REGULATIONS

Regulations under the *Pay-roll Tax Act*

Part 1 Preliminary

1 Citation

These Regulations may be cited as the *Pay-roll Tax Regulations*.

2 Commencement

These Regulations shall come into operation on the date of commencement of the Act.

3 Definitions

In these Regulations, unless the contrary intention appears:

fringe benefits tax means the tax imposed under the *Fringe Benefits Tax Act 1986* of the Commonwealth on fringe benefits.

return means a return required to be furnished under section 13 of the Act.

year of tax has the meaning given in section 136 of the FBTA Act.

4 Employers

In pursuance of paragraph (c) of the definition of ***employer*** in section 3(1) of the Act, the Territory Insurance Office established by section 4 of the *Territory Insurance Office Act* is declared to be an employer for the purposes of the Act.

Part 2 Registration, returns and applications

8 Issue of certificate

The Commissioner, or a person authorised by the Commissioner, may issue to every person registered as an employer, a certificate to the effect that the employer is registered.

Part 3A Superannuation contributions

27A Employer to obtain actuarial determination

- (1) Where a contribution is to be taken to be payable by an employer to a superannuation scheme of a kind referred to in clause 3(1) of Schedule 1 to the Act in the return period in respect of a participant, the employer must ensure that a determination of the kind referred to in clause 3(3)(a) of the Schedule to the Act in respect of contributions to that scheme in that return period in respect of that participant is made.
- (2) Where an event that could reasonably be expected to significantly affect a determination made for the purpose of subregulation (1) occurs, the employer must ensure that another determination is made for the purpose of that subregulation as soon as practicable after the event.
- (3) If the Commissioner considers that, as a result of a significant change in circumstances, a determination made for the purpose of subregulation (1) or (2) is no longer accurate, the Commissioner may direct the employer to ensure that another determination is made and the employer must comply with the direction.
- (4) A determination made in compliance with a direction under subregulation (3) has effect in respect of a return period that commences after the date of the direction.

27B Categories of participants

- (1) A determination for the purpose of regulation 27A must be made in respect of each participant in the superannuation scheme, either individually or in accordance with this regulation.
- (2) If he or she considers it reasonable to do so, an actuary may divide the participants in a superannuation scheme into categories and make a determination in respect of a notional average member of each category.
- (3) If an actuary makes a determination as described in subregulation (2) in respect of a category, the determination applies in respect of each participant who is a member of that category, including a person who subsequently becomes a member of that category.
- (4) For the purpose of subregulation (2), an actuary may categorise participants in a superannuation scheme according to occupation, salary, type of benefits to which they are or will become entitled or on any other basis that the actuary considers appropriate.

27C Rate of earnings

The earnings referred to in clause 3(3)(a) of Schedule 1 to the Act are to be calculated at a rate equal to the yield rate, on the day on which the determination is made, for 10 year treasury bonds issued by the Commonwealth.

27D Determination to be in respect of 3 year period

- (1) A determination for the purpose of regulation 27A is to specify the amount of contributions for each participant or category of participants for each return period in the 3 years from and including the date on which the determination is made.
- (2) If a determination is made for the purpose of regulation 27A(2), the determination is to also specify the amount of contributions for each participant or category of participants for each return period from the date on which the event occurred to and including the date on which the determination is made.
- (3) If a determination is made in compliance with a direction under regulation 27A(3), the determination is to specify the amount of contributions for each participant or category of participants for each return period from the date of the direction to and including the date on which the determination is made.
- (4) The contribution for a participant may be expressed:
 - (a) as a dollar amount, which need not be the same for each return period; or
 - (b) by reference to a variable that is, or a number of variables that are, readily ascertainable in respect of the participant for each return period, an example of such a variable being a percentage of salary.

27E Duration of determination

A determination made for the purpose of regulation 27A has effect:

- (a) for 3 years from the date on which it was made; or
- (b) until it is replaced by another determination made for the same purpose.

27F Determining amount of contribution in respect of prescribed class of participants

The amount of a contribution in respect of a member of the class of participants whose employer is the Territory but who are not employed by or in:

- (a) a Government Business Division to which paragraph (b) of the definition of **employer** in section 3(1) of the Act applies; or
- (b) a statutory corporation to which paragraph (c) of the definition of **employer** in section 3(1) of the Act applies,

is to be calculated by multiplying the charge percentage ascertained under Part III of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth by the wages paid or payable by the employer other than wages of the kind described in paragraph (d) or (e) of the definition of **wages** in section 3(1) of the Act.

27G Records relating to contributions

For the purposes of section 74 of the *Taxation Administration Act*, in relation to a contribution to a superannuation fund that under section 3A of the Act is to be taken to be wages, all documents and records used to ascertain the amount of the contribution, including any determination for the purposes of regulation 27A, are to be kept and preserved.

Part 3B Fringe benefits

Division 1 Fringe benefits

27J Value of fringe benefits to be included in returns

- (1) In the Act, a reference to taxable wages that were paid or payable by an employer during a month is, in relation to taxable wages that are fringe benefits:
 - (a) a reference to the value of the fringe benefits taken to be wages paid or payable by the employer during the month;
 - (b) if the employer has made an election under regulation 27K(1) that is in force – a reference to an amount calculated in accordance with regulation 27K(2); or

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- (c) if the Commissioner has approved a method of calculating the value of fringe benefits under regulation 27K(4) – a reference to an amount calculated in accordance with that approved method.
 - (2) In the Act, a reference to taxable wages that were paid or payable by an employer during a financial year is, in relation to taxable wages that are fringe benefits, a reference to the sum of the amounts under subregulation (1)(a), (1)(b) or (1)(c), or a combination thereof as the case requires, for the financial year.

27K Estimated value of fringe benefits

- (1) An employer may, before the first monthly return or an annual return is required to be furnished for a financial year, elect to include in monthly returns or annual returns (as the case requires) as the value of fringe benefits taken to be wages paid or payable by the employer the estimated value determined in accordance with this regulation.
- (2) The estimated value of fringe benefits to be included in a monthly return or an annual return for a financial year by an employer who has paid or is liable to pay fringe benefits tax in respect of a period of not less than 15 months before the financial year is:
 - (a) in the case of an employer who is required to lodge monthly returns:
 - (i) in a return furnished in relation to each of the first 11 months of the financial year – one-twelfth of the value of the fringe benefits or the part thereof that, in accordance with section 6 of the Act, comprises taxable wages for the year of tax ending 31 March preceding the financial year; and
 - (ii) in the return furnished in relation to the twelfth month of the financial year – the value of the fringe benefits or the part thereof that, in accordance with section 6 of the Act, comprises taxable wages for the year of tax ending 31 March in the financial year, less the total value of the fringe benefits included in the returns furnished for the preceding 11 months; or
 - (b) in the case of an employer who is required to lodge an annual return – the value of the fringe benefits or the part thereof that, in accordance with section 6 of the Act, comprises taxable wages for the year of tax ending 31 March in the financial year.

- (3) For the purposes of subregulation (2), the value of the fringe benefits or the part thereof that comprises taxable wages is to be taken to be the value of fringe benefits or the part thereof that would have comprised taxable wages had:
 - (a) the *Pay-roll Tax Amendment Act 1999* and this Division commenced on 1 April 1998; and
 - (b) the *Pay-roll Tax Amendment Act 2002* commenced on 1 April 2001.
- (4) Where an employer is unable to make an election under subregulation (2), the Commissioner may approve a method of calculating the value of fringe benefits to be included in a return, subject to the terms and conditions specified in the approval.
- (5) An election under subregulation (1) does not take effect unless and until the Commissioner receives notice of the election in the form approved by the Commissioner.
- (6) Subject to subregulation (7), an employer who has made an election under subregulation (1) must furnish monthly returns or an annual return (as the case requires) containing amounts calculated in accordance with the election.
- (7) The Commissioner may, on the application, made in the form and manner approved by the Commissioner, of an employer who has made an election under subregulation (1), by notice to the employer, approve the termination of that election.
- (8) Where the Commissioner approves the termination of an election, the employer is to include in a return after the Commissioner's approval under subsection (7) the value of the fringe benefits taken to be wages paid or payable by the employer to which the return relates.
- (9) Where the Commissioner approves the termination of an election during a financial year, the value of taxable wages that are fringe benefits that the employer may elect to include in the employer's return for June in that financial year is the value of the fringe benefits taken to be wages paid or payable by the employer for the financial year, less the total value of the fringe benefits included in the returns for the preceding months of the financial year.
- (10) If an employer who made an election under subregulation (1) ceases to be liable to pay tax in a financial year, whether or not the election is still in force, the value of taxable wages that are fringe benefits to be included in the employer's last return is the actual value of the fringe benefits paid or payable by the employer for the

period on and from the preceding 1 July until the date on which the employer ceases to be liable to pay tax, less the total value of the fringe benefits included in the returns for the preceding months of the financial year.

27L Amended assessments under FBT Act

An employer must, within 30 days after receiving an amended assessment under the FBT Act, give a copy of the amended assessment to the Commissioner.

27M Records relating to fringe benefits

For the purposes of section 74 of the *Taxation Administration Act*, in relation to a fringe benefit, the following documents and records are to be kept and preserved:

- (a) documents and records of the provision of the fringe benefit;
- (b) documents and records used in calculating the value of, or that support the calculation of the value of, the fringe benefit.

Part 3C Exemptions

27S Exempt classes of employees

- (1) For the purposes of section 9(j)(i) of the Act, the following classes of employees are prescribed:
 - (a) the class comprising apprentices employed in approved apprenticeships within the meaning of the *Northern Territory Employment and Training Act*;
 - (b) the class comprising persons receiving wages funded under the Community Development Employment Programme;
 - (c) the class comprising graduates of approved tertiary educational institutions employed under approved trainee arrangements, subject to the following conditions:
 - (i) that the exemption from the payment of tax applies for a maximum period of 6 months of employment of the employee under the trainee arrangement;
 - (ii) that the exemption does not apply if the employee was employed by the employer before graduating, whether or not under a trainee arrangement.

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- (2) In subsection (1)(c), **approved** means approved under regulation 27T.

27T Approval of tertiary education institutions and trainee arrangements

- (1) An employee is not a member of the class described in regulation 27S(1)(c) unless the Commissioner, on the application of the employer, by notice in writing to the employer, approves:
- (a) the tertiary educational institution of which the employee is a graduate; and
 - (b) the training arrangements under which the employee is employed by the employer.
- (2) An application for approval is to be made in the form and manner approved by the Commissioner.
- (3) An approval takes effect on the date specified in the notice, being a date that is not earlier than 3 years before the date of the application for the approval.
- (4) The Commissioner may, by notice in writing to the employer, revoke an approval.
- (5) A revocation takes effect on the date specified in the notice, being a date that is not earlier than the date on which the approval to which it relates took effect.

27U Exemption for environmental management purposes

- (1) Section 6 of the Act does not apply to wages that are paid or payable by an environment conservation organisation to its employees.
- (2) Subregulation (1) does not apply to wages paid or payable to an employee in respect of a period when the employee is exclusively engaged in providing services on behalf of an environment conservation organisation for which the organisation charges a fee under a contract.

(3) In this regulation:

environment conservation organisation means a person or body that:

- (a) is formed for the sole or predominant purpose of conserving (including restoring) native vegetation or habitat through the performance of re-vegetation or other land management activities on land;
- (b) through its employees and other persons, performs re-vegetation or other land management activities on land; and
- (c) is not permitted under its constitution to distribute money or other property of the organisation amongst its members.

Part 4 Miscellaneous

42 Offences

A person who contravenes, or fails to comply with, a provision of these Regulations shall be guilty of an offence punishable upon conviction by a fine of 50 penalty units.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Pay-roll Tax Regulations (SL No. 17, 1978)

Notified	30 June 1978
Commenced	1 July 1978 (r 2 and s 2 <i>Pay-roll Tax Ordinance 1978</i> (Act No. 47, 1978))

Amendments of the Pay-roll Tax Regulations (SL No. 49, 1980)

Notified	23 December 1980
Commenced	23 December 1980

Amendments of the Pay-roll Tax Regulations (SL No. 8, 1981)

Notified	15 May 1981
Commenced	15 May 1981

Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)

Assent date	28 November 1983
Commenced	1 January 1984 (s 2, s 2 <i>Criminal Code Act 1983</i> (Act No. 47, 1983), <i>Gaz</i> G46, 18 November 1983, p 11 and <i>Gaz</i> G8 26 February 1986, p 5)

Amendments of the Pay-roll Tax Regulations (SL No. 24, 1987)

Notified	20 May 1987
Commenced	20 May 1987

Amendments of the Pay-roll Tax Regulations (SL No. 15, 1988)

Notified	13 April 1988
Commenced	13 April 1988

Amendments of Pay-roll Tax Regulations (SL No. 10, 1990)

Notified	9 May 1990
Commenced	9 May 1990

Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)

Assent date	31 December 1993
Commenced	1 June 1994 (s 2, s 2 <i>Local Government Act 1993</i> (Act No. 83, 1993) and Gaz S35, 20 May 1994)

Amendments of Pay-roll Tax Regulations (SL No. 50, 1994)

Notified	14 December 1994
Commenced	14 December 1994

Amendments of Pay-roll Tax Regulations (SL No. 21, 1999)

Notified	1 July 1999
Commenced	1 July 1999 (r 1, s 2 <i>Pay-roll Tax Amendment Act 1999</i> (Act No. 29, 1999 and Gaz S31, 1 July 1999)

Northern Territory Employment and Training Authority (Consequential Amendments) Act 1999 (Act No. 52, 1999)

Assent date	30 November 1999
Commenced	30 November 1999 (s 2 and s 2 <i>Northern Territory Employment and Training Authority Act 1999</i> (Act No. 51, 1999))

Amendment of Pay-roll Tax Regulations (SL No. 57, 2000)

Notified	13 December 2000
Commenced	13 December 2000

Amendment of Pay-roll Tax Regulations (SL No. 52, 2001)

Notified	19 December 2001
Commenced	1 January 2002 (r 1)

Amendments of Pay-roll Tax Regulations (SL No. 38, 2002)

Notified	9 October 2002
Commenced	9 October 2002

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date	13 September 2002
Commenced	30 October 2002 (Gaz G43, 30 October 2002, p 3)

Pay-roll Tax Amendment Act 2002 (Act No. 43, 2002)

Assent date	13 September 2002
Commenced	1 July 2002 (s 2)

Northern Territory Employment and Training Authority (Consequential Amendments) Act 2002 (Act No. 47, 2002)

Assent date	13 September 2002
Commenced	6 November 2002 (s 2, s 2 <i>Northern Territory Employment and Training Authority Amendment Act 2002</i> (Act No. 46, 2002) and Gaz G44, 6 November 2002, p 2)

Amendment of Pay-roll Tax Regulations (SL No. 37, 2004)

Notified	22 December 2004
Commenced	22 December 2004

Taxation (Administration) Amendment (Objections and Appeals) Act 2005 (Act No. 5, 2005)

Assent date	4 March 2005
Commenced	31 March 2005 (Gaz S11, 31 March 2005, p 1)

Pay-roll Tax Amendment Act 2007 (Act No. 26, 2007)

Assent date 29 October 2007
Commenced 1 January 2008 (s 2)

Pay-roll Tax Amendment (Harmonisation) Act 2008 (Act No. 22, 2008)

Assent date 30 June 2008
Commenced 1 July 2008 (s 2)

3 SAVINGS AND TRANSITIONAL PROVISIONS

r 14 Amendments of Pay-roll Tax Regulations (SL No. 21, 1999)

4 LIST OF AMENDMENTS

pt 1 hdg	amd Act No. 22, 2008, s 20
r 2	amd No. 49, 1980, r 5
r 3	amd No. 49, 1980, r 1 sub No. 10, 1990, r 1; No. 21, 1999, r 3 amd Act No. 26, 2007, s 25; Act No. 22, 2008, s 20
r 4	amd No. 49, 1980, r 5 sub No. 21, 1999, r 3
r 5	amd No. 49, 1980, r 5 rep No. 21, 1999, r 4
r 6	amd No. 49, 1980, r 5 rep Act No. 26, 2007, s 25
r 7	amd No. 49, 1980, r 5 rep No. 21, 1999, r 4
pt 2 hdg	amd Act No. 22, 2008, s 20
rr 9 – 10	amd No. 49, 1980, r 5 rep No. 21, 1999, r 4
r 11	amd No. 49, 1980, r 5 rep Act No. 26, 2007, s 25
r 12	amd No. 49, 1980, r 5, No. 21, 1999, r 5 rep Act No. 26, 2007, s 25
rr 13 – 14	amd No. 49, 1980, r 5 rep No. 21, 1999, r 6
r 15	amd No. 49, 1980, r 5 rep Act No. 26, 2007, s 25
r 16	rep Act No. 26, 2007, s 25
pt III hdg	rep Act No. 26, 2007, s 25
r 17	amd No. 49, 1980, r 5; No. 21, 1999, r 7; Act No. 38, 2002, s 7 rep Act No. 26, 2007, s 25
r 18	rep Act No. 26, 2007, s 25
rr 19 – 21	amd No. 49, 1980, r 5 rep Act No. 26, 2007, s 25
r 22	rep Act No. 26, 2007, s 25
rr 23 – 25	amd No. 49, 1980, r 5 rep Act No. 26, 2007, s 25
r 26	amd No. 49, 1980, r 5 sub No. 21, 1999, r 8 rep Act No. 26, 2007, s 25
r 27	sub No. 21, 1999, r 8 rep Act No. 26, 2007, s 25

pt IIIA hdg	ins No. 49, 1980, r 2 sub No. 21, 1999, r 9 amd Act No. 22, 2008, s 20
r 27A	ins No. 49, 1980, r 2 amd No. 9, 1981, r 1; No. 24, 1987, r 2; No. 15, 1988, r 2; No. 50, 1994, r 1 sub No. 21, 1999, r 9 amd Act No. 22, 2008, s 20
r 27B	ins No. 8, 1981, r 2 sub No. 21, 1999, r 9
r 27C	ins No. 21, 1999, r 9 amd Act No. 22, 2008, s 20
rr 27D – 27F	ins No. 21, 1999, r 9
r 27G	ins No. 21, 1999, r 9 amd Act No. 26, 2007, s 25
pt IIIB hdg	ins No. 21, 1999, r 9 amd Act No. 22, 2008, s 20
pt IIIB div 1 hdg	ins No. 21, 1999, r 9
r 27H	ins No. 21, 1999, r 9 rep Act No. 22, 2008, s 20
r 27J	ins No. 21, 1999, r 9 amd Act No. 43, 2002, s 8
r 27K	ins No. 21, 1999, r 9 amd Act No. 43, 2002, s 9
r 27L	ins No. 21, 1999, r 9
r 27M	ins No. 21, 1999, r 9 amd Act No. 26, 2007, s 25
pt IIIB div 2 hdg	ins No. 21, 1999, r 9 rep Act No. 22, 2008, s 20
rr 27N – 27Q	ins No. 21, 1999, r 9 rep Act No. 22, 2008, s 20
r 27R	ins No. 21, 1999, r 9 amd Act No. 26, 2007, s 25 rep Act No. 22, 2008, s 20
pt IIIC hdg	ins No. 21, 1999, r 9 amd Act No. 22, 2008, s 20
r 27S	ins No. 21, 1999, r 9 amd Act No. 52, 1999, s 4; Act No. 47, 2002, s 7; No. 37, 2004
r 27T	ins No. 21, 1999, r 9
r 27U	ins No. 21, 1999, r 9 rep No. 57, 2000 ins No. 52, 2001, r 2
rr 28 – 29	amd No. 49, 1980, r 5 rep Act No. 5, 2005, s 20
r 30	rep Act No. 26, 2007, s 25
r 31	amd No. 49, 1980, r 5 sub No. 21, 1999, r 10 rep Act No. 26, 2007, s 25
r 32	amd No. 49, 1980, r 5 rep Act No. 26, 2007, s 25
r 33	amd No. 49, 1980, r 5; Act No. 84, 1993, s 6; No. 38, 2002 rep Act No. 26, 2007, s 25
rr 34 – 35	rep Act No. 26, 2007, s 25
r 36	amd No. 49, 1980, r 5 rep No. 21, 1999, r 11
rr 37 – 38	rep Act No. 26, 2007, s 25

rr 39 – 40	amd No. 49, 1980, r 5 rep Act No. 26, 2007, s 25
r 41	rep Act No. 26, 2007, s 25
pt 4 hdg	amd Act No. 22, 2008, s 20
r 42	amd No. 49, 1980, r 5; No. 21, 1999, r 12
r 43	ins Act No. 68, 1983, s 93 rep Act No. 26, 2007, s 25
sch 1 hdg	amd No. 49, 1980, r 3
sch 1	rep No. 10, 1990, r 2
sch 2	ins No. 49, 1980, r 4 amd No. 24, 1987, r 3; No. 15, 1988, r 3; No. 50, 1994, r 2 rep No. 21, 1999, r 13
sch 3	ins No. 8, 1981, r 3 rep No. 21, 1999, r 13