

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF PAY-ROLL TAX REGULATIONS

Regulations 1999, No. 21

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 1999, No. 21

Regulations under the *Pay-roll Tax Act*

I, NEIL RAYMOND CONN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Pay-roll Tax Act*.

Dated 30 June 1999.

N. R. CONN
Administrator

By His Honour's Command

M. A. REED
Treasurer

AMENDMENTS OF PAY-ROLL TAX REGULATIONS

1. Commencement

These Regulations come into operation on the commencement of the *Pay-roll Tax Amendment Act 1999*.

2. Principal Regulations

The Pay-roll Tax Regulations are in these Regulations referred to as the Principal Regulations.

3. Repeal and substitution

Regulation 3 of the Principal Regulations is repealed and the following substituted:

"3. Interpretation

"(1) In these Regulations, unless the contrary intention appears –

'employee share scheme' means a scheme by which an employer provides shares, rights to acquire shares, units in a unit trust or rights to acquire units in a unit trust, whether directly or indirectly, to or in relation to an employee in respect of services performed or rendered by the employee;

'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 FBT Act.

"(2) A reference in these Regulations to the office of the Commissioner is to be read as including a reference to a place that is an agency of the office of the Commissioner.

"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."

4. Repeal

Regulations 4, 5, 7, 9 and 10 of the Principal Regulations are repealed.

5. Furnishing returns, applications and information

Regulation 12 of the Principal Regulations is amended –

- (a) by omitting "A return" and substituting "(1) A return"; and
- (b) by adding at the end the following:

"(2) A person is not to be taken to have complied with a requirement under section 16(1)(a), (b) or (c) of the Act unless and until the person furnishes the information, attends and gives evidence, or produces the books, documents or other papers, as the case may be, in accordance with the notice referred to in section 16(1) of the Act."

6. Repeal

Regulations 13 and 14 of the Principal Regulations are repealed.

7. How tax to be paid

Regulation 17 of the Principal Regulations is amended –

- (a) by omitting from paragraph (b) "sent; or" and substituting "sent;";
- (b) by omitting from paragraph (c) "the Commonwealth Bank of Australia." and substituting "an authorised deposit-taking institution within the meaning of section 5(1) of the *Banking Act 1959* of the Commonwealth that has been approved by the Commissioner for the purpose of this paragraph; or"; and
- (c) by adding at the end the following:

"(d) by any other means approved by the Commissioner, which may include electronic means."

8. Repeal and substitution

Regulations 26 and 27 of the Principal Regulations are repealed and the following substituted:

"26. Officer may appear for Commissioner

"(1) An officer authorised in writing by the Commissioner may appear on behalf of the Commissioner before a court of competent jurisdiction –

- (a) in a proceeding instituted in the name of the Commissioner for the recovery of unpaid tax, including further or additional tax; or
- (b) in a prosecution under section 45 of the Act.

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"(2) An officer appearing in a proceeding or prosecution under subregulation (1) –

- (a) is to be taken to represent the Commissioner in that proceeding or prosecution; and
- (b) is entitled, on behalf of the Commissioner, to conduct the proceeding or prosecution and to give evidence in the proceeding or prosecution.

"27. Certified copies

"(1) A document or other thing that is certified by the Commissioner to be a true copy of, a true extract from, or a true record of or from, an assessment, determination, return, list, declaration, statement, book, document or writing of any other kind whatsoever in the custody of the Commissioner or an officer of the Commissioner –

- (a) is, for all purposes, to be taken to be evidence of the original of or from which it purports to be a copy, extract or record; and
- (b) may be received in evidence to the same extent as the original would have been.

"(2) In subregulation (1) –

'record' means any thing or process –

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed in visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning."

9. Repeal and substitution

Part IIIA of the Principal Regulations is repealed and the following substituted:

"PART IIIA – 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 the Schedule 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

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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 the Schedule 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

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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 61 of the 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 IIIB – FRINGE BENEFITS AND PRESCRIBED BENEFITS

"Division 1 – Fringe benefits

"27H. Not fringe benefits

"For the purposes of the definition of 'fringe benefit' in section 3(1) of the Act, a living-away-from-home allowance fringe benefit under the FBTA Act is prescribed not to be a fringe benefit.

"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 actual value of the fringe benefits 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
- (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 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 the *Pay-roll Tax (Amendment) Act 1999* and this Division commenced on 1 April 1998.

"(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.

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"(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 actual value of the fringe benefits, 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 actual value of the fringe benefits 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 FBTA Act

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

"27M. Records relating to fringe benefits

"For the purposes of section 61 of the 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.

"Division 2 – Prescribed benefits

"27N. Prescribed benefits

"For the purposes of the definition of 'prescribed benefit' in section 3(1) of the Act, a contribution to an employee share scheme (other than a contribution that is otherwise wages under the Act) is prescribed to be a benefit.

"27P. Value of employee share benefit

"The value of the prescribed benefit referred to in regulation 27N is –

- (a) where the contribution is a share, unit or right to acquire a share or unit – the market value (determined in accordance with regulation 27Q) at the time the share, unit or right is contributed, less any consideration for the acquisition of the share, unit or right paid or given by the employee;
- (b) where the contribution is money – the amount provided; or
- (c) where the contribution is property that is worth money (other than property of the kind referred to in paragraph (a) or (b)) – the amount of money that the property is worth at the time it is contributed.

"27Q. Market value of share, unit or right

"(1) The market value of a share, unit or right that is quoted on an approved stock exchange on the relevant day is –

- (a) if there was at least one transaction on that stock exchange in shares, units or rights of the same class as the share, unit or right contributed during the one week period immediately before the relevant day – the weighted average of the prices at which those shares, units or rights were traded on that stock exchange during that period; or
- (b) if there were no transactions on that stock exchange in that class of shares, units or rights during that one week period – the last price at which an offer was made on that stock exchange during that period to buy such a share, unit or right.

"(2) The market value of a share or unit (other than a unit in an unlisted public unit trust) not quoted on an approved stock exchange on the relevant day is the arm's length value of the share or unit –

- (a) as specified in a written report that is in a form approved by the Commissioner and is provided to the employer by a person who is a qualified person in relation to valuing the share or unit; or

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- (b) as calculated in accordance with any other method approved in writing by the Commissioner as a reasonable method of calculating the arm's length value of unlisted shares or units.

"(3) The market value of a unit in an unlisted public unit trust is the weighted average of the issue price for the units during the one week period immediately before the relevant day.

"(4) The market value of a right not quoted on an approved stock exchange on the relevant day is the market value on that day of the share or unit that may be acquired by exercising the right, less the lowest amount that must be paid to exercise the right to acquire the share or unit.

"(5) In determining the market value of a share, unit or right under this regulation –

- (a) the share, unit or right; and
- (b) any share or right that may be acquired as a consequence of the exercise or operation of the right,

is to be taken not to be subject to any conditions or restrictions.

"(6) If the lowest amount that must be paid to exercise a right to acquire a share or unit is nil or cannot be determined, the market value of the right on a particular day is the same as the market value of the share or unit on that day.

"(7) If a share, unit or right is quoted on a day on 2 or more approved stock exchanges –

- (a) the price on that day is the price on whichever of those stock exchanges is nominated by the employer; and
- (b) if one or more of the stock exchanges on which the share, unit or right is quoted is an Australian stock exchange – the employer must nominate one of the Australian stock exchanges.

"(8) The market value of a share, unit or right wherever determined is to be expressed in Australian currency.

"(9) In this regulation –

'approved stock exchange' has the meaning given in section 470 of the *Income Tax Assessment Act 1936* of the Commonwealth;

'qualified person', in relation to valuing a share of a company or a unit in a unit trust, means a person who is registered as a company auditor under a law in force in the Territory, a State of the Commonwealth or another Territory, other than –

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- (a) a trustee of the unit trust;
- (b) a director, secretary or employee of the company or of the trustee of the unit trust;
- (c) a partner, employer or employee of a person referred to in paragraph (a) or (b); or
- (d) a partner or employee of a person referred to in paragraph (c);

'relevant day', in relation to the contribution of a share, unit or right, means the day on which the share, unit or right is contributed;

'unlisted public unit trust' means a unit trust that is not quoted on an approved stock exchange and in respect of which either of the following applies:

- (a) units in the unit trust were offered to the public;
- (b) at all times during the previous 12 months, the units in the unit trust were held by at least 50 unit holders.

"27R. Records relating to prescribed benefits

"For the purposes of section 61 of the Act, in relation to a prescribed benefit, the following documents and records are to be kept and preserved:

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

"PART IIIC – 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 probationers and trainees within the meaning of the *Northern Territory Employment and Training Authority 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:

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- (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.

"(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. Exempt classes of services

"For the purposes of section 9(j)(ii) of the Act, all services directly, wholly or substantially involved in the manufacture within the Territory of corrugated and solid fibreboard boxes and fibreboard packaging materials and in their warehousing and wholesale distribution are prescribed."

10. Repeal and substitution

Regulation 31 of the Principal Regulations is repealed and the following substituted:

"31. Certificate as to failure to furnish information etc.

"In any proceedings against a person for failing to comply with a requirement under section 16 of the Act, a certificate signed by the Commissioner stating—

- (a) that the defendant was required by the Commissioner by notice in writing to furnish information, attend and give evidence, or produce books, documents or other papers, as the case may be; and
- (b) that the defendant failed to furnish information, attend and give evidence, or produce books, documents or other papers, in accordance with that notice,

is evidence of the matters so stated."

11. Repeal

Regulation 36 of the Principal Regulations is repealed.

12. Offences

Regulation 42 of the Principal Regulations is amended by omitting "\$100" and substituting "50 penalty units".

13. Repeal and substitution

Schedules 2 and 3 to the Principal Regulations are repealed.

14. Saving

Despite regulation 9, Part IIIA of the Principal Regulations as in force before the commencement of these Regulations continues to apply in relation to a repayment of tax paid in respect of a financial year ending on or before 30 June 1999.
