



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. PT 29

Applicability of Pay-roll Tax Provisions to Various Components of Remuneration Packages

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PT 29	2 March 1989	2 / 3 / 89	31 / 12 / 89	Obsolete

Preamble

Revenue Ruling PT 28 dealt with the broad principles of pay-roll tax on non-cash elements of remuneration packages. This ruling, which should be read in conjunction with earlier rulings PT 22, PT 23 and PT 24, provides guidelines on acceptable treatment and valuation for pay-roll tax purposes of commonly encountered components of modern remuneration packages.

The definition of "wages" in the Pay-roll Tax Act includes wages, salary, commission, allowances paid or payable, whether paid at piece rates or otherwise and whether paid or payable in cash or in kind. The definition provides that what is taxed for pay-roll tax purposes is the cost to an employer of remuneration to employees for services.

In a recent NSW Supreme Court decision (*Bond Brewing NSW Ltd v Chief Commissioner of Pay-roll Tax*) handed down on 27 February 1989, Hunt J. stated that bonuses paid to employees' spouses, which were not made at the direction of the employees, were not "paid or payable ... to an employee as such". The loophole created by this judgement was effectively closed by amendments to the Pay-roll Tax Act contained in the Pay-roll Tax (Amendment) Act 1988, which took effect from 1 January 1989. The relevant amendments were inclusion of a definition of "pay" to include "provide, confer and assign" and a new subsection 3(4) which extended the definition of wages to include wages paid or payable to or by third parties.

It is important to understand the distinction between the provisions of the NSW Pay-roll Tax legislation and the Commonwealth's Fringe Benefits Tax (FBT) legislation. The pay-roll tax provisions in NSW are based on the **cost to the employer** of remunerating employees NOT value of the benefit to the employee. Similar distinctions may be drawn between NSW and Victorian pay-roll tax provisions which seek to value certain benefits.

Ruling

Employment Agreements

1. It is common practice for employment agreements (both written and oral) to be negotiated between employers and employees whereby a range of options is available to the employee on the method of remuneration. In such cases "wages" for pay-roll tax purposes will be the cost to the employer of remuneration paid or payable including non-cash elements (in kind).
2. Some commonly found elements of remuneration packages are dealt with below. It should be noted, however, that where the remuneration package includes a calculation or provision for tax to be paid under FBT legislation the cost to the employer should be reduced by that amount (i.e. the FBT tax) for pay-roll tax purposes as it is a liability of the employer and not remuneration to the employee.

Payments to or by Third Parties

3. Following the decision in the Bond Brewing case, prior to 1 January 1989 payments to third parties which were not made at the direction of the employee would not be subject to pay-roll tax even where such payments were "wages ... paid or payable ... in respect of services performed or rendered". However, such payments which are made at the direction of the employee, would be subject to pay-roll tax.
4. From 1 January 1989 all payments to or by third parties which can be categorised as being "wages ... paid or payable ... In respect of services performed or rendered" are subject to pay-roll tax, regardless of whether or not such payments are made at the direction of the employee.

Treatment and Valuation

5. It has been pointed out that in some cases taxpayers may have difficulty in calculating the full cost of remuneration paid or payable "in kind" due to the business accounting systems and records available. The following methods of treatment and valuation of some common elements of remuneration will be acceptable for pay-roll tax purposes where a specific amount has not been agreed between the employer and employee.

(i) Motor Vehicles

Where, as a result of agreement or arrangement, an employee accepts the provision of a motor vehicle by the employer it is remuneration "in kind" and the cost of providing the vehicle is accordingly taxable. If the vehicle is used for both business and private purposes of the employee then only the additional cost i.e. total costs of the vehicle less what the cost would have been if only used for business purposes, is taxable.

For convenience to taxpayers and to minimise compliance cost the value assessed for Fringe Benefits Tax purposes would be acceptable as a fair representation of the cost of private use of motor vehicles.

The assessable amount for pay-roll tax purposes may be returned on an annual basis i.e. in the return for June each year.

(ii) Superannuation

Employee contributions to superannuation funds where paid by the employer are taxable. Note that employer contributions are not taxable.

(iii) Loans

Except where interest on employee loans is paid by the employer after 1 January 1989, in which case the amount of interest paid is taxable, no pay-roll tax liability will arise. Provision of an interest free or low interest loan from the employer's funds does not result in any amount of "wages" being paid or payable.

(iv) Allowances and Expenses

Except to the extent that they represent direct reimbursement of business expenses the following payments are taxable:

- Entertainment allowances

- Credit cards and other credit facilities provided
- School fees
- Club fees
- Other payments made on employees' behalf.

(v) **Private Travel**

The cost of private travel of employees (and their families) paid or payable by the employer to the employee or at the direction of the employee is taxable.

Travel which is for both business and private purposes is taxable only to the extent of **additional cost** incurred over and above the business related expenses. For example if an employee travel led to London for business reasons for, say, two weeks, but then extended the trip by touring Europe for a further two weeks for non-business purposes, the additional cost would be the accommodation, travel and other expenses of the two weeks in Europe only. The fares to and from London and expenses relating to the two weeks in London would not be taxable.

(vi) **Medical Fund Contributions**

See Pay-roll Tax Ruling No. PT 22 (May 1988)

(vii) **Discount Vouchers**

See Pay-roll Tax Ruling No. PT 23 (May 1988)

(viii) **Shopping Discounts**

See Pay-roll Tax Ruling No. PT 24 (May 1988)

Compliance

6. In view of the misunderstanding by some employers of their liability to pay-roll tax in relation to issues covered by this ruling, provided any underpayments of pay-roll tax are disclosed by **30 April 1989**, the additional liability will be restricted to the period from 30 April 1986. If **payment** of the above amounts is made by **30 April 1989** the penalty imposed will be limited to 20% flat. Such penalty should be paid concurrently with the primary tax.
7. Any enquiries in relation to the issues raised by this ruling or related issues may be directed to the Compliance Division, telephone No. 685-2133.
8. Payment should be addressed to:

Compliance Division
Office of State Revenue
PO Bag 5327
Parramatta 2124

B. BUCHANAN,
for Chief Commissioner of Pay-roll Tax,
2 March 1989.