



Pay-Roll Tax Legislation Amendment (Avoidance) Bill

Second Reading

Corrected
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PAY-ROLL TAX LEGISLATION AMENDMENT (AVOIDANCE) BILL

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Bill introduced and read a first time.

Second Reading

Ms MEAGHER (Cabramatta—Parliamentary Secretary), on behalf of Mr Aquilina [6.07 p.m.]:
I move:

That this bill be now read a second time.

The Pay-roll Tax Legislation Amendment (Avoidance) Bill contains amendments to the Pay-roll Tax Act 1971 and the Taxation Administration Act 1996. The amendments were recommended by two special advisers in the recently completed "Report on Compliance with Workers Compensation Premiums and Pay-roll Tax". Earlier this year the Government appointed the two special advisers, Ms Penny Le Couteur, an independent consultant, and Dr Neil Warren, Associate Professor of Economics at the University of New South Wales, to undertake a review and make recommendations to improve compliance with payroll tax and workers compensation legislation. The advisers were asked to examine measures to increase the level of compliance, and make recommendations on various issues, including aligning definitions and administrative processes for payroll tax and workers compensation purposes.

The special advisers consulted with peak employer, employee and industry bodies, and also with the Office of State Revenue and WorkCover. An interim report was released for public comment on 7 June 2002 and attracted 15 written submissions from a range of organisations, including professional advisers, and peak industry and union bodies. After taking these submissions into account, the special advisers presented their final report to the Government in mid-September. The report's recommendations include immediate, short-term and long-term changes. The report proposes that consistent definitions of workers, employers and wages be adopted for payroll tax and workers compensation purposes.

The report also recommends that WorkCover and the Office of State Revenue adopt consistent approaches to the assessment and collection of payroll tax and workers compensation premiums. Implementation of these recommendations should significantly reduce compliance costs for employers, increase the ease of enforcement for WorkCover and the Office of State Revenue, and improve the transparency of the system. As a first step it is proposed to amend the payroll tax and workers compensation legislation, with effect from 1 July 2003, to implement certain short-term recommendations. These include common definitions of ordinary wages; the introduction of common grouping provisions; and placing an obligation on principal contractors to ensure their sub-contractors comply with workers compensation and payroll tax legislation. This bill contains amendments to the Pay-roll Tax and Taxation Administration Acts to implement these short-term measures. The remaining recommendations will require longer lead times and have significant implementation and operational implications. These recommendations will be subject to further consultation with stakeholders to ensure they provide equitable and practical outcomes.

I will now explain in greater detail the payroll tax amendments contained in the bill. The special advisers recommended that the definition of wages for payroll tax be amended to tax certain

payments which are part of the remuneration for services performed by employees, but which are not currently subject to payroll tax. The changes include taxing the GST-inclusive grossed-up value of fringe benefits. Currently, GST is excluded from the taxable value of fringe benefits, which provides an untaxed benefit to employees, equivalent to the amount of the GST. The changes also include removal of an exemption for lump sum payments of leave paid on termination where the leave accrued prior to 1 January 1990. This exemption is redundant in many cases, but creates administrative difficulties, particularly in relation to record-keeping, which means many employers may incorrectly claim the exemption, or may be unable to verify that they are entitled to claim it. These changes will bring the New South Wales payroll tax legislation into line with most other States and Territories. An avoidance practice identified by the special advisers will be dealt with by taxing distributions from trusts to beneficiaries, where the beneficiaries perform unpaid or under-paid work.

The existing grouping provisions under the payroll tax legislation assess related employers together as a group to prevent employers from splitting their businesses amongst several legal entities to reduce their payroll tax by claiming multiple threshold deductions. The advisers recommended that the payroll tax grouping provisions be strengthened in relation to trusts, and simplified using recent Australian Capital Territory legislation as a model. The advisers also recommended that the upgraded provisions should be applied for workers compensation purposes. There are approximately 24,000 employers registered for payroll tax, and about 4,600 separate groups consisting of approximately 9,500 separate employer entities. The Australian Capital Territory provisions have a similar outcome to the New South Wales provisions in most respects, but have been written in simpler format. This makes the legislation easier to understand and should ensure a higher level of compliance by employers.

The bill will transfer the simplified grouping provisions from the Pay-roll Tax Act to the Taxation Administration Act. This will facilitate the application and maintenance of uniform provisions for both workers compensation and payroll tax purposes. The bill extends the circumstances in which the Chief Commissioner may exclude a business from a group where it is conducted by a trustee but is owned and operated independently of all the other members of the group. Currently this discretion may be applied only where two businesses are grouped because they use common employees but the businesses are owned and operated substantially independently of each other. The consultants have recommended that provisions similar to section 127 of the Industrial Relations Act 1996 be introduced to require principal contractors to verify that their subcontractors have complied with payroll tax and workers compensation premium liabilities. The bill inserts such a provision into the Taxation Administration Act for payroll tax purposes.

The bill requires a principal contractor to obtain a certificate from their subcontractors within 21 days after entering into a contract, indicating that the subcontractor has complied with the payroll tax legislation. A principal contractor who does not obtain a certificate, or knows that a certificate is false, will be liable for payment of any amounts of payroll tax not paid by the subcontractor for work done for the principal contractor. However, the principal contractor will be able to recover any such liability from the subcontractor. If a subcontractor fails to provide a certificate as required, the principal contractor will be able to retain any amounts payable to the subcontractor unless or until a correct statement is provided. These obligations are not new to principal contractors as they already exist in section 127 of the Industrial Relations Act in relation to remuneration payable but not paid by the subcontractor to its employees. I table a summary of the bill for the assistance of honourable members. I commend the bill to the House.

Debate adjourned on motion by Mr R. H. L. Smith.

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