



New South Wales

Payroll Tax Deferral (BlueScope Steel) Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to authorise the Treasurer to enter into and give effect to a deed with BlueScope Steel Limited (ABN 16 000 011 058) (*BlueScope*) providing for the deferral of payroll tax payments for which BlueScope and certain BlueScope Taxpayer Entities are liable to pay in the period commencing 1 January 2016 and ending 31 December 2018 and for payment by instalments of the total amount deferred in accordance with a structured payment plan set out in the deed.

The Bill provides for a copy of the text of the proposed deed to be tabled in Parliament on the date of introduction of the Bill.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides for the proposed Act to be read with the *Payroll Tax Act 2007* and the *Taxation Administration Act 1996*.

Clause 5 contains the authorisation described in the Overview of the Bill. It also makes it clear that the Treasurer can give effect to the deed despite anything in the *Payroll Tax Act 2007* or any other law.

Clause 6 provides for certification and use in evidence of the text of the proposed deed as tabled in Parliament.

Schedule 1 Amendment of Taxation Administration Act 1996 No 97

Schedule 1 amends the definition of *taxation laws* in section 4 of the *Taxation Administration Act 1996* to enable administration and enforcement of the provisions relating to the deferral and payment of payroll tax by BlueScope and certain BlueScope Taxpayer Entities described in the deed under the proposed Act.



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Payroll Tax Deferral (BlueScope Steel) Bill 2015

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New South Wales

Payroll Tax Deferral (BlueScope Steel) Bill 2015

No. , 2015

A Bill for

An Act with respect to arrangements for the temporary deferral of payroll tax payments by BlueScope Steel Limited and certain other entities.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Payroll Tax Deferral (BlueScope Steel) Act 2015</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Interpretation	6
(1) In this Act:	7
<i>BlueScope</i> means BlueScope Steel Limited (ABN 16 000 011 058).	8
<i>BlueScope Taxpayer Entity</i> has the meaning it has in the deed.	9
<i>deed</i> means the deed entitled “Payroll Tax Structured Payment Plan Deed” set out in the tabled text.	10
<i>function</i> includes a power, authority or duty, and <i>exercise</i> a function includes perform a duty.	12
<i>tabled text</i> means the text of the proposed deed entitled “Payroll Tax Structured Payment Plan Deed”, a copy of which was tabled in Parliament on the date of introduction of the Bill for the <i>Payroll Tax Deferral (BlueScope Steel) Act 2015</i> .	14
(2) Other expressions used in this Act have the same meaning as they have in the <i>Payroll Tax Act 2007</i> .	17
(3) Notes included in this Act do not form part of this Act.	19
4 Relationship to Payroll Tax Act 2007 and Taxation Administration Act 1996	20
(1) This Act is to be read together with the <i>Payroll Tax Act 2007</i> and the <i>Taxation Administration Act 1996</i> .	21
Note. The <i>Taxation Administration Act 1996</i> makes provision for the administration and enforcement of taxation laws. This Act is a taxation law for the purposes of that Act.	23
(2) This Act sets out provisions that, for the purposes of the <i>Payroll Tax Act 2007</i> , apply only in this jurisdiction.	25
5 Authorisation of payroll tax deferral arrangements	27
(1) The Treasurer is authorised, on behalf of the State, to enter into and give effect to the deed.	28
(2) The deed may be given effect despite sections 7, 8 and 9 of the <i>Payroll Tax Act 2007</i> .	29
(3) In this section:	30
<i>giving effect to</i> the deed includes:	31
(a) complying with any obligation of the State under the deed, and	32
(b) exercising or enforcing any right or power under the deed.	33
(4) For the purpose of giving effect to the deed, section 81 (1) of the <i>Payroll Tax Act 2007</i> is to be read as if the reference to an amount that a member of a group is required to pay under that Act in respect of a period were a reference to an amount that a BlueScope Taxpayer Entity is required to pay under the deed.	35
Note. The BlueScope Taxpayer Entities are a group under the <i>Payroll Tax Act 2007</i> .	36
(5) This section has effect despite anything to the contrary in the <i>Payroll Tax Act 2007</i> or any other law.	37
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- (6) Nothing in this section limits or prevents the exercise of any function by the Chief Commissioner under section 37 or 47 of the *Taxation Administration Act 1996* in relation to payroll tax payable by BlueScope and any BlueScope Taxpayer Entity. 1
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3
- (7) A failure by BlueScope or a BlueScope Taxpayer Entity to pay an amount required to be paid by it under the deed is a tax default for the purposes of the *Taxation Administration Act 1996*. 4
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6 Evidence 7

- (1) A certificate of the Clerk of the Legislative Assembly certifying that a document is an accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence: 8
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11
- (a) of the matter certified, and 12
- (b) that the text of the proposed deed was tabled in the Legislative Assembly as referred to in the definition of *tabled text* in section 3. 13
14
- (2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established. 15
16
17

Payroll Tax Structured Payment Plan Deed set out in the tabled text for Payroll Tax Deferral (BlueScope Steel) Bill 2015

This is the Payroll Tax Structured Payment Plan Deed set out in the tabled text referred to in the *Payroll Tax Deferral (BlueScope Steel) Bill 2015* that was tabled on 12 November 2015 in the Legislative Assembly of New South Wales by or on behalf of the Minister introducing the Bill.

Ronda Miller
Clerk of the Legislative Assembly of New South Wales

DATED

**The Treasurer of New South Wales for and on behalf of the Crown in right
of the State of New South Wales
("State")**

and

**BlueScope Steel Limited
("BlueScope")**

Payroll Tax Structured Payment Plan Deed

Lea Armstrong
Crown Solicitor
60-70 Elizabeth Street
SYDNEY NSW 2000
DX 19 SYDNEY

Tel: (02) 9224-5000

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Ref: 201503129

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Schedule

Parties

This Deed is made between:

1. The Treasurer of New South Wales for and on behalf of the Crown in right of the State of New South Wales ("**State**"); and
2. BlueScope Steel Limited A.B.N 16 000 011 058 of Level 11, 120 Collins Street, Melbourne in the State of Victoria ("**BlueScope**").

Background

- A. BlueScope has sought the State's assistance to support its operations at the Port Kembla Steelworks so that they remain viable and continue to operate.
- B. The State has agreed, subject to the Conditions Precedent and all other terms of this Deed, to assist BlueScope by allowing BlueScope and other BlueScope Taxpayer Entities to defer certain Payroll Tax payments.

Operative provisions

1. Definitions and Interpretation

1.1 In this Deed, unless the contrary intention appears:

"**BlueScope Taxpayer Entity**" or "**BTE**" means any of the following entities responsible for the payment of payroll tax to the State:

- (a) BlueScope Steel (AIS) Pty Ltd (ABN 19 000 019 625);
- (b) BlueScope Solutions Holdings Pty Ltd (ABN 30 070 874 538);
- (c) Metalcorp Steel Pty Ltd (ABN 13 002 581 213);
- (d) BlueScope Steel Limited (ABN 16 000 011 058);
- (e) BlueScope Water Australia Pty Ltd (ABN 83 009 387 660);
- (f) BlueScope Distribution Pty Ltd (ABN 88 096 380 068);
- (g) Lysaght Building Solutions Pty Ltd (ABN 61 103 232 444);
- (h) Fielders Manufacturing Pty Ltd (ABN 73 165 350 621); and
- (i) Orrcon Distribution Pty Ltd (ABN 89 006 702 067).

"**Ceases Operation**" means ceasing the production of commodity hot rolled coil at the Port Kembla Steelworks.

"**Conditions Precedent**" means the condition set out in clause 2.

"**Deferrals**" means those Payroll Tax amounts the payment of which is deferred pursuant to this Deed, as further set out in the Payroll Tax structured payment plan in the schedule to this Deed (the "**Schedule**").

"**Deed**" means this deed and includes all schedules and annexures.

"**Event of Default**" means any of the following in relation to any BTE:

- (a) the BTE becoming unable to pay its debts as and when they fall due;
- (b) an application for winding up is made regarding the BTE and not stayed within 14 days;
- (c) a winding up order is made against the BTE;
- (d) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the BTE;
- (e) a mortgagee enters into the possession of any property of the BTE, whether or not such property is part of the Port Kembla Steelworks;
- (f) notice is given of a meeting of creditors of the BTE for the purposes of a deed of arrangement; or
- (g) any actions of a similar effect as set out in (a) to (f) are taken.

"**Payments**" means the payment of the Deferrals in the instalments as set out in the Payroll Tax structured payment plan in the Schedule.

"**Payroll Tax**" has the meaning given to that term in the Payroll Tax Act.

"**Payroll Tax Act**" means the *Payroll Tax Act 2007* (NSW).

"**Port Kembla Steelworks**" means the blast furnace and all associated operations, for example coke ovens and Sinter plant, pertaining to the production of commodity hot rolled coil.

"**Taxation Administration Act**" means the *Taxation Administration Act 1996* (NSW).

1.2 Except where the context otherwise requires:

- (a) **Reconstitution of a party.** A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (b) **Rules of construction.** No rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Deed or any part of it.
- (c) **Headings.** The headings and index in this Deed are for convenience only and do not affect the interpretation of this Deed.

- (d) **References to gender.** Words importing a gender include any other gender.
- (e) **References to persons.** Persons will be taken to include any natural or legal person.
- (f) **Grammatical forms.** Where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.
- (g) **Legislation.** A reference to a statute, regulation, ordinance or by-law ("Law") will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that Law from time to time.
- (h) **Currency.** A reference to dollars or to "\$" is a reference to Australian dollars.

2. Conditions precedent

- 2.1 The grant of Deferrals under this Deed is conditional and subject to the enactment of the Payroll Tax Deferral (BlueScope Steel) Bill 2015 by the New South Wales Parliament and the commencement of that Bill to authorise the entry by the State into, and performance of the obligations of the State under, this Deed.

3. Deferrals

Grant of Deferrals and Payments

- 3.1 The State agrees to grant BlueScope and the BTEs the Deferrals set out in the Schedule.
- 3.2 Subject to clause 3.5 BlueScope must ensure that each BTE makes payment of all Payroll Tax the subject of the Deferrals in accordance with the Payroll Tax structured payment plan set out in the Schedule.
- 3.3 In the event that the Conditions Precedent are not satisfied by 1 December 2015, the Payroll Tax structured payment plan set out in the Schedule will be recalculated such that the Deferrals apply for a total of 36 months as from the date on which the Conditions Precedent are satisfied, with Payments commencing 48 months as from the date on which the Conditions Precedent are satisfied.
- 3.4 BlueScope must continue to lodge monthly Payroll Tax returns at all times in compliance with the Payroll Tax Act, the Taxation Administration Act and any other Law applicable to Payroll Tax.

Payment on cessation of Steelworks operations

- 3.5 In the event that BlueScope Ceases Operation of the Port Kembla Steelworks, BlueScope must ensure that each BTE pays its respective proportion of the total amount of the Deferrals outstanding, as at the date the Port Kembla Steelworks Ceases Operation, to the State in 24 equal monthly instalments commencing on the date of such operations ceasing until paid in full.

4. Default

4.1 On the occurrence of an Event of Default in respect of a BTE, BlueScope must ensure that the total amount of the Deferrals then outstanding in respect of that BTE will, within 30 days of the Event of Default being notified to BlueScope in writing by the State, either:

- (i) be assumed by one of the other BTEs and then paid by that BTE in accordance with the Payroll Tax structured payment plan as set out in the Schedule; or
- (ii) be paid in full.

4.2 In the event that clause 4.1 is not complied with, the total amount of the Deferrals then outstanding becomes a debt immediately due and payable by BlueScope to the State and the State will be entitled to recover such amount from:

- (i) BlueScope; or
- (ii) any BTE,

including without limitation, in accordance with the Payroll Tax Act and the Taxation Administration Act.

4.3 A failure by BlueScope or any other BTE to make a Payment in accordance with the terms of this Deed is a "tax default" for the purposes of the Taxation Administration Act.

5. Further assurances

5.1 BlueScope agrees to ensure that the BTEs do everything necessary to give full effect to the terms of this Deed including, without limitation, the fulfilment of the payment obligations in respect of the Deferrals in accordance with clause 3 of this Deed. If a BTE fails to make a payment in accordance with clause 3 of this Deed, without limiting any other rights of recovery which may be available at law, including without limitation under the Payroll Tax Act and the Taxation Administration Act, BlueScope is liable to make such payment to the State.

6. Media comment

6.1 Each of the State (including any Minister of the Crown) and BlueScope may, at its discretion, make a public announcement or media comments about this Deed.

7. Notices

7.1 A notice under this Deed must be in writing and forwarded to the address, of the intended recipient as specified in this Deed or the address last notified by the intended recipient to the sender.

7.2 A notice under this Deed will be deemed to be served:

- (a) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
- (b) in the case of delivery by post - within 3 business days of posting.

- 7.3 Notwithstanding the preceding clause 7.2, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

8. Miscellaneous

Writing

- 8.1 All amendments to this Deed and all consents, approvals, waivers and agreements made under or pursuant to this Deed must be evidenced in writing.

Non-waiver

- 8.2 No failure or delay by the State in exercising any right, power or remedy under this Deed and no course of dealing or grant by the State to BlueScope of any time or other consideration, will operate as a waiver of any breach or a default by BlueScope under this Deed. Any waiver by the State of a breach of this Deed will not be construed as a waiver of any further breach of the same or any other provision.

Entire agreement

- 8.3 This Deed constitutes the entire agreement and understanding between the parties as to the subject matter of this Deed. Any prior arrangements, representations or undertakings as to the subject matter of this Deed are superseded.

Inconsistency

- 8.4 In the event of an inconsistency between the terms of this Deed, for the purpose only of resolving the inconsistency, the documents that comprise this Deed are to be considered in the following order of decreasing priority:

- (a) the operative provisions of this Deed;
- (b) the Schedule.

Legal advice and costs

- 8.5 Each party acknowledges that in relation to this Deed:
- (a) it has received legal advice or has had the opportunity to obtain legal advice; and
 - (b) it will bear its own costs incurred in relation to this Deed.

Severability

- 8.6 If any part of this Deed is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Deed but without affecting the continued operation of the remainder of the Deed.

Representations

- 8.7 BlueScope represents and warrants, and it is a condition of this Deed, that to the best of its knowledge and belief:
- (a) all information provided by BlueScope to the State including information provided in connection with the Port Kembla Steelworks, was true and correct as at the time it was provided;
 - (b) BlueScope is not aware of any circumstances which adversely affect or might adversely affect BlueScope's ability to fulfil its obligations under this Deed; and
 - (c) BlueScope has full power and authority to enter into this Deed.

Counterparts

- 8.8 This Deed may be executed by counterparts by the respective parties, which together will constitute one agreement.

Applicable law

- 8.9 This Deed is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.

Governing jurisdiction

- 8.10 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

Execution by the State:

Signed as a deed for and on behalf of the)
 Crown in right of the State of New South Wales)
)
)
 by the Hon. Gladys Berejiklian MP, New South)
 Wales Treasurer,) (signature of the Treasurer)
)
)
 in the presence of.....)
 (insert name of witness)) (signature of witness)
)
)

Execution by BlueScope:

Signed as a deed for and on behalf of)
 BlueScope Steel Limited A.B.N 16 000 011 058)
)
)
 by.....)
 (insert name of person signing on behalf of BlueScope)) (signature of BlueScope's representative)
)
)
 in the presence of.....)
 (insert name of witness)) (signature of witness)
)
)

SCHEDULE

PAYROLL TAX STRUCTURED PAYMENT PLAN

Deferrals

In this **Schedule**:

- (a) "**2016 Year**" means the period from 1 December 2015 to 30 November 2016;
- (b) "**2017 Year**" means the period from 1 December 2016 to 30 November 2017;
- (c) "**2018 Year**" means the period from 1 December 2017 to 30 November 2018; and
- (d) "**Year**" means each of the 2016 Year, 2017 Year and 2018 Year as the context requires.

The Payroll Tax to be deferred per Year will be as follows:

- 2016 Year: Lower of \$25m or total Payroll Tax payable by the BTEs for that Year at the applicable rate;
- 2017 Year: Lower of \$20m or total Payroll Tax payable by the BTEs for that Year at the applicable rate; and
- 2018 Year: Lower of \$15m or total Payroll Tax payable by the BTEs for that Year at the applicable rate.

For each Year BlueScope will ensure that the BTEs commence making monthly Payroll Tax payments only after the deferred threshold amount for that Year (as set out above) has been reached.

For example, if in the 2016 Year the BTEs were to have a collective monthly Payroll Tax liability of \$3m, then for December 2015 to July 2016, there would be no Payroll Tax payable; for August 2016 the total Payroll Tax payable would be \$2m; for September 2016 to November 2016 the total Payroll Tax payable in each month would be \$3m.

As from 1 December 2018 Payroll Tax shall be payable by the BTEs at 100% of the applicable rate. All Payroll Tax shall then continue to be payable by the BTEs on a monthly basis.

Payments

The total amount of Deferrals shall be paid in monthly instalments commencing from 1 January 2020 until such time as the total amount of Deferrals is repaid in full.

The following table sets out the Payments by reference to calendar year.

*Payments are to be made in monthly instalments of \$0.5 million in arrears (or part thereof in the case of the final monthly instalment if the total amount of Deferrals is less than \$60 million) until the total amount of Deferrals is paid in full.

Calendar Year	Payments \$' million
2020	6*
2021	6*
2022	6*
2023	6*
2024	6*
2025	6*
2026	6*
2027	6*
2028	6*
2029	6*