Pay-Roll Tax (Further Amendment) Bill 1982

EXPLANATORY MEMORANDUM

Clause 1: This clause contains the usual sub-clauses relating to title and date of commencement.

Clause 2: This clause gives effect to the decision to increase the maximum exemption from pay-roll tax from $125 000 to $140 000 from 1 January 1983.

Sub-clause (1) amends section 9A (3A) (*ga*) of the Principal Act so as to apply the new levels of annual deductions prescribed in the Schedules of the Principal Act in relation to members of groups.

Sub-clause (2) amends section 9B of the Principal Act. After 31 December 1982 the maximum monthly deduction which may be claimed will increase to $11 666. As with the present legislation, this amount will reduce by $2 for every $3 by which the taxable wages exceed $11 666 a month until it reaches the minimum deduction. Additionally, the definition of "prescribed amount" has been amended to apply in respect of return periods after 31 December 1982.

Sub-clause (3) amends sub-sections (2A) and (2B) of section 11A of the Principal Act so as to apply the new levels of annual deductions prescribed in the Schedules of the Principal Act in relation to employers who are not members of a group.

Sub-clause (4) amends section 12 of the Principal Act to require an employer to register for pay-roll tax purposes when his weekly pay-roll exceeds $2690 instead of the present $2400.

Sub-clauses (5) to (8) inclusive amend Schedules One and Two of the Principal Act (which contains the formulae for calculating the annual adjustment of each employer's pay-roll tax liability) by substituting the new levels of deductions in those Schedules and by substituting the current years for the years appearing in the Schedules.

Clause 3: This clause amends section 3 of the Principal Act, the section which contains definitions of terms that are used elsewhere in the legislation. The amendments are necessary to overcome the difficulties that have been experienced with regard to the collection of pay-roll tax in respect of benefits.

Paragraph (*a*) of clause 3 inserts a definition of "motor vehicle". This definition is needed for the purposes of section 3B inserted by clause 4 of this Bill.

Paragraph (*b*) of clause 3 amends the existing definition of "wages". Sub-paragraph (i) amends the general definition and sub-paragraph (ii) amends the specific provision which was inserted two years ago to catch schemes whereby an employer could avoid the payment of pay-roll tax by arranging for his employee's wages to be paid by a third party. The effect of these amendments is to include "remuneration" in the definition of "wages" with a view to making

6—[194]—1000/1.12.1982—57074/82 (921)

it clear that the definition is intended to be all embracing and that all items which go to make up an employee's remuneration are to be subject to pay-roll tax.

Paragraph (*c*) of clause 3 amends section 3 (2B) of the Principal Act. This amendment is consequential on the amendment contained in paragraph (*b*) (ii) as explained above.

Paragraph (*d*) of clause 3 inserts a new sub-section (2E) in section 3 of the Principal Act. The existing definition of "wages" refers to "wages . . . paid or payable whether in cash or in kind . . ." and it has been argued in some quarters that these words do not catch some benefits which are provided to or conferred on an employee. If this narrow interpretation were to be upheld by a court the legislation would operate in a most inequitable way because the more common types of benefits are generally provided or conferred and would not be subject to pay-roll tax. The new sub-section (2E) makes it clear that the word "paid" is to be interpreted to include the expressions "provided, conferred or assigned" and "pay" and "payable" are to be given corresponding meanings. It will then be beyond dispute that benefits which are provided, conferred or assigned are "paid" for the purposes of the Pay-roll Tax Act.

Clause 4: This clause inserts two new sections in the Principal Act. The first of these, section 3A, deals with benefits conferred on employees through the provision of low interest or interest free loans by employers. These benefits will now be caught as a result of the amendments referred to under the heading of clause 3 but it is necessary to insert provisions to prescribe the manner in which they are to be valued for the purpose of the calculation of pay-roll tax.

The second of these new sections, section 3B, deals with benefits received by employees from their employers as a result of being provided with the use of a motor vehicle. The existing legislation does not spell out the circumstances in which these benefits are subject to pay-roll tax or the manner in which they are to be valued for the purpose of the calculation of pay-roll tax. The provisions of the new section 3B reflect the general agreement that has been reached between the Commissioner of Pay-roll Tax and representatives of various Employers' groups.

SECTION 3A—LOW INTEREST OR INTEREST FREE LOANS

Sub-section (1) defines "prescribed rate" and "loan" for the purposes of the section. The prescribed rate is not contained in the Bill as a specific rate but will be the rate fixed by the Governor in Council from time to time. This is to enable the Government to respond quickly to fluctuations in current interest rates, particularly those which are downwards, when Parliament is not sitting. It is intended that the prescribed rate will approximate the rate charged on housing loans by the major banks.

Sub-section (2) provides that where a taxable benefit arises in connection with the provision of a low interest or interest free loan, the value of the benefit is to be calculated in accordance with the section. This provision must, however, be read in conjunction with the definition of "wages" to determine whether a taxable benefit arises; that is, the benefit must be conferred by the employer on the employee in his capacity as an employee.

Sub-section (3) provides that the taxable amount will be the difference between the amount of interest on the loan calculated at the prescribed rate (as fixed by the Governor in Council from time to time) and the amount of the interest actually paid. The calculation is to be made on an annual basis, although another section of the Principal Act makes provision for amounts to be included in the employer's pay-roll tax returns on a monthly basis. The following are examples of the way in which calculations would be made (assuming that the prescribed rate of interest is 13% per annum):

Example 1

A personal loan of $10 000 repayable over five years at 7% with interest calculated at monthly rests.

Interest actually paid in the first financial year	=	$640
Interest on $10 000 @ 13% per annum	=	$1300
Interest Differential (Benefit)	=	$660
Pay-roll Tax @ 5%	=	$33

Example 2

A housing loan of $25 000 repayable over 29·5 years at 7·25% with interest calculated at quarterly rests.

Interest actually paid in the first financial year	=	$1806
Interest on $25 000 @ 13% per annum	=	$3250
Interest Differential (Benefit)	=	$1444
Pay-roll Tax @ 5%	=	$72.20

Sub-section (4) contains a provision which will enable the Commissioner to determine that pay-roll tax should not be levied on the interest differential where certain circumstances exist. The first requirement is that the rate of interest payable by the employee at the time the loan was made was the current market rate of interest in respect of loans of that type. If this requirement is satisfied it will then be necessary for the Commissioner to look at all the other circumstances concerning the loan (in particular, the reasons why the loan agreement does not provide for an adjustment to the interest rate from time to time) to ascertain whether he should make such a determination.

Sub-section (5) is designed to make it quite clear that the section cannot be avoided by providing the benefit of a low interest or interest free loan to an employee through the medium of a third party. If this sub-section was not included it would be a simple matter for an employer to lend money (either interest free or at a low rate of interest) to a third party and for the third party to lend that money (either interest free or at a low rate of interest) to the employee of the employer and pay-roll tax would be avoided.

Sub-section (6) sets out the operative date for a change in the prescribed rate.

Sub-section (7) provides that the section applies whether the loan was entered into before or after the commencement of this Bill.

Sub-section (8) is a machinery provision which relates only to the period commencing on 1 January 1983 and ending on 30 June 1983. The new section 3A is based on calculations being made over a financial year. If sub-section (7) was not included, the section could not be applied to the period of six months ending on 30 June 1983. Sub-section (7) enables a calculation to be made in respect of this period.

Section 3B—Motor Vehicles

Sub-sections (1) and (2) provide that where a taxable benefit arises in connexion with the provision of a motor vehicle, the value of the benefit is to be calculated in accordance with the section.

Sub-section (1) deals with the situation where a motor vehicle has been provided by an employer to an employee as part of the employee's remuneration. It is intended to cover those situations where the provision of the vehicle is specifically intended to be a part of the employee's remuneration, or where a value is allocated for the use of the vehicle as a component of the employee's total remuneration package. The calculation of the value is explained later in this Memorandum under clause 11.

Sub-section (2) deals with "prestige" vehicles which are provided by an employer for business purposes, but where an employee derives a benefit from using the vehicle for private purposes. Prestige vehicles are defined as those where the cost price is greater than the Income Tax Commissioner's depreciation limit. For the year ended 30 June 1983 the limit is $21 547. The definition of "motor vehicle" in clause 3 of the Bill specifically excludes motor vehicles designed to carry a load in excess of one tonne or more than nine passengers from this provision. The calculation of the value is explained later in this Memorandum under clause 11.

Sub-section (3) provides for the arbitrary apportionment of the use of a prestige vehicle as between private use (60 per cent) and business use (40 per cent), but employers will be able to submit to the Commissioner that a more favourable ratio should be adopted. If an employer can demonstrate to the Commissioner that the private use by an employee of a prestige vehicle, not forming part of a remuneration package, constitutes less than 60 per cent of the total use of the vehicle, the employer will be subject to pay-roll tax on an amount calculated in accordance with the lower percentage.

In this regard the Commissioner of Pay-roll Tax has already agreed to accept that vehicles which are used by employees of an employer who is a licensed motor car trader will not be subject to pay-roll tax where those vehicles constitute the stock in trade of the employer.

Sub-section (4) is inserted to cover those cases where an employee has not had the use of a motor vehicle for the entire financial year. In such a case, the employer will be able to reduce the amount of the benefit by a proportion, being the same proportion as the number of days in the year on which the vehicle was not provided bears to 365.

Example

Value of benefit calculated on annual basis, say $7300

Vehicle provided for 200 days in financial year

$$\text{Taxable benefit} - \frac{200}{365} \times \frac{7300}{1} = \$4000$$

Sub-section (5) provides that the distance travelled by an employee between his place of residence and his place of employment is to be regarded as private use for the purpose of calculating the value of benefits under this section.

Sub-section (6) is designed to make it quite clear that the section cannot be avoided by providing the benefit of a motor vehicle to an employee through the medium of a third party. If this sub-section was not included it would be a simple matter for an employer to provide a motor vehicle to a third party and for the third party to provide that motor vehicle to the employee of the employer and pay-roll tax would be avoided.

Sub-section (7) sets out the cost price limits to be applied to determine whether a vehicle is a "prestige" vehicle for the purposes of this section. These prices apply irrespective of whether the employer has purchased, leased or hired the vehicle. They are based on the Income Tax Commissioner's depreciation limits, although a concession is given by applying the figure which relates to the year ending 30 June 1981 to all vehicles purchased during that year or earlier. A prestige vehicle is one where the cost price of the vehicle exceeds the following amounts—

Year ended 30 June 1983 or later	\$21 547
Year ended 30 June 1982	\$19 732
Year ended 30 June 1981 or earlier	\$18 828

Sub-section (8) is inserted to ensure that this section does not have retrospective application and that it only applies from 1 January 1983 onwards. Benefits provided as a result of the provision of motor vehicles before that date will be calculated in accordance with Circular No. 11 of 1982 issued by the Commissioner of Pay-roll Tax. The calculations made under the Circular and under this Act will, in the great majority of cases, be identical.

Sub-section (9) provides that benefits obtained by employees from the provision of motor vehicles by their employers will only be taxed in accordance with this section. In other words, the benefits derived from the use of certain vehicles will be exempt. Such vehicles are those where the purchase price is less than the Income Tax Commissioner's depreciation limit and which do not form part of a formal remuneration agreement. An example of an exempt vehicle is a vehicle provided by an employer for an employee who is a travelling salesman where the salesman uses the vehicle extensively for business purposes but is permitted by the employer to also use the vehicle for his own private purposes.

Clause 5: This clause provides an exemption from the payment of pay-roll tax in respect of wages paid under approved Group Apprenticeship Schemes. The Minister for Employment and Training will notify the Commissioner of Pay-roll Tax in writing of those Group Apprentceship Schemes which are approved and wages paid under those schemes to apprentices will be exempt. The exemption will continue until such time as the Minister for Employment and Training notifies the Commissioner of Pay-roll Tax that a scheme is no longer approved.

Clause 6: This clause inserts two new sub-sections in section 13 of the Principal Act.

It is recognized that pay-roll tax has been a relatively straightforward, self-assessing tax until recently. It is also recognized that the need to calculate values as a result of the taxation of benefits will make the self-assessment of pay-roll tax less straightforward. It is accepted that the need to make detailed calculations on a monthly basis would make the self-assessment of pay-roll tax a cumbersome exercise. The new sub-section (3A) of section 13 is inserted to remove the need for these detailed calculations on a monthly basis and to keep the self-assessment of pay-roll tax as simple as possible.

This sub-section provides that for eleven months of the year an employer can disclose amounts estimated in accordance with a formula approved by the Commissioner of Pay-roll Tax. It is envisaged that these amounts will be estimated by reference to the total value of the benefits subject to pay-roll tax in the preceding financial year. Detailed calculations will be made on an annual basis and the result of those detailed calculations will be reflected in the return for the month of June. Any adjustment between the aggregate of the monthly estimated amounts and the actual annual amount will be made by an employer when he lodges his June return.

There may be situations where employers fail to include amounts estimated in accordance with the formula approved by the Commissioner. Sub-section (3B) is therefore inserted to enable the Commissioner to determine an amount on which pay-roll tax should be paid on a monthly basis in these cases. Having determined an amount, the Commissioner will be able to issue an assessment for the pay-roll tax in accordance with existing provisions in the legislation.

Clause 7: This clause inserts in section 18 of the Principal Act two new sub-sections concerning additional tax. Other sections of the Principal Act provide for additional tax to be imposed when an employer does not pay pay-roll tax within the prescribed time. However, if an employer refuses to pay the additional tax and it is necessary to take legal action, complicated procedural requirements must be satisfied before a Court Order can be obtained.

The Principal Act empowers the Commissioner of Pay-roll Tax to issue assessments for pay-roll tax as distinct from additional tax. If an employer refuses to pay the pay-roll tax, the same complicated procedural requirements do not have to be satisfied if it is necessary to take legal action. This is because other provisions in the Principal Act make an assessment final and conclusive.

The new sub-sections of section 18 will empower the Commissioner to issue an assessment for additional tax so that the complicated procedural requirements referred to above can be avoided. The issue of an assessment will not result in any greater burden being imposed on an employer. It will simply facilitate the collection of the additional tax.

Clause 8: This clause inserts a new sub-section in section 31 of the Principal Act.

Section 31 authorizes the Commissioner of Pay-roll Tax to collect outstanding tax from any person who owes money to an employer who is in arrears with pay-roll tax, upon receipt of a notice in writing to that effect from the Commissioner. The provision does not, however, enable the Commissioner to collect amounts from the Crown where amounts are owed by the Crown to a defaulting employer.

As it is not uncommon for the Crown to owe money to employers who are liable for pay-roll tax, the new sub-section of section 31 will enable the Commissioner to collect the outstanding tax from the Crown.

Clause 9: This clause inserts a new section 46A in the Principal Act.

The purpose of the provision is to enable documents to be issued out of the Pay-roll Tax Office containing stamped or printed signatures of the Commissioner of Pay-roll Tax and other specified officers, and for those stamped or printed signatures to have the same force and effect as if the signature was in the hand writing of the Commissioner or other specified officers, as the case may be.

The Land Tax Regulations contain a similar provision and the Commissioner of Pay-roll Tax is concerned that taxpayers may seek to rely on the absence of such a provision from the pay-roll tax legislation to enable them to challenge the legality of a document containing a stamped or printed signature. Advice has been received from Parliamentary Counsel that this provision cannot be inserted in the Pay-roll Tax Regulations. Accordingly, it is necessary to insert the provision in the Pay-roll Tax Act.

The enactment of this provision will not have any practical effect on the operations of the Pay-roll Tax Office. It is a precautionary measure designed to safeguard existing practices.

Clause 10: This clause converts all penalties contained in the Principal Act into penalty units in accordance with Government policy.

Clause 11: This clause inserts Schedule Six in the Principal Act to enable the value of the benefit resulting from the provision of a motor vehicle by an employer for his employee to be calculated. The Schedule contains a table of costs and a number of provisions which are designed to simplify the calculation of the benefit.

The table of costs contains five columns. Column 1 sets out the cost price ranges of motor vehicles.

Column 2 applies where the motor vehicle is owned by the employer and has been fully depreciated by him. In such a case the maximum cost of providing the benefit would be equivalent to the standing and running costs (if met by the employer) and the figures contained in column 2 represent those costs.

Column 3 applies where the motor vehicle is owned by the employer and the vehicle is still subject to depreciation. The difference between the values shown in this column and the respective values shown in column 2 represents the amount of depreciation expense.

Column 4 applies where the employer is financing the purchase of a vehicle and is using the vehicle as collateral. The figures shown in this column contain an additional amount over those shown in column 3 to cover the cost of financing the purchase.

Column 5 sets out the costs (including standing and running costs) involved where the employer is leasing the vehicle.

The costs set out in the table are based on an assumption that the employer will meet all costs incurred in relation to the motor vehicle. In some cases, however, an employee may be required to meet the running and standing costs or the standing costs alone or the cost of petrol. Clause 2 of Schedule Six contains provisions to enable an adjustment to be made to the figure derived from the table of costs in these circumstances. For the purposes of the Pay-roll Tax Act the standing costs represent 30 per cent of the column 2 amount, the cost of petrol represents 40 per cent of the column 2 amount, and the running costs other than petrol represent the remaining 30 per cent.

Clause 3 of the Schedule contains a number of definitions. A definition of "cost price" is inserted to enable an employer to calculate the appropriate amount from the table of costs. It is to be noted that an employer is entitled to adopt the written down value of the motor vehicle as the cost price where he has depreciated the vehicle for not less than five years. The value of the benefit for pay-roll tax purposes will therefore be reduced substantially after five years. This is explained in example 3 and illustrated in situation (*a*) of examples no. 1 and 2 below.

The figures contained in the table of costs are less than the actual costs that would be incurred in each category.

Some examples of the calculation of benefits in respect of motor vehicles are set out hereunder.

Example No. 1

Where a Motor Vehicle forms part of Remuneration of Employee

Cost of Motor Vehicle to Employer—$14 000

Refer Cost Price Category in column 1 of table; i.e. $12 001–$15 000

	Annual Cost from Table	*Pay-roll Tax at 5%*
	$	$
Situation (*a*)		
Where vehicle owned by employer and fully depreciated (standing and running costs only) (Column 2)	1300*	65
Situation (*b*)		
Where vehicle owned by employer but subject to depreciation (Column 3)	3400	170
Situation (*c*)		
Where vehicle subject to hire purchase agreement or loan finance and subject to depreciation (Column 4)	5000	250
Situation (*d*)		
Where vehicle subject to a lease agreement (Column 5)	5400	270

* Vehicle must have been depreciated for more than seven years to be fully depreciated. Employer is entitled to adopt written down value of NIL as the cost price for the purposes of this provision. Hence the annual cost is $1300 instead of $1600.

Example No. 2

A Prestige Vehicle which does not form part of Remuneration of Employee

Cost of Motor Vehicle to Employer e.g. $24 000
Refer Cost Price Category in column 1 of table; i.e. $23 001–$27 000

		Annual Cost from Table	*Pay-roll Tax at 5%*
		$	$
Situation (*a*)			
Where vehicle owned by employer and fully depreciated (standing and running costs only)		1300*	
(Column 2)	60%	780	39
Situation (*b*)			
Where vehicle owned by employer but subject to depreciation		5500	
(Column 3)	60%	3300	165
Situation (*c*)			
Where vehicle subject to hire purchase agreement or loan finance and subject to depreciation		8700	
(Column 4)	60%	5220	261
Situation (*d*)			
Where vehicle subject to a lease agreement		9900	
(Column 5)	60%	5940	297

* Vehicle must have been depreciated for more than seven years to be fully depreciated. Employer is entitled to adopt written down value of NIL as the cost price for the purposes of this provision. Hence the annual cost is $1300 instead of $2100.

Example No. 3

Depreciated Value as Cost Price

Where a motor vehicle has been depreciated in accordance with approved depreciation methods for a period of five years as at 1 July of the relevant taxing year the depreciated value becomes the new cost price.

Cost price as purchased	=	$14 000.00
Depreciated value after five years	=	$3 914.14
Cost price category in the table which is applicable	=	$0–$7 000.00

By Authority F D Atkinson Government Printer Melbourne

57074/82—2