



Western Australia

# **Taxation Legislation Amendment Act (No. 3) 2015**

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As at 26 May 2015

No. 15 of 2015

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# Taxation Legislation Amendment Act (No. 3) 2015

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## **Taxation Legislation Amendment Act (No. 3) 2015**

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**No. 15 of 2015**

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**An Act to amend the following Acts —**

- **the *Duties Act 2008*;**
- **the *Land Tax Assessment Act 2002*;**
- **the *Pay-roll Tax Assessment Act 2002*.**

*[Assented to 26 May 2015]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Taxation Legislation Amendment Act (No. 3) 2015*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 4 —
  - (i) comes into operation on 1 July 2015 if assent day is not later than that day; or
  - (ii) is deemed to have come into operation on 1 July 2015 if assent day is later than that day;
- (c) the rest of the Act — on the day after assent day.

## **Part 2 — *Duties Act 2008* amended**

**3. Act amended**

This Part amends the *Duties Act 2008*.

**4. Sections 122 and 123 replaced**

Delete sections 122 and 123 and insert:

**122. Relevant superannuation transactions for consideration**

- (1) Nominal duty is chargeable on a relevant superannuation transaction if there is, or will be, consideration for the transaction.
- (2) A reference in this section to a relevant superannuation transaction is to a transfer of, or an agreement for the transfer of, dutiable property by a person (the *transferor*) to a trustee, or a custodian of a trustee, of a superannuation fund that meets the following criteria (an *approved superannuation fund*) —
  - (a) either of the following apply to the superannuation fund —
    - (i) only the transferor can be a member of the superannuation fund;
    - (ii) property can only be held in the superannuation fund specifically for the transferor and cannot be pooled with the contributions or other assets of another member and no other member can obtain an interest in the property;
  - (b) property can only be held in the superannuation fund to be provided to the transferor as a retirement benefit.

- (3) In subsection (2)(a)(ii) and (b) —
- property** —
- (a) means —
- (i) dutiable property the subject of a relevant superannuation transaction; or
  - (ii) if such dutiable property is sold so that the proceeds can be provided to the transferor as a retirement benefit, those proceeds;
- and
- (b) includes any net income from property referred to in paragraph (a), including income retained by a trustee of a superannuation fund while legal ownership of the property is held by a custodian of a trustee of the fund.
- (4) An application for assessment or reassessment under this section must be made in the approved form.

**123. Subsequent liability in certain circumstances**

- (1) A reference in this section to a subsequent event in relation to a superannuation fund is to an event the effect of which is that the superannuation fund ceases to be an approved superannuation fund, as defined in section 122(2).
- (2) Subsection (3) applies if, after a transaction is duty endorsed under section 122, a subsequent event takes place in relation to the superannuation fund while the dutiable property the subject of the transaction (the **original dutiable property**), or part of it, is held —
- (a) by a custodian of a trustee of the superannuation fund; or
  - (b) in the superannuation fund.



- (3) A subsequent event is taken to be a transfer of the original dutiable property and is liable to duty accordingly.
- (4) Not later than 2 months after the day on which a subsequent event takes place a trustee, or a custodian of a trustee, of the superannuation fund, as is relevant, is to lodge a transfer duty statement for the event.  
Penalty: a fine of \$20 000.
- (5) The person liable to pay the duty is a trustee, or a custodian of a trustee, of the superannuation fund, as is relevant.

**5. Section 126 amended**

In section 126(1) in the definition of *relevant entity* delete “relation a” and insert:

relation to a

**Part 3 — *Land Tax Assessment Act 2002* amended**

**6. Act amended**

This Part amends the *Land Tax Assessment Act 2002*.

**7. Section 14 amended**

In section 14(1):

(a) in paragraph (b) delete “hectares.” and insert:

hectares; and

(b) after paragraph (b) insert:

(c) the subdivision was not carried out only for the purpose of defining an area of land to be taken or resumed under an enactment relating to the compulsory acquisition of land.

**8. Section 43A amended**

Delete section 43A(4).

**9. Section 45A amended**

(1) In section 45A(1) delete “Act.” and insert:

Act on and from the creation of the interest.

(2) In section 45A(4) delete “determination and the reasons for the determination.” and insert:

determination, the reasons for the determination and the effect of the determination as described in section 45B.

**10. Section 45B replaced**

Delete section 45B and insert:

**45B. Effect of determination under s. 45A**

- (1) If the Commissioner makes a determination under section 45A that an interest in a lot or parcel of land is an interest that is to be disregarded for the purposes of this Act on and from the creation of the interest, then, on and from the creation of the interest —
  - (a) the owner of the interest is to be taken not to be an owner of the lot or parcel of land for the purposes of this Act; and
  - (b) the land is to be taken to be wholly owned by the owner of the land who does not have an interest the subject of a determination.
- (2) The Commissioner is to make any assessment, or reassessment, necessary to give effect to a determination.
- (3) However, a reassessment cannot be made for an assessment year that is 5 or more years before the assessment year during which the determination was made.
- (4) Subsection (3) —
  - (a) does not affect the operation of the *Taxation Administration Act 2003* section 17(2); and
  - (b) applies despite the *Taxation Administration Act 2003* section 17(4).

**s. 11**

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**11. Glossary amended**

Delete the Glossary clause 3(1)(d)(ii) and insert:

- (ii) if not — an occupancy permit or a building approval certificate required under the *Strata Titles Act 1985* section 5B(2) is granted under an application mentioned in the *Building Act 2011* section 50(1)(a) or (b);

**Part 4 — Pay-roll Tax Assessment Act 2002 amended**

**12. Act amended**

This Part amends the *Pay-roll Tax Assessment Act 2002*.

**13. Section 8 amended**

After section 8(2) insert:

- (3) The upper threshold amount is \$7 500 000.
- (4) The tapering value for a financial year is to be calculated as follows —

$$\frac{AT}{UT - AT}$$

where —

AT is the annual threshold amount for the year;

UT is the upper threshold amount.

Note: The heading to amended section 8 is to read:

**Tax thresholds and tapering value**

**14. Sections 10 to 14 replaced**

Delete sections 10 to 14 and insert:

**10. Annual tax liability: local non-group employers**

- (1) If an employer is a local non-group employer for the whole of an assessment year, the amount of pay-roll tax payable by the employer for the year is —
  - (a) if the total amount of WA taxable wages paid or payable by the employer during the year is

**s. 14**

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less than or equal to the annual threshold amount for the year — nil;

- (b) if the total amount of WA taxable wages paid or payable by the employer during the year is equal to or greater than the upper threshold amount — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the year;
- (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
  - (i) the total amount of WA taxable wages paid or payable by the employer during the year; and
  - (ii) the deductible amount for the employer for the year calculated in accordance with subsection (2).

- (2) For the purposes of subsection (1)(c)(ii), the deductible amount for the employer for the year is to be calculated as follows —

$$AT - [(W - AT) \times TV]$$

where —

AT is the annual threshold amount for the year;

TV is the tapering value for the year;

W is the total amount of WA taxable wages paid or payable by the employer during the year.

- (3) If an employer is a local non-group employer for only part of an assessment year (the *part-year*), the amount of pay-roll tax payable by the employer for the part-year is —
- (a) if the total amount of WA taxable wages paid or payable by the employer during the part-year is less than or equal to the apportioned annual threshold amount for the part-year — nil;
  - (b) if the total amount of WA taxable wages paid or payable by the employer during the part-year is equal to or greater than the apportioned upper threshold amount for the part-year — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the part-year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the employer during the part-year; and
    - (ii) the deductible amount for the employer for the part-year calculated in accordance with subsection (4).
- (4) For the purposes of subsection (3)(c)(ii), the deductible amount for the employer for the part-year is to be calculated as follows —

$$AAT - [(W - AAT) \times TV]$$

where —

AAT is the apportioned annual threshold amount for the part-year;

**s. 14**

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TV is the tapering value for the year;

W is the total amount of WA taxable wages paid or payable by the employer during the part-year.

- (5) The apportioned annual threshold amount for part of an assessment year is calculated in accordance with section 11A(1).
- (6) The apportioned upper threshold amount for part of an assessment year is calculated in accordance with section 11A(2).

**11A. Apportioned threshold amounts for s. 10: local non-group employers**

- (1) For the purposes of section 10, the apportioned annual threshold amount for part of an assessment year is to be calculated as follows —

$$AT \times \left( \frac{P}{Y} \right)$$

where —

AT is the annual threshold amount for the year;

P is the number of days in that part of the year;

Y is the number of days in the year.

- (2) For the purposes of section 10(3), the apportioned upper threshold amount for part of an assessment year is to be calculated as follows —

$$UT \times \left( \frac{P}{Y} \right)$$

where —

UT is the upper threshold amount;



- P is the number of days in that part of the year;  
Y is the number of days in the year.

**11. Tax payable with returns: local non-group employer**

- (1) The amount of pay-roll tax payable by a local non-group employer for a progressive return period or for part of a progressive return period in an assessment year (the *period or part-period*) is —
- (a) if the total amount of WA taxable wages paid or payable by the employer during the period or part-period is less than or equal to the apportioned threshold amount for the period or part-period — nil;
  - (b) if the total amount of WA taxable wages paid or payable by the employer during the period or part-period is equal to or greater than the apportioned upper threshold amount for the period or part-period — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the period or part-period;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the employer during the period or part-period; and
    - (ii) the deductible amount for the employer for the period or part-period calculated in accordance with subsection (2).

**s. 14**

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- (2) For the purposes of subsection (1)(c)(ii), the deductible amount for the employer for the period or part-period is to be calculated as follows —

$$AT - [(W - AT) \times TV]$$

where —

- AT is the apportioned threshold amount for the period or part-period;
- TV is the tapering value for the year;
- W is the total amount of WA taxable wages paid or payable by the employer during the period or part-period.

- (3) The apportioned threshold amount for a progressive return period or part of a progressive return period is calculated in accordance with section 12(1).
- (4) The apportioned upper threshold amount for a progressive return period or part of a progressive return period is calculated in accordance with section 12(2).

**12. Apportioned threshold amounts for s. 11: local non-group employers**

- (1) For the purposes of section 11, the apportioned threshold amount for a progressive return period or part of a progressive return period is to be calculated as follows —

$$N \times MT \times \left( \frac{D}{P} \right)$$

where —

- N is the number of months in the progressive return period;
- MT is the monthly threshold amount for the year;

- D is the number of days in the progressive return period, or part of the progressive return period, during which WA taxable wages were paid or payable by the employer;
- P is the number of days in the progressive return period.

- (2) For the purposes of section 11, the apportioned upper threshold amount for a progressive return period or part of a progressive return period is to be calculated as follows —

$$N \times \left( \frac{UT}{12} \right) \times \left( \frac{D}{P} \right)$$

where —

- N is the number of months in the progressive return period;
- UT is the upper threshold amount;
- D is the number of days in the progressive return period, or part of the progressive return period, during which WA taxable wages were paid or payable by the employer;
- P is the number of days in the progressive return period.

**13. Annual tax liability: interstate non-group employers**

- (1) In this section —  
*Australian taxable wages* means WA taxable wages and interstate taxable wages.

**s. 14**

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- (2) If an employer is an interstate non-group employer for the whole of an assessment year, the amount of pay-roll tax payable by the employer for the year is —
- (a) if the total amount of Australian taxable wages paid or payable by the employer during the year is less than or equal to the annual threshold amount for the year — nil;
  - (b) if the total amount of Australian taxable wages paid or payable by the employer during the year is equal to or greater than the upper threshold amount — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the employer during the year; and
    - (ii) the deductible amount for the employer for the year calculated in accordance with subsection (3).
- (3) For the purposes of subsection (2)(c)(ii), the deductible amount for the employer for the year is to be calculated as follows —

$$(AT - [(TW - AT) \times TV]) \times \left( \frac{W}{TW} \right)$$

where —

AT is the annual threshold amount for the year;

- TW is the total amount of Australian taxable wages paid or payable by the employer during the year;
- TV is the tapering value for the year;
- W is the total amount of WA taxable wages paid or payable by the employer during the year.
- (4) If an employer is an interstate non-group employer for only part of an assessment year (the *part-year*), the amount of pay-roll tax payable by the employer for the part-year is —
- (a) if the total amount of Australian taxable wages paid or payable by the employer during the part-year is less than or equal to the apportioned annual threshold amount for the part-year — nil;
  - (b) if the total amount of Australian taxable wages paid or payable by the employer during the part-year is equal to or greater than the apportioned upper threshold amount for the part-year — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the part-year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the employer during the part-year; and
    - (ii) the deductible amount for the employer for the part-year calculated in accordance with subsection (5).

**s. 14**

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- (5) For the purposes of subsection (4)(c)(ii), the deductible amount for the employer for the part-year is to be calculated as follows —

$$(AAT - [(TW - AAT) \times TV]) \times \left( \frac{W}{TW} \right)$$

where —

AAT is the apportioned annual threshold amount for the part-year;

TW is the total amount of Australian taxable wages paid or payable by the employer during the part-year;

TV is the tapering value for the year;

W is the total amount of WA taxable wages paid or payable by the employer during the part-year.

- (6) The apportioned annual threshold amount for part of an assessment year is calculated in accordance with section 14(1).
- (7) The apportioned upper threshold amount for part of an assessment year is calculated in accordance with section 14(2).

**14. Apportioned threshold amounts for s. 13: interstate non-group employers**

- (1) For the purposes of section 13, the apportioned annual threshold amount for part of an assessment year is to be calculated as follows —

$$AT \times \left( \frac{P}{Y} \right)$$

where —

- AT is the annual threshold amount for the year;
- P is the number of days in that part of the year;
- Y is the number of days in the year.

- (2) For the purposes of section 13, the apportioned upper threshold amount for part of an assessment year is to be calculated as follows —

$$UT \times \left( \frac{P}{Y} \right)$$

where —

- UT is the upper threshold amount;
- P is the number of days in that part of the year;
- Y is the number of days in the year.

**15. Section 17 amended**

- (1) Before section 17(1) insert:

- (1A) In this section —

*Australian taxable wages* means WA taxable wages and interstate taxable wages.

- (2) In section 17(1) delete “WA taxable wages or interstate taxable wages” (each occurrence) and insert:

Australian taxable wages

**s. 15**

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(3) Delete section 17(2) and insert:

- (2) The amount of pay-roll tax payable by the group for the assessment year is —
- (a) if the total amount of Australian taxable wages paid or payable by the group members during the year is less than or equal to the annual threshold amount for the year — nil;
  - (b) if the total amount of Australian taxable wages paid or payable by the group members during the year is equal to or greater than the upper threshold amount — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the group members during the year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the group members during the year; and
    - (ii) the deductible amount for the group for the year calculated in accordance with subsection (3A).

(3A) For the purposes of subsection (2)(c)(ii), the deductible amount for the group for the year is to be calculated as follows —

$$(AT - [(TW - AT) \times TV]) \times \left( \frac{W}{TW} \right)$$

where —

AT is the annual threshold amount for the year;



- TW is the total amount of Australian taxable wages paid or payable by the group members during the year;
- TV is the tapering value for the year;
- W is the total amount of WA taxable wages paid or payable by the group members during the year.

- (4) In section 17(3):
- (a) in paragraph (a) after “assessment year” (1<sup>st</sup> occurrence) insert:
- (the *part-year*)
- (b) delete “WA taxable wages or interstate taxable wages” (each occurrence) and insert:

Australian taxable wages

- (5) Delete section 17(4) and insert:
- (4) The amount of pay-roll tax payable by the group for the assessment year is —
- (a) if the total amount of Australian taxable wages paid or payable by the group members during the part-year is less than or equal to the apportioned annual threshold amount for the part-year — nil;
- (b) if the total amount of Australian taxable wages paid or payable by the group members during the part-year is equal to or greater than the apportioned upper threshold amount for the part-year — the amount calculated by applying

the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the group members during the part-year;

- (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
- (i) the total amount of WA taxable wages paid or payable by the group members during the part-year; and
  - (ii) the deductible amount for the group for the part-year calculated in accordance with subsection (5).

- (5) For the purposes of subsection (4)(c)(ii), the deductible amount for the group for the part-year is to be calculated as follows —

$$(AAT - [(TW - AAT) \times TV]) \times \left( \frac{W}{TW} \right)$$

where —

AAT is the apportioned annual threshold amount for the part-year;

TW is the total amount of Australian taxable wages paid or payable by the group members during the part-year;

TV is the tapering value for the year;

W is the total amount of WA taxable wages paid or payable by the group members during the part-year.

- (6) The apportioned annual threshold amount for part of an assessment year is calculated in accordance with section 18(1).

- (7) The apportioned upper threshold amount for part of an assessment year is calculated in accordance with section 18(2).

**16. Section 18 replaced**

Delete section 18 and insert:

**18. Apportioned threshold amounts for s. 17: groups**

- (1) For the purposes of section 17, the apportioned annual threshold amount for part of an assessment year is to be calculated as follows —

$$AT \times \left( \frac{P}{Y} \right)$$

where —

AT is the annual threshold amount for the year;

P is the number of days in that part of the year;

Y is the number of days in the year.

- (2) For the purposes of section 17, the apportioned upper threshold amount for part of an assessment year is to be calculated as follows —

$$UT \times \left( \frac{P}{Y} \right)$$

where —

UT is the upper threshold amount;

P is the number of days in that part of the year;

Y is the number of days in the year.

**17. Section 22A deleted**

Delete section 22A.

**18. Schedule 1 amended**

At the end of Schedule 1 insert:

**Division 5 — Provisions for the *Taxation Legislation Amendment Act (No. 3) 2015* Part 4**

**14. Changes relating to tax thresholds do not apply to assessment years commencing before 1 July 2015**

This Act has effect in relation to an assessment year that commenced before 1 July 2015 as if the amendments in the *Taxation Legislation Amendment Act (No. 3) 2015* Part 4 had not come into operation.

**19. Glossary amended**

- (1) In the Glossary clause 1 delete the definition of *apportioned threshold amount*.
- (2) In the Glossary clause 1 insert in alphabetical order:

*tapering value*, for a year, means the tapering value for the year calculated in accordance with section 8(4);

*upper threshold amount* means the amount fixed under section 8(3);

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