

Western Australia

Pay-roll Tax Assessment Act 2002

As at 20 Mar 2003

No. 48 of 2002

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Pay-roll Tax Assessment Act 2002

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Western Australia

Pay-roll Tax Assessment Act 2002

No. 48 of 2002

An Act relating to the assessment and collection of tax on wages paid by employers.

[Assented to 20 March 2003]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Pay-roll Tax Assessment Act 2002*.

2. Commencement

This Act comes into operation on the day on which the *Taxation Administration Act 2003* comes into operation.

3. Relationship with other Acts

The *Taxation Administration Act 2003* and the *Pay-roll Tax Act 2002* are to be read with this Act as if they formed a single Act.

4. Meaning of terms used in this Act

The Glossaries at the end of this Act and the *Taxation Administration Act 2003* respectively define or affect the meaning of some of the words and expressions used in this Act, and also affect the operation of other provisions.

Part 2 — Liability and assessment

Division 1 — Liability to pay-roll tax

5. Pay-roll tax on wages

- (1) Pay-roll tax is payable, in accordance with the pay-roll tax Acts, on wages that are taxable in Western Australia under subsection (2) except wages that are exempt under section 40.
- (2) The following kinds of wages are taxable in Western Australia —
 - (a) wages that are paid or payable for services carried out wholly in Western Australia, irrespective of where the wages are paid or payable;
 - (b) wages that are paid or payable in Western Australia, except where they are for services carried out wholly in one other State.

6. Time for payment of pay-roll tax

Pay-roll tax is due for payment on the last day for lodging the return of the wages on which the pay-roll tax is payable.

7. Liability to pay-roll tax

- (1) An employer who pays or is liable to pay WA taxable wages is liable to pay any pay-roll tax payable on the wages.
- (2) Pay-roll tax payable on wages by a member or members of a group is a debt due jointly and severally by each person who is a member of the group during the period in which the wages become payable.
- (3) A liability arising under subsection (2) does not affect the liability of an employer under subsection (1).

- (4) A person who is liable to pay pay-roll tax is also liable to pay any penalties, interest or other amounts payable under a pay-roll tax Act in connection with the pay-roll tax.

8. The tax threshold

- (1) The annual threshold amount for a financial year beginning on or after 1 July 2002 is \$675 000.
- (2) The monthly threshold amount for a financial year beginning on or after 1 July 2002 is \$56 250.

9. Determinations of reduced monthly rates

- (1) An interstate non-group employer or the DGE of a group may apply to the Commissioner to determine that the monthly rate of pay-roll tax payable by the employer or the members of the group for an assessment year is the rate determined under section 9(b) or 11(b) of the *Pay-roll Tax Act 2002*.
- (2) An application must —
- (a) be in the approved form;
 - (b) include estimates of the total interstate taxable wages and WA taxable wages that the employer or the members of the group expects or expect to pay throughout Australia during the assessment year; and
 - (c) be accompanied by any other relevant information required by the Commissioner.
- (3) The Commissioner may make the determination if satisfied, on the basis of the estimates and other information, that it is appropriate to do so.
- (4) The Commissioner may at any time revoke or vary a determination.

- (5) If the Commissioner makes, revokes or varies a determination, the Commissioner is to inform the employer or the DGE of the group accordingly, giving particulars of the determination, revocation or variation, and the date on which it takes effect.

Division 2 — Non-group employers' liability

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 assessment year is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —
- (a) the total amount of WA taxable wages paid or payable by the employer during the assessment year; and
 - (b) the allowable deduction for the employer for the assessment year calculated in accordance with section 12(1).
- (2) If an employer is a local non-group employer for only part of an assessment year, the amount of pay-roll tax payable by the employer for that part of the assessment year is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —
- (a) the total amount of WA taxable wages paid or payable by the employer during that part of the assessment year; and
 - (b) the allowable deduction for the employer for that part of the assessment year calculated in accordance with section 12(2).

11. Tax payable with returns — local non-group employers

The amount of pay-roll tax payable by a local non-group employer for a monthly return period or for part of a month is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —

- (a) the total amount of WA taxable wages paid or payable by the employer during the month or part of the month; and
- (b) the allowable deduction for the employer for the month, or part of the month, worked out in accordance with section 12(3).

12. Allowable deductions — local non-group employers

- (1) For the purposes of section 10(1)(b), the allowable deduction for the employer for the assessment year is A in the formula —

$$A = T - \left(\frac{W - T}{3} \right)$$

where —

T is the annual threshold amount for the assessment year;

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

- (2) For the purposes of section 10(2)(b), the allowable deduction for the employer for that part of the assessment year is A in the formula —

$$A = \left(\frac{T \times P}{Y} \right) - \left[\frac{W - \left(\frac{T \times P}{Y} \right)}{3} \right]$$

where —

- P is the number of days in that part of the assessment year;
- T is the annual threshold amount for the assessment year;
- W is the total amount of WA taxable wages paid or payable by the employer during that part of the assessment year;
- Y is the number of days in the assessment year.

- (3) For the purposes of section 11(b), the allowable deduction for the employer for the month, or part of the month, is A in the formula —

$$A = \left(\frac{S \times D}{M} \right) - \left[\frac{W - \left(\frac{S \times D}{M} \right)}{3} \right]$$

where —

- D is the number of days in the month, or part of the month, during which WA taxable wages were paid or payable by the employer;
- M is the number of days in the month;
- S is the monthly threshold amount for the assessment year;
- W is the total amount of WA taxable wages paid or payable by the employer during the month or part of the month.

13. Annual tax liability — interstate non-group employers

- (1) 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 assessment year is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —
- (a) the total amount of WA taxable wages paid or payable by the employer during the assessment year; and

- (b) the allowable deduction for the employer for the assessment year calculated in accordance with section 14(1).
- (2) If an employer is an interstate non-group employer for only part of an assessment year, the amount of pay-roll tax payable by the employer for that part of the assessment year is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —
 - (a) the total amount of WA taxable wages paid or payable by the employer during that part of the assessment year; and
 - (b) the allowable deduction for the employer for that part of the assessment year calculated in accordance with section 14(2).

14. Allowable deductions — interstate non-group employers

- (1) For the purposes of section 13(1)(b), the allowable deduction for the employer for the assessment year is A in the formula —

$$A = \left(\frac{W}{W + I} \right) \times \left[T - \left(\frac{W + I - T}{3} \right) \right]$$

where —

- I is the total amount of interstate taxable wages paid or payable by the employer during the assessment year;
- T is the annual threshold amount for the assessment year;
- W is the total amount of WA taxable wages paid or payable by the employer during the assessment year.

- (2) For the purposes of section 13(2)(b), the allowable deduction for the employer for that part of the assessment year is A in the formula —

$$A = \left(\frac{W}{W + I} \right) \times \left\{ \left(\frac{T \times P}{Y} \right) - \left[\frac{(W + I) - \left(\frac{T \times P}{Y} \right)}{3} \right] \right\}$$

where —

- I is the total amount of interstate taxable wages paid or payable by the employer during that part of the assessment year;
- P is the number of days in that part of the assessment year;
- T is the annual threshold amount for the assessment year;
- W is the total amount of WA taxable wages paid or payable by the employer during that part of the assessment year;
- Y is the number of days in the assessment year.

15. Tax payable with monthly returns — interstate non-group employers

- (1) The amount of pay-roll tax payable by an interstate non-group employer for a month is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —
- (a) the total amount of WA taxable wages paid or payable by the employer during the month; and
 - (b) the amount of the employer's nominated deduction under subsection (2) or (4).

- (2) The employer may nominate an amount, or ask the Commissioner to nominate an amount, as the employer's nominated deduction for a return period.
- (3) The employer must include with the nomination or request for nomination particulars of the estimates on which the nomination is or is to be made.
- (4) The Commissioner may accept the amount nominated by an employer, or nominate another amount instead, or nominate an amount on his or her initiative, as the employer's nominated deduction for the return period.
- (5) The nominated amount is to be calculated on the basis of estimates of the amounts of WA taxable wages and interstate taxable wages likely to be paid or payable by the employer during the assessment year or part-year.
- (6) The Commissioner must notify the employer as soon as practicable of the nomination of an amount or the cancellation of a nomination.
- (7) If there is no nominated amount for an employer, the nominated deduction for the employer is taken to be nil.
- (8) A nomination remains in force for each subsequent return period in the assessment year unless it is cancelled.
- (9) The Commissioner may cancel a nomination at any time.

16. Annual reconciliation — non-group employers

- (1) If the sum of the amounts of pay-roll tax paid or payable by a non-group employer under section 11 or 15 for the return periods in an assessment year is greater than the amount of pay-roll tax payable by the employer for the year under section 10 or 13, the employer is entitled to a refund or rebate of the difference.

- (2) If the sum of the amounts of pay-roll tax paid or payable by a non-group employer under section 11 or 15 for the return periods in an assessment year is less than the amount of pay-roll tax payable by the employer for the year under section 10 or 13, the employer must pay the difference.
- (3) Subject to section 17(4) of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.

Division 3 — Group employers' liability

17. Annual tax liability — groups

- (1) The amount of pay-roll tax payable by a group for an assessment year is to be worked out in accordance with subsection (2) if at all times during the assessment year there is at least one member of the group who pays or is liable to pay WA taxable wages or interstate taxable wages as a group member, whether or not any member of the group pays or is liable to pay WA taxable wages or interstate taxable wages as a group member throughout the whole assessment year.
- (2) The amount of pay-roll tax payable by the group for the assessment year is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —
 - (a) the total amount of WA taxable wages paid or payable by the group members during the assessment year; and
 - (b) the allowable deduction for the group for the assessment year calculated in accordance with section 18(1).
- (3) The amount of pay-roll tax payable by a group for an assessment year is to be worked out in accordance with subsection (4) if —
 - (a) during part only of the assessment year there is at least one member of the group who pays or is liable to pay

WA taxable wages or interstate taxable wages as a group member, whether or not that member or any other member of the group pays or is liable to pay WA taxable wages or interstate taxable wages as a group member throughout that part of the assessment year; and

- (b) during the remainder of the assessment year there is no member of the group who pays or is liable to pay WA taxable wages or interstate taxable wages as a group member.
- (4) The amount of pay-roll tax payable by the group for the assessment year is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the difference between —
- (a) the total amount of WA taxable wages paid or payable by the group members during that part of the assessment year; and
 - (b) the allowable deduction for the group for that part of the assessment year calculated in accordance with section 18(2).

18. Allowable deductions — groups

- (1) For the purposes of section 17(2)(b), the allowable deduction for the group for the assessment year is A in the formula —

$$A = \left(\frac{W}{W + I} \right) \times \left[T - \left(\frac{W + I - T}{3} \right) \right]$$

where —

- I is the total amount of interstate taxable wages paid or payable by the group members during the assessment year;
- T is the annual threshold amount for the assessment year;

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

- (2) For the purposes of section 17(4)(b), the allowable deduction for the group for that part of the assessment year is A in the formula —

$$A = \left(\frac{W}{W + I} \right) \times \left\{ \left(\frac{T \times P}{Y} \right) - \left[\frac{(W + I) - \left(\frac{T \times P}{Y} \right)}{3} \right] \right\}$$

where —

- I is the total amount of interstate taxable wages paid or payable by the group members during that part of the assessment year;
- P is the number of days in that part of the assessment year;
- T is the annual threshold amount for the assessment year;
- W is the total amount of WA taxable wages paid or payable by the group members during that part of the assessment year;
- Y is the number of days in the assessment year.

19. Tax payable with monthly returns — groups

- (1) The amount of pay-roll tax payable for a monthly return period by any member of a group except the DGE is the amount calculated by applying the appropriate rate of pay-roll tax to the amount equal to the total amount of WA taxable wages paid or payable by the member for the return period.

- (2) The amount of pay-roll tax payable for a monthly return period by the DGE of a group is the amount calculated by applying the appropriate rate of pay-roll tax to the difference between —
 - (a) the amount equal to the total amount of WA taxable wages paid or payable by the DGE for the return period; and
 - (b) the amount of the group's nominated deduction under subsection (3) or (5).
- (3) The DGE may nominate an amount, or ask the Commissioner to nominate an amount, as the group's nominated deduction for a return period.
- (4) The DGE must include with the nomination or request for nomination particulars of the estimates on which the nomination is or is to be made.
- (5) The Commissioner may accept the amount nominated by the DGE, or nominate another amount instead, or nominate an amount on his or her initiative, as the group's nominated deduction.
- (6) The nominated amount is to be calculated on the basis of estimates of the WA taxable wages and the interstate taxable wages likely to be paid or payable by the group during the assessment year.
- (7) The Commissioner must notify the DGE as soon as practicable of the nomination of an amount or the cancellation of a nomination.
- (8) If there is no nominated amount, the nominated deduction is taken to be nil.
- (9) The Commissioner may cancel a nomination at any time.

20. Annual reconciliation — groups

- (1) If the sum of the amounts of pay-roll tax paid or payable by the members of a group under section 19 for the return periods in an assessment year is greater than the amount of pay-roll tax payable by the group for the year under section 17, the group is entitled to a refund or rebate of the difference.
- (2) If the sum of the amounts of pay-roll tax paid or payable by the members of a group under section 19 for the return periods in an assessment year is less than the amount of pay-roll tax payable by the group for the year under section 17, the group members must pay the difference.
- (3) Subject to section 17(4) of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.

Division 4 — Assessment generally

21. Tax-reducing arrangements

- (1) If a person is a party to a tax-reducing arrangement, the Commissioner may —
 - (a) disregard the arrangement;
 - (b) determine that any party to the arrangement is an employer for the purposes of this Act; and
 - (c) determine that any payment made under the arrangement is wages for the purposes of this Act.
- (2) If the Commissioner makes a determination, he or she must —
 - (a) serve a notice to that effect on the person; and
 - (b) set out in the notice the grounds on which the Commissioner relies and his or her reasons for making the determination.

22. Adjustments for changes in annual threshold amount

- (1) If the Commissioner is satisfied that the total amount of pay-roll tax paid or payable by a non-group employer or a group for an assessment year exceeds by more than \$10 the total amount of pay-roll tax that would have been paid or payable for the year if the annual threshold amount had not been amended with respect to that year, the employer or group is eligible for a refund or rebate of the amount by which the first-mentioned total amount exceeds the second-mentioned total amount.
- (2) The non-group employer or the group's DGE may apply to the Commissioner for the rebate or refund.
- (3) An application may be made in the approved form before the end of the following financial year.
- (4) The Commissioner must reassess the amount of pay-roll tax payable by the employer or the group for the year on receiving an application, and may do so on his or her initiative.

23. Taxable wages not paid throughout assessment year

- (1) This section applies to a non-group employer if —
 - (a) the employer pays or is liable to pay WA taxable wages or interstate taxable wages for part only of an assessment year; and
 - (b) the Commissioner is satisfied that, because of the nature of the employer's trade or business, the employer's liability to pay WA taxable wages or interstate taxable wages fluctuates with different periods of the assessment year.
- (2) If the employer has conducted the trade or business in Australia during the whole of the assessment year —
 - (a) the appropriate rate of pay-roll tax payable by the employer is the rate that would have been payable if the

- employer had paid or was liable to pay WA taxable wages or interstate taxable wages throughout the assessment year; and
- (b) the employer's liability to pay pay-roll tax is assessed as if the employer had been an employer throughout the assessment year.
- (3) If the employer has conducted the trade or business in Australia during part only of the assessment year —
- (a) the appropriate rate of pay-roll tax payable by the employer is the rate that would have been payable if the employer had paid or was liable to pay WA taxable wages or interstate taxable wages during that part of the assessment year; and
 - (b) the employer's liability to pay pay-roll tax is assessed as if the employer had been an employer only during that part of the assessment year.

Part 3 — Registration and returns

24. Applications for registration as an employer

- (1) A non-group employer who is not registered must apply to the Commissioner for registration if —
 - (a) the employer pays or is liable to pay any WA taxable wages during a month; and
 - (b) the total amount of the WA taxable wages and any interstate taxable wages that the employer pays or is liable to pay during the month exceeds the monthly threshold amount.

Penalty: \$20 000.

- (2) A group member who is not registered must apply for registration if the member pays or is liable to pay any WA taxable wages during a month.

Penalty: \$20 000.

- (3) A non-group employer whose registration is cancelled in an assessment year but who in any later month of the year pays or is liable to pay WA taxable wages may apply for registration even if the amount of wages paid or payable by the employer during the month is less than the monthly threshold amount.
- (4) An application must be made in the approved form.
- (5) An application under subsection (1) or (2) must be made to the Commissioner within 7 days after the end of the month.

25. Registration and cancellation of registration

- (1) On receiving an application under section 24, the Commissioner must register the applicant as an employer for the purposes of this Act if it appears to the Commissioner that the employer is, or is likely to become, liable to pay pay-roll tax.

- (2) The Commissioner may cancel the registration of a person as an employer if —
- (a) the person has ceased to be an employer paying wages as mentioned in section 24(1); or
 - (b) the person —
 - (i) ceases to be a member of a group; and
 - (ii) does not pay and is not liable to pay wages as mentioned in section 24(1).

26. Monthly returns

- (1) An employer who is registered or required to apply for registration under section 24 must lodge a return for each month specifying the amount of the WA taxable wages paid or payable by the employer during the month, unless the employer is exempted under section 29.
- (2) A monthly return must —
- (a) be in the approved form; and
 - (b) be lodged within 7 days after the end of the month, or within any other period that the Commissioner directs in a particular case.

Penalty: \$5 000.

27. Additional returns for reconciliation purposes

- (1) If a determination is in force under section 9 for an employer or the members of a group for an assessment year, then, in addition to lodging monthly returns for the assessment year, the employer or the DGE of the group must lodge an additional return for the assessment year specifying the amount of interstate taxable wages paid or payable by the employer, or by each member of the group, for the whole assessment year.
- (2) The additional return must —

- (a) be in the approved form;
- (b) contain any information required by the Commissioner;
and
- (c) be lodged within 2 months after the end of the
assessment year or within any further time allowed by
the Commissioner.

Penalty: \$5 000.

28. Further returns

- (1) The Commissioner may, by notice to a person (whether as principal or as an agent or trustee and whether or not the person is an employer) require the person to lodge a return or a further or fuller return.
- (2) The person must lodge the return in accordance with any requirements set out in the notice and within the time specified in the notice.

Penalty: \$5 000.

29. Exemptions from lodging monthly returns

- (1) An employer may apply to the Commissioner for exemption from the requirement to lodge monthly returns for an assessment year.
- (2) The Commissioner may exempt an employer from the requirement to lodge monthly returns if —
 - (a) the Commissioner is satisfied that the requirement is unduly onerous in the circumstances; or
 - (b) the Commissioner is of the opinion that pay-roll tax will not be payable by the employer, or, if paid, would be refunded.

- (3) The Commissioner may give an exemption on receiving an application or on his or her initiative.
- (4) An exemption is subject to the prescribed conditions (if any) and to the conditions specified in the notice (if any).
- (5) An exemption continues in force until it is revoked.
- (6) The Commissioner may revoke an exemption at any time by giving the employer notice of the revocation.
- (7) Granting an exemption does not exempt the employer from any liability to pay-roll tax, even if it has the effect of postponing the time for payment of the pay-roll tax.
- (8) A person who is exempted from lodging monthly returns for an assessment year must —
 - (a) lodge an annual return within 21 days after the end of the assessment year, unless the notice of exemption otherwise provides; or
 - (b) if the notice otherwise provides — lodge returns as required by the notice.

Penalty: \$5 000.

- (9) An annual return must —
 - (a) be in the approved form; and
 - (b) specify the WA taxable wages and the interstate taxable wages that the employer paid or became liable to pay during the assessment year.

Penalty: \$5 000.

Part 4 — Constitution of business groups

30. Grouping corporations

For the purposes of a pay-roll tax Act, 2 corporations constitute a group if they are related to each other within the meaning of section 50 of the Corporations Act.

31. Grouping where employees used in another business

- (1) An employer and another person or other persons constitute a group if one or more of the employer's employees carries out duties solely or mainly for or in connection with a business carried on by the employer and the other person or persons, or carried on by the other person or persons.
- (2) An employer and another person or other persons constitute a group if —
 - (a) the employer has an agreement, arrangement or undertaking with that person or those persons in relation to a business carried on by the person or persons, whether alone or together with another person or other persons; and
 - (b) the agreement, arrangement or undertaking relates to the employment of, or the performance of duties by, one or more of the employer's employees.
- (3) Subsection (2) applies in relation to an agreement, arrangement or undertaking whether it is formal or informal, whether it is express or implied and whether or not it includes provisions in respect of the supply of goods or services or goods and services.
- (4) The Commissioner may exclude a person from a group in accordance with section 38 if the Commissioner is satisfied, having regard to the nature and degree of the duties referred to in subsection (1) or (2) and to any other matters that he or she

considers relevant, that it would not be just and reasonable to include the person as a member of a group.

32. Grouping commonly controlled businesses

- (1) A reference in this section to 2 businesses does not include a reference to 2 businesses that are owned by the same person (otherwise than as a trustee) or by the trustee or trustees of a trust.
- (2) If the same person has, or the same persons have together, a controlling interest in each of 2 businesses, the persons who carry on those businesses constitute a group.
- (3) If a member of a group is included in the group because of carrying on a business in which a person has, or persons have together, a controlling interest under section 33(4) or (9) as the beneficiary or beneficiaries under a discretionary trust, the Commissioner may exclude the group member from the group in accordance with section 38 if the Commissioner is satisfied, after taking into account the matters referred to in subsection (4), that —
 - (a) the group member's business is carried on substantially independently of the business carried on by any other member of the group; and
 - (b) it is just and reasonable to exclude the group member from the group.
- (4) The matters to be taken into account are —
 - (a) the nature and degree of ownership and control of the businesses;
 - (b) the nature of the businesses; and
 - (c) any other matter that the Commissioner considers relevant.

33. Controlling interest in business

- (1) A person has, or persons have together, a controlling interest in a business carried on by a corporation if the directors of the corporation, or a majority of them, or one or more of them —
 - (a) are or is entitled to exercise a majority in voting power at meetings of the directors; and
 - (b) are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person, or of those persons acting together.
- (2) A person has, or persons have together, a controlling interest in a business carried on by a corporation that has a share capital if the person, or those persons acting together, may (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, more than 50% of the voting power attached to voting shares issued by the corporation.
- (3) A person has, or persons have together, a controlling interest in a business carried on by a partnership, if the person or persons —
 - (a) owns, or own together (whether beneficially or not) more than 50% of the capital of the partnership; or
 - (b) is, or are together, entitled (whether beneficially or not) to more than 50% of any profits of the partnership.
- (4) A beneficiary under a trust has, or beneficiaries under a trust together have, (whether or not as the trustee or trustees of another trust) a controlling interest in a business carried on by the trust if the beneficiary has, or the beneficiaries together have, a beneficial interest in respect of more than 50% of the value of the interests in the trust.

- (5) A person has a controlling interest in a business if the person is the sole owner of the business, whether as trustee or otherwise.
- (6) Two or more persons together have a controlling interest in a business if the persons own the business as trustees.
- (7) If a corporation has a controlling interest in a business, the corporation also has a controlling interest in any other business in which a related corporation has a controlling interest.
- (8) Where —
 - (a) a person has, or persons have together, a controlling interest in a business; and
 - (b) the person or persons who carries or carry on the business has or have a controlling interest in another business,then the person or persons referred to in paragraph (a) has or have a controlling interest in the other business referred to in paragraph (b).
- (9) A beneficiary under a trust has, or beneficiaries under a trust have, a controlling interest in a business if —
 - (a) the trustee or trustees of the trust has or have a controlling interest in the business; and
 - (b) the beneficiary has, or the beneficiaries together, have a beneficial interest in more than 50% of the value of the interests in the trust.

34. Value of beneficial interest in discretionary trusts

- (1) For the purposes of this Part, a person who may benefit under a discretionary trust as a result of the exercise of a power or discretion by the trustee or by another person, or by the trustee and another person, is taken to be a beneficiary of the trust who

has a beneficial interest in respect of more than 50% of the value of the interests in the trust.

- (2) For the purposes of this Part, 2 or more persons who may benefit under a discretionary trust as a result of the exercise of a power or discretion by the trustee or by another person, or by the trustee and another person, are taken to be beneficiaries of the trust who together have a beneficial interest in respect of more than 50% of the value of the interests in the trust.

35. Grouping head and branch businesses

- (1) Two businesses together constitute a group if —
- (a) one of the businesses is the head or parent business;
 - (b) the second business is a branch, agency or subsidiary of the head or parent business; and
 - (c) the head or parent business exercises managerial control, whether administrative, financial, or procedural, over the branch, agency or subsidiary.
- (2) The Commissioner may exclude a business from the group in accordance with section 38 if the Commissioner is satisfied, having regard to the nature and degree of managerial control exercised by the head or parent business and to any other matters that the Commissioner considers relevant, that it would not be just and reasonable to include the business as a member of the group.

36. Smaller groups subsumed into larger groups

- (1) Where a person is a member of 2 or more groups (each of which is called a “**smaller group**” for the purposes of subsection (3)), the members of those groups together constitute one group for the purposes of this Act.

- (2) Where the members of a group (called a “**smaller group**” for the purposes of subsection (3)) have together a controlling interest in a business, the members of the group and the person or persons who carry on the business together constitute one group for the purposes of this Act.
- (3) When the members of a smaller group are members of a group constituted under subsection (1) or (2), the smaller group is no longer treated as a group for the purposes of this Act except for the purpose of —
 - (a) determining whether a group is constituted under subsection (1) or (2); or
 - (b) excluding a member from a group under section 31(4), 32(3) or 35(2).

37. Grouping provisions operate independently

The fact that a person is not a member of a group constituted under a provision of this Part does not prevent that person from being a member of a group constituted under another provision of this Part.

38. Exclusion from groups

- (1) The Commissioner may exclude a person from a group under section 31(4), 32(3) or 35(2) on receiving an application from the person or on his or her initiative.
- (2) However, a corporation cannot be excluded from a group if it is related, within the meaning of section 50 of the Corporations Act, to another corporation which is a member of the group.
- (3) An application for exclusion must —
 - (a) set out the grounds on which it is made; and
 - (b) include a statement of the circumstances giving rise to those grounds.

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- (4) An exclusion takes effect on the date specified in the notice of exclusion and continues in force until it is revoked.
- (5) The date specified as the date on which the exclusion takes effect may be the date of the notice or an earlier date.
- (6) The Commissioner may revoke an exclusion at any time by giving notice of the revocation to the person or persons excluded from a group.
- (7) A person who is excluded from a group must notify the Commissioner immediately if there is a material change in the circumstances set out in the statement under subsection (3)(b).

39. Designated group employer

- (1) The members of a group may designate one of the members as the designated group employer (DGE) for the group for the purposes of the pay-roll tax Acts.
- (2) A designation must —
 - (a) be in the approved form;
 - (b) be accompanied by any information required by the Commissioner;
 - (c) be executed by or for each member of the group; and
 - (d) be served on the Commissioner.
- (3) If the members of a group do not designate a DGE for the group, the Commissioner may on his or her initiative designate one of the members to be the DGE for the group for the purposes of a pay-roll tax Act.
- (4) A designation by the Commissioner is to be made by notice served on the member designated as the DGE.
- (5) An employer who is the DGE for a group stops or is taken to have stopped being the group's DGE on the first day of a return

period of the employer during which either of the following happens —

- (a) the employer leaves the group; or
 - (b) the designation is revoked.
- (6) The members of a group may revoke the designation by giving the Commissioner notice in the approved form.
- (7) The members of a group are not entitled to revoke a designation unless —
- (a) the members designate another member to be the DGE;
or
 - (b) the Commissioner consents to the revocation.
- (8) If the Commissioner designated a member of a group as the DGE, the Commissioner may revoke the designation by giving notice of the revocation to the member.

Part 5 — Miscellaneous

40. Exempt wages

- (1) The following wages are exempt from pay-roll tax —
 - (a) wages of a kind listed in subsection (2);
 - (b) wages that are exempt under subsection (3);
 - (c) wages prescribed under subsection (4);
 - (d) specified exempt allowances;
 - (e) benefits that are exempt benefits under any provision of the FBTA Act except section 58W and that are not specified taxable benefits.

- (2) For the purposes of subsection (1)(a), wages paid or payable during an assessment year are exempt from pay-roll tax if the wages are paid or payable —
 - (a) by the Governor of a State;
 - (b) by a religious institution for doing the religious work of the institution;
 - (c) by a public benevolent institution for doing work of a public benevolent nature;
 - (d) by a public hospital for doing work of a kind ordinarily performed in connection with the conduct of public hospitals;
 - (e) by a hospital carried on by a non-profit organisation for doing work of a kind ordinarily performed in connection with the conduct of hospitals;
 - (f) by a school or college (except a college under the *Vocational Education and Training Act 1996*) that is carried on by a non-profit organisation that provides education at or below, but not above, the secondary level of education, for doing work of a kind ordinarily

- performed in connection with the conduct of such schools or colleges;
- (g) by a local government, a regional local government or one of the associations constituted under section 9.58 of the *Local Government Act 1995*;
 - (h) by a consular or other representative (except a diplomatic representative) in Australia of the government of another country to members of his or her official staff;
 - (i) by a Trade Commissioner representing in Australia the government of a country of the British Commonwealth of Nations, to members of his or her official staff;
 - (j) by the Commonwealth War Graves Commission;
 - (k) by the Australian-American Educational Foundation;
 - (l) to a person who is a member of the Defence Force of the Commonwealth or of the armed force of a country that is a member of the British Commonwealth of Nations, being wages paid or payable by the employer from whose employment the person is on leave because of his or her being a member of the force;
 - (m) by an employer to or in relation to a person who is a probationer, or an apprentice, within the meaning of the *Industrial Training Act 1975*;
 - (n) by a charitable body or organisation exempted under section 41 for doing work of the kind ordinarily performed in connection with a charitable purpose for which the body or organisation is established or carried on;
 - (o) by an employer to or in relation to a trainee employed under a training agreement as part of the Australian Traineeship System established by the Governments of the Commonwealth and the State;

- (p) by an employer to or in relation to a person employed as a trainee by agreement under a traineeship or training scheme that —
 - (i) is established or recognised as a traineeship or training scheme by the Minister to whom the administration of the *Industrial Training Act 1975* is for the time being committed by the Governor; and
 - (ii) is not a prescribed traineeship or training scheme or a traineeship or training scheme of a prescribed class or description;
 - (q) out of moneys expended for the purpose of a division or portion of a division referred to in the annual estimates of expenditure from the Consolidated Fund prepared by the Treasurer in respect of the assessment year, being a division or portion in respect of a department or other organisation prescribed for the purposes of this paragraph or the division in respect of special Acts to the extent that the estimates of expenditure in that division relate to the department or other organisation; or
 - (r) as wages of a prescribed kind to a person for services carried out by the person at a remote location.
- (3) If wages are paid or payable in Western Australia for services carried out wholly in another country for a continuous period of more than 6 months, the wages paid or payable more than 6 months after the wages were first paid, or first became payable, are exempt from pay-roll tax.
- (4) Regulations may prescribe, as exempt wages, the whole or part of wages paid or payable by an employer where the employer is entitled to recover an amount in respect of those wages from a fund, contributions to which are specified taxable benefits.

- (5) If the Minister referred to in subsection (2)(p) notifies the Commissioner that an agreement under a traineeship or training scheme referred to in the subsection has been terminated because the trainee or the trainee's employer contravened the terms of the agreement during a period specified in the notice, then the Commissioner may determine that the exemption under that subsection does not apply to the wages paid or payable by the employer of the trainee to the trainee during that period.

41. Exempting charitable bodies or organisations

- (1) A charitable body or organisation may apply to the Commissioner for exemption from liability to pay-roll tax.
- (2) The Commissioner may, by giving notice to the charitable body or organisation, exempt it from liability to pay-roll tax.
- (3) The exemption is subject to any conditions specified in the notice.
- (4) The exemption comes into operation on the day specified in the notice, which may be the day on which the notice is given, or an earlier or later day.
- (5) The Commissioner's decision as to the day on which the exemption comes into operation is non-reviewable.
- (6) The exemption continues in force until it is revoked.
- (7) The Commissioner may amend or revoke the exemption and any condition to which it is subject, by giving further notice to the charitable body or organisation.

42. Tax payable when employer leaves Australia

- (1) If the Commissioner has reason to believe that an employer may leave Australia before any taxes become due and payable by the employer —
- (a) the Commissioner may, by notice to the employer, fix an earlier date for payment of the taxes; and

(b) the taxes are due and payable on the date specified in the notice.

(2) In subsection (1) —

“**taxes**” means pay-roll tax, or any penalties, interest or other amount payable under a pay-roll tax Act in connection with pay-roll tax.

43. Agents and trustees

(1) An agent or trustee is answerable as an employer for the doing of everything required to be done by a pay-roll tax Act in relation to the payment of any WA taxable wages by the principal or the trust.

(2) Without limiting subsection (1), an agent or trustee is to lodge the returns for WA taxable wages as required, and is chargeable with any taxes payable on the wages, but in his or her representative capacity only, and each return is separate and distinct from any other, except as otherwise provided by a pay-roll tax Act.

(3) If the agent or trustee is an executor or administrator, the returns are to be the same as far as practicable as the deceased person, if living, would have been liable to make.

(4) An agent or trustee who disburses an amount by way of taxes for the principal or beneficiary is authorised to recover the amount from the person for whom it was paid, or to deduct it from any money belonging to that person that is in the hands of the agent or trustee.

(5) An agent or trustee is required to retain from time to time out of any money which comes to the agent or trustee in his or her representative capacity so much as is sufficient to pay the taxes.

- (6) An agent or trustee is personally liable for the taxes payable if, after the Commissioner has required him or her to make a return, or while the taxes remain unpaid, the agent or trustee, except with the permission of the Commissioner, disposes of or parts with any fund or money which comes to the agent or trustee from which the taxes could legally be paid, but is not otherwise personally liable for the taxes.
- (7) An agent or trustee is indemnified for all payments which he or she makes in accordance with a pay-roll tax Act or a requirement of the Commissioner.
- (8) For the purpose of ensuring the payment of taxes the Commissioner has the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he or she would have against the property of any other person in respect of taxes, and in as full and ample a manner.
- (9) The Commissioner may, by giving notice to a person, declare the person to be an agent, or the sole agent, of any other person for the purposes of this Act.
- (10) Nothing in this section affects the operation of Part 2 Division 3, or of Part 4, in relation to trustees.
- (11) In this section —
“**taxes**” means pay-roll tax, or any penalties, interest or other amount payable under a pay-roll tax Act in connection with pay-roll tax.

44. Keeping books and accounts

- (1) An employer who is registered or required to apply for registration must keep —
 - (a) the records that are prescribed in the regulations for the purposes of this section (if any); and

- (b) any other records necessary to enable the Commissioner to determine the employer's liability to pay pay-roll tax.

Penalty: \$20 000.

- (2) Despite section 87 of the *Taxation Administration Act 2003*, the employer must retain the records for at least 5 years, or for any greater period that is prescribed, after the completion of the transactions to which they relate.

Penalty: \$20 000.

45. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Regulations may be made about any or all of the following matters —
 - (a) the evidence that the Commissioner may require for the purpose of determining whether or not an employer was an employer for part only of an assessment year, whether or not a person was or was not a member of a group or whether or not an exemption under section 29 should be given;
 - (b) benefits on the value of which pay-roll tax is payable (whether or not the benefits are exempt benefits under the FBTA Act);
 - (c) allowances that are exempt from pay-roll tax, to the extent that is prescribed;
 - (d) the records and other evidence required to be kept in respect of —
 - (i) specified exempt allowances; and

- (ii) anything affecting the extent to which those allowances are excluded from being wages;
 - (e) the value of a fringe benefit paid or payable by an employer that is to be included in a return;
 - (f) any other matter for the application of this Act to a fringe benefit, a specified taxable benefit or a specified exempt allowance;
 - (g) classes of contracts for the purposes of clause 2(1)(e) of the Glossary.
- (3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.

Glossary

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1. Definitions

In a pay-roll tax Act, unless the contrary intention appears —

“actuary” means a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

“agent” includes —

- (a) a person who in Western Australia, for or on behalf of another person outside Western Australia, holds or has the management or control of the business of that other person; and
- (b) a person on whom notice of a declaration under section 43(9) has been served;

“allowable deduction” means —

- (a) in relation to a group — the amount calculated in accordance with section 18;
- (b) in relation to an interstate non-group employer — the amount calculated in accordance with section 14; or
- (c) in relation to a local non-group employer — the amount calculated in accordance with section 12;

“annual threshold amount”, in relation to a financial year, means the annual threshold amount fixed for the financial year under section 8(1);

“appropriate rate”, in relation to a particular kind of employer and an assessment year or return period, means the rate or rates of pay-roll tax fixed in relation to employers of that kind for the year or the return period by the *Pay-roll Tax Act 2002*;

“assessment year”, in relation to pay-roll tax, means the financial year for which the pay-roll tax is, or is to be, assessed;

“Australian superannuation scheme” means a superannuation scheme that —

- (a) was established in Australia, or has any asset situated in Australia; and
- (b) has its central management and control in Australia;

“business”, for the purposes of Part 4, includes —

- (a) a trade or profession;
- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity, carried on by an employer, of employing one or more persons where that person performs or those persons perform duties for or in connection with another business;

“charitable body or organisation” means a body or organisation established or carried on for charitable purposes except —

- (a) a body or organisation whose sole or principal purpose is the provision of tertiary education; or
- (b) a college or other vocational education and training institution under the *Vocational Education and Training Act 1996*;

“company” includes all bodies and associations (corporate and unincorporate) and partnerships;

“controlling interest”, in relation to a business, has the definition given in section 33;

“Corporations Act” means the *Corporations Act 2001* of the Commonwealth;

“corporation” has the meaning given by section 57A of the Corporations Act;

“corresponding law”, in relation to another State, means a law in force in the State relating to the imposition upon employers of a tax on wages paid or payable by them and the assessment and collection of that tax, but does not include the *Pay-roll Tax Assessment Act 1941* of the Commonwealth;

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- “defined superannuation benefit”** means a benefit under a superannuation scheme that is defined, wholly or in part, by reference to either or both of the following —
- (a) the amount of the participant’s salary —
 - (i) at a particular date, being the date of the termination of the participant’s employment, the date of the participant’s retirement, or an earlier date; or
 - (ii) averaged over a period ending on any such date;
 - (b) a stated amount;
- “designated group employer”**, in relation to a group, means the member of the group designated under section 39;
- “DGE”** means designated group employer;
- “employer”** means any person who pays or is liable to pay any wages, and includes the Crown in right of the State of Western Australia and an employment agent;
- “employment agent”** means a person (the agent) who procures the services of another person (the worker) for a third person (the client) under an arrangement where —
- (a) the worker does not become the employee of either the agent or the client, but does carry out duties of a similar nature to those of an employee; and
 - (b) remuneration is paid directly or indirectly by the agent to the worker or to some other person for the services provided by the worker;
- “exempt”**, in relation to wages, means exempt from pay-roll tax under section 40;
- “FBTA Act”** means the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth;
- “fringe benefit”** means anything that is a fringe benefit under the FBTA Act except a benefit prescribed not to be a fringe benefit for the purposes of this definition;
- “group”** means a group constituted under Part 4;
- “GST”** has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth

except that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

“individual superannuation guarantee shortfall” has the same definition as it has in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

“interstate non-group employer” means a non-group employer who pays or is liable to pay WA taxable wages during all or part of an assessment year, and who also pays or is liable to pay interstate taxable wages during all or part of the assessment year, whether or not the interstate taxable wages are paid or payable in respect of the same part of the assessment year as the WA taxable wages;

“interstate taxable wages” means wages that are subject to pay-roll tax under a corresponding law;

“local non-group employer” means a non-group employer who pays or is liable to pay WA taxable wages during part or all of an assessment year, but is not liable to pay any interstate taxable wages during the assessment year;

“monthly threshold amount”, in relation to a financial year, means the amount fixed as the monthly threshold amount for the financial year under section 8(2);

“nominated deduction” means —

- (a) in relation to a group — the amount nominated for the group under section 19;
- (b) in relation to an interstate non-group employer — the amount nominated for the employer under section 15;

“non-group employer” means an employer who is not a member of a group under Part 4;

“non-profit organisation” means body corporate, society or association formed otherwise than for the purpose of profit or gain to individual members of the body, society or association;

“‘otherwise deductible’ rule” has the meaning given in clause 7(3);

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“participant”, in relation to a superannuation scheme, means a person in respect of whom the fund provides for benefits that are, or are to be, funded to any extent by the employer’s contributions;

“pay-roll tax” means the tax imposed under the *Pay-roll Tax Act 2002*;

“pay-roll tax Act” means —

- (a) the *Pay-roll Tax Act 2002*;
- (b) the *Pay-roll Tax Assessment Act 2002*; or
- (c) the *Taxation Administration Act 2003*;

“provide”, in relation to a fringe benefit or a specified taxable benefit, has the same definition as in section 136 of the FBTA Act;

“registered” means registered as an employer under section 25;

“regulated superannuation fund” has the same definition as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

“related corporation”, in relation to a second corporation, means a corporation that is related to the second corporation within the meaning of section 50 of the Corporations Act;

“remote location” means a location that is not —

- (a) in an eligible urban area within the meaning of section 140 of the FBTA Act; or
- (b) adjacent to an eligible urban area within the meaning of that section;

“return” means a return lodged under this Act;

“return period”, in relation to an employer, means —

- (a) a month;
- (b) if the employer is required to lodge an annual return under section 27(1) — an assessment year; or
- (c) if the employer is exempt under section 29 from lodging monthly returns, but no alternative return period is specified in the notice of exemption — an assessment year;

“**smaller group**”, for the purposes of section 36, has the meaning given in that section;

“**specified exempt allowance**” means an allowance prescribed under section 45(2)(c);

“**specified taxable benefit**” means a benefit prescribed under section 45(2)(b);

“**State**” means a State or a Territory;

“**superannuation fund**” means any fund carried on —

- (a) for the purposes of a superannuation scheme; or
- (b) to provide retirement savings accounts within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth,

and includes the Superannuation Holding Accounts Reserve established by the *Small Superannuation Accounts Act 1995* of the Commonwealth;

“**superannuation guarantee charge**” means a charge imposed by the *Superannuation Guarantee Charge Act 1992* of the Commonwealth, except that it does not include additional superannuation guarantee charge under Part 7 of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

“**superannuation scheme**” includes a provident or retirement fund or scheme;

“**taxes**”, for the purposes of section 42 or 43, has the meaning given in the respective section;

“**tax-reducing arrangement**” means any arrangement, transaction or agreement, whether in writing or otherwise —

- (a) under which a natural person (the worker) carries out, for or on behalf of a second person, services for which any payment is made to a third person related or connected to the worker; and
- (b) which has the effect of reducing or avoiding the liability of any person to the assessment, imposition, or payment of pay-roll tax (whether or not that is the only effect of the agreement);

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“Territory” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

“trustee”, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, includes —

- (a) an executor or administrator, guardian, committee, receiver or liquidator; and
- (b) every person having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of any real or personal property of a person under any legal or other disability;

“unfunded public sector superannuation scheme” means a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, except one that is funded in advance in accordance with actuarial advice at a level that is reasonably expected by the actuary to be adequate to provide for present and prospective liabilities in respect of benefits under the scheme;

“value” —

- (a) in relation to a beneficial interest in a discretionary trust, has the meaning given in section 34;
- (b) in relation to a fringe benefit, has the meaning given in clause 7;
- (c) in relation to a specified taxable benefit, has the meaning given in clause 6;
- (d) in relation to wages in respect of a supply on which GST is payable, has the meaning given in clause 3;
- (e) in relation to wages paid in kind, has the meaning given in clause 6;

“voting share” has the definition given by section 9 of the Corporations Act;

“wages” has the definition given in clause 2;

“WA taxable wages” means wages that are taxable in Western Australia under section 5(2);

“work-related benefit” means a benefit that is provided to an employee in the course of carrying out the duties of his or her employment and for the purpose of enabling the employee to carry out those duties.

2. Wages — meaning

(1) In a pay-roll tax Act, unless the contrary intention appears —

“wages” means —

- (a) wages, salary, commission, bonuses or allowances paid or payable to or in relation to an employee as an employee, whether paid or payable at piece work rates or otherwise, and whether paid or payable in cash or in kind;
- (b) wages, salary, commission, bonuses or allowances that are paid or payable, in cash or in kind, to or in relation to an employee by someone acting for the employer, or acting in concert or under an arrangement or undertaking, whether formal or informal and whether express or implied, with the employer;
- (c) an amount paid or payable by way of remuneration to a person holding office under the Crown in right of the State of Western Australia or in the service of the Crown in right of the State of Western Australia;
- (d) the amount of any superannuation benefit that is taken by clause 8 to be paid by the employer;
- (e) an amount paid or payable under a class of contracts prescribed under section 45(2)(g) to the extent to which the payment is attributable to labour;
- (f) an amount paid or payable by a company by way of remuneration to or in relation to a director or member of the governing body of the company;
- (g) an amount paid or payable by way of commission to an insurance or time-payment canvasser or collector;
- (h) an amount in respect of services that is paid or payable by an employment agent, directly or indirectly, to a person who was engaged to perform the services for a client of the employment agent, or to some other person, as a result of which engagement the employment agent receives

Glossary

payment, directly or indirectly, whether by way of a lump sum or an ongoing fee, in relation to the period during which the services are performed for the client by the person engaged to perform them; and

- (i) an amount equal to the value of a fringe benefit or specified taxable benefit that is provided to or in relation to an employee.
- (2) Wages, salary, commission, bonuses or allowances referred to in subclause (1)(b) are taken to be paid or payable by the employer.

3. GST excluded from wages

- (1) If a person is liable to pay GST on the supply to which wages paid or payable to the person relate, the amount of those wages on which pay-roll tax is payable is the amount equal to the amount or value of the wages paid or payable to the person minus the relevant proportion of the amount of GST payable by the person on the supply to which the wages relate.
- (2) In subclause (1) —
 - “**consideration**” has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth;
 - “**relevant proportion**”, in relation to GST payable on a supply to which wages relate, means the proportion that the amount or value of the wages bears to the consideration for the supply to which the wages relate.

4. Place of payment of wages

- (1) Wages that are payable to a person, but have not been paid (except wages that, under the terms of employment, are payable in Western Australia or in another State), are taken —
 - (a) if the wages are not payable for services carried out wholly in Western Australia or wholly in one other State, and the wages last paid or payable to the person were included or are required to be included in a return by the employer under this Act — to be wages payable to the person in Western Australia; or

(b) where the wages are not taken, by paragraph (a) or by any provision in a corresponding law that corresponds with paragraph (a), to be wages payable to the person in Western Australia or in another State — to be wages payable to the person by the employer at the place where the person last carried out any services for the employer before the wages became payable.

(2) If a cheque, bill of exchange, promissory note, money order or postal order issued by a post office or any other instrument is sent or given by an employer to a person or the person's agent at a place in Australia in payment of wages, the wages are taken to have been paid at that place, and to have been paid when the instrument was sent or given.

5. Provider of fringe benefits or specified taxable benefits

(1) A fringe benefit that is provided or liable to be provided by a person other than the employer is taken to be provided by the employer.

(2) A specified taxable benefit that is provided or liable to be provided to or in relation to an employee by a person acting for or in concert or under an arrangement or undertaking, whether formal or informal and whether express or implied, with the employer, is taken to be provided by the employer.

6. Value of wages paid in kind and other benefits

(1) The value of wages (except fringe benefits or specified taxable benefits) that are paid or payable in kind is the greater of —

(a) the value agreed or attributed to the wages in, or ascertainable for the wages from, arrangements between the employer and the employee, whichever is the greater; and

(b) if the regulations prescribe how the value of wages of that type is to be determined — the value determined in accordance with the regulations.

(2) The value of a specified taxable benefit is the prescribed value, or the value calculated in the prescribed manner, as the case requires.

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7. The value of fringe benefits

- (1) The value of a fringe benefit is —
- (a) the grossed-up value of the fringe benefit worked out in accordance with subclause (2) (unless paragraph (b) applies to the fringe benefit); or
 - (b) if a method for determining the value of a particular kind of fringe benefit is prescribed — the value determined as prescribed.

- (2) The grossed-up value of a fringe benefit is G in the formula —

$$G = V \times F$$

where —

- V is the employee's share of the taxable value of the fringe benefit worked out —
- (i) if the benefit is a work-related benefit — under the FBTA Act; or
 - (ii) if the benefit is not a work-related benefit — under the FBTA Act without regard to any reduction of that taxable value under that Act because of the “otherwise deductible” rule;

F is the factor by which —

- (i) for a fringe benefit that is a GST-creditable benefit (within the meaning of the FBTA Act) — the “Type 1 aggregate fringe benefits amount” is multiplied in section 5B(1B) of the FBTA Act; or
- (ii) for a fringe benefit that is not a GST-creditable benefit — the “Type 2 aggregate fringe benefits amount” is multiplied in section 5B(1C) of the FBTA Act.

- (3) In subclause (2) the reference to the “otherwise deductible” rule is a reference to any provision of the FBTA Act that provides for a reduction of the taxable value of a fringe benefit because the person receiving the benefit, had he or she personally incurred the cost of providing it, would be allowed a deduction under the *Income Tax Assessment Act 1936* of the Commonwealth in relation to that cost.

8. Superannuation benefits

- (1) A contribution paid or payable by an employer in respect of a person to a superannuation fund is taken, for the purposes of the definition of “wages” in clause 2, to be a superannuation benefit paid by the employer in relation to the person when and where the contribution is paid or payable.
- (2) Clause 4 applies for the purpose of working out when and where the contribution is paid or payable as if those provisions referred to contributions instead of wages.

9. Superannuation fund contributions

- (1) Setting aside any money or anything that is worth money as, or as part of, a superannuation fund is taken to be paying it as a contribution to the superannuation fund.
- (2) Making a contribution to a superannuation fund of anything that is worth money is taken to be paying a contribution of the amount equal to its value, and its value is to be worked out in accordance with clause 6 as if that clause referred to the contribution instead of to wages.
- (3) If an amount by way of administration or other charges in respect of the carrying on of a superannuation fund is paid otherwise than to the fund, the amount is taken to be paid as a contribution to the fund.
- (4) If, in a return period, a person becomes obliged, but fails, to do anything that, if it were done, would be taken under subclause (1), (2) or (3) to be paying a contribution to a superannuation fund, the contribution to the superannuation fund is taken to be payable in the return period.
- (5) A contribution to a superannuation fund that is paid or payable on behalf of an employer is taken to be paid or payable by the employer.
- (6) Contributions to a superannuation fund that are taken by different provisions of this Act to be paid or payable by an employer are cumulative upon one another, and on contributions that are actually paid or payable, unless it is otherwise provided.

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10. Contributions to defined superannuation benefit schemes

- (1) This clause applies to an Australian superannuation scheme if the scheme —
 - (a) either is not a regulated superannuation fund, or is an unfunded public sector scheme (whether or not it is a regulated superannuation fund);
 - (b) provides for an employer to contribute; and
 - (c) provides for any defined superannuation benefit in respect of any person, whether or not it also provides for any benefit that is not a defined superannuation benefit.
- (2) A contribution is taken, for the purposes of clause 8(1), to be payable, in the return period, by the employer to the superannuation fund for each participant.
- (3) The amount of the contribution for a participant is the amount that an actuary determines would be sufficient, together with earnings on the amount, to provide fully for the cost to the employer of the entitlement accruing under the scheme to benefits for services carried out by the participant in the return period.
- (4) The regulations may include provisions about how an actuary is to determine an amount under subclause (3).
- (5) If a contribution by an employer under a scheme is taken by subclause (2) to be payable to the superannuation fund, no other contribution by the employer to the fund under the scheme is taken by clause 8(1) to be a superannuation benefit unless —
 - (a) it is a contribution that the employer is taken to pay under clause 12(1); or
 - (b) the contribution is made for any reason other than to make provision for the cost described in subclause (3).

11. Unfunded credit to certain unregulated schemes

- (1) This clause applies to an Australian superannuation scheme if —
 - (a) it is not a regulated superannuation fund;
 - (b) it does not provide for any defined superannuation benefit in respect of any person; and

- (c) under the scheme, any amount not excluded under subclause (3) is credited in a return period as an employer's contribution in respect of a person.
- (2) An amount that a person is obliged to, but does not, credit in a return period is taken for the purposes of this clause to be credited in the return period and not at any other time.
- (3) Amounts of the following kinds are excluded from the amount referred to in subclause (1) —
 - (a) an amount paid or payable as a contribution under the scheme;
 - (b) an amount that is taken, otherwise than under subclause (4), to be paid or payable as a contribution under the scheme for the purposes of clause 8.
- (4) A contribution of the amount referred to in subclause (1) is taken, for the purposes of clause 8(1), to be payable by the employer to the superannuation fund concerned, in the return period, in respect of each participant.
- (5) If an amount credited as an employer's contribution under a scheme is taken under subclause (4) to be payable to the fund concerned, no contribution paid under the scheme is taken to be a superannuation benefit under clause 8(1) to the extent that it is paid to meet or partly meet an obligation arising from the credit.

12. Superannuation guarantee charge

- (1) If any superannuation guarantee charge payable by an employer is imposed in a return period, a contribution of the amount of the charge is taken, for the purposes of clause 8(1), to be payable by the employer to a superannuation fund in the return period.
- (2) If the charge is imposed because of only one individual superannuation guarantee shortfall, the contribution is taken to be in respect of the person in respect of whom the employer has the shortfall.
- (3) If the charge is imposed because of an individual superannuation guarantee shortfall in respect of each of 2 or more persons, the contribution is taken to be in respect of them, apportioned according

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to the amount of the employer's individual superannuation guarantee shortfall in respect of each of them.

- (4) If —
- (a) a contribution that was payable, but not paid, by the employer in respect of a person is taken to be a superannuation benefit under clause 8(1); and
 - (b) the charge is imposed wholly or in part because of an individual superannuation guarantee shortfall that results wholly or in part from the employer's failure to pay the contribution,

then the amount of the contribution that is taken by this clause to be payable in respect of the person is reduced by the amount of the contribution described in paragraph (a).

- (5) However, subclause (4) cannot reduce an amount below zero.

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