

Western Australia

Pay-roll Tax Assessment Act 2002

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Pay-roll Tax Assessment Act 2002

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Defined Terms

Western Australia

Pay-roll Tax Assessment Act 2002

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

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Pay-roll Tax Assessment Act 2002*¹.

2. Commencement

This Act comes into operation on the day on which the *Taxation Administration Act 2003* comes into operation¹.

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.

5A. Notes in the text

A note included in this Act is explanatory and is not part of this Act.

[Section 5A inserted by No. 15 of 2010 s. 4.]

Part 2 — Liability and assessment

Division 1 — Liability to pay-roll tax

5. Pay-roll tax on WA taxable wages

- (1) Pay-roll tax is payable, in accordance with the pay-roll tax Acts, on wages that are WA taxable wages.
- (2) **WA taxable wages** are wages, other than exempt wages, that are taxable in this jurisdiction.

[Section 5 amended by No. 15 of 2010 s. 5.]

6A. Wages that are taxable in this jurisdiction

- (1) Wages are taxable in this jurisdiction if —
 - (a) the wages are paid or payable by an employer for or in relation to services performed by a person wholly in this jurisdiction; or
 - (b) the wages are paid or payable by an employer for or in relation to services performed by a person in 2 or more Australian jurisdictions, or partly in one or more Australian jurisdictions and partly outside all Australian jurisdictions, and —
 - (i) the person is based in this jurisdiction; or
 - (ii) the employer is based in this jurisdiction — in a case where the person is not based in an Australian jurisdiction; or
 - (iii) the wages are paid or payable in this jurisdiction — in a case where both the person and the employer are not based in an Australian jurisdiction; or
 - (iv) the wages are paid or payable for services performed mainly in this jurisdiction — in a case where both the person and employer are not based in an Australian jurisdiction and the wages

are not paid or payable in an Australian jurisdiction;

or

- (c) the wages are paid or payable by an employer for or in relation to services performed by a person wholly outside all Australian jurisdictions and are paid or payable in this jurisdiction.

Note: Section 41B provides an exemption for wages paid or payable for services performed wholly in one or more other countries for a continuous period of more than 6 months.

- (2) The question of whether wages are taxable in this jurisdiction is, subject to this section, to be determined by reference only to the services performed by the person in respect of the employer during the month in which the wages are paid or payable.
- (3) For that purpose, any wages paid or payable by an employer in respect of a person in a particular month are taken to be paid or payable for or in relation to the services performed by the person in respect of the employer during that month.

Note: For example, if wages paid in a month are paid to a person for services performed over several months, the question of whether the wages are taxable in this jurisdiction is to be determined by reference only to services performed by the person in the month in which the wages are paid. The services performed in previous months are disregarded for this purpose.

- (4) If no services are performed by a person in respect of an employer during a month in which wages are paid or payable to or in relation to the person by the employer —
 - (a) the question of whether the wages are taxable in this jurisdiction is to be determined by reference only to the services performed by the person in respect of the employer during the most recent prior month in which the person performed services in respect of the employer; and
 - (b) the wages are taken to be paid or payable for or in relation to the services performed by the person in

respect of the employer during that most recent prior month.

- (5) If no services are performed by a person in respect of an employer during a month in which wages are paid or payable to or in relation to the person by the employer and no services were performed by the person in respect of the employer during any prior month —
- (a) the wages are taken to be paid or payable for or in relation to services performed by the person during the month in which the wages are paid or payable; and
 - (b) the services are taken to have been performed at a place or places where it may be reasonably expected that the services of the person in respect of the employer will be performed.
- (6) All amounts of wages paid or payable in the same month by the same employer in respect of the same person are to be aggregated for the purposes of determining whether they are taxable in this jurisdiction.
- Note: For example, if one amount of wages is paid by an employer in a particular month for services performed in this jurisdiction, and another amount of wages is paid by the same employer in the same month for services performed by the same person in another Australian jurisdiction, the wages paid are to be aggregated as if they were paid for all the services performed by the person in that month.
- (7) If wages are paid in a different month from the month in which they are payable, the question of whether the wages are taxable in this jurisdiction is to be determined by reference to the earlier of the relevant months.
- (8) If an amount that is paid or payable to a company is, under section 9GA or 21, taken to be wages paid or payable to another person, subsection (1)(b) has effect as if references to the jurisdiction in which the person who performs the services is based were references to the jurisdiction in which the company is based and, for that purpose, the jurisdiction in which the

company is based is to be worked out under section 6C as if the company were an employer.

[Section 6A inserted by No. 15 of 2010 s. 6.]

6B. Jurisdiction in which person who performs services is based

- (1) The jurisdiction in which a person who performs services is based is the jurisdiction in which the person's principal place of residence is located.
- (2) The jurisdiction in which the person is based is to be determined by reference to the state of affairs existing during the month in which the relevant wages are paid or payable.
- (3) If more than one jurisdiction would qualify as the jurisdiction in which the person is based during a month, the jurisdiction in which the person is based is to be determined by reference to the state of affairs existing on the last day of that month.
- (4) If the person does not have a principal place of residence, the person is taken to be a person who is not based in an Australian jurisdiction.

[Section 6B inserted by No. 15 of 2010 s. 6.]

6C. Jurisdiction in which employer is based

- (1) The jurisdiction in which an employer is based is —
 - (a) the jurisdiction in which the employer's registered business address is located — if the employer has an ABN; or
 - (b) the jurisdiction in which the employer's principal place of business is located — in any other case.
- (2) If wages are paid or payable in connection with a business carried on by an employer under a trust, the employer's registered business address is the registered business address of the trust or, if the trust does not have an ABN, the registered business address of the trustee of the trust.

- (3) If an employer has registered business addresses located in different jurisdictions at the same point in time, the jurisdiction in which the employer is based at that point in time is the jurisdiction in which the employer's principal place of business is located.
- (4) The jurisdiction in which an employer is based is to be determined by reference to the state of affairs existing during the month in which the relevant wages are paid or payable.
- (5) If more than one jurisdiction would qualify as the jurisdiction in which an employer is based during a month, the jurisdiction in which the employer is based is to be determined by reference to the state of affairs existing on the last day of that month.
- (6) An employer who has neither a registered business address nor a principal place of business is taken to be an employer who is not based in an Australian jurisdiction.

[Section 6C inserted by No. 15 of 2010 s. 6.]

6D. Place and date of payment of wages

- (1) In this section —
instrument includes a cheque, bill of exchange, promissory note, money order or a postal order issued by a post office.
- (2) Wages are taken to have been paid at a place if, for the purpose of the payment of those wages —
 - (a) an instrument is sent or given or an amount is transferred by an employer to a person or a person's agent at that place; or
 - (b) an instruction is given by an employer for the crediting of an amount to the account of a person or a person's agent at that place.
- (3) The wages are taken to have been paid on the date that the instrument was sent or given, the amount was transferred or the account credited in accordance with the instruction (whichever is relevant).

- (4) Subject to this section, wages are taken to be payable at the place at which they are paid.
- (5) Wages that are not paid by the end of the month in which they are payable are taken to be payable at —
 - (a) the place where wages were last paid by the employer for or in relation to services performed by the person; or
 - (b) if wages have not previously been paid by the employer for or in relation to services performed by the person — the place where the person last performed services in respect of the employer before the wages became payable.
- (6) If wages paid or payable in the same month by the same employer in respect of the same person are paid or payable in more than one Australian jurisdiction, the wages paid or payable in that month are taken to be paid or payable in the Australian jurisdiction in which the highest proportion of the wages are paid or payable.

[Section 6D inserted by No. 15 of 2010 s. 6.]

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 2003 is \$750 000.
- (2) The monthly threshold amount for a financial year beginning on or after 1 July 2003 is \$62 500.

[Section 8 amended by No. 40 of 2003 s. 12.]

[9. Deleted by No. 40 of 2003 s. 13.]

Division 2A — Wages

[Heading inserted by No. 15 of 2010 s. 7.]

Subdivision 1 — General concept of wages

[Heading inserted by No. 15 of 2010 s. 7.]

9AA. Term used: wages

- (1) In this Act —
- wages** means —
- (a) wages, remuneration, salary, commission, bonuses or allowances paid or payable to or in relation to an employee; and
 - (b) an amount paid or payable by way of remuneration to a person holding an office under, or in the service of, the Crown in right of the State of Western Australia; and
 - (c) an amount paid or payable under a contract in a class of contract prescribed under section 45(2)(g), to the extent to which that payment is attributable to labour; and

- (d) an amount paid or payable by a company by way of remuneration to or in relation to a director of that company; and
 - (e) an amount paid or payable by way of commission to an insurance or time-payment canvasser or collector; and
 - (f) an amount that is taken to be wages paid or payable by an employer to a person by another provision of this Division; and
 - (g) a motor vehicle allowance paid or payable to an employee for a financial year, to the extent to which it exceeds the exempt component determined under section 9FA; and
 - (h) an accommodation allowance paid or payable to an employee in a financial year in respect of a night's absence from the person's usual place of residence, to the extent to which it exceeds the exempt rate determined under section 9FB.
- (2) Wages, remuneration, salary, commission, bonuses, allowances or other amounts referred to in subsection (1) are wages —
- (a) whether paid or payable at piece work rates or otherwise; and
 - (b) whether paid or payable in cash or in kind.

[Section 9AA inserted by No. 15 of 2010 s. 7.]

Subdivision 2 — Fringe benefits and specified taxable benefits

[Heading inserted by No. 15 of 2010 s. 7.]

9BA. Wages include fringe benefits and specified taxable benefits

- (1) The value of a fringe benefit or a specified taxable benefit that is provided by an employer to or in relation to an employee is taken to be wages paid by the employer to the employee unless the benefit is a fringe benefit constituted by the grant of a share or an option the value of which is taken to be wages under Subdivision 4.

- (2) Subsection (1) does not apply to benefits that are exempt benefits for the purposes of the FBTA Act.

[Section 9BA inserted by No. 15 of 2010 s. 7.]

9BB. Actual value of a fringe benefit

- (1) The value of a fringe benefit (**V**) is to be calculated in accordance with the formula —

$$V = TV \times \frac{1}{1 - \text{FBT rate}}$$

where —

FBT rate is the rate of fringe benefits tax, imposed for the purposes of the FBTA Act, that applies when the liability to pay-roll tax under this Act arises;

TV is the taxable value of the benefit as a fringe benefit for the purposes of the FBTA Act.

- (2) The value of a fringe benefit calculated in accordance with subsection (1) is the **actual value** of the fringe benefit.

[Section 9BB inserted by No. 15 of 2010 s. 7.]

9BC. Basis for including the value of fringe benefits in returns

- (1) If an employer is required to specify in a return WA taxable wages that include the value of fringe benefits provided by the employer, the employer may, instead of including the actual value of the fringe benefits, include a value of the fringe benefits calculated using the estimated value method, if the employer is eligible to do so.
- (2) An employer must use the same basis upon which to include the value of fringe benefits in returns for all returns for an assessment year unless the Commissioner allows a change during that year under section 9BH(4).

[Section 9BC inserted by No. 15 of 2010 s. 7.]

9BD. Eligibility to use estimated value method

An employer is eligible to use the estimated value method to calculate the value of fringe benefits provided by the employer in an assessment year if the employer —

- (a) has provided WA fringe benefits for at least the 15 months ending immediately before the beginning of the assessment year; and
- (b) lodges monthly returns for the assessment year.

[Section 9BD inserted by No. 15 of 2010 s. 7.]

9BE. Returns (other than annual returns) using the estimated value method

- (1) If an employer, other than one who lodges an annual return, uses the estimated value method for an assessment year, the value of the fringe benefits (*V*) to be included in each return for the year except the last return is to be calculated in accordance with the formula —

$$V = AV \times \frac{1}{N}$$

where —

AV is the actual value of the fringe benefits provided by the employer in relation to the FBT year ending on 31 March in the financial year immediately before the assessment year;

N is the number of returns in the assessment year.

- (2) The value of the fringe benefits to be included in the employer's last return for the assessment year is the amount equal to the difference between —
 - (a) the actual value of the WA fringe benefits provided by the employer during the FBT year that ended on 31 March in the assessment year; and
 - (b) the sum of the amounts included in each of the previous returns for the assessment year under subsection (1).

[Section 9BE inserted by No. 15 of 2010 s. 7.]

9BF. Annual returns using the estimated value method

If an employer who lodges an annual return for an assessment year uses the estimated value method for the assessment year, the value of the fringe benefits to be included in the return is the amount equal to the actual value of the WA fringe benefits provided by the employer for the FBT year that ended on 31 March in the assessment year.

[Section 9BF inserted by No. 15 of 2010 s. 7.]

9BG. Final returns using the estimated value method

If an employer who uses the estimated value method lodges a final return for an assessment year, the value of the fringe benefits to be included in the return is the amount equal to the difference between —

- (a) the sum of —
 - (i) the WA fringe benefits provided by the employer for the FBT year that ended on 31 March in the assessment year; and
 - (ii) the WA fringe benefits provided by the employer for April, May and June in the assessment year (if any);

and

- (b) the sum of —
 - (i) one quarter of the WA fringe benefits provided by the employer for the FBT year that ended in the first financial year for which the employer last chose to make returns using the estimated value method; and
 - (ii) the total of the amounts of WA fringe benefits included in the returns for the assessment year.

[Section 9BG inserted by No. 15 of 2010 s. 7.]

9BH. Changing method of valuing fringe benefits

- (1) An employer may commence using the estimated value method for an assessment year if the employer —
 - (a) is eligible to use the estimated value method; and
 - (b) gives the Commissioner notice of the intention to do so before the day on which the first or only return for the assessment year is required to be lodged by the employer.
- (2) An employer may cease using the estimated value method for an assessment year if the employer gives the Commissioner notice of the intention to do so before the day on which the first or only return for the assessment year is required to be lodged by the employer.
- (3) A notice under subsection (1) or (2) must be in a form approved by the Commissioner.
- (4) On the written application of an employer, the Commissioner may allow the employer to change the basis upon which to include the value of fringe benefits in returns during an assessment year if the Commissioner is satisfied that —
 - (a) there is a compelling reason for making the change; and
 - (b) where relevant — if the change were not made, the amount of pay-roll tax paid by the employer during the assessment year would be substantially greater than the amount payable for the assessment year on the actual value of the fringe benefits provided by the employer for the assessment year.
- (5) If an employer ceases using the estimated value method during an assessment year, the value of the fringe benefits to be included in the last return lodged by the employer for the assessment year is the amount equal to the difference between —
 - (a) the sum of —

- (i) the actual value of the WA fringe benefits provided by the employer for the FBT year ending on 31 March in the assessment year; and
 - (ii) the actual value of the WA fringe benefits provided by the employer in April, May and June of the assessment year (if any);
- and
- (b) the sum of —
 - (i) one quarter of the actual value of the WA fringe benefits provided by the employer for the FBT year that ended in the first financial year in which the employer last chose to make returns using the estimated value method; and
 - (ii) the total of the amounts of the WA fringe benefits included in the employer's returns for the assessment year.
- (6) If an employer commences using the estimated value method during an assessment year, the value of the fringe benefits to be included in the last return lodged by the employer for the assessment year is the amount equal to the difference between —
- (a) the actual value of the WA fringe benefits provided by the employer for the FBT year ending on 31 March in the assessment year; and
 - (b) the total of the amounts of the WA fringe benefits included in the employer's returns for the assessment year.

[Section 9BH inserted by No. 15 of 2010 s. 7.]

9BI. Value of a specified taxable benefit

The value of a specified taxable benefit is the prescribed value, or the value calculated in the prescribed manner (whichever is relevant).

[Section 9BI inserted by No. 15 of 2010 s. 7.]

Subdivision 3 — Superannuation contributions

[Heading inserted by No. 15 of 2010 s. 7.]

9CA. Terms used

For the purposes of this Subdivision —

employee includes —

- (a) any person to whom, because of paragraph (a), (b), (c), (d) or (e) of the definition of *wages* in section 9AA(1), an amount paid or payable in the circumstances referred to in that paragraph constitutes wages; and
- (b) a director of a company to whom paragraph (a) does not apply;

employer, of a director referred to in the definition of *employee* paragraph (b), means the company;

notional contribution has the meaning given in section 9CD;

superannuation contribution has the meaning given in section 9CC.

[Section 9CA inserted by No. 15 of 2010 s. 7.]

9CB. Wages include superannuation contributions and other similar amounts

- (1) The amount of each of the following is taken to be wages paid by the employer to the employee in the return period —
 - (a) a superannuation contribution made by an employer in respect of an employee in a return period of the employer;
 - (b) a notional contribution taken to have been made by an employer in respect of an employee in a return period of the employer;

- (c) an individual superannuation guarantee shortfall that an employer has for an employee for a return period of the employer.
- (2) If a notional contribution is taken to have been made by an employer, in respect of an employee, to a superannuation fund in a return period, no contribution made to the fund by the employer, in respect of the employee, in the return period to make provision for the cost referred to in section 9CD(3) is taken to be wages under subsection (1).
- (3) If —
 - (a) a superannuation contribution that was payable, but not paid, or was required to be credited as a contribution, but was not, by an employer in respect of an employee is taken to be wages paid by the employer to the employee in a return period under subsection (1); and
 - (b) an individual superannuation guarantee shortfall results wholly or in part from the employer's failure to pay or credit the contribution,

the amount of the individual superannuation guarantee shortfall is reduced (but not to below zero) by the amount of the superannuation contribution referred to in paragraph (a).

- (4) Section 6D(5) applies to —
 - (a) a superannuation contribution that is payable but not paid or is or is required to be credited as a contribution; and
 - (b) a notional contribution; and
 - (c) an individual superannuation guarantee shortfall,as if —
 - (d) it referred to contributions rather than wages; and
 - (e) an amount that is or is required to be credited as a contribution, a notional contribution and an individual

superannuation guarantee shortfall were contributions payable.

- (5) For the purposes of subsection (1)(c) —
- (a) the individual superannuation guarantee shortfall referred to is reduced by any amount of the shortfall arising under the Superannuation Guarantee Act section 19 because of contributions not made in compliance with the choice of fund requirements; and
 - (b) if an employer has an individual superannuation guarantee shortfall for an employee for a quarter (within the meaning given in the Superannuation Guarantee Act section 6), the shortfall is taken to be for the last month of the quarter.

[Section 9CB inserted by No. 15 of 2010 s. 7.]

9CC. Superannuation contributions

- (1) A superannuation contribution is made by an employer in respect of an employee if —
- (a) a contribution is paid or payable by an employer to or as a superannuation fund in respect of the employee; or
 - (b) an amount, although not paid or payable, is or is required to be credited under a superannuation fund as an employer's contribution in respect of an employee.
- (2) Subsection (1)(b) applies only in respect of an Australian superannuation fund that does not provide for any defined superannuation benefits in respect of any person.
- (3) Setting aside any money or anything that is worth money as, or as part of, a superannuation fund is taken to be paying a contribution.
- (4) Making a contribution 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 section 9HA as if that section referred to the contribution instead of to wages.

[Section 9CC inserted by No. 15 of 2010 s. 7.]

9CD. Notional contributions

- (1) Notional contributions are taken to have been made by an employer in respect of an employee if —
 - (a) the employee is a member of an Australian superannuation fund; and
 - (b) the fund is a defined benefit fund.
- (2) For each return period of the employer in which the employee accrues an entitlement to a defined superannuation benefit from the fund, a notional contribution is taken to have been made to the fund in the return period by the employer in respect of the employee.
- (3) The amount of the notional contribution is the amount that an actuary determines would be sufficient to meet the expected long-term cost to the employer of that benefit.
- (4) The regulations may include provisions about how an actuary is to determine an amount under subsection (3).

[Section 9CD inserted by No. 15 of 2010 s. 7.]

Subdivision 4 — Shares and options

[Heading inserted by No. 15 of 2010 s. 7.]

9DA. Wages include shares and options granted to employees

- (1) The value of a share or an option granted by an employer to an employee in respect of the appointment of or services performed by the employee is taken to be wages paid by the employer to the employee unless the share or option is wages under a paragraph of section 9AA(1) other than paragraph (f).
- (2) A share or an option is granted to a person in the following circumstances —

- (a) in the case of a share — if the person acquires the share —
 - (i) in accordance with section 139G of the *Income Tax Assessment Act 1936* (Commonwealth); or
 - (ii) in circumstances prescribed for the purposes of this paragraph by the regulations;
- (b) in the case of an option — if the person acquires a right to the share to which the option relates and the right is acquired —
 - (i) in accordance with section 139G of the *Income Tax Assessment Act 1936* (Commonwealth); or
 - (ii) in circumstances prescribed for the purposes of this paragraph by the regulations.
- (3) Wages constituted by the value of a share or an option are taken to be paid on the relevant day.
- (4) The **relevant day** is the day that the employer elects, in accordance with this Subdivision, to treat as the day on which the wages are paid.
- (5) To avoid doubt, a share or an option is valuable consideration for the purposes of section 9HC.

[Section 9DA inserted by No. 15 of 2010 s. 7.]

9DB. Relevant day — choice of

- (1) The employer may elect to treat as the relevant day either the day on which the share or option is granted to the employee or the vesting day.
- (2) The **vesting day** in respect of a share is the day on which the share vests in the employee, that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded.

- (3) The **vesting day** in respect of an option is the earlier of the following days —
- (a) the day on which the share to which the option relates is granted to the employee;
 - (b) the day on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vest in him or her.

[Section 9DB inserted by No. 15 of 2010 s. 7.]

9DC. Relevant day — special cases

- (1) If —
- (a) an employer grants a share or an option to an employee the value of which is taken to be wages under this Subdivision; and
 - (b) the value of the share or option is not specified as WA taxable wages in a return in the financial year in which the share or option was granted,

the employer is taken to have elected to treat the wages constituted by the value of that share or option as being paid on the vesting day.

- (2) If —
- (a) an employer grants a share or an option to an employee the value of which is taken to be wages under this Subdivision; and
 - (b) either —
 - (i) the value of the share or option is nil; or
 - (ii) if the employer were to elect to treat the day on which the share or option was granted as the relevant day — the wages constituted by the value of the share or option would not be liable to pay-roll tax,

the employer is taken to have elected to treat the wages constituted by the value of the share or option as being paid or payable on the day on which the share or option was granted.

[Section 9DC inserted by No. 15 of 2010 s. 7.]

9DD. Value of shares and options

(1) In this section —

Commonwealth income tax provisions means the provisions of Subdivision F of Division 13A of Part III of the *Income Tax Assessment Act 1936* (Commonwealth).

(2) The value of a share or an option taken to be wages under this Subdivision is the market value of the share or option (expressed in Australian currency) on the relevant day, less the consideration (if any) paid or given by the employee in respect of the share or option (other than consideration in the form of services performed).

(3) The market value of a share or an option on the relevant day is to be determined in accordance with the Commonwealth income tax provisions.

(4) For that purpose, the Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications —

- (a) the market value of an option is to be determined as if it were a right to acquire a share;
- (b) a reference to a taxpayer is to be read as a reference to the employee;
- (c) a reference to the Commissioner of Taxation is to be read as a reference to either that Commissioner or the Commissioner of State Revenue.

[Section 9DD inserted by No. 15 of 2010 s. 7.]

9DE. Effect of rescission, cancellation etc. of share or option

- (1) If an employer grants a share or an option to an employee the value of which is taken to be wages under this Subdivision and the grant of the share or option is withdrawn, cancelled or exchanged before the vesting day for any valuable consideration (other than the grant of other shares or options) —
- (a) the day of withdrawal, cancellation or exchange is taken to be the relevant day in relation to the share or option; and
 - (b) the market value of the share or option, on the relevant day, is taken to be the amount of the valuable consideration.
- (2) If —
- (a) an employer grants a share or an option to an employee the value of which is taken to be wages under this Subdivision; and
 - (b) the value of the share or option is specified as WA taxable wages in a return; and
 - (c) the grant is rescinded because the conditions attaching to the grant were not met,
- the WA taxable wages of the employer, in the return period in which the grant is rescinded, are to be reduced by the value of the share or option as specified in the earlier return.
- (3) Subsection (2) does not apply just because an employee fails to exercise an option or to otherwise exercise his or her rights in respect of a share or an option.

[Section 9DE inserted by No. 15 of 2010 s. 7.]

9DF. Grant of share under exercise of option

The value of a share granted by an employer to an employee is not to be taken to be wages under this Subdivision if —

- (a) the employer is required to grant the share as a consequence of the exercise of an option by a person; and
- (b) the value of the option granted to the person was taken to be wages under this Subdivision.

[Section 9DF inserted by No. 15 of 2010 s. 7.]

9DG. Wages include certain shares and options granted to directors

- (1) If the value of a share or an option granted by a company to a director of the company by way of remuneration for the appointment or services of the director would be taken to be wages under this Subdivision if the director were an employee of the company, the value of the share or option is taken to be wages paid by the company (as an employer) to the director.
- (2) For the purposes of subsection (1), the other provisions of this Subdivision apply in respect of any such grant as if a reference to the employer were a reference to the company and a reference to the employee were a reference to the director of the company.
- (3) In this section, a reference to a director of the company includes a reference to the following —
 - (a) a person who, under a contract or other arrangement, is to be appointed as a director of the company;
 - (b) a former director of the company.

[Section 9DG inserted by No. 15 of 2010 s. 7.]

9DH. Place where wages (as shares or options) are payable

- (1) In this section —

local company means —

 - (a) a company incorporated or taken to be incorporated under the Corporations Act that is taken to be registered in Western Australia for the purposes of that Act; or

- (b) any other body corporate that is incorporated under a written law.
- (2) Wages constituted by the value of a share or an option are taken to be paid in Western Australia if the share is a share in a local company or, in the case of an option, an option to acquire shares in a local company.
- (3) In any other case, wages constituted by the value of a share or an option are taken to be paid outside Western Australia.

[Section 9DH inserted by No. 15 of 2010 s. 7.]

Subdivision 5 — Termination payments

[Heading inserted by No. 15 of 2010 s. 7.]

9EA. Wages include termination payments

- (1) The amount of a termination payment is taken to be wages paid or payable by the employer to the employee, or by the company (as an employer) to the director.
- (2) For the purposes of subsection (1) —
employment termination payment means —
 - (a) an employment termination payment within the meaning of section 82-130 of the ITA Act; or
 - (b) a payment that would be an employment termination payment within the meaning of section 82-130 of the ITA Act but for the fact that it was received later than 12 months after the termination of a person's employment; or
 - (c) a transitional termination payment within the meaning of section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* (Commonwealth);

termination payment means —

- (a) a payment made in consequence of the retirement from, or termination of, any office or employment of an employee, being —

- (i) an unused annual leave payment; or
- (ii) an unused long service leave payment; or
- (iii) so much of an employment termination payment paid or payable by an employer, whether or not paid to the employee or to any other person or body, that would be included in the assessable income of an employee under Part 2-40 of the ITA Act if the whole of the employment termination payment had been paid to the employee;

or

- (b) an amount paid or payable by a company as a consequence of the termination of the services or office of a director of the company, whether or not paid to the director or to any other person or body, that would be an employment termination payment if that amount had been paid or payable as a consequence of termination of employment;

unused annual leave payment has the meaning given in section 83-10 of the ITA Act;

unused long service leave payment has the meaning given in section 83-75 of the ITA Act.

[Section 9EA inserted by No. 15 of 2010 s. 7.]

Subdivision 6 — Allowances

[Heading inserted by No. 15 of 2010 s. 7.]

9FA. Motor vehicle allowances

- (1) For the purposes of section 9AA(1)(g), the exempt component (*E*) of a motor vehicle allowance paid or payable in respect of a financial year is calculated in accordance with the formula —

$$E = K \times R$$

where —

K is the number of business kilometres travelled during the financial year under subsection (2);

R is the exempt rate under subsection (3).

- (2) The number of business kilometres travelled during the financial year is to be determined —
- (a) if paragraph (b) does not apply to the employer — in accordance with the applicable recording method in the regulations; or
 - (b) if the Commissioner has, by order in writing, approved the use, by an employer or class of employer, of another method (including the use of an estimate) of determining the number of business kilometres travelled during the financial year — in accordance with the method approved by the Commissioner.
- (3) The exempt rate for the financial year concerned is —
- (a) the rate prescribed by the regulations under section 28-25 of the ITA Act for calculating a deduction for car expenses for a large car using the “cents per kilometre method” in the financial year immediately preceding the financial year in which the allowance is paid or payable; or
 - (b) if no rate referred to in paragraph (a) is prescribed under that Act — the rate prescribed in the regulations.

[Section 9FA inserted by No. 15 of 2010 s. 7.]

9FB. Accommodation allowances

For the purposes of section 9AA(1)(h), the exempt rate for the financial year concerned is —

- (a) the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the financial year determined by the Commissioner of Taxation of the Commonwealth; or

- (b) if no determination referred to in paragraph (a) is in force — the rate prescribed in the regulations.

[Section 9FB inserted by No. 15 of 2010 s. 7.]

Subdivision 7 — Employment agents

[Heading inserted by No. 15 of 2010 s. 7.]

9GA. Wages include amounts paid by employment agents

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 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 is taken to be wages paid or payable by the agent (as an employer) to the person for or in relation to the services performed by the person.

[Section 9GA inserted by No. 15 of 2010 s. 7.]

Subdivision 8 — Miscellaneous provisions

[Heading inserted by No. 15 of 2010 s. 7.]

9HA. Value of wages paid in kind

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 the value attributed to the wages in, or the value ascertainable for the wages from, arrangements between the employer and the employee, whichever is the greater of the 3 amounts; 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.

[Section 9HA inserted by No. 15 of 2010 s. 7.]

9HB. GST excluded from wages

- (1) If wages paid or payable to a person relate to a supply on which the person is liable to pay GST, the amount or value of the wages is reduced by the amount of GST payable by the person in respect of the services to which the wages relate.
- (2) Subsection (1) does not apply in respect of the value of wages comprising a fringe benefit.

[Section 9HB inserted by No. 15 of 2010 s. 7.]

9HC. Wages paid by or to third parties

- (1) If any of the following amounts of money or other valuable consideration would, if paid or given directly by an employer to an employee, be or be taken to be wages paid or payable by the employer to the employee for the purposes of this Act, they are taken to be wages paid or payable by the employer to the employee —
 - (a) any money or other valuable consideration paid or given, or to be paid or given, to an employee, for the employee's services as an employee of an employer, by a person other than the employer;
 - (b) any money or other valuable consideration paid or given, or to be paid or given, by an employer, for an employee's services as the employee of the employer, to a person other than the employee;
 - (c) any money or other valuable consideration paid or given, or to be paid or given, by a person other than an employer, for an employee's services as an employee of the employer, to a person other than the employee.
- (2) If any of the following amounts of money or other valuable consideration would, if paid or given directly by a company to a director of the company, be or be taken to be wages paid or payable by the company to the director for the purposes of this Act, they are taken to be wages paid or payable by the company to the director —

- (a) any money or other valuable consideration paid or given, or to be paid or given, to a director of a company, by way of remuneration for the appointment or services of the director to the company, by a person other than the company;
 - (b) any money or other valuable consideration paid or given, or to be paid or given, by a company, by way of remuneration for the appointment or services of the director to the company, to a person other than the director;
 - (c) any money or other valuable consideration paid or given, or to be paid or given, by any person, by way of remuneration for the appointment or services of a director to the company, to a person other than the director.
- (3) In this section, a reference to a director of a company includes a reference to —
- (a) a person who, under a contract or other arrangement, is to be appointed as a director of the company; and
 - (b) a former director of the company.

[Section 9HC inserted by No. 15 of 2010 s. 7.]

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 pay-roll tax rate 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 annual threshold amount for the assessment year.

- (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 pay-roll tax rate 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 apportioned threshold amount for that part of the assessment year calculated in accordance with section 12(1).

[Section 10 amended by No. 40 of 2003 s. 14.]

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

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 is the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —

- (a) the total amount of WA taxable wages paid or payable by the employer during the period or part of the period; and
- (b) the apportioned threshold amount for the period or part of the period calculated in accordance with section 12(2).

[Section 11 amended by No. 40 of 2003 s. 15; No. 82 of 2004 s. 7.]

12. Apportioned threshold amount — local non-group employers

- (1) For the purposes of section 10(2)(b), the apportioned threshold amount for part of an assessment year is A in the formula —

$$A = T \times \left(\frac{P}{Y} \right)$$

where —

T is the annual threshold amount for the assessment year;

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

Y is the number of days in the assessment year.

- (2) For the purposes of section 11(b), the apportioned threshold amount for a progressive return period or part of a progressive return period is A in the formula —

$$A = N \times T \times \left(\frac{D}{P} \right)$$

where —

N is the number of months in the period;

T is the monthly threshold amount for the assessment year;

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

P is the number of days in the period.

[Section 12 inserted by No. 40 of 2003 s. 16; amended by No. 82 of 2004 s. 8.]

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 pay-roll tax rate 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 apportioned threshold amount 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 pay-roll tax rate 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 apportioned threshold amount for that part of the assessment year worked out in accordance with section 14(2).

[Section 13 amended by No. 40 of 2003 s. 17.]

14. Apportioned threshold amounts — interstate non-group employers

- (1) For the purposes of section 13(1)(b), the apportioned threshold amount for an assessment year is A in the formula —

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

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;
- I is the total amount of interstate taxable wages paid or payable by the employer during the assessment year.

- (2) For the purposes of section 13(2)(b), the apportioned threshold amount for a part of the assessment year is A in the formula —

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

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 that part of the assessment year;

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;

Y is the number of days in the assessment year.

[Section 14 inserted by No. 40 of 2003 s. 18.]

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

- (1) The amount of pay-roll tax payable by an interstate non-group employer for a progressive return period is the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
 - (a) the total amount of WA taxable wages paid or payable by the employer during the period; and
 - (b) the amount of the employer's nominated deduction under subsection (2).
- (2) The employer's nominated deduction for an assessment year is —
 - (a) the amount nominated by the Commissioner having regard to the amounts of WA taxable wages and interstate taxable wages previously paid or payable by the employer and any other relevant matters; or
 - (b) any other amount nominated by the Commissioner, at his or her discretion, on the request of the employer under subsection (3).
- (3) The employer may ask the Commissioner to nominate a different amount if the employer expects that the amounts of WA taxable wages and interstate taxable wages payable by the employer for the assessment year will vary significantly from the amounts of WA taxable wages and interstate taxable wages previously paid or payable by the employer.

[(4), (5) deleted]

- (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 progressive return period in the assessment year unless it is cancelled.
- (9) The Commissioner may cancel a nomination at any time.

[Section 15 amended by No. 40 of 2003 s. 19; No. 82 of 2004 s. 9.]

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 progressive 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 progressive 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.

[Section 16 amended by No. 82 of 2004 s. 10.]

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 pay-roll tax rate 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 apportioned threshold amount 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 pay-roll tax rate 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 apportioned threshold amount for that part of the assessment year calculated in accordance with section 18(2).

[Section 17 amended by No. 40 of 2003 s. 20.]

18. Apportioned threshold amounts — groups

- (1) For the purposes of section 17(2)(b), the apportioned threshold amount for an assessment year is A in the formula —

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

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

- (2) For the purposes of section 17(4)(b), the apportioned threshold amount for part of the assessment year is A in the formula —

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

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

[Section 18 inserted by No. 40 of 2003 s. 21.]

19. Tax payable with progressive returns — groups

- (1) The amount of pay-roll tax payable for a progressive return period by any member of a group except the DGE is the amount calculated by applying the pay-roll tax rate to the amount equal to the total amount of WA taxable wages paid or payable by the member for the period.
- (2) The amount of pay-roll tax payable for a progressive return period by the DGE of a group is the amount calculated by applying the pay-roll tax rate to the difference between —
 - (a) the amount equal to the total amount of WA taxable wages paid or payable by the DGE for the period; and
 - (b) the amount of the group's nominated deduction under subsection (3).
- (3) The group's nominated deduction for an assessment year is —
 - (a) the amount nominated by the Commissioner having regard to the amounts of WA taxable wages and interstate taxable wages previously paid or payable by the group and any other relevant matters; or
 - (b) any other amount nominated by the Commissioner, at his or her discretion, on the request of a member of the group under subsection (4).
- (4) A member of the group may ask the Commissioner to nominate a different amount if the member expects that the amounts of WA taxable wages and interstate taxable wages payable by the group for the assessment year will vary significantly from the amounts of WA taxable wages and interstate taxable wages previously paid or payable by the group.

[(5), (6) deleted]

- (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.

[Section 19 amended by No. 40 of 2003 s. 22; No. 82 of 2004 s. 11.]

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 progressive 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 progressive 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.

[Section 20 amended by No. 82 of 2004 s. 12.]

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 paid or payable for or in relation to the services performed by the worker 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.

[Section 21 amended by No. 15 of 2010 s. 8.]

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.

22A. Effect of change in tax rate during 2004/5 year

- (1) The purpose of this section is to modify provisions of this Act that operate by reference to the pay-roll tax rate, and related provisions, to the extent that they apply to the assessment year commencing on 1 July 2004 (the **2004/5 year**).
- (2) The modifications are required because the rate of pay-roll tax (the **old rate**) for the first 6 months of the 2004/5 year (the **first period**) differs from the rate of pay-roll tax (the **new rate**) for the last 6 months of that year (the **second period**).

- (3) When using a provision of this Act to calculate the amount of pay-roll tax payable for —
- (a) the whole or part of a progressive return period that is during the 2004/5 year and before the second period commences, a reference to the pay-roll tax rate means the old rate;
 - (b) the whole or part of a progressive return period that is during the 2004/5 year and after the first period ends, a reference to the pay-roll tax rate means the new rate.
- (4) To calculate the amount of pay-roll tax payable by an employer or group for a period (the ***tax period***) that is the whole or part of the 2004/5 year —
- (a) separate amounts are to be calculated, as described in subsection (5), for —
 - (i) any part of the tax period that is before 1 January 2005 (the ***first part of the tax period***); and
 - (ii) any part of the tax period that is after 31 December 2004 (the ***second part of the tax period***);and
 - (b) the amount, if any, calculated for the second part of the tax period is to be added to the amount, if any, calculated for the first part of the tax period to give the total amount payable for the tax period.
- (5) To calculate the amount for the first part of the tax period or the second part of the tax period (the ***relevant part period***), the provision that applies for the calculation of the amount of pay-roll tax payable for the tax period is to be used, but in using that provision —
- (a) a reference to the tax period is to be taken to refer to the relevant part period, except in a reference to an annual threshold amount or an apportioned threshold amount;

- (b) a reference to the pay-roll tax rate means —
- (i) if the relevant part period is the first part of the tax period, the old rate; and
 - (ii) if the relevant part period is the second part of the tax period, the new rate;
- (c) if the provision is section 10(1), the amount referred to in section 10(1)(b) is to be multiplied by the part period factor, as defined in subsection (6); and
- (d) if the provision refers to an apportioned threshold amount, the calculation of the apportioned threshold amount for the tax period under section 12(1), 14, or 18, as the case requires, (the *calculation provision*) is modified by multiplying the amount that T represents in the formula in the calculation provision by the part period factor, as defined in subsection (6).
- (6) In subsection (5)(c) and (d) —
- part period factor* means the amount represented by F in the formula —

$$F = \frac{W_p}{W}$$

where —

W_p is the total amount of WA taxable wages paid or payable by the employer or group during the relevant part period;

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

[Section 22A inserted by No. 82 of 2004 s. 4.]

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 conducted the trade or business in Australia during the whole of the assessment year, then the employer's liability to pay pay-roll tax is to be assessed as if the employer had paid or been liable to pay wages throughout the assessment year.
- (3) If the employer has conducted the trade or business in Australia during part only of the assessment year, then the employer's liability is to be assessed as if the employer had paid or been liable to pay wages only during that part of the assessment year.

[Section 23 amended by No. 40 of 2003 s. 23.]

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: a fine of \$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: a fine of \$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.

[Section 24 amended by No. 15 of 2010 s. 19.]

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 be in the approved form.
- (3) A monthly return must —
- (a) for a month other than June — be lodged within 7 days after the end of the month, or within any further time allowed by the Commissioner in a particular case; and
 - (b) for June — be lodged within 21 days after the end of the month, or within any further time allowed by the Commissioner in a particular case.

Penalty: a fine of \$5 000.

[Section 26 amended by No. 15 of 2010 s. 9.]

27. Additional returns for reconciliation purposes

- (1) If a non-group employer who lodges returns for progressive return periods pays or is liable to pay any interstate taxable wages for an assessment year, then the employer must also lodge an additional return for the assessment year specifying the amount of interstate taxable wages paid or payable by the employer for the whole assessment year.

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- (1a) If any member of a group pays or is liable to pay interstate taxable wages for an assessment year, 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 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 21 days after the end of the assessment year or within any further time allowed by the Commissioner.

Penalty: a fine of \$5 000.

[Section 27 amended by No. 40 of 2003 s. 24; No. 82 of 2004 s. 13; No. 15 of 2010 s. 10 and 19.]

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: a fine of \$5 000.

[Section 28 amended by No. 15 of 2010 s. 19.]

28A. Manner of lodging and paying in certain cases

- (1) In a circumstance described in subsection (2), a return referred to in that subsection must be lodged, and payment of any pay-roll tax that is due on the last day for lodging the return must be made, in the manner prescribed in the regulations.

- (2) Subsection (1) applies if —
- (a) an employer —
 - (i) has, or is a member of a group that has, an expected pay-roll tax liability for an assessment year that is not less than the amount applying under section 29(1aa)(a) or (b); and
 - (ii) is required to lodge a return for a progressive return period in that assessment year or, to lodge an additional return under section 27 for that year;
 - or
 - (b) a condition of an exemption under section 29 requires a return to be lodged in accordance with this section.

- (3) In subsection (2)(a)(i) —
expected pay-roll tax liability has the meaning given to that term in section 29(1b).

[Section 28A inserted by No. 82 of 2004 s. 14.]

29. Exemptions from lodging monthly returns

- (1) A non-group employer may, or a DGE on behalf of all the members of a group may, apply to the Commissioner for exemption from the requirement to lodge monthly returns for an assessment year.
- (1a) Except as stated in subsection (1c) or (1d), the Commissioner has to give an exemption on receiving an application from an employer having, or the DGE of a group having, an expected pay-roll tax liability for the assessment year that is less than —
 - (a) \$20 000; or
 - (b) a greater amount prescribed for the purpose of this subsection by the regulations.
- (1aa) Except as stated in subsection (1c) or (1d), the Commissioner has to give an exemption on receiving an application from an

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employer having, or the DGE of a group having, an expected pay-roll tax liability for the assessment year that is not less than the amount applying under subsection (1a)(a) or (b) but is less than —

- (a) \$100 000; or
- (b) a greater amount prescribed for the purpose of this subsection by the regulations.

(1b) In subsections (1a) and (1aa) —

expected pay-roll tax liability means the amount of pay-roll tax for which the employer or group would be liable in the assessment year if, during that year, the employer, or the employers of the group between them, paid or were liable to pay WA taxable wages and interstate taxable wages —

- (a) equal to those that the employer paid or was liable to pay, or the employers of the group between them paid or were liable to pay, during the immediately preceding assessment year; or
- (b) if the Commissioner is satisfied that applying paragraph (a) would not result in a reasonable approximation of the wages to be paid in the assessment year, as reasonably assessed by the employer or, in the case of a group, the DGE.

(1c) The Commissioner may decline to give an exemption until the applicant provides to the Commissioner sufficient information to justify any assessment under paragraph (b) of the definition of “expected pay-roll tax liability” in subsection (1b).

(1d) The Commissioner may decline to give an exemption if the Commissioner considers that the effect of the exemption would create an unacceptable risk of a person failing to satisfy a liability in accordance with this Act.

(2) The Commissioner may, in any other circumstances, exempt an employer from the requirement to lodge monthly returns.

- (3) The Commissioner may give an exemption on receiving an application or on his or her initiative.
- (4) An exemption is subject to the conditions (if any) prescribed in the regulations and to the conditions specified in the notice (if any).
 - (4a) An exemption for the members of a group has to apply to every member of the group, and has to result in each member of the group lodging returns at the same frequency.
 - (4b) An exemption under subsection (1a) cannot exclude the operation of subsection (8)(a).
 - (4c) Without limiting any other conditions that can be prescribed or specified, an exemption under subsection (1aa) is on the conditions that —
 - (a) a return is lodged for each quarter, and the lodging of the return, the form of it, and the information specified in it, are as section 26 would describe if a reference in that section to a month referred to a quarter;
 - (b) the return is lodged in accordance with section 28A; and
 - (c) any return under section 27 is also lodged in accordance with section 28A.
 - (4d) In subsection (4c) —
quarter means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April.
- (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 except that the Commissioner cannot revoke an exemption that subsection (1a) or (1aa) would oblige the Commissioner to give if an application were made for the exemption unless —
 - (a) the person having the benefit of the exemption consents;
or

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- (b) the Commissioner considers that the effect of the exemption would create an unacceptable risk of a person failing to satisfy a liability in accordance with this Act.
- (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 a condition of the exemption otherwise provides; or
 - (b) if a condition of the exemption requires returns to be lodged more frequently than annually, lodge returns as the condition requires.

Penalty: a fine of \$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: a fine of \$5 000.

[Section 29 amended by No. 40 of 2003 s. 25; No. 82 of 2004 s. 5 and 15(1)-(6); No. 15 of 2010 s. 19.]

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 performs duties solely or mainly for or in connection with one or more businesses carried on by the employer and the other person or persons (separately, together or in any other combination), or carried on by the other person or persons (separately, together or in any other combination).
- (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 one or more businesses carried on by the person or persons (separately, together or in any other combination), whether or not 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, whether or not it includes provisions in respect of the supply of goods or services or goods and services, and whether or not it provides for duties to be performed by the employees or specifies the duties to be performed by them.
- (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.

[Section 31 amended by No. 11 of 2005 s. 4; No. 15 of 2010 s. 11.]

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.

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- (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

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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.
- (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.

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- (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.

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- (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 — Exempt wages

[Heading inserted by No. 15 of 2010 s. 12.]

40. Exempt wages

- (1) The following wages are exempt from pay-roll tax —
 - (a) wages of a kind listed in subsection (2);
 - [(b) *deleted*]
 - (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; or
 - (b) by a religious institution for doing the religious work of the institution; or
 - (c) by a public benevolent institution for doing work of a public benevolent nature; or
 - (d) by a public hospital for doing work of a kind ordinarily performed in connection with the conduct of public hospitals; or
 - (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; or
 - (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

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- performed in connection with the conduct of such schools or colleges; or
- (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*; or
 - (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; or
 - (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; or
 - (j) by the Commonwealth War Graves Commission; or
 - (k) by the Australian-American Educational Foundation; or
 - (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; or
 - (m) by an employer to or in relation to a person who is an apprentice under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2; or
 - (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; or
 - (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; or
 - (p) subject to subsection (3), by an employer to or in relation to a person for a period when the person is —

- (i) performing functions as a volunteer member of a FESA Unit, an SES Unit or a VMRS Group under the *Fire and Emergency Services Authority of Western Australia Act 1998*; or
 - (ii) performing functions as a member of a volunteer fire brigade under the *Fire Brigades Act 1942*; or
 - (iii) performing functions as a volunteer member of a bush fire brigade under the *Bush Fires Act 1954*;
- or
- (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 Account 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 performed by the person at a remote location.
- (3) The exemption provided for by subsection (2)(p) does not apply to wages paid or payable as annual leave, long service leave, recreation leave or sick leave.
- (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) *deleted*]
- [Section 40 amended by No. 77 of 2006 s. 4; No. 44 of 2008 s. 59; No. 15 of 2010 s. 13.]

41A. Exempt wages — parental and adoption leave

- (1) In this section —

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adoption leave means leave given to an employee in connection with the adoption of a child by the employee, other than annual leave, recreation leave, sick leave or similar leave;

maternity leave means leave given to a female employee in connection with her pregnancy or the birth of her child, other than annual leave, recreation leave, sick leave or similar leave;

parental leave means leave given to an employee in connection with the pregnancy of a female carrying the employee's unborn child or the birth of the employee's child, other than annual leave, recreation leave, sick leave or similar leave.

- (2) Wages paid or payable to or in relation to an employee for maternity leave, parental leave or adoption leave are exempt from pay-roll tax.
- (3) It is immaterial whether the leave is taken during or after the pregnancy or before or after the adoption.
- (4) The exemption in subsection (2) is limited to wages paid or payable for not more than 14 weeks' worth of leave at the employee's normal rate of pay.
- (5) The exemption in subsection (2) does not apply to wages comprising a fringe benefit under the FBTA Act.

[Section 41A inserted by No. 15 of 2010 s. 14.]

41B. Exempt wages — wages paid or payable for or in relation to services performed in other countries

- (1) Wages are exempt from pay-roll tax if they are paid or payable for or in relation to services performed by a person wholly in one or more other countries for a continuous period of more than 6 months beginning on the day on which wages were first paid or payable to that person for the services so performed.
- (2) The Commissioner must make any reassessment necessary to give effect to this section.

[Section 41B inserted by No. 15 of 2010 s. 14.]

Part 6 — Miscellaneous

[Heading inserted by No. 15 of 2010 s. 15.]

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) deleted]

- (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.

[Section 41 amended by No. 12 of 2004 s. 7.]

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: a fine of \$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: a fine of \$20 000.

[Section 44 amended by No. 15 of 2010 s. 19.]

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;
 - (fa) the manner of lodging a return or making a payment in a circumstance in which section 28A(1) applies, which may include lodgment or payment by electronic means;
 - (g) classes of contracts for the purposes of section 9AA(1)(c).

- (3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.

[Section 45 amended by No. 82 of 2004 s. 16; No. 15 of 2010 s. 16.]

46. Transitional provisions

Schedule 1 contains transitional provisions relating to amendments made to this Act.

[Section 46 inserted by No. 15 of 2010 s. 17.]

Schedule 1 — Transitional provisions

[s. 46]

[Heading inserted by No. 15 of 2010 s. 17.]

Division 1 — Provisions for the Pay-roll Tax Assessment Amendment Act 2010 in relation to taxable wages

[Heading inserted by No. 15 of 2010 s. 17.]

1. Liability to tax for the assessment years commencing on 1 July 2009 and 1 July 2010

A person's liability to pay-roll tax under this Act for the assessment year commencing on 1 July 2009, and for the assessment year commencing on 1 July 2010, is to be determined as if the *Pay-roll Tax Assessment Amendment Act 2010* (other than Part 2 Division 3) had come into operation on 1 July 2009.

[Clause 1 inserted by No. 15 of 2010 s. 17.]

2. Shares and options granted on or after 1 July 2009 and before the Pay-roll Tax Assessment Amendment Act 2010 received the Royal Assent

(1) If —

- (a) an employer granted a share or an option to a person —
 - (i) on or after 1 July 2009; and
 - (ii) before the *Pay-roll Tax Assessment Amendment Act 2010* received the Royal Assent;

and

- (b) the amount equal to the value of the share or option was WA taxable wages; and
- (c) the value of the share or option is, under section 9DA or 9DG and clause 1, taken to be wages paid by the employer to the employee; and
- (d) the wages constituted by the value of that share or option are WA taxable wages under section 5(2) and clause 1,

the employer may, by notice given to the Commissioner, elect to treat those wages as being paid on the vesting day.

- (2) A notice under subclause (1) must be given within the 3 months after the day on which the *Pay-roll Tax Assessment Amendment Act 2010* received the Royal Assent.
- (3) The Commissioner must, on application, make any reassessment necessary to give effect to this clause.

[Clause 2 inserted by No. 15 of 2010 s. 17.]

3. Notices under the *Pay-roll Tax Assessment Regulations 2003* regulation 26(1) or (2)

A notice under the *Pay-roll Tax Assessment Regulations 2003* regulation 26(1) or (2) in relation to the assessment year commencing on 1 July 2009, or the assessment year commencing on 1 July 2010, has effect as if it were given under section 9BH(1) or (2), whichever is relevant.

[Clause 3 inserted by No. 15 of 2010 s. 17.]

Glossary

[s. 4]

1. Definitions

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

ABN means the ABN (Australian Business Number) for an entity within the meaning of the *A New Tax System (Australian Business Number) Act 1999* (Commonwealth);

actual value, of a fringe benefit, has the meaning given in section 9BB(2);

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;

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

apportioned threshold amount 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;
- (c) in relation to a local non-group employer — the amount calculated in accordance with section 12;

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 jurisdiction means a State or a Territory;

Australian superannuation fund means a superannuation fund 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;

defined benefit fund has the meaning given to “defined benefit superannuation scheme” in section 6 of the Superannuation Guarantee Act;

defined superannuation benefit means a benefit under a superannuation fund that is defined, wholly or in part, by reference to either or both of the following —

- (a) the amount of the member’s salary —

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- (i) at a particular date, being the date of the termination of the member's employment, the date of the member'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;

director of a company includes a member of the governing body of the company;

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 perform 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 performed by the worker;

exempt, in relation to wages, means exempt from pay-roll tax under Part 5;

FBTA Act means the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth;

FBT year means a year ending on 31 March;

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 Act;

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;

ITA Act means the *Income Tax Assessment Act 1997* (Commonwealth);

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);

motor vehicle allowance means an allowance paid by an employer to a person who provides or maintains a motor vehicle used for business journeys;

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;

option means an option or right, whether actual, prospective or contingent, of a person to acquire a share or to have a share transferred or allotted to the person;

paid, in relation to wages, includes provided, conferred and assigned and **pay** and **payable** have corresponding meanings;

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*;

pay-roll tax rate, in relation to an assessment year or progressive return period, means the rate of pay-roll tax fixed for the year or the period by the *Pay-roll Tax Act 2002*;

progressive return period means a period for which an employer is required by section 26, or by a condition of an exemption under section 29, to lodge a return;

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;

registered business address means an address for service of notices under the *A New Tax System (Australian Business Number) Act 1999* (Commonwealth) on an entity that has an ABN, as shown in the Australian Business Register kept under that Act;

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 —
 - (i) unless subparagraph (ii) applies, an assessment year;
 - (ii) if a condition of the exemption requires returns to be lodged more frequently than annually, a progressive return period;

share means a share in a company and includes a stapled security within the meaning of section 139GCD of the *Income Tax Assessment Act 1936* (Commonwealth);

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 includes —

- (a) a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Commonwealth); and
- (b) any other form of superannuation, provident or retirement fund or scheme including —
 - (i) the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* (Commonwealth); and
 - (ii) a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* (Commonwealth);

Superannuation Guarantee Act means the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth);

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 —

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- (a) under which a natural person (the worker) performs, 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);

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;

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 section 9BB;
- (c) in relation to a specified taxable benefit, has the meaning given in section 9BI;
- (d) in relation to wages in respect of a supply on which GST is payable, has the meaning given in section 9HB;
- (e) in relation to wages paid in kind, has the meaning given in section 9HA;

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

WA fringe benefits means fringe benefits that are WA taxable wages on which fringe benefits tax (imposed under the *Fringe Benefits Tax Act 1986* (Commonwealth)) is paid or payable;

wages has the meaning given in section 9AA;

WA taxable wages has the meaning given in section 5(2).

[Clause 1 amended by No. 40 of 2003 s. 26 and 28(1); No. 82 of 2004 s. 6 and 17; No. 15 of 2010 s. 18(1)-(9).]

[2-12. *Deleted by No. 15 of 2010 s. 18(10).]*

Notes

¹ This is a compilation of the *Pay-roll Tax Assessment Act 2002* and includes the amendments made by the other written laws referred to in the following table ^{1a}.
^{4,5} The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Pay-roll Tax Assessment Act 2002</i>	48 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Business Tax Review (Assessment) Act 2003</i> Pt. 4 and 5	40 of 2003	30 Jun 2003	1 Jul 2003 (see s. 2(1))
<i>Revenue Laws Amendment and Repeal Act 2004</i> Pt. 3	12 of 2004	29 Jun 2004	29 Jun 2004 (see s. 2(1))
<i>Revenue Laws Amendment (Tax Relief) Act 2004</i> ^{2,3}	82 of 2004	8 Dec 2004	Pt. 2 Div. 1 & 2: 1 Jan 2005 (see s. 2(2)); Pt. 2 Div. 3: 1 Jul 2006 (see s. 2(3))
<i>Revenue Laws Amendment Act 2005</i> Pt. 2	11 of 2005	30 Aug 2005	18 May 2005 (see s. 2(2))
Reprint 1: The <i>Pay-roll Tax Assessment Act 2002</i> as at 6 Jan 2006 (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Training Legislation Amendment and Repeal Act 2008</i> s. 59	44 of 2008	10 Dec 2008	10 Jun 2008 (see s. 2(2))
<i>Pay-roll Tax Assessment Amendment Act 2010</i> Pt. 2 Div. 1 and 2	15 of 2010	25 Jun 2010	25 Jun 2010 (see s. 2(a))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number	Assent	Commencement
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	and year		
<i>Pay-roll Tax Assessment Amendment Act 2010 Pt. 2 Div. 3</i> ⁶	15 of 2010	25 Jun 2010	1 Jul 2012 (see s. 2(b))

² The *Revenue Laws Amendment (Tax Relief) Act 2004* s. 5(6) reads as follows:

“

- (6) The amendments made by this section do not affect an exemption given before the coming into operation of this section.

”

³ The *Revenue Laws Amendment (Tax Relief) Act 2004* s. 15(7) reads as follows:

“

- (7) The amendments made by this section do not affect an exemption given before the coming into operation of this section.

”

⁴ Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007*. r. 1-4 and Pt. 5 Div. 2 of those regulations read as follows:

“

1. Citation

These regulations are the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007*.

2. Commencement

These regulations come into operation on the day on which the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007* comes into operation.

3. When certain modifications have effect

- (1) The modifications prescribed in Part 2, Part 3, Part 5, Part 6 Division 2 and Part 7 have effect on and from 1 July 2003.
- (2) The modifications prescribed in Part 4 have effect on and from 9 April 2006 and prevail over the modifications in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002* Part 5 to the extent of any inconsistency.

Note: Modifications prescribed for the purposes of section 7(2) of the Act may be expressed to take effect from a date that is earlier than the date on which the modifications are published in the Gazette, see section 7(3) of the Act.

4. Modification of State taxing laws

- (1) For the purposes of section 7(2) of the Act, each State taxing law is taken to be modified to the extent necessary to give effect to subregulation (2).
- (2) If —
 - (a) a State taxing law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding applied law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction; and
 - (b) a person is required or permitted, or could be required or permitted, to take an action under both the State taxing law and the corresponding applied law in relation to the event, state of affairs or transaction; and
 - (c) the person has taken the action in accordance with the corresponding applied law; and
 - (d) the Commissioner of State Revenue has sufficient information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the State taxing law or the corresponding applied law or both, as the case requires,then —
 - (e) the person is not required to take the action under the State taxing law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the State taxing law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in these regulations of certain State taxing laws have effect for the purposes of section 7(2) of the Act.

Part 5 — Pay-roll tax

Division 2 — The *Pay-roll Tax Assessment Act 2002*

27. Modification of the *Pay-roll Tax Assessment Act 2002*

This Division sets out modifications of the *Pay-roll Tax Assessment Act 2002* in its application as a law of Western Australia.

28. Section 4A inserted

After section 4 the following section is inserted —

“

4A. Application of Act in non-Commonwealth places

- (1) In this Act, unless the contrary intention appears —
 - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of Western Australia; and
 - (b) a reference to the regulations is to be read as a reference to the *Pay-roll Tax Assessment Regulations 2003* in their application as a law of Western Australia; and
 - (c) a reference to the *Pay-roll Tax Act 2002* is to be read as a reference to that Act in its application as a law of Western Australia; and
 - (d) a reference to the *Taxation Administration Act 2003* is to be read as a reference to that Act in its application as a law of Western Australia.
- (2) This Act is to be read with the applied Pay-roll Tax Assessment Act as a single body of law.
- (3) In the following provisions, a reference to WA taxable wages is to be read as a reference to WA taxable wages as defined in this Act or WA taxable wages as defined in the applied Pay-roll Tax Assessment Act — sections 17(1) and (3) and 23(1) and the Glossary clause 1 (the definitions of “interstate non-group employer” and “local non-group employer”).
- (4) In section 22A(6), a reference to WA taxable wages is to be read as a reference to WA taxable wages as defined in this Act and WA taxable wages as defined in the applied Pay-roll Tax Assessment Act.

”

29. Section 5 modified

- (1) Section 5(2)(b) is modified by inserting after “State” —

“

(whether or not in Commonwealth places in that State) or wholly in Commonwealth places in Western Australia

”

- (2) After section 5(2) the following subsection is inserted —

“

- (3) In this section, a reference to Western Australia (except the reference inserted by the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007* regulation 29(1)) is to be read as not including Commonwealth places in Western Australia.

”

30. Section 16A inserted

After section 16 the following section is inserted —

“

16A. Dual liability — non-group employers

- (1) If a non-group employer is, for a period, liable to pay pay-roll tax under Part 2 Division 2 of this Act and liable to pay pay-roll tax under Part 2 Division 2 of the applied Pay-roll Tax Assessment Act then, for the purposes of calculating the amount of pay-roll tax the employer is liable to pay, a reference to WA taxable wages in Part 2 Division 2 of this Act is to be read as a reference to WA taxable wages as defined in this Act and WA taxable wages as defined in the applied Pay-roll Tax Assessment Act.
- (2) The employer need not pay the pay-roll tax which the employer is otherwise liable to pay for the period, in accordance with subsection (1), to the extent to which the employer has paid pay-roll tax under Part 2 Division 2 of the applied Pay-roll Tax Assessment Act for the period.

”

31. Section 20A inserted

After section 20 the following section is inserted —

“

20A. Dual liability — groups

- (1) If a group is, for a period, liable to pay pay-roll tax under Part 2 Division 3 of this Act and liable to pay pay-roll tax under Part 2 Division 3 of the applied Pay-roll Tax Assessment Act then, for the purposes of calculating the amount of pay-roll tax the group is liable to pay, a reference to WA taxable wages in Part 2 Division 3 of this Act (other than section 17(1) and (3)) is to be read as a reference to WA taxable wages as defined in this Act and WA taxable

wages as defined in the applied Pay-roll Tax Assessment Act.

- (2) The members of a group need not pay the pay-roll tax which the group is otherwise liable to pay for the period, in accordance with subsection (1), to the extent to which the members of the group have paid pay-roll tax under Part 2 Division 3 of the applied Pay-roll Tax Assessment Act for the period.

”

32. Section 29 modified

After section 29(1b) the following subsection is inserted —

“

- (1ba) If the employer or group is liable to pay pay-roll tax under both this Act and the applied Pay-roll Tax Assessment Act then, in subsection (1a), the expected pay-roll tax liability is the sum of —
- (a) the amount of expected pay-roll tax liability in subsection (1b) of this Act; and
 - (b) the amount of expected pay-roll tax liability in subsection (1b) of the applied Pay-roll Tax Assessment Act.

”

33. Section 29A inserted

After section 29 the following section is inserted in Part 3 —

“

29A. Dual liability — returns

- (1) In sections 26(1) and 29(9), a reference to WA taxable wages to be specified in a return for a period is to be read as a reference to the sum of —
- (a) the amount of WA taxable wages to be specified in the return for that period for the purposes of section 26(1) or 29(9) of this Act (which ever is relevant); and
 - (b) the amount of WA taxable wages to be specified in a return for that period for the purposes of section 26(1) or 29(9) of the applied Pay-roll Tax Assessment Act (which ever is relevant).
- (2) If a person has lodged a return relating to a period under section 26(1) or 29(9) of the applied Pay-roll Tax

Assessment Act, the person need not lodge a return for that period under section 26(1) or 29(9) of this Act.

”

34. Glossary modified

- (1) The Glossary clause 1 is modified by inserting in their appropriate alphabetical positions —

“

applied Pay-roll Tax Act means the *Pay-roll Tax Act 2002* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Act;

applied Pay-roll Tax Assessment Act means the *Pay-roll Tax Assessment Act 2002* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Act;

Commonwealth Act means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

”

- (2) The Glossary clause 1 is modified in the definition of “WA taxable wages” by deleting “in Western Australia”.
- (3) The Glossary clause 4 is modified as follows:
- (a) in subclause (1)(a) by inserting after “State” —

“

(whether or not in Commonwealth places in that State) or wholly in Commonwealth places in Western Australia

”

- (b) by inserting after subclause (2) the following subclause —

“

- (3) In subclause (1)(a) and (b), a reference to Western Australia (except the reference inserted by the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007* regulation 34(3)(a)) is to be read as not including Commonwealth places in Western Australia.

”

”

⁵ Under the *Commonwealth Places (Mirror Taxes) Act 1998* s. 8(2) of the Commonwealth, this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*. r. 1-5 and Pt. 5 Div. 2 of that notice read as follows:

“

1. Citation

This notice is the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*.

2. Commencement

This notice comes into operation on the day after the day on which it is registered under the *Legislative Instruments Act 2003* of the Commonwealth.

3. When certain modifications have effect

- (1) The modifications prescribed in Part 2, Part 3, Part 5, Part 6 Division 2 and Part 7 have effect on and from 1 July 2003.
- (2) The modifications prescribed in Part 4 have effect on and from 9 April 2006 and prevail over the modifications in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002* Part 5 to the extent of any inconsistency.

Note: Modifications prescribed in a notice under section 8 of the Act may be expressed to take effect from a date that is earlier than the date on which the modifications are published in the *Commonwealth of Australia Gazette*, see section 8(5) of the Act.

4. Definitions

In this notice —

applied WA law means the provisions of a State taxing law of Western Australia that apply or are taken to have applied in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

Commissioner of State Revenue means the Commissioner of State Revenue of Western Australia appointed in accordance with the *Taxation Administration Act 2003* section 6 of Western Australia;

Commonwealth Mirror Taxes Act means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.

5. Modification of applied WA laws

- (1) For the purposes of the Commonwealth Mirror Taxes Act section 8, each applied WA law is taken to be modified to the extent necessary to give effect to subclause (2).

- (2) If —
- (a) an applied WA law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding State taxing law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction; and
 - (b) a person is required or permitted, or could be required or permitted, to take an action under both the applied WA law and the corresponding State taxing law in relation to the event, state of affairs or transaction; and
 - (c) the person has taken the action in accordance with the corresponding State taxing law; and
 - (d) the Commissioner of State Revenue has sufficient information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the applied WA law or the corresponding State taxing law or both, as the case requires,
- then —
- (e) the person is not required to take the action under the applied WA law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the applied WA law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in this notice of certain applied WA laws have effect for the purposes of the Commonwealth Mirror Taxes Act section 8.

Part 5 — Pay-roll tax

Division 2 — The applied *Pay-roll Tax Assessment Act 2002*

28. Modification of the applied *Pay-roll Tax Assessment Act 2002*

This Division sets out modifications of the *Pay-roll Tax Assessment Act 2002* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia.

29. Section 4A inserted

After section 4 the following section is inserted —

“

4A. Application of Act in Commonwealth places

- (1) In this Act, unless the contrary intention appears —
 - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act; and
 - (b) a reference to the regulations is to be read as a reference to the *Pay-roll Tax Assessment Regulations 2003* of Western Australia in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act; and
 - (c) a reference to the *Pay-roll Tax Act 2002* is to be read as a reference to the *Pay-roll Tax Act 2002* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act; and
 - (d) a reference to the *Taxation Administration Act 2003* is to be read as a reference to the *Taxation Administration Act 2003* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act.
- (2) This Act is to be read with the corresponding Pay-roll Tax Assessment Act as a single body of law.
- (3) In the following provisions, a reference to WA taxable wages is to be read as a reference to WA taxable wages as defined in this Act or WA taxable wages as defined in the corresponding Pay-roll Tax Assessment Act — sections 17(1) and (3) and 23(1) and the Glossary clause 1 (the definitions of “interstate non-group employer” and “local non-group employer”).
- (4) In section 22A(6), a reference to WA taxable wages is to be read as a reference to WA taxable wages as defined in this Act and WA taxable wages as defined in the corresponding Pay-roll Tax Assessment Act.
- (5) In addition to being modified as prescribed by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*, this Act is deemed to be further modified to any extent that is necessary or convenient —

- (a) to enable this Act to operate effectively as a law of the Commonwealth; and
- (b) to ensure that the combined liability of a taxpayer under this Act and the corresponding Pay-roll Tax Assessment Act is as nearly as possible the same as the taxpayer's liability would be under the corresponding Pay-roll Tax Assessment Act alone if the Commonwealth places in Western Australia were not Commonwealth places.

”

30. Section 5 modified

- (1) Section 5(2)(b) is modified by inserting after “State” —

“

(whether or not in Commonwealth places in that State) or wholly in Western Australia (other than in Commonwealth places in Western Australia)

”

- (2) After section 5(2) the following subsection is inserted —

“

- (3) In this section, a reference to Western Australia (except the references inserted by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007* clause 30(1)) is to be read as referring only to Commonwealth places in Western Australia.

”

31. Section 16A inserted

After section 16 the following section is inserted —

“

16A. Dual liability — non-group employers

- (1) If a non-group employer is, for a period, liable to pay pay-roll tax under both Part 2 Division 2 of this Act and liable to pay pay-roll tax under Part 2 Division 2 of the corresponding Pay-roll Tax Assessment Act then, for the purposes of calculating the amount of pay-roll tax the employer is liable to pay, a reference to WA taxable wages in Part 2 Division 2 of this Act is to be read as a reference to WA taxable wages as defined in this Act and WA taxable wages as defined in the corresponding Pay-roll Tax Assessment Act.

- (2) The employer need not pay the pay-roll tax which the employer is otherwise liable to pay for the period, in accordance with subsection (1), to the extent to which the employer has paid pay-roll tax under Part 2 Division 2 of the corresponding Pay-roll Tax Assessment Act for the period.

”

32. Section 20A inserted

After section 20 the following section is inserted —

“

20A. Dual liability — groups

- (1) If a group is, for a period, liable to pay pay-roll tax under both Part 2 Division 3 of this Act and liable to pay pay-roll tax under Part 2 Division 3 of the corresponding Pay-roll Tax Assessment Act then, for the purposes of calculating the amount of pay-roll tax the group is liable to pay, a reference to WA taxable wages in Part 2 Division 3 of this Act (other than section 17(1) and (3)) is to be read as a references to WA taxable wages as defined in this Act and WA taxable wages as defined in the corresponding Pay-roll Tax Assessment Act.
- (2) The members of a group need not pay the pay-roll tax which the group is otherwise liable to pay for the period, in accordance with subsection (1), to the extent to which the members of the group have paid pay-roll tax under Part 2 Division 3 of the corresponding Pay-roll Tax Assessment Act for the period.

”

33. Section 29 modified

After section 29(1b) the following subsection is inserted —

“

- (1ba) If the employer or group is liable to pay pay-roll tax under both this Act and the corresponding Pay-roll Tax Assessment Act then, in subsection (1a), the expected pay-roll tax liability is the sum of —
- (a) the amount of expected pay-roll tax liability in subsection (1b) of this Act; and
 - (b) the amount of expected pay-roll tax liability in section 29(1b) of the corresponding Pay-roll Tax Assessment Act.

”

34. Section 29A inserted

After section 29 the following section is inserted in Part 3 —

“

29A. Dual liability — returns

- (1) In sections 26(1) and 29(9), a reference to WA taxable wages to be specified in a return for a period is to be read as a reference to the sum of —
 - (a) the amount of WA taxable wages to be specified in the return for that period for the purposes of section 26(1) or 29(9) of this Act (which ever is relevant); and
 - (b) the amount of WA taxable wages to be specified in a return for that period for the purposes of section 26(1) or 29(9) of the corresponding Pay-roll Tax Assessment Act (which ever is relevant).
- (2) If a person has lodged a return relating to a period under section 26(1) or 29(9) of the corresponding Pay-roll Tax Assessment Act, the person need not lodge a return for that period under section 26(1) or 29(9) of this Act.

”

35. Glossary modified

- (1) The Glossary clause 1 is modified by inserting the following definitions in their appropriate alphabetical positions —

“

Commonwealth Mirror Taxes Act means the *Commonwealth Places (Mirror Taxes) Act 1998*;

corresponding Pay-roll Tax Act means the *Pay-roll Tax Act 2002* of Western Australia in its application as a law of Western Australia;

corresponding Pay-roll Tax Assessment Act means the *Pay-roll Tax Assessment Act 2002* of Western Australia in its application as a law of Western Australia;

”

- (2) The Glossary clause 1 is modified in the definition of “employer” by inserting after “Western Australia” —

“ or the Commonwealth ”.
- (3) The Glossary clause 1 is modified in the definition of “WA taxable wages” by deleting “in Western Australia”.

-
- (4) The Glossary clause 2(1)(c) is modified by inserting after “Western Australia” in both places where it occurs —
“ or the Commonwealth ”.
- (5) The Glossary clause 4 is modified as follows:
- (a) in subclause (1)(a) by inserting after “State” —
“
(whether or not in Commonwealth places in that State) or wholly in Western Australia (other than in Commonwealth places in Western Australia)
”.
- (b) by inserting after subclause (2) the following subclause —
“
- (3) In subclause (1)(a) and (b), a reference to Western Australia (except the references inserted by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007* clause 35(5)(a)) is to be read as referring only to Commonwealth places in Western Australia.
”
”

⁶ On the date as at which this compilation was prepared, the *Pay-roll Tax Assessment Amendment Act 2010* Pt. 2 Div. 3 had not come into operation. It reads as follows:

Division 3 — Amendments relating to grouping of employers

20. Section 31 amended

In section 31(4) delete the passage that begins with “section 38” and continues to the end of the subsection and insert:

section 38.

21. Section 32 amended

Delete section 32(3) and (4) and insert:

- (3) The Commissioner may exclude a person from a group in accordance with section 38.

22. Section 33 amended

In section 33(7) delete “related corporation” and insert:

related body corporate

23. Section 35 replaced

Delete section 35 and insert:

35A. Groups arising from tracing of interests in corporations

(1) For the purposes of this section —

associated person means a person who is associated with another person in accordance with any of the following —

- (a) persons are associated persons if they are related persons;
- (b) individuals are associated persons if they are partners in a partnership;
- (c) private companies are associated persons if common shareholders have a majority interest in each private company;
- (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
- (e) a private company and a trustee are associated persons if a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee;

entity means —

- (a) a person; or
- (b) 2 or more persons who are associated persons;

private company means a company that is not limited by shares, or whose shares are not quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges;

related person means a person who is related to another person in accordance with any of the following —

- (a) individuals are related persons if —
 - (i) one is the spouse or de facto partner of the other; or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;

- (b) private companies are related persons if they are related bodies corporate;
 - (c) an individual and a private company are related persons if the individual is a majority shareholder or director of the company or of another private company that is a related body corporate of the company;
 - (d) an individual and a trustee are related persons if the individual is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;
 - (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.
- (2) An entity and a corporation form part of a group if the entity has a controlling interest in the corporation.
- (3) An entity has a controlling interest in a corporation if the corporation has share capital and —
- (a) the entity has a direct interest in the corporation the value of which exceeds 50%; or
 - (b) the entity has an indirect interest in the corporation the value of which exceeds 50%; or
 - (c) the entity has an aggregate interest in the corporation the value of which exceeds 50%.
- (4) The Commissioner may exclude an entity from a group in accordance with section 38.

35B. Direct interests

- (1) An entity has a *direct interest* in a corporation if —
- (a) in the case of an entity that is a person — the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation; or
 - (b) in the case of an entity that is 2 or more persons who are associated persons — each of the associated persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation.
- (2) The value of the direct interest of the entity in the corporation is the proportion (expressed as a percentage) of the voting power of all voting shares issued by the corporation that —

- (a) in the case of an entity that is a person — the person can directly or indirectly exercise, control the exercise of, or substantially influence the exercise of; or
- (b) in the case of an entity that is 2 or more persons who are associated persons — the associated persons can, if acting together, directly or indirectly exercise, control the exercise of, or substantially influence the exercise of.

35C. Indirect interests

- (1) An entity has an *indirect interest* in a corporation if the corporation is linked to another corporation (the *directly controlled corporation*) in which the entity has a direct interest.
- (2) A corporation is linked to a directly controlled corporation if the corporation is part of a chain of corporations —
 - (a) that starts with the directly controlled corporation; and
 - (b) in which a link in the chain is formed if a corporation has a direct interest in the next corporation in the chain.
- (3) The value of the indirect interest of an entity in a corporation (an *indirectly controlled corporation*) that is linked to a directly controlled corporation is calculated by multiplying together the following —
 - (a) the value of the direct interest of the entity in the directly controlled corporation;
 - (b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.
- (4) If an entity has more than one indirect interest in a corporation, the value of those interests is worked out under section 35D.

35D. Aggregate interests

- (1) An entity has an *aggregate interest* in a corporation if —
 - (a) the entity has a direct interest and one or more indirect interests in the corporation; or
 - (b) the entity has more than one indirect interest in the corporation.
- (2) The value of the aggregate interest of an entity in a corporation is the sum of the following —
 - (a) the value of the direct interest (if any) of the entity in the corporation;
 - (b) the value of each indirect interest of the entity in the corporation.

24. Section 36 amended

- (1) In section 36(3) delete the passage that begins with “Act except” and continues to the end of the subsection and insert:

Act.

- (2) After section 36(3) insert:
- (4) The Commissioner may exclude a person from a group in accordance with section 38.

25. Section 38 amended

Delete section 38(1) and insert:

- (1) The Commissioner may exclude a person from a group under section 31(4), 32(3), 35A(3) or 36(4) in relation to a business carried on by the person if satisfied that the business is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of the group, having regard to —
- (a) the nature and degree of ownership and control of the businesses; and
 - (b) the nature of the businesses; and
 - (c) any other matters the Commissioner considers relevant.

26. Schedule 1 amended

After Schedule 1 clause 3 insert:

Division 2 — Provisions for the *Pay-roll Tax Assessment Amendment Act 2010* in relation to grouping of employers

4. Exclusion, from a group, in force before 1 July 2012

If the Commissioner has excluded a person from a group under section 31(4) or 32(3) (as in force before 1 July 2012) and that exclusion was in force immediately before 1 July 2012, that exclusion has effect, according to its terms, on and after

1 July 2012, as if it had been granted under Part 4 (as in force on and after 1 July 2012).

5. Exclusion, from a group, granted on or after 1 July 2012

An exclusion of a person from a group under Part 4 (as in force on and after 1 July 2012) cannot have effect before 1 July 2012 despite section 38(5).

6. Exclusion, from a group, having effect before 1 July 2012

The Commissioner may, on and after 1 July 2012, exclude a person from a group for a period that is before 1 July 2012 but not on or after 1 July 2012, and may do so as if the *Pay-roll Tax Assessment Amendment Act 2010* Part 2 Division 3 had not come into operation.

27. Glossary amended

- (1) In the Glossary clause 1 delete the definition of *related corporation*.
- (2) In the Glossary clause 1 insert in alphabetical order:

related body corporate has the meaning given in section 9 of the Corporations Act;

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
2004/5 year	22A(1)
actual value	9BB(2)
adoption leave	41A(1)
AV	9BE(1)
calculation provision	22A(5)
Commonwealth income tax provisions	9DD(1)
employee	9CA
employer	9CA
employment termination payment.....	9EA(2)
expected pay-roll tax liability	28A(3), 29(1b)
FBT rate	9BB(1)
first part of the tax period.....	22A(4)
first period.....	22A(2)
instrument	6D(1)
local company	9DH(1)
maternity leave.....	41A(1)
N	9BE(1)
new rate.....	22A(2)
notional contribution	9CA
old rate	22A(2)
parental leave	41A(1)
part period factor.....	22A(6)
quarter	29(4d)
relevant day	9DA(4)
relevant part period	22A(5)
second part of the tax period	22A(4)
second period	22A(2)
smaller group	36(1), 36(2)
superannuation contribution.....	9CA
tax period	22A(4)
taxes	42(2), 43(11)
termination payment	9EA(2)
TV	9BB(1)
unused annual leave payment	9EA(2)
unused long service leave payment.....	9EA(2)
vesting day	9DB(2), 9DB(3)
WA taxable wages	5(2)
wages	9AA(1)

