



Western Australia

## **Pay-roll Tax Assessment Act 2002**



# Pay-roll Tax Assessment Act 2002

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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*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation on the day on which the *Taxation Administration Act 2003* comes into operation<sup>1</sup>.

### **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. Terms used**

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.

[4A.<sup>1M</sup> *Modification, to insert section 4A, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999, see note 1M.*]

[4A.<sup>1MC</sup> *Modification, to insert section 4A, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth), see note 1MC.*]

### **5A. Notes in 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**

*[5B.<sup>1M</sup> Modification, to insert section 5B, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999, see note 1M.]*

*[5B.<sup>1MC</sup> Modification, to insert section 5B, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth), see note 1MC.]*

#### **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. Tax thresholds and tapering value**

- (1) The annual threshold amount for —
  - (a) the financial years beginning on 1 July 2014 and 1 July 2015 is \$800 000; and
  - (b) a financial year beginning on or after 1 July 2016 is \$850 000.
- (2) The monthly threshold amount for —
  - (a) the financial years beginning on 1 July 2014 and 1 July 2015 is \$66 667; and
  - (b) a financial year beginning on or after 1 July 2016 is \$70 833.
- (3) The upper threshold amount is \$7 500 000.
- (4) The tapering value for a financial year is to be calculated as follows —

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

where —

AT    is the annual threshold amount for the year;

UT    is the upper threshold amount.

*[Section 8 inserted by No. 15 of 2014 s. 9; amended by No. 15 of 2015 s. 13.]*

[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 that constitutes 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; amended by No. 29 of 2012 s. 17.]*

#### **9BB. Actual value of 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 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 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 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 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 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) For the purposes of this Act —  
**wages** include the grant of a share or an option to an employee by an employer in respect of services performed by the employee if the share or option —
  - (a) is an ESS interest within the meaning of the *Income Tax Assessment Act 1997* (Commonwealth) section 83A-10; and
  - (b) is granted to the employee under an employee share scheme within the meaning of that section.

Note:

A grant of a share or an option to an employee by an employer that is not an ESS interest will be taxable as a fringe benefit under Subdivision 2.

- (2) A share or an option is granted to a person if —
  - (a) another person transfers the share or option to that person (other than, in the case of a share, by issuing the share to that person); or
  - (b) in the case of a share — another person allots the share to that person; or
  - (c) in the case of an option — another person confers the option on, or otherwise creates the option in, that person; or

- (d) the person otherwise acquires a legal interest in the share or option from another person; or
  - (e) the person acquires a beneficial interest in the share or option from another person.
- (3A) To avoid doubt, if an employee acquires a right to be granted a share or an option, or some other material benefit, at the employer's election, the share or option is not granted until the employer elects to grant the share or option.
- (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; amended by No. 29 of 2012 s. 18.]*

**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 earlier of the following days —
  - (a) 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);
  - (b) the day at the end of the period of 7 years from the day on which the share is granted to the employee.
- (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 vested in the employee;
- (c) the day at the end of the period of 7 years from the day on which the option is granted to the employee.

*[Section 9DB inserted by No. 15 of 2010 s. 7; amended by No. 29 of 2012 s. 19.]*

**9DC. Relevant day: special cases**

(1) If —

- (a) an employer grants a share or an option to an employee; 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; 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; amended by  
No. 29 of 2012 s. 20.]*

**9DD. Value of shares and options**

- (1) In this section —

***Commonwealth income tax provisions*** means the *Income Tax Assessment Act 1997* (Commonwealth) section 83A-315 and the regulations made for the purposes of that section.

Note:

See the *Income Tax Assessment Regulations 1997* (Commonwealth) Division 83A for the relevant regulations.

- (2) The value of a share or an option is the 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 value of a share or an option is —
- (a) the market value; or
  - (b) the amount determined as provided for by the Commonwealth income tax provisions.
- (4) The employer may elect the method by which the value of a share or an option is determined in any return lodged under this Act.
- (5) However, the Commissioner may determine the method by which the value of a share or an option is determined if the grant of the share or option is not included as wages in a return lodged by an employer as required by this Act.
- (6) In determining the market value of a share or an option, anything that would prevent or restrict conversion of the share or option to money is to be disregarded.

- (7) The Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications —
- (a) the value of an option is to be determined as if it were a right to acquire a beneficial interest in a share;
  - (b) a reference to the acquisition of a beneficial interest in a share or right is to be read as a reference to the grant of a share or an option.

*[Section 9DD inserted by No. 15 of 2010 s. 7; amended by No. 29 of 2012 s. 21.]*

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

- (1) If an employer grants a share or an option to an employee 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; 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; amended by No. 29 of 2012 s. 22.]*

**9DF. Grant of share under exercise of option**

The grant of a share by an employer does not constitute wages for the purposes of this Act 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 grant of the option to the person constitutes wages for the purposes of this Act.

*[Section 9DF inserted by No. 29 of 2012 s. 23.]*

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

- (1) For the purposes of this Act —  
**wages** include the grant of a share or an option by a company to a director of the company who is not an employee of the company by way of remuneration for the appointment or services of the director.
- (2) For that purpose, 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.

- (4) However, if wages referred to in this section are fringe benefits, the value of the wages is to be determined in accordance with Subdivision 2 and not this Subdivision.

*[Section 9DG inserted by No. 15 of 2010 s. 7; amended by No. 29 of 2012 s. 24.]*

**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 year is —
- (a) if the total amount of WA taxable wages paid or payable by the employer during the year is less than or equal to the annual threshold amount for the year — nil;
  - (b) if the total amount of WA taxable wages paid or payable by the employer during the year is equal to or greater than the upper threshold amount — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the employer during the year; and
    - (ii) the deductible amount for the employer for the year calculated in accordance with subsection (2).
- (2) For the purposes of subsection (1)(c)(ii), the deductible amount for the employer for the year is to be calculated as follows —

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



where —

AT is the annual threshold amount for the year;

TV is the tapering value for the year;

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

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

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

where —

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

TV is the tapering value for the year;

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

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

*[Section 10 inserted by No. 15 of 2015 s. 14.]*

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

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

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

where —

AT is the annual threshold amount for the year;

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

Y is the number of days in the year.

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

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

where —

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

*[Section 11A inserted by No. 15 of 2015 s. 14.]*

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

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

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

where —

AT is the apportioned threshold amount for the period or part-period;

TV is the tapering value for the year;

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

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

*[Section 11 inserted by No. 15 of 2015 s. 14.]*

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

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

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

where —

N is the number of months in the progressive return period;

MT is the monthly threshold amount for the year;

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

P is the number of days in the progressive return period.

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

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

where —

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

*[Section 12 inserted by No. 15 of 2015 s. 14.]*

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

*[(1) deleted]*

- (2) If an employer is an interstate non-group employer for the whole of an assessment year, the amount of pay-roll tax payable by the employer for the year is —
- (a) if the total amount of Australian taxable wages paid or payable by the employer during the year is less than or equal to the annual threshold amount for the year — nil;
  - (b) if the total amount of Australian taxable wages paid or payable by the employer during the year is equal to or greater than the upper threshold amount — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —

- (i) the total amount of WA taxable wages paid or payable by the employer during the year; and
- (ii) the deductible amount for the employer for the year calculated in accordance with subsection (3).

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

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

where —

AT is the annual threshold amount for the year;

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

TV is the tapering value for the year;

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

- (4) If an employer is an interstate non-group employer for only part of an assessment year (the *part-year*), the amount of pay-roll tax payable by the employer for the part-year is —
- (a) if the total amount of Australian taxable wages paid or payable by the employer during the part-year is less than or equal to the apportioned annual threshold amount for the part-year — nil;
  - (b) if the total amount of Australian taxable wages paid or payable by the employer during the part-year is equal to or greater than the apportioned upper threshold amount for the part-year — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the employer during the part-year;

- (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
- (i) the total amount of WA taxable wages paid or payable by the employer during the part-year; and
  - (ii) the deductible amount for the employer for the part-year calculated in accordance with subsection (5).
- (5) For the purposes of subsection (4)(c)(ii), the deductible amount for the employer for the part-year is to be calculated as follows —

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

where —

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

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

*[Section 13 inserted by No. 15 of 2015 s. 14; amended by No. 20 of 2017 s. 4.]*

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

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

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

where —

AT is the annual threshold amount for the year;

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

Y is the number of days in the year.

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

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

where —

UT is the upper threshold amount;

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

Y is the number of days in the year.

*[Section 14 inserted by No. 15 of 2015 s. 14.]*

**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 Australian 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 Australian taxable wages payable by the employer for the assessment year will vary significantly from the amounts of WA taxable wages and Australian 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; No. 20 of 2017 s. 5.]*

## **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.]*

*[16A.<sup>1M</sup> Modification, to insert section 16A, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999, see note 1M.]*

*[16A.<sup>1MC</sup> Modification, to insert section 16A, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth), see note 1MC.]*

### **Division 3 — Group employers' liability**

#### **17. Annual tax liability: groups**

*[(1A) deleted]*

- (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 Australian taxable wages as a group member, whether or not any member of the group pays or is liable to pay Australian 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 —
- (a) if the total amount of Australian taxable wages paid or payable by the group members during the year is less than or equal to the annual threshold amount for the year — nil;
  - (b) if the total amount of Australian taxable wages paid or payable by the group members during the year is equal to or greater than the upper threshold amount — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the group members during the year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the group members during the year; and
    - (ii) the deductible amount for the group for the year calculated in accordance with subsection (3A).
- (3A) For the purposes of subsection (2)(c)(ii), the deductible amount for the group for the year is to be calculated as follows —

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

where —

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

- (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 (the *part-year*) there is at least one member of the group who pays or is liable to pay Australian taxable wages as a group member, whether or not that member or any other member of the group pays or is liable to pay Australian 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 Australian taxable wages as a group member.
- (4) The amount of pay-roll tax payable by the group for the assessment year is —
- (a) if the total amount of Australian taxable wages paid or payable by the group members during the part-year is less than or equal to the apportioned annual threshold amount for the part-year — nil;
  - (b) if the total amount of Australian taxable wages paid or payable by the group members during the part-year is equal to or greater than the apportioned upper threshold amount for the part-year — the amount calculated by applying the pay-roll tax rate to the total amount of WA taxable wages paid or payable by the group members during the part-year;
  - (c) otherwise — the amount calculated by applying the pay-roll tax rate to the amount equal to the difference between —
    - (i) the total amount of WA taxable wages paid or payable by the group members during the part-year; and
    - (ii) the deductible amount for the group for the part-year calculated in accordance with subsection (5).

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

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

where —

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

- (6) The apportioned annual threshold amount for part of an assessment year is calculated in accordance with section 18(1).  
 (7) The apportioned upper threshold amount for part of an assessment year is calculated in accordance with section 18(2).

*[Section 17 amended by No. 40 of 2003 s. 20; No. 15 of 2015 s. 15; No. 20 of 2017 s. 6.]*

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

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

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

where —

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

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

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

where —

UT is the upper threshold amount;

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

Y is the number of days in the year.

*[Section 18 inserted by No. 15 of 2015 s. 16.]*

**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 Australian 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 Australian taxable wages payable by the group for the assessment year will vary significantly from the amounts of WA taxable wages and Australian 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; No. 20 of 2017 s. 7.]*

## **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.]*

[20A.<sup>1M</sup> *Modification, to insert section 20A, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999, see note 1M.*]

[20A.<sup>1MC</sup> *Modification, to insert section 20A, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth), see note 1MC.*]

### **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; and
  - (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. Deleted by No. 15 of 2015 s. 17.]*

**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.]*

**Division 5 — Special provisions for period from 1 July 2018 to  
30 June 2023**

*[Heading inserted by No. 20 of 2017 s. 8.]*

**23A. Nomination of estimates for determining rates for  
progressive return periods**

- (1) The Commissioner may —
  - (a) for the purposes of the *Pay-roll Tax Act 2002* section 9(a), nominate —
    - (i) an amount of Australian taxable wages that it is estimated will be payable by an interstate non-group employer during an assessment year in the sliding scale period; and
    - (ii) a number of days in the assessment year during which it is estimated that Australian taxable wages will be payable by the employer;
  - or
  - (b) for the purposes of the *Pay-roll Tax Act 2002* section 11(a), nominate —
    - (i) an amount of Australian taxable wages that it is estimated will be payable by all members of a group during an assessment year in the sliding scale period; and
    - (ii) a number of days in the assessment year during which it is estimated that Australian taxable wages will be payable by at least one member of the group.
- (2) The Commissioner may make or vary a nomination under this section —
  - (a) on the Commissioner's own initiative, having regard to the amounts of Australian taxable wages previously paid or payable by the employer, or by all members of the group, and any other relevant matters; or

- (b) on application by the interstate non-group employer, or by a member of the group, having regard to the information included in the application and any other relevant matters.
- (3) The Commissioner may cancel a nomination under this section at any time.
- (4) As soon as practicable after making, varying or cancelling a nomination under this section, the Commissioner must notify the employer, or each member of the group, to which the nomination relates of —
  - (a) the making, variation or cancellation of the nomination; and
  - (b) in the case of the making or variation of a nomination — the first progressive return period to which the nomination, or the nomination as varied, applies (which may be any period in the assessment year, including a period that has ended).
- (5) Subject to any cancellation or variation, a nomination under this section applies to the progressive return period specified under subsection (4)(b) and each subsequent progressive return period in the assessment year.
- (6) Subject to the *Taxation Administration Act 2003* section 17, the Commissioner must make any reassessment necessary to give effect to the making or variation of a nomination under this section.

*[Section 23A inserted by No. 20 of 2017 s. 8.]*

**23B. Application for nomination under s. 23A**

- (1) An application for the making or variation of a nomination under section 23A must —
  - (a) be in the approved form; and
  - (b) include any relevant information required by the Commissioner.

- (2) An application for the variation of a nomination made under section 23A in relation to an interstate non-group employer or a group cannot be made unless the applicant expects that —
- (a) the amount of Australian taxable wages that will be payable by the employer, or by all members of the group, during the assessment year will vary significantly from the nominated amount; or
  - (b) the number of days in the assessment year during which Australian taxable wages will be payable by the employer, or by at least one member of the group, will vary significantly from the nominated number of days.

*[Section 23B inserted by No. 20 of 2017 s. 8.]*

**23C. Determination of reduced rate where *Pay-roll Tax Act 2002* s. 8(6) or 10(7) applied**

- (1) This section applies if —
- (a) an interstate non-group employer, or the DGE of a group, fails to comply, within the period referred to in section 27(2)(c), with a requirement under section 27 to lodge an additional return in respect of an assessment year in the sliding scale period; and
  - (b) as a result of the failure to comply, a pay-roll tax rate of 6.5% applies to the employer or group and the assessment year or part of the assessment year (the ***part-year***) under the *Pay-roll Tax Act 2002* section 8(6) or 10(7).
- (2) If the Commissioner has sufficient information to determine the pay-roll tax rate that would, but for the application of the *Pay-roll Tax Act 2002* section 8(6) or 10(7), have applied to the employer or group and the year or part-year, the Commissioner may determine that the *Pay-roll Tax Act 2002* section 8(6) or 10(7) (whichever is relevant) does not apply to the employer or group and the year or part-year.

- (3) A determination under subsection (2) may be made on the Commissioner's own initiative or on application by the interstate non-group employer or a member of the group.
- (4) An application for a determination under subsection (2) must —
  - (a) be in the approved form; and
  - (b) include any relevant information required by the Commissioner.
- (5) As soon as practicable after making a determination under subsection (2), the Commissioner must notify the employer, or each member of the group, to which the determination relates of the making of the determination.
- (6) Subject to the *Taxation Administration Act 2003* section 17, the Commissioner must make any reassessment necessary to give effect to a determination under subsection (2).

*[Section 23C inserted by No. 20 of 2017 s. 8.]*

### **Part 3 — Registration and returns**

#### **24. Applications for registration as 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.

- (2A) The Commissioner may register an employer, although the employer has not applied for registration under section 24, if it appears to the Commissioner that the employer is, or is likely to become, liable to pay pay-roll tax.
- (2B) If the Commissioner registers an employer under subsection (2A), the Commissioner must give the employer notice of the registration.
- (2C) The Commissioner is taken always to have been entitled to register an employer on his or her own initiative under this Act or the *Pay-roll Tax Assessment Act 1971*<sup>2</sup>, and any such registration before the coming into operation of the *Revenue Laws Amendment Act 2012* section 27 is, and is taken always to have been, a valid and effective registration.
- (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).

*[Section 25 amended by No. 29 of 2012 s. 27.]*

## **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

**s. 27**

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- (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.
  - (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; and
  - (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 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 Australian 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; and
  - (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
  - (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; No. 20 of 2017 s. 9.]*

*[Modification, to section 29, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999, see note 1M.]*

*[Modification, to section 29, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth), see note 1MC.]*

*[29A.<sup>1M</sup> Modification, to insert section 29A, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999, see note 1M.]*

*[29A.<sup>1MC</sup> Modification, to insert section 29A, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth), see note 1MC.]*

## **Part 4 — Constitution of business groups**

### **30. Grouping corporations**

For the purposes of a pay-roll tax Act, corporations constitute a group if they are related bodies corporate.

*[Section 30 amended by No. 32 of 2012 s. 36.]*

### **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.

*[Section 31 amended by No. 11 of 2005 s. 4; No. 15 of 2010 s. 11 and 20.]*

### **32. Grouping commonly controlled businesses**

*[(1) deleted]*

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

*[Section 32 amended by No. 15 of 2010 s. 21; No. 32 of 2012 s. 37.]*

### **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 —

- (a) the person, or each of the persons, is a director of the corporation and the person is, or the persons are together, entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation; or
- (b) a director that is, or directors that are together, entitled to exercise more than 50% of the voting power at meetings of the directors of the corporation is or are 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.

- (2A) A person has, or persons have together, a controlling interest in a business carried on by a body corporate or unincorporate if the person or persons constitute more than 50% of the board of management (by whatever name called) of the body or control the composition of that board.

- (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 under the trust if the beneficiary has, or the beneficiaries together have, a beneficial interest in respect of more than 50% of the value of the interests in the trust.
- (5) A person has a controlling interest in a business if the person is the sole owner of the business, whether as trustee or otherwise.
- (6) Two or more persons together have a controlling interest in a business if the persons own the business as trustees.
- (7) If —
  - (a) 2 corporations are related bodies corporate; and
  - (b) one of the corporations has a controlling interest in a business,the other corporation has a controlling interest in the business.
- (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.

*[Section 33 amended by No. 15 of 2010 s. 22; No. 29 of 2012 s. 28; No. 32 of 2012 s. 38.]*

#### **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, or a failure to exercise the 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, or a failure to exercise the 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.

*[Section 34 amended by No. 32 of 2012 s. 39.]*

**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.

*[Section 35A inserted by No. 15 of 2010 s. 23.]*

### **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

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- (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.

[Section 35B inserted by No. 15 of 2010 s. 23.]

**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.

*[Section 35C inserted by No. 15 of 2010 s. 23.]*

### **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.

*[Section 35D inserted by No. 15 of 2010 s. 23.]*

*[35. Deleted by No. 15 of 2010 s. 23.]*

### **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) If 2 or more members of a group (called a ***smaller group*** for the purposes of subsection (3)) have together a controlling interest in a business, all the members of the group and the person or

persons who carry on the business together constitute one group for the purposes of this Act.

- (3) When the members of a smaller group are members of a group constituted under subsection (1) or (2), the smaller group is no longer treated as a group for the purposes of this Act.
- (4) The Commissioner may exclude a person from a group in accordance with section 38.

*[Section 36 amended by No. 15 of 2010 s. 24; No. 29 of 2012 s. 29.]*

**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, by written notice, exclude a person from a group under section 31(4), 32(3), 35A(4) 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.
- (2) However, a corporation cannot be excluded from a group if it and another corporation which is a member of the group are related bodies corporate.
- (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.
- (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).

*[Section 38 amended by No. 15 of 2010 s. 25; No. 32 of 2012 s. 40.]*

**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; and
  - (b) be accompanied by any information required by the Commissioner; and
  - (c) be executed by or for each member of the group; and
  - (d) be served on the Commissioner.
- (3) If the members of a group do not designate a DGE for the group, the Commissioner may on his or her initiative designate one of the members to be the DGE for the group for the purposes of a pay-roll tax Act.
- (4) A designation by the Commissioner is to be made by notice served on the member designated as the DGE.

- (5) An employer who is the DGE for a group stops or is taken to have stopped being the group's DGE on the first day of a return period of the employer during which either of the following happens —
  - (a) the employer leaves the group; or
  - (b) the designation is revoked.
- (6) The members of a group may revoke the designation by giving the Commissioner notice in the approved form.
- (7) The members of a group are not entitled to revoke a designation unless —
  - (a) the members designate another member to be the DGE; or
  - (b) the Commissioner consents to the revocation.
- (8) If the Commissioner designated a member of a group as the DGE, the Commissioner may revoke the designation by giving notice of the revocation to the member.



## Part 5 — 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) to a person who is staff member as defined in the *Health Services Act 2016* section 6 of a health service provider, in connection with that person's employment in, or engagement under a contract for services by, the health service provider under that Act; 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 performed in connection with the conduct of such schools or colleges; or

- (g) by a local government, a regional local government, a regional subsidiary 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) deleted]*

- (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) deleted]*

- (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 FES Unit, an SES Unit or a VMRS Group under the *Fire and Emergency Services Act 1998*; or

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- (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.
- (2A) The exemption provided for by subsection (2)(d) does not apply to wages that are paid or payable to a staff member to the extent that the person's employment or engagement is in connection with a commercial activity referred to in the *Health Services Act 2016* section 35 unless the commercial activity is, or is in a class of commercial activity, prescribed in the regulations for the purposes of this subsection.
- (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.

*[Section 40 amended by No. 77 of 2006 s. 4; No. 44 of 2008 s. 59; No. 15 of 2010 s. 13; No. 22 of 2012 s. 131; No. 11 of 2016 s. 298; No. 26 of 2016 s. 80; No. 7 of 2018 s. 4.]*

**41A. Exempt wages: parental and adoption leave**

- (1) In this section —

*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 rate of pay per pay period that the employee would ordinarily be paid, irrespective of the actual period of leave.

Note:

For example, the exemption may apply to wages paid or payable for a 28 week period of maternity leave if the wages are paid at half the rate at which the wages would normally be paid or payable to the employee.

- (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; amended by No. 29 of 2012 s. 30.]*

**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.]*

**41C. Exempt wages: DSC disability support and disability wages subsidy**

- (1) In this section —

***Disability Services Commission*** means the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;

***disability wages subsidy*** means —

- (a) a wages subsidy provided by the Commonwealth to employers who employ persons with a disability, under the Wages Subsidy Scheme carried on in accordance with the deed entitled “Disability Employment Services Deed 2010-2012”; or
- (b) a wages subsidy provided by the Commonwealth (directly or indirectly) to employers who employ persons with a disability, that is prescribed for the purposes of this definition;

***DSC disability support*** means a disability service, within the meaning of paragraph (a) of the definition of ***disability service*** in the *Disability Services Act 1993* section 3, provided by or under an arrangement with the Disability Services Commission;

***new employee*** has the meaning given in subsection (4).

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- (2) Wages paid or payable to or in relation to a new employee in respect of a period during the 24 months commencing on the day on which the employee first commenced employment with the employer are, or are to be treated as if they were, exempt from pay-roll tax if —
- (a) the employer received or was entitled to receive a disability wages subsidy in respect of the employee on or before the day on which the employee first commenced employment with the employer; or
  - (b) the employee was eligible for some form of DSC disability support on the day on which the employee first commenced employment with the employer, and the following apply —
    - (i) the employee was, on that day, of or above the minimum age necessary to engage in that employment;
    - (ii) the employee is employed and remunerated in accordance with a binding award or other industrial determination or order or an industrial agreement.
- (3) If the Commissioner is satisfied that the employer dismissed or reduced the working hours of an employee solely or primarily in anticipation of, or as a consequence of, employing the new employee —
- (a) subsection (2) is taken not to have applied to the wages paid or payable to or in relation to the new employee; and
  - (b) the Commissioner must make any reassessment necessary to give effect to this subsection.
- (4) An employee of an employer is a *new employee* if the employee —
- (a) commences employment with the employer on or after 1 July 2012; and

- (b) was not an employee of the employer, or of any other employer in a group of which the employer is a member, at any time prior to the commencement of employment referred to in paragraph (a).
- (5) Regulations prescribing a wages subsidy for the purposes of the definition of *disability wages subsidy* in subsection (1) may be made and published during a year for which the prescription is expressed to have effect.

[Section 41C inserted by No. 32 of 2012 s. 41.]

**41D. Exempt wages: apprentices and trainees under training contracts**

- (1) In this section —
- apprentice* has the meaning given in the VET Act section 60A;
- class A or class B qualification* means a prescribed VET qualification (as defined in the VET Act section 5(1)) that is classified as a class A qualification or class B qualification under the VET Act section 60C;
- group member*, in relation to an employer, means another employer in a group of which the employer is a member;
- initial employer*, in relation to an employee and a training contract, means the employer who enters into the contract with the employee and does not include another employer to whom the contract is assigned;
- nominal period*, in relation to a training contract, means the nominal period or nominal term (however described) that applies under a requirement for the training contract imposed under the VET Act section 60C(5);
- registered training contract* means a training contract that has been registered under the VET Act section 60F;
- training contract* has the meaning given in the VET Act section 60A;
- VET Act* means the *Vocational Education and Training Act 1996*.

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- (2) Wages paid or payable by an employer to or in relation to an employee are exempt from pay-roll tax if the wages are paid or payable for a period during which the employee is an apprentice under a registered training contract that —
- (a) is for a class A or class B qualification; and
  - (b) in accordance with a requirement imposed under the VET Act section 60C(5), refers to the apprentice under the training contract as an “apprentice”.
- (3) Wages paid or payable by an employer to or in relation to an employee are exempt from pay-roll tax if —
- (a) the wages are paid or payable for a period during which the employee is an apprentice under a registered training contract that —
    - (i) is for a class A or class B qualification; and
    - (ii) in accordance with a requirement imposed under the VET Act section 60C(5), refers to the apprentice under the training contract as a “trainee”; and
    - (iii) has not been in effect for longer than the nominal period for the training contract;and
  - (b) the employee is an eligible new employee under subsection (4); and
  - (c) on the day on which the training contract was lodged for registration under the VET Act section 60F(2) —
    - (i) there had not been any previous registered training contract between the employee and the initial employer or a group member of the initial employer; and
    - (ii) the employee’s pay entitlement did not exceed the threshold amount worked out under subsection (5).



- (4) For the purposes of subsection (3)(b), the employee is an eligible new employee unless, immediately preceding the commencement date stated in the training contract, the employee had been continuously employed by the initial employer or by the initial employer and one or more group members of the initial employer —
- (a) in full-time employment for more than 3 months; or
  - (b) in part-time or casual employment (or a combination of both) for more than 12 months; or
  - (c) in a combination of full-time employment and part-time or casual employment (or both) for a period that is more than the equivalent of 3 months of full-time employment, worked out on the basis that 4 months of part-time or casual employment are taken to be equivalent to 1 month of full-time employment.
- (5) For the purposes of subsection (3)(c)(ii), the employee's pay entitlement exceeds the threshold amount if, under the terms and conditions that apply to the employee's employment, the employee is entitled to a rate of pay for ordinary hours of work that, expressed in annualised terms, would exceed \$100 000 per annum for a full-time employee or a pro rata amount for a part-time employee.
- (6) If a training contract is suspended under the VET Act —
- (a) an exemption under subsection (2) or (3) does not apply to wages paid or payable to or in relation to the employee for the period of the suspension; and
  - (b) the period of the suspension is not to be taken into account in determining the period for which the training contract has been in effect for the purposes of subsection (3)(a)(iii).

*[Section 41D inserted by No. 7 of 2018 s. 5.]*

## **Part 6 — Miscellaneous**

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

### **41. Exempting charitable bodies or organisations**

- (1A) A charitable body or organisation is exempt under this section from liability to pay-roll tax if —
- (a) an exemption given by the Commissioner under subsection (2) is in force in respect of the body or organisation; or
  - (b) it is a relevant body in respect of which a beneficial body determination is in force for the purposes of this Act.
- (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.
- (3A) However, a charitable body or organisation that is a relevant body cannot be given an exemption by the Commissioner under subsection (2).
- (3) An exemption given by the Commissioner under subsection (2) is subject to any conditions specified in the notice.
- (4) An exemption given by the Commissioner under subsection (2) comes into operation on the day specified in the notice, which may be the day on which the notice is given, or an earlier or later day.
- (5) The day on which an exemption given by the Commissioner under subsection (2) comes into operation under subsection (4) cannot be earlier than —
- (a) if the charitable body or organisation is registered, or has at any time been registered, the commencement of the assessment year during which the application for the exemption was made; or

- (b) otherwise, the commencement of the assessment year that is 5 years before the assessment year in which the charitable body or organisation was first found by the Commissioner to be liable to pay-roll tax.
- (6) An exemption given by the Commissioner under subsection (2) continues in force until it is revoked.
- (7) The Commissioner may amend or revoke an exemption given under subsection (2) 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; No. 8 of 2015 s. 13.]*

#### **42A. What is a relevant body**

A reference to a relevant body is to any of the following —

- (a) a political party;
- (b) an industrial association;
- (c) a professional association;
- (d) a body, other than a body referred to in paragraph (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the main purposes of the body are charitable purposes that fall within the first 3 categories (being relief of poverty, advancement of education and advancement of religion) identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 as developed by the common law of Australia from time to time;
- (e) a body that is a member of a class of bodies prescribed for the purposes of this paragraph;
- (f) a body that —
  - (i) is a member of a group of which a body referred to in another paragraph is also a member; or
  - (ii) is a related body corporate of a body referred to in another paragraph; or

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- (iii) has as its sole or dominant purpose or object the conferral of a benefit, whether financial or non-financial, on a body referred to in another paragraph.

*[Section 42A inserted by No. 8 of 2015 s. 14.]*

**42B. Application for a beneficial body determination**

- (1) An application may be made to the Minister for a determination under section 42C that a relevant body is a beneficial body for the purposes of the taxation Acts if —
  - (a) the Commissioner has (the *decision*) —
    - (i) refused to give an exemption under section 41(2); or
    - (ii) revoked an exemption under section 41(7);and
  - (b) that decision is made solely on the ground that the applicant for the exemption, or the subject of the revoked exemption, is a relevant body referred to in section 42A(c), (d), (e) or (f).
- (2) An application referred to in subsection (1) can be made only if —
  - (a) an objection was made to the decision and the objection and any subsequent review proceedings are exhausted, discontinued or finally determined; or
  - (b) under the *Taxation Administration Act 2003* section 34B —
    - (i) all rights of objection or review conferred by that Act in respect of the decision have been surrendered; or
    - (ii) an objection to the decision has been determined and all rights to take review proceedings on the Commissioner's decision on the objection have been surrendered.

- (3) However, an application referred to in subsection (1) cannot be made if the decision was made, or confirmed, on a reassessment made on an application made by the taxpayer —
- (a) under the *Taxation Administration Act 2003* section 16(2)(b); and
  - (b) after the right to object to the original assessment had expired.
- (4) An application referred to in subsection (1) must be made within 60 days after subsection (2) first applies in respect of the decision.

*[Section 42B inserted by No. 8 of 2015 s. 14.]*

**42C. Beneficial body determination**

- (1) On an application under section 42B the Minister, with the Treasurer's concurrence, may determine that a relevant body is a beneficial body for the purposes of the taxation Acts.
- (2) The Minister, with the Treasurer's concurrence, may amend or revoke a beneficial body determination.
- (3) The Minister may make, amend or revoke a beneficial body determination only if the Minister is of the opinion that it is in the public interest to do so and after considering any information that the Minister considers relevant.
- (4) The Minister must —
- (a) provide written reasons to the applicant for a decision in relation to an application under section 42B; and
  - (b) provide written reasons for a decision to amend or revoke a beneficial body determination to the body in respect of which the determination is made.
- (5) The Minister is to publish notice of the making, amendment or revocation of a beneficial body determination in the *Gazette*.
- (6) A beneficial body determination is subject to the conditions specified in the determination (if any).

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- (7) A beneficial body determination made under this section comes into force —
- (a) for the purposes of this Act — on the day on which the determination is made; and
  - (b) for the purposes of the *Duties Act 2008* and the *Land Tax Assessment Act 2002* — on the day specified in the notice in respect of each Act.
- (8) Despite subsection (7)(a), a beneficial body determination made under this section applies —
- (a) on and from the day specified by the Minister in the determination, and section 41(5) applies in relation to specifying that day as if it were the day on which an exemption under section 41(2) comes into operation; and
  - (b) in relation to any liability to pay-roll tax in respect of which the relevant body would have been exempt under section 41 had a beneficial body determination been in force for the purposes of this Act in respect of the relevant body.
- (9) The Commissioner is to reassess the liability to pay-roll tax of a relevant body for the period in respect of which a beneficial body determination applies in respect of the body under subsection (8).
- (10) The limitations as to time in the *Taxation Administration Act 2003* section 17 do not apply in respect of a reassessment under subsection (9).
- (11) A beneficial body determination continues in force until the day on which notice of the revocation is published in the *Gazette*, and different days may be specified for each Act in respect of which the determination is in force.

*[Section 42C inserted by No. 8 of 2015 s. 14.]*

**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.

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- (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

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- (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.
- (4) Regulations may be expressed to apply to wages paid or payable before the day on which the regulations come into operation if the application of the regulations to the wages would not adversely affect a person who is or may be liable to pay pay-roll tax on the wages.

*[Section 45 amended by No. 82 of 2004 s. 16; No. 15 of 2010 s. 16; No. 32 of 2012 s. 42.]*

**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**

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*[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 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 *Pay-roll Tax Assessment Amendment Act 2010* received 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.

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**Schedule 1** Transitional provisions

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

**cl. 3**

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- (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 *Pay-roll Tax Assessment Regulations 2003* r. 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.]*

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

*[Heading inserted by No. 15 of 2010 s. 26.]*

**4. Exclusion from 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).

*[Clause 4 inserted by No. 15 of 2010 s. 26.]*

**5. Exclusion from 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).

*[Clause 5 inserted by No. 15 of 2010 s. 26.]*

**6. Exclusion from 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.

*[Clause 6 inserted by No. 15 of 2010 s. 26.]*

**Division 3 — Provisions consequent on enactment of Revenue Laws  
Amendment Act 2012 Part 5 Division 2**

*[Heading<sup>3</sup> inserted by No. 29 of 2012 s. 25.]*

**7. Assessment and payment of pay-roll tax in relation to employee shares and options**

Anything done or omitted to be done by an employer in connection with the assessment and payment of pay-roll tax, in respect of a month occurring after June 2009 and before July 2011, that would have been validly done or omitted to be done had the amendments made to this Act by the *Revenue Laws Amendment Act 2012* Part 5 Division 2 been in force, is taken to have been validly done or omitted.

Note:

This provision validates a decision by an employer to treat the grant of a share or an option to an employee that is not an ESS interest as a fringe benefit under Part 2 Division 2A Subdivision 2 and to determine the value of those fringe benefits in accordance with those provisions, rather than by reference to Part 2 Division 2A Subdivision 4.

*[Clause 7<sup>3</sup> inserted by No. 29 of 2012 s. 25.]*

**8. Determination of vesting day and value of employee shares and options**

(1) In this clause —

*assessment amendments* means the amendments made by the *Revenue Laws Amendment Act 2012* sections 19 and 21;

*new section 9DA* means section 9DA as amended by the *Revenue Laws Amendment Act 2012* section 18;

*old section 9DA* means section 9DA as in force immediately before 1 July 2011;

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**Schedule 1** Transitional provisions

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*relevant day* has the meaning given in section 9DA(4).

- (2) Part 2 Division 2A Subdivision 4 continues to apply in respect of a share or an option granted before 1 July 2011 that constituted wages under old section 9DA, whether or not the grant of the share or option would constitute wages under new section 9DA, if the relevant day in relation to the grant of the share or option is not a day occurring before 1 July 2011.

Note:

For example, a share granted before 1 July 2011 that is not an ESS interest continues to be treated as wages under Part 2 Division 2A Subdivision 4 if the vesting day for the share did not occur before 1 July 2011 and the employer did not elect to treat the day of the grant as the relevant day.

- (3) Sections 9DB and 9DD as amended by the assessment amendments apply in respect of any such share or option.
- (4) Accordingly, the vesting day and the value of the share or option are to be determined in accordance with those sections as amended by the assessment amendments.
- (5) This clause does not apply in respect of a share or an option granted before 1 July 2011 if the liability for pay-roll tax in respect of the grant is determined in accordance with Part 2 Division 2A Subdivision 2 (as permitted by clause 7).

[Clause 8<sup>3</sup> inserted by No. 29 of 2012 s. 25.]

**9. Shares and options granted on or after 1 July 2011 and before Revenue Laws Amendment Act 2012 received Royal Assent**

Subject to the *Taxation Administration Act 2003* section 17(4), if an employer granted a share or an option to a person —

- (a) on or after 1 July 2011; and
- (b) before the *Revenue Laws Amendment Act 2012* received the Royal Assent,

the Commissioner must make any reassessment necessary to give effect to this Act as amended by the *Revenue Laws Amendment Act 2012* Part 5 Division 2.

[Clause 9<sup>3</sup> inserted by No. 29 of 2012 s. 25.]

**Division 4 — Provisions for the *Taxation Legislation Amendment Act (No. 2) 2015***

*[Heading inserted by No. 8 of 2015 s. 15.]*

**10. Terms used**

In this Division —

**commencement day** means the day on which the *Taxation Legislation Amendment Act (No. 2) 2015* Part 4 comes into operation;

**exemption** means an exemption under section 41;

**new provisions** means sections 41, 42A, 42B and 42C as in force immediately after commencement day;

**previously exempt charitable body or organisation** means a charitable body or organisation in respect of which an exemption was in force immediately before commencement day.

*[Clause 10 inserted by No. 8 of 2015 s. 15.]*

**11. Exemptions currently held by relevant bodies may be revoked**

- (1) If the Commissioner forms the preliminary view that a previously exempt charitable body or organisation may be a relevant body then the Commissioner is to give notice (**preliminary notice about an exemption under section 41**) to that body or organisation informing it —
  - (a) that the Commissioner has formed such a preliminary view; and
  - (b) that the exemption may be revoked under this clause; and
  - (c) that if the exemption is revoked under this clause, the revocation will have effect on and from the day specified in the notice, being a day that is at least 2 months after the day on which the notice is given (the **specified day**).
- (2) If preliminary notice about an exemption under section 41 is given the Commissioner is to decide whether or not the previously exempt charitable body or organisation is a relevant body.

- (3) If the Commissioner decides that the previously exempt charitable body or organisation is a relevant body, the Commissioner, by notice given to the body or organisation, is to —
- (a) revoke the exemption; and
  - (b) inform the previously exempt charitable body or organisation of the grounds on which the decision to revoke the exemption was made.
- (4) The revocation of an exemption under this clause has effect —
- (a) on and from the specified day; and
  - (b) for the purposes of an application under section 42B, as if the revocation were made under section 41(7).
- (5) If the Minister makes a determination under section 42C of the new provisions that the previously exempt charitable body or organisation in respect of which an exemption was revoked is a beneficial body for the purposes of the taxation Acts, then the new provisions apply in relation to that determination as if —
- (a) a reference in section 42C(7)(a) to the day on which the determination comes into force for the purposes of this Act were a reference to the specified day; and
  - (b) a reference in section 42C(8) to the day on and from which the beneficial body determination applies were a reference to the specified day.

*[Clause 11 inserted by No. 8 of 2015 s. 15.]*

**12. Exemptions for periods before the commencement of the *Taxation Legislation Amendment Act (No. 2) 2015 Part 4***

- (1) This clause applies to a charitable body or organisation if, after commencement day —
- (a) the charitable body or organisation becomes registered and applies for an exemption; and
  - (b) the Commissioner decides that the charitable body or organisation is a relevant body.



- (2) Despite section 41(3A), the Commissioner may give an exemption under section 41(2) to a charitable body or organisation to which this clause applies but such an exemption —
- (a) does not apply to the period on and after commencement day; and
  - (b) is to be taken to have been revoked immediately before that day.

*[Clause 12 inserted by No. 8 of 2015 s. 15.]*

**13. A body or organisation given an exemption under clause 12 may apply for a beneficial body determination**

- (1) If the Commissioner makes a decision under clause 12(1)(b) solely on the ground that the charitable body or organisation is a relevant body referred to in section 42A(c), (d), (e) or (f) (the *relevant body*), then —
- (a) an application may be made under section 42B for a beneficial body determination in respect of the relevant body; and
  - (b) the new provisions apply to and in respect of that application, and any subsequent determination, as if a reference in section 42B(1) to the decision were a reference to the decision of the Commissioner under clause 12(1)(b).
- (2) If the Minister makes a beneficial body determination under section 42C in respect of a relevant body, then the new provisions apply in relation to that determination as if —
- (a) a reference in section 42C(7)(a) to the day on which the determination comes into force for the purposes of this Act were a reference to commencement day; and
  - (b) a reference in section 42C(8) to the day on and from which the beneficial body determination applies were a reference to commencement day.

*[Clause 13 inserted by No. 8 of 2015 s. 15.]*

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

*[Heading inserted by No. 15 of 2015 s. 18.]*

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

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

*[Clause 14 inserted by No. 15 of 2015 s. 18.]*

**Division 6 — Provisions for the *Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018***

*[Heading inserted by No. 7 of 2018 s. 6.]*

**15. Terms used**

In this Division —

***apprentice*** has the meaning given in the *Vocational Education and Training Act 1996* section 60A;

***commencement day*** means 1 December 2017, being the day on which the *Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018* section 6 is deemed, under section 2(b) of that Act, to have come into operation;

***existing training contract*** means a training contract that was lodged for registration under the *Vocational Education and Training Act 1996* section 60F(2) before commencement day.

*[Clause 15 inserted by No. 7 of 2018 s. 6.]*

**16. Modification of s. 41D for existing training contracts**

Section 41D applies in relation to an employee who is an apprentice under an existing training contract as if section 41D(3)(b) and (c)(i) were omitted.

*[Clause 16 inserted by No. 7 of 2018 s. 6.]*

**17.      Reassessment**

Subject to the *Taxation Administration Act 2003* section 17, the Commissioner must make any reassessment necessary as a result of the amendments made by the *Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018* coming into operation on commencement day.

*[Clause 17 inserted by No. 7 of 2018 s. 6.]*

## Glossary

[s. 4]

### 1. Terms used

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);

**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;

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

**business** includes —

- (a) a profession or trade; and

- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity of employing one or more persons who perform duties for or in connection with another business; and
- (d) the carrying on of a trust (including a dormant trust); and
- (e) the activity of holding any money or property used for or in connection with another business,

whether carried on by one person or 2 or more persons together;

**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;

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

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

**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<sup>4</sup>;

**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 —
  - (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;

**FBT year** means a year ending on 31 March;

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

**fringe benefit** means anything that is a fringe benefit under the FBTA Act except a benefit prescribed not to be a fringe benefit for the purposes of this definition;

**group** means a group constituted under Part 4;

**GST** has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth except that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

**individual superannuation guarantee shortfall** has the same definition as it has in the Superannuation Guarantee Act;

**industrial association** means any of the following —

- (a) an organisation registered under the *Industrial Relations Act 1979* section 53 or 54;
- (b) an association of employees, or an association of employers, registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);
- (c) an association of employees registered or recognised as a trade union (however described) under the law of another State or a Territory;
- (d) an association of employers registered or recognised as such (however described) under the law of another State or a Territory;
- (e) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment;

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

**pay-roll tax rate**, in relation to an employer or group and an assessment year, part of an assessment year or a progressive return period, means the rate of pay-roll tax fixed for the employer or group and the year, part-year or period under the *Pay-roll Tax Act 2002*;

**political party** means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth, or to a Parliament of a State or Territory, of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;

**professional association** means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the interests of its members in any profession;

**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;

**promote trade, industry or commerce** includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce;



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

**relevant body** has the meaning given in section 42A;

**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; or
- (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;

**sliding scale period** has the meaning given in the *Pay-roll Tax Act 2002* section 5(3);

**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);

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

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

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

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

**upper threshold amount** means the amount fixed under section 8(3);  
**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) and 27; No. 29 of 2012 s. 26; No. 32 of 2012 s. 43; No. 8 of 2015 s. 16; No. 15 of 2015 s. 19; No. 20 of 2017 s. 10.]

[Modification, to clause 1, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999, see note 1M.]

[Modification, to clause 1, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth), see note 1MC.]

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

**cl. 1**

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## Notes

- <sup>1</sup> 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 <sup>1M, 1MC</sup>. 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> Pt. 2 <sup>5</sup>	82 of 2004	8 Dec 2004	Pt. 2 Div. 1 and 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))
<b>Reprint 1: The <i>Pay-roll Tax Assessment Act 2002</i> as at 6 Jan 2006</b> (includes amendments listed above except those in the <i>Revenue Laws Amendment (Tax Relief) Act 2004</i> Pt. 2 Div. 3)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) 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 2009 (see s. 2(2))
<i>Pay-roll Tax Assessment Amendment Act 2010</i> Pt. 2	15 of 2010	25 Jun 2010	Pt. 2 Div. 1 and 2: 25 Jun 2010 (see s. 2(a)); Pt. 2 Div. 3: 1 Jul 2012 (see s. 2(b))
<b>Reprint 2: The <i>Pay-roll Tax Assessment Act 2002</i> as at 15 Oct 2010</b> (includes amendments listed above except those in the <i>Pay-roll Tax Assessment Amendment Act 2010</i> Pt. 2 Div. 3)			
<i>Fire and Emergency Services Legislation Amendment Act 2012</i> Pt. 7 Div. 10	22 of 2012	29 Aug 2012	1 Nov 2012 (see s. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Revenue Laws Amendment Act 2012 Pt. 5</i>	29 of 2012	3 Sep 2012	Heading to Pt. 5, Pt. 5 Div. 1 and 2: 1 Jul 2011 (see s. 2(c)); Pt. 5 Div. 3: 4 Sep 2012 (see s. 2(e))
<i>Revenue Laws Amendment Act (No. 2) 2012 Pt. 5</i>	32 of 2012	8 Oct 2012	1 Jul 2012 (see s. 2(d)(ii))
<b>Reprint 3: The Pay-roll Tax Assessment Act 2002 as at 17 Jan 2014</b> (includes amendments listed above)			
<i>Revenue Laws Amendment Act 2014 Pt. 4</i>	15 of 2014	2 Jul 2014	1 Jul 2014 (see s. 2(c)(ii))
<i>Taxation Legislation Amendment Act (No. 2) 2015 Pt. 4</i>	8 of 2015	9 Mar 2015	10 Mar 2015 (see s. 2(b))
<i>Taxation Legislation Amendment Act (No. 3) 2015 Pt. 4</i>	15 of 2015	26 May 2015	1 Jul 2015 (see s. 2(b)(i))
<i>Health Services Act 2016 s. 298</i>	11 of 2016	26 May 2016	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291)
<i>Local Government Legislation Amendment Act 2016 Pt. 3 Div. 27</i>	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
<i>Pay-roll Tax Assessment Amendment (Debt and Deficit Remediation) Act 2017</i>	20 of 2017	13 Dec 2017	s. 1 and 2: 13 Dec 2017 (see s. 2(a)); Act other than s. 1 and 2: 14 Dec 2017 (see s. 2(b))
<i>Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018</i>	7 of 2018	18 May 2018	Act other than s. 1 and 2: 1 Dec 2017 (see s. 2(b)); s. 1 and 2: 18 May 2018 (see s. 2(a))

<sup>1M</sup> Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7, modifications to State taxing laws may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007*. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

<sup>1MC</sup> Under the *Commonwealth Places (Mirror Taxes) Act 1998* (Commonwealth) s. 8, modifications to State taxing laws, in their application as Commonwealth laws in Commonwealth places in Western Australia, may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes) (Modifications of Applied*

*Laws (WA) Notice 2007* (Commonwealth). If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1MC appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1MC appearing after the defined term.

<sup>2</sup> Repealed by the *Taxation Administration (Consequential Provisions) Act 2002* s. 5.

<sup>3</sup> Renumbered under the *Reprints Act 1984* s. 7(5)(c)(ii).

<sup>4</sup> Repealed by the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* (Commonwealth).

<sup>5</sup> The *Revenue Laws Amendment (Tax Relief) Act 2004* s. 5(6) and 15(7) read as follows:

**5. Section 29 amended and transitional provision**

...

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

**15. Section 29 amended and transitional provision**

...

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

## Defined terms

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

<b>Defined term</b>	<b>Provision(s)</b>
ABN .....	Gl.
actual value .....	9BB(2), Gl.
actuary.....	Gl.
adoption leave .....	41A(1)
agent.....	Gl.
aggregate interest .....	35D(1)
annual threshold amount .....	Gl.
apprentice.....	41D(1), Sch. 1 cl. 15
assessment amendments.....	Sch. 1 cl. 8(1)
assessment year .....	Gl.
associated person .....	35A(1)
Australian jurisdiction.....	Gl.
Australian superannuation fund .....	Gl.
Australian taxable wages .....	Gl.
business .....	Gl.
charitable body or organisation.....	Gl.
class A or class B qualification .....	41D(1)
commencement day .....	Sch. 1 cl. 10 and cl. 15
Commonwealth income tax provisions .....	9DD(1)
company.....	Gl.
controlling interest .....	Gl.
corporation .....	Gl.
Corporations Act.....	Gl.
corresponding law .....	Gl.
decision).....	42B(1)
defined benefit fund .....	Gl.
defined superannuation benefit .....	Gl.
designated group employer .....	Gl.
DGE .....	Gl.
direct interest.....	35B(1)
directly controlled corporation.....	35C(1)
director .....	Gl.
Disability Services Commission .....	41C(1)
disability wages subsidy .....	41C(1)
DSC disability support.....	41C(1)
employee.....	9CA
employer .....	9CA, Gl.
employment agent.....	Gl.
employment termination payment .....	9EA(2)
entity .....	35A(1)



exempt.....	Gl.
exemption .....	Sch. 1 cl. 10
existing training contract.....	Sch. 1 cl. 15
expected pay-roll tax liability .....	28A(3), 29(1b)
FBT year .....	Gl.
FBTA Act .....	Gl.
fringe benefit.....	Gl.
group .....	Gl.
group member .....	41D(1)
GST .....	Gl.
indirect interest .....	35C(1)
indirectly controlled corporation.....	35C(3)
individual superannuation guarantee shortfall .....	Gl.
industrial association.....	Gl.
initial employer .....	41D(1)
instrument .....	6D(1)
interstate non-group employer .....	Gl.
interstate taxable wages .....	Gl.
ITA Act.....	Gl.
local company .....	9DH(1)
local non-group employer .....	Gl.
maternity leave.....	41A(1)
monthly threshold amount .....	Gl.
motor vehicle allowance .....	Gl.
new employee .....	41C(1) and (4)
new provisions .....	Sch. 1 cl. 10
new section 9DA.....	Sch. 1 cl. 8(1)
nominal period .....	41D(1)
nominated deduction .....	Gl.
non-group employer.....	Gl.
non-profit organisation.....	Gl.
notional contribution .....	9CA
old section 9DA .....	Sch. 1 cl. 8(1)
option .....	Gl.
paid .....	Gl.
parental leave .....	41A(1)
part-year .....	10(3), 13(4), 23C(1)
pay.....	Gl.
payable .....	Gl.
pay-roll tax .....	Gl.
pay-roll tax Act .....	Gl.
pay-roll tax rate .....	Gl.
period or part-period .....	11(1)
political party .....	Gl.
preliminary notice about an exemption under section 41.....	Sch. 1 cl. 11(1)

**Defined terms**

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previously exempt charitable body or organisation .....	Sch. 1 cl. 10
private company .....	35A(1)
professional association .....	Gl.
progressive return period .....	Gl.
promote trade, industry or commerce .....	Gl.
provide .....	Gl.
quarter .....	29(4d)
registered.....	Gl.
registered business address .....	Gl.
registered training contract .....	41D(1)
related body corporate.....	Gl.
related person.....	35A(1)
relevant body.....	Sch. 1 cl. 13(1), Gl.
relevant day.....	9DA(4), Sch. 1 cl. 8(1)
remote location .....	Gl.
return.....	Gl.
return period.....	Gl.
share .....	Gl.
sliding scale period .....	Gl.
smaller group .....	Gl.
specified day .....	Sch. 1 cl. 11(1)
specified exempt allowance .....	Gl.
specified taxable benefit .....	Gl.
State .....	Gl.
superannuation contribution.....	9CA
superannuation fund.....	Gl.
Superannuation Guarantee Act .....	Gl.
tapering value.....	Gl.
taxes .....	42(2), 43(11), Gl.
tax-reducing arrangement .....	Gl.
termination payment .....	9EA(2)
Territory .....	Gl.
training contract .....	41D(1)
trustee.....	Gl.
unused annual leave payment .....	9EA(2)
unused long service leave payment.....	9EA(2)
upper threshold amount.....	Gl.
value.....	Gl.
vesting day .....	9DB(2) and (3)
VET Act.....	41D(1)
voting share.....	Gl.
WA fringe benefits.....	Gl.
WA taxable wages .....	5(2), Gl.
wages .....	9AA(1), 9DA(1), 9DG(1), Gl.

