

# REVENUE LAWS AMENDMENT (TAXATION) BILL 2001

## EXPLANATORY MEMORANDUM

### PART 1 - PRELIMINARY

This part contains the title of the Act and the relevant commencement provisions.

**Clause 1: Short title**

This clause contains the short title and citation.

**Clause 2: Commencement**

Subclause (1) provides that the Act commences on the day that it receives the Royal Assent, subject to the remainder of the clause.

Subclause (2) provides that Part 2 containing amendments to the Pay-roll Tax Act commence on 1 July 2001, if the Act receives the Royal Assent on or before 1 July 2001.

Subclause (3) provides that Part 2 is deemed to have commenced on 1 July 2001, if the Act receives the Royal Assent after 1 July 2001.

Subclause (4) provides that the Stamp Act amendments contained in Part 3 commence on 30 June 2001, if the Act receives the Royal Assent on or before 30 June 2001.

Subclause (5) provides that Part 3 is deemed to have commenced on 30 June 2001, if the Act receives the Royal Assent after 30 June 2001.

### PART 2 – PAY-ROLL TAX ACT 1971 AMENDED

This Bill seeks to implement 2 measures in relation to the calculation of the rate of pay-roll tax:

- to include wages paid throughout Australia for all members of a group; and
- to ensure that the pay-roll tax rate thresholds are apportioned over the financial year where an employer has changed status during the year by commencing or ceasing to pay wages or becoming a member of a group.

#### **Inclusion of wages paid throughout Australia for all members of a group**

The tax rate for a non-group employer is based on the wages paid by that employer throughout Australia during a financial year. The tax rate for a group employer is based on the total wages paid throughout Australia by those members of the group that pay wages in Western Australia, with the wages of members that only pay wages outside of Western Australia being disregarded.

This is inconsistent with the method of calculating the prescribed amount (liability threshold) under the Pay-roll Tax Assessment Act. In calculating the prescribed amount, the Australia-wide wages of all members of the group are taken into account.

The current rate calculation mechanism that excludes wages paid by those group members that do not pay wages in Western Australia can provide an unfair tax advantage.

The proposed amendments do not make liable any employer that would not be liable under current provisions, but may affect the rate at which pay-roll tax is payable where a group contains some members that do not pay wages in Western Australia.

To ensure a level playing field for employers, it is desirable that two groups paying the same amount of wages in Australia over any period be subject to pay-roll tax at the same rate on those wages, regardless of where those wages are paid.

### **Change of status during a financial year**

An anomaly arises where an employer changes status from a non-group employer to a group employer or vice versa during a financial year. The Pay-roll Tax Act requires that the rate of tax be calculated separately for each status period (ie. as a non-group employer and as a group employer) as if the employer had paid wages in each status category for the full financial year. As a result, a lower tax rate may apply than if the employer did not change status.

This is inconsistent with the method of calculating the prescribed amount (liability threshold) under the Pay-roll Tax Assessment Act. In calculating the prescribed amount, the number of days during the financial year in which wages were paid in each status period (ie. as a non-group employer or as a group employer) is taken into account, thereby, where necessary, apportioning the prescribed amount between status periods.

The current rate calculation mechanism for employers that pay wages for a full financial year but change status during the year can provide an unfair tax advantage.

The proposed amendments may also affect employers who did not operate for a complete financial year (ie. commenced or ceased to be an employer part way through a financial year).

The Act provides for the rate of tax to be calculated upon the wages paid by an employer during a financial year. As most employers pay wages over the full financial year, this is appropriate.

However, even if an employer only pays wages for a part of a year, the pay-roll tax rate is currently calculated as if the employer paid those wages over the full year rather than over the period in which wages were actually paid. As a result, a lower rate of tax may apply.

To ensure a level playing field for employers, it is desirable that two employers paying the same amount of wages over any period, be subject to pay-roll tax at the

same rate on those wages, regardless of whether one employer pays wages for only part of the year while the other pays wages all year round.

The proposed amendments seek to make the pay-roll tax rate calculation consistent with the principle on which the prescribed amount is calculated.

This is achieved by apportioning the annual wage thresholds used to calculate the tax rate over the period that:

- an employer pays wages; and
- is classified as a non-group employer; or
- is classified as a group employer.

The only exception to this would be a seasonal employer (eg. a fishing fleet operator or shearing contractor) whose wages may fluctuate with different periods of the financial year. Part 2 of the Revenue Laws Amendment (Assessment) Act 2001 amends the Pay-roll Tax Assessment Act 1971 so that in such cases, the Commissioner of State Revenue has the discretion, as currently exists with the pay-roll tax liability threshold (prescribed amount), such that where the Commissioner is satisfied that the employer conducted the trade or business during the whole financial year, the employer is treated as an employer for the full financial year. Where the Commissioner is satisfied that the employer conducted the trade or business during only part of a financial year, the employer will be treated as an employer during that part of the financial year. Such treatment in these cases is not considered to offer any advantage, as similar employers would also be subject to seasonal employment demand.

The proposed amendments do not make liable any employer that would not be liable under current provisions, but may affect the rate at which pay-roll tax is payable where a change in the employer's status has occurred during the financial year, or where an employer paid wages for only part of a financial year.

**Clause 3:     The Act amended by this Part**

This clause provides that the amendments are to the *Pay-roll Tax Act 1971*.

**Clause 4:     Section 5 replaced**

This clause repeals section 5 and inserts a new section 5.

Subsection (1) sets out to whom this section applies. The section applies to an employer who, at any time during the financial year, is not a member of a group and, during the period that the employer is not a member of a group, does not pay any interstate wages. Where any interstate wages are paid during the period that the employer is not a member of a group, the rate of pay-roll tax for the period will be calculated in accordance with section 6.

Subsection (2) provides the method of calculating the rate of pay-roll tax for a month by an employer to whom section 5 applies. The calculation introduces a new variable “M” such that the pay-roll tax thresholds are apportioned for the proportion of the month the employer is one to whom section 5 applies. The apportionment will be required where an employer commences or ceases to be an employer during a month. Paragraphs (a) to (d) deal with different wage levels.

Subsection (3) provides a method of calculating the rate of pay-roll tax payable for the year or relevant part of the year. As an employer to whom this section applies may pay pay-roll tax at a different rate each month based upon wages paid during that month, this subsection allows for a reconciliation process to determine the rate for the year or relevant part of the year.

The calculation now introduces a new variable “Y” such that the pay-roll tax rate thresholds are apportioned for the proportion of the year that an employer is one to whom section 5 applies. Paragraphs (a) to (d) deal with different wage levels.

Subsection (4) provides an explanation of the new variables “M” and “Y”.

“M” is the proportion of the month that an employer is one to whom section 5 applies and is calculated by dividing the number of days in the month that the employer was an employer of this type by the number of days in the month.

“Y” is the proportion of the year that an employer is one to whom section 5 applies and is calculated by dividing the number of days in the year that the employer was an employer of this type by the number of days in the financial year.

**Clause 5: Section 6 amended**

Subclause (1) repeals section 6(1) and inserts a new subsection (1).

Subsection (1) sets out to whom this section applies. The section applies to an employer who, at any time during the financial year, is not a member of a group and, during the period that the employer is not a member of a group, pays some interstate wages. Where no interstate wages are paid during the period that the employer is not a member of a group, the rate of pay-roll tax for the period will be calculated in accordance with section 5.

Subclause (2) repeals sections 6(6) and 6(7) and inserts new subsections (6), (7) and (8).

Subsection (6) provides a method of calculating the rate of pay-roll tax payable each month by an employer to whom section 6 applies and is

based upon an estimate of the total interstate wages and taxable wages to be paid or payable for the financial year or the relevant part of the financial year.

The calculation introduces a new variable “Y” such that the pay-roll tax rate thresholds are apportioned for the estimated proportion of the year that an employer is likely to be an employer to whom section 6 applies. Paragraphs (a) to (d) deal with different wage levels.

Subsection (7) provides a method of calculating the rate of pay-roll tax payable for the year or relevant part of the year. As an employer to whom this section applies pays pay-roll tax each month based upon estimated wages, this subsection allows for a reconciliation process once actual wages paid or payable are known and is based on the total interstate wages and taxable wages paid or payable.

The calculation introduces a new variable “Y” such that the pay-roll tax rate thresholds are apportioned for the proportion of the year that an employer is an employer to whom section 6 applies. Paragraphs (a) to (d) deal with different wage levels.

Subsection (8) provides an explanation for the new variable “Y”.

As “Y” is used in both subsections (6) and (7) it is either the estimated (in the case of subsection (6)) or actual (in the case of subsection (7)) proportion of the year that an employer is an employer to whom section 6 applies and is calculated by dividing the estimated or actual number of days in the year that the employer was an employer of this type by the number of days in the financial year.

**Clause 6: Section 7 amended**

Subclause (1) repeals section 7(1) and inserts a new subsection (1).

Subsection (1) sets out to whom this section applies. The section applies to employers that are members of a group containing at least one member that pays taxable wages. Accordingly, this section applies to members that pay taxable wages and also to those members that pay only interstate wages. The section declares the rate of pay-roll tax payable by each group member that pays taxable wages.

Subclause (2) amends section 7(3) by deleting the words “in Western Australia”. This amendment is to remove any argument that the wages must be physically paid in Western Australia and ensures that the subsection will apply in respect of those members of the group that pay wages liable to pay-roll tax in Western Australia.

Subclause (3) amends section 7(4) so that where a request is made under subsection (3) for a lesser rate of tax, estimates of interstate and

taxable wages for all members of the group (including those members that do not pay taxable wages) must be provided.

Subclause (4) amends section 7(5) so that where a designated group employer is not able to provide the estimates and information required under subsection (4), each member of the group (including those members that do not pay taxable wages) must undertake to supply the estimates and information directly to the Commissioner.

Subclause (5) amends section 7(6) by deleting the words “in Western Australia”. This amendment is to remove any argument that the wages must be physically paid in Western Australia and ensures that the subsection will apply in respect of those members of the group that pay wages liable to pay-roll tax in Western Australia.

Subclause (6) repeals sections 7(7) and 7(8) and inserts new subsections (7), (8) and (9).

Subsection (7) provides a method of calculating the rate of pay-roll tax payable each month by an employer to whom section 7 applies and is based upon an estimate of the total interstate wages and taxable wages to be paid or payable for the financial year or the relevant part of the financial year by all members of the group.

The calculation introduces a new variable “Y” such that the pay-roll tax rate thresholds are apportioned for the estimated proportion of the year that the group will pay any wages. Paragraphs (a) to (d) deal with different wage levels.

Subsection (8) provides a method of calculating the rate of pay-roll tax payable for the year or relevant part of the year. As an employer to whom this section applies pays pay-roll tax each month based upon estimated wages, this subsection allows for a reconciliation process once actual wages paid or payable are known. It provides a method of calculating the rate of pay-roll tax payable for the year or the relevant part of the year based on the total interstate wages and taxable wages paid or payable.

The calculation introduces a new variable “Y” such that the pay-roll tax rate thresholds are apportioned for the proportion of the year that the group pays wages. Paragraphs (a) to (d) deal with different wage levels.

Subsection (9) provides an explanation for the new variable “Y”.

As “Y” is used in both subsections (7) and (8) it is either the estimated (in the case of subsection (7)) or actual (in the case of subsection (8)) proportion of the year that wages were paid or payable by a member of the group.

Subclause (7) amends section 7(12) by deleting the words “that pays taxable wages in Western Australia”. The effect of this amendment is that if any member of the group, including those that do not pay wages that are taxable in Western Australia, do not provide actual wages, the highest rate of pay-roll tax will apply.

**Clause 7: Existing rates and liabilities not affected**

This clause ensures that these amendments do not apply to wages paid or payable prior to 1 July 2001 and the provisions in force prior to 1 July 2001 will continue to apply to such wages.

**PART 3 – STAMP ACT 1921 AMENDED**

The Bill seeks to restore small businesses to the position that they were in before 1998-99 by reducing the rate of stamp duty applicable to their workers’ compensation insurance from 5% to 3%.

These amendments are intended to operate such that the 5% rate of duty will apply to the workers’ compensation insurance policies of all employers who, in the 12 months immediately preceding the date that their policies come into effect:

- had a liability for pay-roll tax in Western Australia; or
- paid wages that were exempt from pay-roll tax in Western Australia and employed an average number of full time equivalent employees of 15 or more.

It is proposed that the 3% rate of duty will apply to the workers’ compensation insurance policies of all other employers.

To ensure that most small businesses receive the benefit of a reduced rate of stamp duty for the full financial year, it is proposed that these amendments apply to worker’s compensation insurance policies that commence on or after 30 June 2001.

**Clause 8: Second Schedule item 16 amended**

This clause amends item 16(1)(a) of the Second Schedule by deleting that item and inserting a new item (1)(a) and (1a) in its place and removing the reference to 5% in the third column of the Schedule.

Item (1)(a) provides that, in relation to a workers’ compensation insurance policy, duty is charged at the rate of:

- (i) 5% of the amount calculated under section 96(2), if in the 12 months immediately preceding the cover period of the policy:
  - (A) an employer was liable for pay-roll tax; or
  - (B) paid wages that were not liable for pay-roll tax and employed an average of 15 (or such other number as prescribed) or more full time equivalent employees.

(ii) 3% of the amount calculated under section 96(2), for every other employer.

Item (1a) provides that the average number of full time equivalent employees referred to in subitem (1)(a)(i)(B) is to be calculated using the number of full time and part time employees engaged on the last day of each calendar month, with part time employees making up an appropriate fraction of full time employees.

This criteria enables small employers to benefit from the reduced rate of duty, as individual employers are generally liable for pay-roll tax when their annual wages exceed \$675,000.

The criteria outlined in item 16(1)(a)(i)(B) relates to employers whose wages are specifically exempted from pay-roll tax and, as a consequence, may not have a pay-roll tax liability.

In the absence of such a provision, these employers may pay stamp duty on their workers' compensation policies at the rate of 3%, even though their wages may far exceed \$675,000 per annum.

To overcome this possibility, a test has been put in place that provides an objective measure that corresponds to an annual pay-roll of approximately \$675,000.

The equivalent of 15 full time employees, or more, employed over a full year provides such a measure, as the average annualised wages of 15 employees, based on the Average Weekly Ordinary Time Earnings of employees in Western Australia, equates to approximately \$675,000 per annum.

Some flexibility has been provided in relation to the number of full time equivalent employees, recognising that the pay-roll tax threshold may vary over time, as will the average weekly earnings of employees.

Some employers with an annual pay-roll of less than \$675,000 in Western Australia will not, however, benefit from the lower rate of duty. These employers would include those that:

- are members of a large employer group, whose combined wages exceed \$675,000 per annum; and
- pay wages of less than \$675,000 in Western Australia but whose annual wages exceed that amount throughout Australia.