

Revenue Laws Amendment Bill 2005

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Revenue Laws Amendment Bill 2005

A Bill for

An Act to amend the *Pay-roll Tax Assessment Act 2002* and the *Stamp Act 1921*, and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Revenue Laws Amendment Act 2005*.

2. Commencement

- 5 (1) Subject to this section, this Act comes into operation on the day
on which it receives the Royal Assent.
- (2) Sections 4, 8, 11(1), 13(2) and (3) and sections 18 to 25 are
deemed to have come into operation on 18 May 2005.
- 10 (3) Sections 27 and 29 are deemed to have come into operation on
1 January 2004.
- (4) Section 28 is deemed to have come into operation on
1 July 2004.

Part 2 — The *Pay-roll Tax Assessment Act 2002* amended

3. The Act amended

The amendments in this Part are to the *Pay-roll Tax Assessment Act 2002**.

[* *Act No. 48 of 2002.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 327.]

4. Section 31 amended

(1) Section 31(1) is amended as follows:

(a) by deleting “a business” and inserting instead —
“ one or more businesses ”;

(b) by inserting after “other person or persons” in both
places where it occurs —

“ (separately, together or in any other combination) ”.

(2) Section 31(2)(a) is amended as follows:

(a) by deleting “a business” and inserting instead —
“ one or more businesses ”;

(b) by deleting “persons, whether alone or together with”
and inserting instead —

“
persons (separately, together or in any other
combination), whether or not with

”.

(3) Section 31(3) is amended as follows:

(a) by deleting “implied and” and inserting instead —
“ implied, ”;

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Part 2 The Pay-roll Tax Assessment Act 2002 amended

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(b) by deleting “or goods and services.” and inserting
instead —

“

5

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.

”.

Part 3 — The *Stamp Act 1921* amended

5. The Act amended

The amendments in this Part are to the *Stamp Act 1921**.

[* *Reprint 14 as at 12 September 2003.*

5 *For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 426.]*

6. Section 7 amended

- (1) Section 7(1)(d) is deleted and the following paragraph is inserted instead —

10

“

- (d) family members;

”.

- (2) After section 7(2) the following subsection is inserted —

“

15

- (3) For the purposes of subsection (1)(d), 2 persons are **“family members”** if, in relation to one person, the other person is —

20

- (a) a child or remoter lineal descendant of the person;

- (b) a parent or remoter lineal ancestor of the person;

- (c) a brother or sister of the person or remoter lineal descendant of a brother or sister of the person;

25

- (d) an aunt or uncle of the person;

- (e) the spouse, former spouse, de facto partner or former de facto partner of the person;

30

- (f) a family member referred to in paragraph (a), (b), (c) or (d) of a person referred to in paragraph (e); or

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- (g) the spouse or de facto partner of a person referred to in paragraph (a), (b), (c) or (d).

”.

7. Section 27 amended

5 Section 27(2)(b)(i) is amended by inserting after
“disposition” —

“ or transfer ”.

8. Section 73D amended

After section 73D(2) the following subsection is inserted —

10

“

- (3) For the purposes of assessing duty under this section, the exemption in item 2(1) of the Third Schedule does not apply.

”.

15 **9. Section 75AE amended**

- (1) Section 75AE(3) is amended by deleting the definition of “eligible purchaser” and inserting instead —

“

20

“**eligible purchaser**”, in relation to a business property, means a person who —

25

- (a) is not a government body;
- (b) after purchasing the property will carry on the business undertaking that is or is part of the property; and
- (c) intends to carry on that business for an indefinite period;

“eligible purchaser”, in relation to a residential property, means —

(a) an individual who —

(i) occupies, or after purchasing the property will occupy, the dwellinghouse on the property as his or her principal place of residence;

(ii) intends to so occupy the dwellinghouse for an indefinite period; and

(iii) is not acquiring, and does not intend to hold, the property as agent, trustee or otherwise on behalf of another person;

or

(b) a trustee who is acquiring, and intends to hold, the property in trust for one or more disabled beneficiaries, if at least one disabled beneficiary of the trust uses, or after the property is purchased will use, the property as his or her principal place of residence;

”.

(2) After section 75AE(3) the following subsections are inserted —

“

(4) In paragraph (b) of the definition of “eligible purchaser”, as defined in relation to residential property —

“disabled beneficiary” has the meaning given to that term in clause 1 of the Glossary at the end of the *Land Tax Assessment Act 2002*;

“trustee” has the meaning given to that term in clause 1 of the Glossary at the end of the *Land Tax Assessment Act 2002*.

(5) In the case of the definition of “trustee”, subsection (4) has effect despite section 63.

”.

s. 10

10. Section 75AG amended

After section 75AG(1) the following subsection is inserted —

“

- 5 (1a) Subsection (1) does not apply to an instrument of
transfer of property referred to in the Second Schedule
item 4(2) or (3) if —
- (a) the unencumbered value of the land and home
 (in the case of property referred to in item 4(2))
 exceeds \$350 000; or
- 10 (b) the unencumbered value of the land (in the case
of property referred to in item 4(3)) exceeds
\$200 000.

”.

11. Section 75J amended

- 15 (1) After section 75J(1) the following subsection is inserted —

“

- 20 (1a) For the purposes of this Part a section 31B or 31C
statement is taken to have been executed on the day on
which the conveyance, transfer or assignment to which
it relates occurred.

”.

- (2) Section 75J(3) is amended by deleting “corporate.” and
inserting instead —

“

- 25 corporate or issued share capital to which
subsection (4) applies.

”.

(3) After section 75J(3) the following subsection is inserted —

“

(4) This subsection applies to issued share capital of a body corporate if the Commissioner is satisfied —

5

(a) that the body corporate is not carried on for the purposes of profit or gain to its members;

10

(b) that the issued share capital of the body corporate carries no right, or a limited right, for its members to participate in the distribution of income and capital of the body corporate; and

15

(c) that the non-existence or limitation of that right is not part of an arrangement having as its purpose, or one of its purposes, the reduction of duty that might otherwise become payable.

”.

12. Section 75JA amended

Section 75JA(4) and (6) are repealed.

13. Section 75JB amended and transitional provision

20

(1) Before section 75JB(1)(d)(ii) the following subparagraph is inserted —

“

25

(i) A and B became associated in the circumstances of an acquisition described in subsection (1) of section 75JA (B being “the transferee” referred to in that subsection), a Part IIIBA statement in respect of that acquisition was exempted under section 75JA(2) and section 75JF has not become applicable to that statement;

30

”.

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(2) After section 75JB(1) the following subsection is inserted —

“

(1a) If, in relation to an instrument executed on or after
18 May 2005 (other than one executed in reliance on a
determination made under section 75JC(4) before that
day), C’s ownership of the issued share capital of B
referred to in subparagraph (iv) of subsection (1)(d) is
indirect, this section does not apply by virtue of that
subparagraph unless this section would have applied if
the beneficial interest had been conveyed, transferred
or assigned —

- (a) from A to C; and
- (b) from C to B.

”.

(3) After section 75JB(3) the following subsection is inserted —

“

(3aa) In determining whether this section applies for the
purposes of subsection (3)(b), the reference in
subsection (1)(d) to the date of execution of the
instrument is taken to be a reference to the date of the
relevant acquisition.

”.

(4) Section 75JB(4) is amended as follows:

(a) by inserting after paragraph (b) the following
paragraph —

“

(ba) section 75J(4) having applied to the issued
share capital of A or B, a change is made to the
purpose for which that body corporate is carried
on;

”;

(b) by deleting “or” after paragraph (c) and inserting —

“

(ca) on or after 18 May 2005 there is a transfer of
A’s beneficial interest in shares in B (the
“**share transfer**”) such that, if the conveyance,
transfer or assignment referred to in
subsection (1)(a) had occurred after the share
transfer, this section would not have applied to
the instrument effecting the conveyance,
transfer or assignment; or

”;

(c) by inserting before “or B” —

“ or A ”.

(5) A notification required under the *Stamp Act 1921*
section 75JB(4) as amended by subsection (4) does not have to
be given before the end of the period of one month after the day
on which this Act receives the Royal Assent.

(6) Section 75JB(5f) is amended by deleting paragraph (ab) and
“and” after it, paragraph (ac) and “the parent body — ” and
inserting instead —

“

and

(ab) the relevant circumstances have occurred,

and within 5 years after the execution of the instrument
or the date of the relevant acquisition the parent
body —

”.

(7) After section 75JB(8) the following subsections are inserted —

“

(9) Subject to subsection (10), if —

(aa) an instrument is exempted under subsection (3);
or

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- 5 (ab) an exemption certificate is issued under
 subsection (3a) in relation to an instrument,
 and section 75J(4) applied to the issued share capital of
 A or B, the claw-back applies if the Commissioner is
10 satisfied that within 5 years after the execution of the
 instrument or the date of the relevant acquisition that
 body corporate has been carried on for the purposes of
 profit or gain to its members.
- (10) The claw-back under subsection (9) does not apply if
15 the constitution or governing rules of the body
 corporate have been changed so that its issued share
 capital carries the right to unlimited participation in the
 distribution of its income and capital.
- (11) If —
- 15 (aa) an instrument is exempted under subsection (3);
 or
- (ab) an exemption certificate is issued under
 subsection (3a) in relation to an instrument,
20 the claw-back applies if there is a transfer of the kind
 referred to in subsection (4)(ca) on or after
 18 May 2005 and within 5 years after the execution of
 the instrument or the date of the relevant acquisition.

”.

14. Section 75JC amended

- 25 (1) Section 75JC(5)(a) is amended by deleting “the draft” and
 inserting instead —
 “ a draft ”.
- (2) Section 75JC(5)(b) is amended by deleting “the draft” and
 inserting instead —
30 “
 a draft provided or were described in
 information or evidence

”.

15. Section 75JD amended

After section 75JD(5) the following subsection is inserted —

“

(6) Despite an exemption under section 75JA or 75JB being granted in relation to an instrument or Part IIIBA statement, the Commissioner must make an assessment of any penalty tax payable under section 26 of the *Taxation Administration Act 2003* on the instrument or statement as if the exemption had not been granted.

”.

16. Section 75JE amended

Section 75JE(1)(da) is deleted.

17. Section 75JG amended

Section 75JG(3) is amended in paragraph (b)(i) of the penalty by inserting before “has” —

“

, or information or evidence about a draft instrument or statement,

”.

18. Sections 76AI, 76AP, 76AR, 76ATB, 76ATI and 76ATK amended

The provisions set out in the Table to this section are amended by deleting “greater” and inserting instead —

“ not less ”.

Table

s. 76AI(4)(a) and (c)	s. 76ATB(6)(a) and (c)
s. 76AP(4)(b)(ii) and (c)(ii)	s. 76ATI(6)(b)(ii) and (c)(ii)
s. 76AR(4)(b)(i)	s. 76ATK(4)(b)(i)

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19. Sections 76AI and 76ATB amended

- (1) Sections 76AI(3)(d) and 76ATB(4)(e) are amended by deleting
“by virtue of Division 6 of Part 1.2 of the Corporations Act a
5 corporation is a subsidiary of the WA company, the
shareholding of that WA company in the subsidiary” and
inserting instead —

“
10 a corporation is a subsidiary of the WA
company by virtue of Division 6 of Part 1.2 of
the Corporations Act, or would be a subsidiary
of it by virtue of that Division if “more” in
section 46(a)(ii) and (iii) of the Corporations
Act were deleted and “not less” were inserted
15 instead, the shareholding of the WA company
in the
”.

- (2) Sections 76AI(4)(a) and 76ATB(6)(a) are amended by inserting
after “Act,” —

“
20 or a corporation that would be a subsidiary
corporation by virtue of that Division if “more”
in section 46(a)(ii) and (iii) of the Corporations
Act were deleted and “not less” were inserted
25 instead,
”.

20. Sections 76AP and 76ATI amended

- (1) Sections 76AP(4)(b)(i) and 76ATI(6)(b)(i) are amended by
deleting “corporation;” and inserting instead —

“
30 corporation, or that would be a
subsidiary (as so defined) of the
corporation if “more” in
section 46(a)(ii) and (iii) of the

Corporations Act were deleted and “not less” were inserted instead;

”.

- 5 (2) Sections 76AP(4)(c)(i) and 76ATI(6)(c)(i) are amended by deleting “corporation;” and inserting instead —

“

corporation, or that would be a subsidiary (as so defined) of the holding corporation if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead;

”.

21. Sections 76AR and 76ATK amended

15 Sections 76AR(4)(a) and 76ATK(4)(a) are amended by deleting subparagraph (ii) and “or” before it and inserting —

“

20 (ii) of which a corporation is a subsidiary by virtue of Division 6 of Part 1.2 of the Corporations Act or would be a subsidiary by virtue of that Division if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead; or

25 (iii) which would be entitled if a corporation were to be wound up to participate in a distribution of the property of that corporation to an extent not less than 50% of the value of the distributable property;

”.

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22. Section 76AI amended

(1) Section 76AI(2a) is amended as follows:

- (a) after paragraph (b) by deleting “and”;
- (b) at the end of paragraph (c) by deleting “given.” and inserting —

5

“

given; and

- (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the WA company is entitled includes a reference to property so situated to which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.

10

15

”.

(2) Section 76AI(3) is amended by inserting after paragraph (ba) —

“

- (bb) an amount paid or payable to the WA company or a subsidiary under a contract or agreement referred to in subsection (5)(b);

20

”.

23. Section 76AP amended

(1) Section 76AP(2a) is amended as follows:

- (a) after paragraph (b) by deleting “and”;
- (b) at the end of paragraph (c) by deleting “given.” and inserting —

25

“

given; and

- (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the corporation is entitled includes a reference to property so situated to

30

which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.

”.

- 5 (2) Section 76AP(3) is amended by inserting after paragraph (ba) —

“

- 10 (bb) an amount paid or payable to the corporation or the trustee or other corporation referred to in subsection (4) under a contract or agreement referred to in subsection (5)(b);

”.

24. Section 76ATB amended

- 15 (1) Section 76ATB(3) is amended as follows:

- (a) after paragraph (b) by deleting “and”;
- (b) at the end of paragraph (c) by deleting “given.” and inserting —

“

given; and

- 20 (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the WA company is entitled includes a reference to property so situated to which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.

25

”.

- 30 (2) Section 76ATB(4) is amended by inserting after paragraph (c) —

“

- (ca) an amount paid or payable to the WA company or a subsidiary under a contract or agreement referred to in subsection (7)(b);

”.

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25. Section 76ATI amended

(1) Section 76ATI(3) is amended as follows:

- (a) after paragraph (b) by deleting “and”;
- (b) at the end of paragraph (c) by deleting “given.” and inserting —

5

“

given; and

- (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the corporation is entitled includes a reference to property so situated to which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.

10

15

”.

(2) Section 76ATI(4) is amended by inserting after paragraph (c) —

“

- (ca) an amount paid or payable to the corporation or the trustee or other corporation referred to in subsection (6) under a contract or agreement referred to in subsection (7)(b);

20

”.

26. Section 82 amended

After section 82(2) the following subsections are inserted —

25

“

- (3) For the purposes of subsection (1), an insured person’s interest in, or right to receive amounts payable under, a policy of insurance is property that is in Western Australia if the insured person is in Western Australia.

- 5
- 10
- (4) An insured person is in Western Australia if —
- (a) for an insured person who is an individual — the individual’s place of residence is in Western Australia;
 - (b) for an insured person that is a body corporate other than a WA company — the body corporate is incorporated by or under a written law; or
 - (c) the insured person is a WA company.
- ”.

27. Section 86 amended

- 15
- 20
- 25
- 30
- (1) Section 86 is amended by inserting before “For” the subsection designation “(1)”.
- (2) At the end of section 86 the following subsections are inserted —
- “
- (2) A mortgage is not chargeable with any other duty.
 - (3) An instrument, other than a mortgage, that effects or has an effect on the transfer of an interest in property as security under or in accordance with a mortgage is not chargeable with any duty.
 - (4) A person must not give effect to, recognise, register or record an instrument to which subsection (3) applies if mortgage duty is payable on the mortgage referred to in that subsection and the duty has not been paid.
Penalty: \$20 000.
 - (5) Subsections (2) and (3) do not apply to, or in relation to, a mortgage or other instrument if the Commissioner is satisfied that —
 - (a) the transfer effected by the mortgage is not intended principally or solely as security under or in accordance with the mortgage; or

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(b) the transfer effected by the other instrument is not intended principally or solely as security under or in accordance with a mortgage.

”.

5 **28. Section 112IB amended**

Section 112IB(3)(a) is amended by deleting all of the paragraph from and including “incidental” and inserting instead —

“

10 in conjunction with a lease of, or a licence to occupy or use, land;

”.

29. Third Schedule amended

The Third Schedule is amended by inserting after item 4 the following item —

15 “

5. DEEDS OF SETTLEMENT OR DEEDS OF GIFT:

An instrument otherwise dutiable under item 19 of the Second Schedule which would be exempt if it effected, or evidenced, a conveyance or transfer that is exempt under item 2 of the Third Schedule.

”.

30. Saving and transitional provisions

(1) In this section —

20 **“amended provisions”** means the *Stamp Act 1921* sections 76AI, 76AP, 76AR, 76ATB, 76ATI, 76ATK and 76AW as enacted after the coming into operation of sections 18 to 25 of this Act;

25 **“existing provisions”** means the *Stamp Act 1921* sections 76AI, 76AP, 76AR, 76ATB, 76ATI, 76ATK and 76AW as enacted before the coming into operation of sections 18 to 25 of this Act;

“relevant acquisition” has the meaning given by the *Stamp Act 1921* section 76AJ, 76AQ, 76ATC or 76ATJ (as the case requires).

- 5 (2) The existing provisions continue to apply in relation to a relevant acquisition made on or before 18 May 2005 and the amended provisions do not apply to it.
- (3) Despite the *Stamp Act 1921* section 76AG(1), 76AN(1), 76AT(1) or (2) or 76ATG(1) or (2), as the case may be, if —
- 10 (a) an acquisition of an interest in a corporation was made on or after 18 May 2005 and before the day on which this Act receives the Royal Assent;
- (b) a statement has to be lodged under section 76AG, 76AN, 76AT or 76ATG in respect of that acquisition because of the operation of the amended provisions; and
- 15 (c) the existing provisions would not have required such a statement to be lodged,

the statement does not have to be lodged before the end of the period of 2 months after the day on which this Act receives the Royal Assent.

20
