

EXPLANATORY MEMORANDUM

PAY-ROLL TAX REBATE BILL 2010

This Bill seeks to implement the Government's 2009-10 Budget commitment to provide a one-off pay-roll tax rebate for certain employers to help support employment by small and medium size businesses.

Consistent with the details announced at the time of the Budget, the Bill provides that employers with Australia-wide pay-rolls of up to \$1.6 million will be paid a rebate to offset all of their 2009-10 Western Australian pay-roll tax liabilities.

The maximum amount of the rebate on a pay-roll of \$1.6 million will be \$46,750.

The rebate will be phased down for employers that have Australia-wide pay-rolls between \$1.6 million and \$3.2 million.

Eligibility for the rebate is based on employers' nationally grouped pay-rolls, with a group of related employers being eligible for only one rebate.

The eligibility of groups for the rebate is consistent with the operation of the provisions under the *Pay-roll Tax Assessment Act 2002*, which sets out the manner in which the \$750,000 tax free threshold is apportioned between all employers who are members of a group.

Like the pay-roll tax threshold, the rebate is also apportioned to ensure consistency with the treatment of taxpayers who pay tax in Western Australia and one or more other jurisdictions.

In addition, employers who pay wages for only part of the 2009-10 assessment year will have their wages annualised to determine their eligibility for a rebate.

While this Bill contains a level of complexity to accommodate groups and employers that change status part way through the year, the majority of employers that are eligible to receive the rebate will not be affected by these complexities.

However, it has been necessary for this Bill to accommodate the changing circumstances of an employer during the course of a year to ensure the rebate produces outcomes that are consistent with the manner in which pay-roll tax is paid.

In this regard, it is possible that the circumstances of a particular group member may change such that the member would be entitled to a rebate that exceeds the maximum amount of \$46,750.

While this may occur in only the rarest of instances, a provision has been included in the Bill to cap the amount of the rebate payable to any one eligible employer to \$46,750.

The relevant clauses of this document include detailed examples that seek to provide clarity about the rebate calculation in respect of employers that are grouped or whose status changes part way through the year.

An important requirement for eligibility for the rebate is that an employer must be registered to pay pay-roll tax in Western Australia during the 2009-10 assessment year.

A deeming provision has been included in the Bill to ensure employers are not disadvantaged if their requirement to register does not arise until after 30 June 2010 in respect of wages payable in June 2010.

Employers who have a pay-roll tax liability during 2009-10 are encouraged to register during the time periods required by the pay-roll tax legislation.

This is because employers will not be eligible for the rebate if they are not registered during 2009-10 and are found in subsequent years, either through voluntary registration or compliance activity, to have a pay-roll tax liability for 2009-10.

The registration requirement also serves to ensure equity in the tax system by only providing the rebate to taxpayers who have complied with their requirements under the Pay-roll Tax Assessment Act to register and remit pay-roll tax.

The Bill also contains a provision to ensure that the rebate is not available in respect of wages that would normally be payable after 30 June 2010, but that are paid on or prior to this date in an attempt to maximise an employer's rebate.

The rebate will be based on an employer's primary pay-roll tax liability, and will not extend to any amounts of penalty tax or interest that an employer has incurred during 2009-10.

Considerable effort has been made to ensure the rebate rules are consistent with the manner in which the corresponding pay-roll tax liability is calculated.

However, there is one major area of difference that needs to be highlighted.

Under the pay-roll tax legislation, pay-roll tax is payable by groups on the basis that the designated group employer receives the benefit of not paying tax on the \$750,000 threshold, and the remaining group members pay pay-roll tax on the entire amount of wages paid by them without any deduction allowed for the threshold amount.

If these rules were applied to the rebate, the designated group employer could pay little or no pay-roll tax because it receives the full benefit of the \$750,000 threshold, but would then receive a disproportionate amount of the rebate on the basis of the tax paid by other group members.

In the context of a rebate payment, a more equitable outcome has been achieved by calculating the rebate on the groups' wages, and then apportioning the rebate between the members of the group who paid, or were liable to pay, a Western Australian pay-roll tax liability. This option was also more cost effective from a computing system development and administrative cost point of view.

The rebates will be calculated and paid by the Commissioner of State Revenue without application having to be made by the employer.

Subject to the passage of this legislation and the Pay-roll Tax Assessment Amendment Bill 2010, it is expected that payments will be made to eligible employers after they have completed their 2009-10 annual reconciliation process.

Should an employer's 2009-10 pay-roll tax liability be amended after a rebate has been paid, the Bill provides that an amended calculation of their rebate will be made that will result in either the employer being paid an additional amount of rebate or a repayment of rebate being sought from the employer.

The time period for these adjustments is consistent with the five year reassessment period applicable to the pay-roll tax liability under the *Taxation Administration Act 2003*.

The rebate has an estimated cost in 2010-11 of \$100 million.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Pay-roll Tax Rebate Act 2010*.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

Paragraph (a) provides that Part 1, other than sections 3 and 4, comes into operation on the day that this Bill receives Royal Assent.

Paragraph (b) provides that the rest of the Act comes into operation on the day after this Bill receives Royal Assent.

Clause 3:

Terms used

Subclause (1) provides the definitions of the various terms used in this Act.

Subclause (2) provides that terms that are used in this Act and either the *Pay-roll Tax Assessment Act 2002* or the *Taxation Administration Act 2003* have the same meaning in this Act as they do in the other mentioned Acts.

For example, terms used in this Bill such as “pay-roll tax” and “registered” have the meaning given to them in the *Pay-roll Tax Assessment Act 2002*.

Clause 4:

Relationship with *Taxation Administration Act 2003* and *Pay-roll Tax Assessment Act 2002*

This clause sets out how this Bill interacts with the *Taxation Administration Act 2003* and the *Pay-roll Tax Assessment Act 2002*.

Subclause (1) operates to allow certain sections of the *Taxation Administration Act 2003* to apply in relation to the pay-roll tax rebate as if the Pay-roll Tax Rebate Act were listed as a “taxation Act” in the *Taxation Administration Act 2003*. The entire Taxation Administration Act is not operational in respect of the rebate, primarily on the basis that the rebate is a legislative entitlement that arises once certain matters of fact are ascertained, including whether an employer’s pay-roll tax liability is within certain specified limits.

Subclause (1)(a) allows the objection and review powers in Part 4 of the Taxation Administration Act to apply to the rebate, in a manner restricted by subclause (2), by making certain modifications that allow the Taxation Administration Act to make sense in the context of a rebate, rather than a tax.

Subclause (1)(b) applies the provisions dealing with the time for payment, the allocation of payment and arrangements for instalments or extensions of time to pay in Part 5 Division 1 of the Taxation Administration Act to apply in respect of the rebate legislation. It also applies the general recovery powers in Part 6 Division 1 of the Taxation Administration Act to apply to an overpaid rebate amount. In both cases, the necessary modifications are made to allow the references to “tax” and “taxpayer” to be read in the context of a rebate.

Subclause (2) limits the objection rights under the *Taxation Administration Act 2003* by specifically preventing an objection from being made against a determination on a pay-roll tax rebate if the objection relies on a review of an assessment of pay-roll tax that has been made under the *Pay-roll Tax Assessment Act 2002*. This limitation has been included because a right of objection already exists in relation to a pay-roll tax liability, and applying the Taxation Administration Act objection provisions to the rebate would effectively require the taxpayer to object to both their liability and the rebate calculation. A rebate objection is not required, because any adjustment to a pay-roll tax liability results in clause 7(8) of the Bill applying, such that an automatic adjustment is required to be made to the rebate calculation. However, a right of objection is provided for under this clause in relation to matters where the eligible employer does not already have the ability to challenge the matter, because it does not require a reassessment of their pay-roll tax liability. Examples of these could involve a decision not to allow an extension of time or instalment arrangement to repay an overpaid rebate amount (which is a decision directly reviewable by the State Administrative Tribunal), or a decision of the Commissioner under clause 12 of this Bill about the pre-payment of an employer's wages.

Subclause (3) provides that section 43 of the *Pay-roll Tax Assessment Act 2002* applies to this Bill as if it were a pay-roll tax Act. Section 43 of the *Pay-roll Tax Assessment Act 2002* deals with the obligations of agents and trustees with regards to pay-roll tax.

Part 2 – Rebate of pay-roll tax

Clause 5: Rebate for the 2009/10 assessment year

This clause provides for the entitlement to a rebate and the requirement for the Commissioner to pay a rebate to an eligible employer.

Subclause (1) provides that an eligible employer is entitled to a rebate of pay-roll tax, calculated as set out in clause 7, for the 2009/10 assessment year.

Subclause (2) provides that, subject to clause 11(2), the Commissioner is to pay a rebate to eligible employers.

The restriction set out in clause 11(2) of the Bill allows the

Commissioner to offset a rebate against any unpaid pay-roll tax liability (which is defined in clause 11(1) to include an amount of pay-roll tax, penalty tax, interest or costs) owed by the eligible employer to the Commissioner.

Clause 6:

Who is entitled to the rebate – eligible employer

This clause sets out the employers that are eligible to receive a rebate of all or part of their 2009/10 pay-roll tax liability.

An employer who is entitled to a rebate is termed, for the purposes of this Bill, as an “eligible employer”.

Generally, an “eligible employer” is an employer that, if they are a non-group employer, paid Australia-wide wages during the 2009/10 assessment year of less than \$3.2 million. If the employer is part of a group, to be an “eligible employer”, the group that the employer is a member of cannot have paid Australia-wide wages of \$3.2 million or more.

For the majority of employers, it is readily apparent whether they will be an eligible employer or not as their status does not change during the course of the year. However, there will be a relatively small number of employers who will either be grouped for part, but not all, of the year or registered for the first time during the year.

Subclause (1) provides that to be an eligible employer, an employer must:

- (a) be registered during the whole or part of the 2009/10 assessment year under the *Pay-roll Tax Assessment Act 2002*; and
- (b) meet the threshold requirements set out in subclause (2) for a part of the 2009/10 assessment year; and
- (c) have lodged, by 31 December 2010, all the returns the *Pay-roll Tax Assessment Act 2002* requires to be lodged for the 2009/10 assessment year. If the employer is a member of a group, then the requirement for the lodgment of returns extends to the designated group employer (DGE) of the group, irrespective of whether the DGE is an eligible employer.

Subclause (2) sets out the threshold requirements referred

to in subclause 6(1)(b).

The term “pro rata” is used in subclause (2). The meaning of this term is set out in clause 8 of the Bill. The term is used in this clause to calculate the threshold for an employer or group who was registered for only part of the 2009/10 assessment year. For example, if a non-group employer was only registered for six months (182 days), the threshold for that employer would be \$1,595,616, as calculated by the formula in clause 8. If that employer paid less than \$1,595,616 in wages in the six month period, they would have an entitlement to a rebate.

To meet the threshold requirements to be eligible for a rebate, an employer must fit into at least one of the following four categories:

- (a) if the employer was a non-group employer for the whole of the year, the employer must have paid or be liable to pay less than \$3.2 million in Australia-wide wages;
- (b) if the employer was a non-group employer for part of the year, the employer must have paid or be liable to pay less than \$3.2 million pro rata in Australia-wide wages;
- (c) if the employer was a member of a group for the whole of the year, that group must have paid or be liable to pay less than \$3.2 million in Australia-wide wages;
- (d) if the employer was a member of a group for part of the year, that group must have paid or be liable to pay less than \$3.2 million pro rata in Australia-wide wages.

Subclause (3) deems employers to be registered during June 2010 (thereby meeting the obligation to be registered set out in clause 6(1)(a) of the Bill) if they are required to apply for registration under the *Pay-roll Tax Assessment Act 2002* because of the amount of wages they paid in June 2010, and the employer made an application for registration in accordance with section 24(5) of the Pay-roll Tax Assessment Act.

This will allow an employer whose liability to pay-roll tax first arises in June 2010 to still be eligible for a rebate if they apply by 7 July 2010 to the Commissioner to be registered under the *Pay-roll Tax Assessment Act 2002*,

despite the requirement in clause 6(1)(a) of the Bill that requires them to be registered during the 2009/10 assessment year.

Clause 7:

Calculation of the rebate

This clause provides the method of calculating the amount of rebate that is payable to an eligible employer.

The maximum rebate that is payable is \$46,750, which is equivalent to the amount of pay-roll tax that is payable on wages of \$1.6 million. A non-group employer or group that pays less than \$1.6 million in wages in the 2009/10 assessment year will receive a rebate of all of their pay-roll tax liability.

The amount of rebate tapers down from \$46,750 for eligible employers that pay wages between \$1.6 million and \$3.2 million in the 2009/10 assessment year. Where an employer is a member of a group, the rebate is calculated for the group.

Once this calculation is done, the amount of rebate is then distributed among the members of the group based on the pay-roll tax that each employer paid, or was liable to pay, in Western Australia.

It should be noted that the rebate that is payable relates only to pay-roll tax. If an employer has had to pay penalty tax or interest as a result of the operation of either the *Pay-roll Tax Assessment Act 2002* or the *Taxation Administration Act 2003*, this Bill does not provide for a rebate of those amounts.

Subclause (1) provides that an eligible employer that is a non-group employer for the whole of the 2009/10 assessment year that pays, or is liable to pay, \$1.6 million or less in Australia-wide wages is entitled to a full rebate of their pay-roll tax.

This subclause also provides that an eligible employer that is a member of one group for the whole of the 2009/10 assessment year is entitled to a full rebate of their pay-roll tax if the group's Australia-wide wages are \$1.6 million or less.

Subclause (2) provides the formula to calculate the rebate for eligible employers that have paid between \$1.6 million and \$3.2 million in Australia-wide wages and are either non-group employers for all of the 2009/10 assessment

year or are members of the same group for all of the 2009/10 assessment year.

The formula operates to reduce the rebate payable to an eligible employer by an amount of \$292.19 for every \$10,000 paid in wages above \$1.6 million. The effect of this tapering is that when an employer has paid \$3.2 million in wages, there is no rebate payable to that employer.

For example, assume an employer had paid wages of \$2 million, all in Western Australia, during the 2009/10 assessment year. The formula would operate to calculate the amount of rebate of \$35,062.50 as follows:

$$\text{Rebate} = \left[2 - \frac{\$2,000,000}{\$1,600,000} \right] \times 46,750 \times \frac{\$2,000,000}{\$2,000,000}$$

Subclause (3) provides that an employer who was a non-group employer for part or parts of the 2009/10 assessment year and paid less than \$1.6 million in Australia-wide wages pro rata is entitled to a rebate of all the pay-roll tax they were liable to pay for that part or parts of the year that they were a non-group employer.

The term “pro rata” is used in subclauses (3), (4), (5) and (6). The meaning of this term is set out in clause 8 of the Bill. The term is used in this clause to assist in the calculation of the amount of rebate payable to a non-group employer that is registered for part or parts of the 2009/10 assessment year. The term is also used in relation to employers that are grouped for part, but not all, of the 2009/10 assessment year. In clause 7, the term pro rata is used to determine whether the eligible employer is entitled to a rebate of all of their pay-roll tax, or is subject to the taper formula.

To illustrate the operation of subclause (3), assume a non-group employer is liable to pay pay-roll tax because they are registered for six months of the 2009/10 assessment year and paid wages of \$750,000. As the wages do not exceed \$1.6 million pro rata, the employer is entitled to a full rebate of their pay-roll tax liability for those six months.

Subclause (4) provides the formula to calculate the rebate where an eligible employer is a non-group employer, for part or parts of the 2009/10 assessment year, and their

Australia-wide wages are between \$1.6 million pro rata and \$3.2 million pro rata.

For example, this formula would apply to an employer who is a non-group employer for only six months of the 2009/10 assessment year and paid Australia-wide wages of \$1.3 million, all in Western Australia. The wages amount of \$1.3 million is greater than \$1.6 million pro rata and less than \$3.2 million pro rata. The formula would operate in this example to provide a rebate of \$8,637.54 as shown below:

$$R = \left[2 - \frac{\$1,300,000 \times 365}{\$1,600,000 \times 182} \right] \times 46,750 \times \frac{\$1,300,000}{\$1,300,000} \times \frac{182}{365}$$

The formula in this subclause differs from that in subclause (2) due to the addition of variables that take into account the number of days in the year that the employer was a non-group employer.

Subclause (5) provides that where an employer was a member of a group for part of the 2009/10 assessment year and the group paid less than \$1.6 million pro rata in Australia-wide wages, that employer is entitled to a rebate of all the pay-roll tax they were liable to pay as part of that group.

For example, assume an employer is a member of a group that existed for only three months of the year and that group paid Australia-wide wages of \$350,000 in those three months. As the wages are less than \$1.6 million pro rata, the amount of rebate for the group is the amount of pay-roll tax that the group was liable to pay for the three month period. Subclause (7) would then operate to allocate the rebate between the members of the group.

Subclause (6) provides the formula to calculate the rebate where an eligible employer is a member of a group for part of the 2009/10 assessment year and the group's Australia-wide wages are between \$1.6 million pro rata and \$3.2 million pro rata.

For example, if an employer is a member of a group that existed for six months of the 2009/10 assessment year and, during those six months paid Australia-wide wages of \$1.5 million, that group's Australia-wide wages would be between \$1.6 million pro rata and \$3.2 million pro rata. As such, they would be eligible for a rebate of \$2793.79 that

would be calculated as follows:

$$R = \left[2 - \frac{\$1,500,000 \times 365}{\$1,600,000 \times 182} \right] \times 46,750 \times \frac{\$1,500,000}{\$1,500,000} \times \frac{182}{365}$$

The rebate would then be allocated between the members of the group in accordance with subclause (7).

Subclause (7) sets out how an amount of rebate is to be allocated among members of a group.

The method of allocation is based on the liability to pay-roll tax in Western Australia for each member of the group, rather than the wages paid by each member of a group. This is necessary to overcome potential inequities that could arise because of the manner in which the pay-roll tax threshold is apportioned under the *Pay-roll Tax Assessment Act 2002* to the designated group employer (DGE) in the first instance. Note that this section uses the term “liability to pay-roll tax” to ensure only the primary pay-roll tax liability is used. This also seeks to avoid any confusion that might otherwise arise with the extended meaning of the defined term “pay-roll tax liability” used in clause 11.

For example, if a group consisted of three employers, and the DGE paid wages of \$750,000, the DGE would not pay any pay-roll tax because they received the benefit of the \$750,000 tax free threshold provided by the *Pay-roll Tax Assessment Act 2002*. In this case, the amount of rebate would be apportioned between the remaining two employers of the group based on each employer’s liability to pay-roll tax in Western Australia. This essentially gives the rebate back to the group members who paid the tax, rather than to the DGE who did not pay any tax because of the manner in which the tax free threshold was apportioned.

Subclause (8) provides that the amount of rebate to be calculated is to be based on the most recent assessment of the employer’s or group’s pay-roll tax liability for the 2009/10 assessment year.

This will ensure that if there is a reassessment of an employer’s or group’s 2009/10 pay-roll tax liability at some point in the future, the Commissioner will be authorised to make the necessary adjustment to an eligible employer’s

rebate without the need for an application.

Section 17 of the *Taxation Administration Act 2003* allows a reassessment to be made in relation to the five financial years that precede the financial year in which the reassessment is made.

Subclause (9) sets a cap on the amount of rebate that an employer can receive.

The cap is necessary as an employer may be entitled to receive separate rebate amounts that collectively exceed \$46,750 by being a member of more than one group during the 2009/10 assessment year, or by being a non-group employer and a member of one or more groups during the year.

Clause 8: Pro rata amounts

This clause provides the meaning of the term “pro rata” for the purposes of this Bill.

The term pro rata is used to calculate whether a wage figure for a period of less than twelve months is below the thresholds for which a rebate is payable.

This calculation is necessary because the calculation of a pay-roll tax rebate is linked to an employer’s pay-roll tax liability under the *Pay-roll Tax Assessment Act 2002*. This liability is calculated on the basis of a \$750,000 tax free threshold for both non-group employers and groups, which is apportioned if the employer or group is liable for pay-roll tax for only part of an assessment year. It is therefore necessary to also apportion the rebate to accommodate employers who are only registered for part of the 2009/10 assessment year.

For example, if an employer first registered in June 2010 and paid wages of \$1 million for that month, they would not be eligible for a rebate as their pro rata wages would exceed the threshold set out in clause 6(2)(b) of \$3.2 million pro rata as follows:

$$\frac{30}{365} \times \$3,200,000 = \$263,013$$

The equivalent threshold of \$3.2 million pro rata for the one month period is \$263,013, which is exceeded as the employer paid \$1 million in wages in that month.

Part 3 – Overpayment and underpayment of rebate

Clause 9: Overpayment of rebate

This clause provides how overpayments of a rebate will be dealt with.

Subclause (1) provides that where the Commissioner is satisfied that an amount of rebate has been overpaid, either to a person who was not eligible to receive a rebate, or to an eligible employer who received an amount of rebate in excess of their entitlement, that amount must be repaid to the Commissioner.

This subclause also provides that should an employer be entitled to a refund of pay-roll tax, the Commissioner can credit that amount of refund against the rebate the employer is liable to repay.

For example, if an employer had annual wages for the 2009/10 assessment year of \$1.1 million, that employer would be entitled to a full rebate of their pay-roll tax liability of \$19,250. If as a result of a reassessment, the employer's annual wages were adjusted down to \$1 million, their pay-roll tax liability for the 2009/10 assessment year would reduce to \$13,750 and they would be entitled to a refund or credit of pay-roll tax of \$5,500. As the employer's pay-roll tax liability has reduced, their entitlement to a rebate would also be reduced. Clause 11(3) of the Bill allows the Commissioner to off-set the amount of refund of pay-roll tax that the employer is owed by the Commissioner against the amount of rebate owed by the employer to the Commissioner.

Subclause (2) provides that an overpaid rebate is to be repaid to the Commissioner either within 30 days of a notice of overpayment being issued or in accordance with a tax payment arrangement. The tax payment arrangement provisions of the Taxation Administration Act are applicable because clause 4(1)(b) of this Bill allows those provisions to apply to a requirement to repay a rebate.

The Commissioner is required by clause 13(1) to issue a notice of overpayment when he is satisfied that there has

been an overpayment of a rebate.

Clause 10: Underpayment of rebate

This clause provides that if an employer becomes entitled to an additional amount of rebate, the Commissioner must either pay or, under clause 11(2), credit that additional amount of rebate to the employer.

An employer's entitlement to a rebate could increase if their pay-roll tax liability under the *Pay-roll Tax Assessment Act 2002* changes as a result of a reassessment.

Clause 11(2) allows the Commissioner to credit an additional amount of rebate against an existing pay-roll tax debt of the employer.

Clause 11: Amounts of tax and rebate may be offset against each other

This clause provides that the Commissioner can offset either an amount of rebate or pay-roll tax owing to an employer against an amount of rebate or pay-roll tax owed to the Commissioner.

Subclause (1) provides that for the purposes of this clause, a pay-roll tax liability includes another amount associated with a primary pay-roll tax liability, such as an amount of interest, penalty tax or costs.

Subclause (2) allows the Commissioner to credit an amount of rebate or additional rebate, contemplated by clause 10, against a pay-roll tax liability of the employer entitled to the rebate.

Subclause (3) allows the Commissioner to credit a refund of pay-roll tax due to an employer against an amount of rebate due to be repaid by the employer to the Commissioner.

Part 4 – Miscellaneous

Clause 12: Wages prepaid before 1 July 2010

This clause allows the Commissioner to disregard wages that he considers are prepaid with the objective of increasing an amount of rebate that an employer will receive. This power is aimed at preventing employers from artificially inflating the amount of rebate they may be

entitled to by bringing forward the payment of wages that would not usually be payable during the 2009/10 assessment year.

Clause 13: **Notices about rebate**

This clause sets out the requirements relating to the issue of notices about rebates.

Subclause (1) provides that when a rebate is either first issued or the amount of rebate is amended, the Commissioner must issue a notice.

Subclause (2) sets out the information that a notice referred to in subclause (1) must contain.

Clause 14: **Regulations**

This clause provides a regulation making power for this Bill.

Subclause (1) provides that the Governor may make regulations about this Bill.

Subclause (2) lists a number of specific matters that regulations may be made about, without limiting the general regulation making power in subclause (1).

Regulations may be made in relation to:

- (a) the calculation of a rebate;
- (b) records that are to be kept in relation to the entitlement to a rebate; and
- (c) notifications that are given to eligible employers or other persons regarding rebates.