

# Pay-roll Tax Assessment Amendment Bill 2008

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Western Australia

LEGISLATIVE ASSEMBLY

## **Pay-roll Tax Assessment Amendment Bill 2008**

**A Bill for**

***An Act to amend the *Pay-roll Tax Assessment Act 2002* and the  
*Pay-roll Tax Assessment Regulations 2003*.***

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Pay-roll Tax Assessment Amendment Act 2008*.

### **2. Commencement**

5 This Act comes into operation as follows:

- (a) Part 1 — on the day on which this Act receives the Royal Assent (“**assent day**”);
- (b) Part 2 Divisions 1 and 2 and Part 3 —
  - 10 (i) if assent day is not later than 1 July 2008 — on 1 July 2008; or
  - (ii) if assent day is later than 1 July 2008 — on assent day;
- (c) Part 2 Division 3 — 1 July 2009.

**Part 2 — Amendment of the *Pay-roll Tax Assessment Act 2002***

**Division 1 — Act amended**

**3. The Act amended**

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

**Division 2 — Amendments to commence on or after 1 July 2008**

**4. Section 5 amended**

10          (1) Section 5(1) is amended by deleting “taxable in Western Australia under subsection (2) except wages that are exempt under section 40” and inserting instead —

“ WA taxable wages ”.

(2) Section 5(2) is repealed.

**5. Sections 6A and 6B inserted**

15            After section 5 the following sections are inserted —

“

**6A. The term “WA taxable wages”**

20          (1) “WA taxable wages” are wages, other than exempt wages, that are paid or payable by an employer for services performed and that are paid or payable —

(a) in Western Australia, other than wages so paid or payable for —

(i) services performed wholly in one other State; or

25          (ii) services performed by a person wholly in another country for a continuous period of more than 6 months beginning on the day on which wages were first

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paid or payable to that person for  
services so performed;

or

- 5 (b) outside Western Australia for services  
performed wholly in Western Australia; or
- (c) outside Australia for services performed mainly  
in Western Australia.
- 10 (2) For the purposes of subsection (1), wages that are  
payable to a person by the person's employer, but have  
not been paid (not being wages that under the terms of  
employment are payable in Western Australia or in  
another State) are to be taken —
- 15 (a) if those wages are payable in respect of services  
performed wholly in Western Australia — to be  
wages payable to that person in Western  
Australia; and
- 20 (b) if those wages are not payable in respect of  
services performed wholly in Western Australia  
or wholly in one other State and the wages last  
paid or payable to that person by that employer  
were specified or required to be specified in a  
return under this Act — to be wages payable to  
that person in Western Australia; and
- 25 (c) if those wages are not taken by paragraph (a) or  
(b) or by any provision in a corresponding law  
that corresponds to either of those paragraphs to  
be wages payable to that person in Western  
Australia or in another State — to be wages  
payable to that person by that employer at the  
30 place where that person last performed any  
services for that employer before those wages  
became payable.



- (3) If, for the purpose of the payment of 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 a place in Australia; 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 a place in Australia,

those wages are to be taken to have been paid at that place and to have been paid when the instrument was sent or given, the amount was transferred or the account is credited in accordance with the instruction (as the case requires).

- (4) Whether services are performed wholly or mainly in Western Australia or another State is to be determined on a monthly basis, taking into account only those services performed during the month in question.

- (5) In subsection (3) —  
“**instrument**” includes a cheque, bill of exchange, promissory note, money order or a postal order issued by a post office.

**6B. Wages not referable to services performed in a particular month**

Wages that are not paid or payable in respect of services performed by a person in a particular month are to be taken to be paid or payable in respect of services performed by the person in the month, and in the State, in which the wages were paid or became payable.

”.

**6. Part 2 Division 2A inserted**

After Part 2 Division 1 the following Division is inserted —

“

**Division 2A — Wages**

5

**Subdivision 1 — General concept of wages**

**9AA. The term “wages”**

(1) “Wages” means —

- 10
- (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
- 15
- (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
- 20
- (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
- 25
- (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
- 30
- (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

- 5 (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 —
- 10 (a) whether paid or payable at piece work rates or otherwise; and
- (b) whether paid or payable in cash or in kind.

**Subdivision 2 — Fringe benefits and specified taxable benefits**

15 **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 to be taken to be wages paid by the employer to the employee unless the benefit is a fringe benefit constituted by the grant of a share or an option the value of which is taken to be wages under Subdivision 4.
- 20
- (2) Subsection (1) does not apply to benefits that are exempt benefits for the purposes of the FBTA Act, other than deposits to the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth.
- 25

**9BB. Actual value of a fringe benefit**

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

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

5

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;

10

“**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.

15

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

- (1) If an employer is required to specify in a return WA taxable wages that include the value of fringe benefits provided by the employer, the employer may, instead of including the actual value of the fringe benefits, include a value of the fringe benefits calculated using the estimated value method, if the employer is eligible to do so.

20

- (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).

25

**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.

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

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

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

where —

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

“**N**” is the number of returns in the assessment year.

- (2) The value of the fringe benefits to be included in the employer’s last return for the assessment year is the amount equal to the difference between —

- (a) the actual value of the WA fringe benefits provided by the employer during the FBT year that ended on 31 March in the assessment year; and

- (b) the sum of the amounts included in each of the previous returns for the assessment year under subsection (1).

**9BF. Annual returns using the estimated value method**

5 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.

**9BG. Final returns using the estimated value method**

15 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

- 25 (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
- 30

- (ii) the total of the amounts of WA fringe benefits included in the returns for the assessment year.

**9BH. Changing method of valuing fringe benefits**

- 5
- (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.
- 10
- (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.
- 15
- (3) A notice under subsection (1) or (2) must be in a form approved by the Commissioner.
- 20
- (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.
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- 30

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- 5 (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 —
- 10 (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);
- 15 and
- (b) the sum of —
- 20 (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
- 25 (ii) the total of the amounts of the WA fringe benefits included in the employer's returns for the assessment year.
- 30 (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.

**9BI. Value of a specified taxable benefit**

5           The value of a specified taxable benefit is the prescribed value, or the value calculated in the prescribed manner (as the case requires).

**Subdivision 3 — Superannuation contributions**

**9CA. Terms used in this Subdivision**

10           For the purposes of this Subdivision —

          “**employee**” includes —

- 15           (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 referred to in section 9DG(1);

20           “**notional contribution**” has the meaning given in section 9CD;

          “**superannuation contribution**” has the meaning given in section 9CC.

**9CB. Wages include superannuation contributions and other similar amounts**

25           (1) The amount of each of the following is to be taken to be wages paid by the employer to the employee in the return period —

- 30           (a) a superannuation contribution made by an employer in respect of an employee in a return period of the employer;

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- (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 to be 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 6A(2) 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 section 19 of the Superannuation Guarantee Act 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 section 6 of the Superannuation Guarantee Act), the shortfall is to be taken to be for the last month of the quarter.

**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.

- 5
- (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 to be taken to be paying a contribution.
- 10
- (4) Making a contribution of anything that is worth money is to be 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.

**9CD. Notional contributions**

- 15
- (1) Notional contributions are to be 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.
- 20
- (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 to be taken to have been made to the fund in the return period by the employer in respect of the employee.
- 25
- (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.
- 30
- (4) The regulations may include provisions about how an actuary is to determine an amount under subsection (3).

**Subdivision 4 — Shares and options**

**9DA. Wages include shares and options granted to employees**

- 5 (1) The value of a share or an option granted by an employer to an employee in respect of the appointment of or services performed by the employee is to be taken to be wages paid by the employer to the employee unless the share or option is wages under a paragraph of section 9AA(1) other than paragraph (f).
- 10 (2) A share or an option is granted to a person in the following circumstances —
- (a) in the case of a share — if the person acquires the share —
- 15 (i) in accordance with section 139G of the *Income Tax Assessment Act 1936* of the Commonwealth; or
- (ii) in circumstances prescribed for the purposes of this paragraph by the regulations;
- 20 (b) in the case of an option — if the person acquires a right to the share to which the option relates and the right is acquired —
- (i) in accordance with section 139G of the *Income Tax Assessment Act 1936* of the Commonwealth; or
- 25 (ii) in circumstances prescribed for the purposes of this paragraph by the regulations.
- 30 (3) Wages constituted by the value of a share or an option are to be taken to be paid on the relevant day.

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- (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) If the grant of a share or an option by an employer to an employee is in respect of the appointment of the employee, but not for services performed, the grant is to be taken to be for services performed by the employee in the place or places where it may reasonably be expected that the services of the employee will be performed.
- (6) To avoid doubt, a share or an option is valuable consideration for the purposes of section 9HC.

**9DB. Relevant day — choice of**

- 15
- 20
- 25
- (1) The employer may elect to treat as the relevant day either the day on which the share or option is granted to the employee or the vesting day.
- (2) The “**vesting day**” in respect of a share is the day on which the share vests in the employee, that is, when any conditions applying to the grant of the share have been met and the employee’s legal or beneficial interest in the share cannot be rescinded.
- (3) The “**vesting day**” in respect of an option is the earlier of the following days —
- (a) the day on which the share to which the option relates is granted to the employee; and
- (b) the day on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vest in him or her.

**9DC. Relevant day — special cases**

(1) If —

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

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

(2) If —

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

the employer is to be 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.

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

- (1) The value of a share or an option taken to be wages under this Subdivision is the market value of the share or option (expressed in Australian currency) on the relevant day, less the consideration (if any) paid or

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given by the employee in respect of the share or option (other than consideration in the form of services performed).

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

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

10 (a) the market value of an option is to be determined as if it were a right to acquire a share;

(b) a reference to a taxpayer is to be read as a reference to the employee;

15 (c) a reference to the Commissioner of Taxation is to be read as a reference to either that Commissioner or the Commissioner of State Revenue.

20 (4) In this section —  
“**Commonwealth income tax provisions**” means the provisions of Subdivision F of Division 13A of Part III of the *Income Tax Assessment Act 1936* of the Commonwealth.

25 **9DE. Effect of rescission, cancellation etc. of share or option**

(1) If an employer grants a share or an option to an employee the value of which is taken to be wages under this Subdivision and the grant of the share or option is withdrawn, cancelled or exchanged before the vesting day for any valuable consideration (other than the grant of other shares or options) —

30 (a) the day of withdrawal, cancellation or exchange is to be 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 to be taken to be the amount of the valuable consideration.

(2) If —

5

(a) an employer grants a share or an option to an employee the value of which is taken to be wages under this Subdivision; and

(b) the value of the share or option is specified as WA taxable wages in a return; and

10

(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.

15

(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.

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

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

25

(a) the employer is required to grant the share as a consequence of the exercise of an option by a person; and

(b) the value of the option granted to the person was taken to be wages under this Subdivision.

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

- 5
- (1) If the value of a share or an option granted by a company to a director of the company by way of remuneration for the appointment or services of the director would be taken to be wages under this Subdivision if the director were an employee of the company, the value of the share or option is to be taken to be wages paid by the company (as an employer) to the director.
- 10
- (2) For the purposes of subsection (1), the other provisions of this Subdivision apply in respect of any such grant as if a reference to the employer were a reference to the company and a reference to the employee were a reference to the director of the company.
- 15
- (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;
- 20
- (b) a former director of the company.
- (4) If the grant of a share or an option by a company to a director of the company is by way of remuneration for the appointment of the director, but not for services performed, the grant is to be taken to be for services performed by the director in respect of the company in the place or places where it may reasonably be expected that the services of the director in respect of the company will be performed.
- 25

30 **9DH. When services considered to have been performed**

If the value of a share or an option is taken to be wages under this Subdivision, the services in respect of which the share or option was granted are to be taken to have

been performed during the month in which the relevant day occurs.

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

- 5 (1) Wages constituted by the value of a share or an option are to be 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.
- 10 (2) In any other case, wages constituted by the value of a share or an option are to be taken to be paid outside Western Australia.
- (3) In this section —  
**“local company”** means —
- 15 (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.

20 **Subdivision 5 — Termination payments**

**9EA. Wages include termination payments**

- 25 (1) The amount of a termination payment is to be 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 —
- 30 (a) an employment termination payment within the meaning of section 82-130 of the ITA Act; or

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5 (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

10 (c) a transitional termination payment within the meaning of section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* of the Commonwealth;

**“termination payment”** means —

15 (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

20 (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

30 (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;

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

### **Subdivision 6 — Allowances**

#### **9FA. Motor vehicle allowances**

10 (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 —

15 **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 —

20 (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  
25 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 —

- 5 (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
- 10 (b) if no rate referred to in paragraph (a) is prescribed under that Act — the rate prescribed in the regulations.

**9FB. Accommodation allowances**

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

- 15 (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
- 20 (b) if no determination referred to in paragraph (a) is in force — the rate prescribed in the regulations.

**Subdivision 7 — Employment agents**

**9GA. Wages include amounts paid by employment agents**

25 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  
30 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 to be taken to be wages paid or payable by the agent (as an employer) to the person.

5

**Subdivision 8 — Miscellaneous provisions**

**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 —

10

(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, which ever is the greater of the 3 amounts; and

15

(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.

**9HB. GST excluded from wages**

20

(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.

25

(2) Subsection (1) does not apply in respect of the value of wages comprising a fringe benefit.

**9HC. Wages paid by or to third parties**

30

(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

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for the purposes of this Act, they are to be taken to be wages paid or payable by the employer to the employee —

- 5 (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;
- 10 (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;
- 15 (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.
- 20 (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 to be taken to be wages paid or payable by the company to the director —
- 25 (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;
- 30 (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;
- 35



5 (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 —

10 (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.

”.

**7. Section 26 amended**

15 Section 26(2) is repealed and the following subsections are inserted instead —

“

(2) A monthly return must be in the approved form.

(3) A monthly return must —

20 (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

25 (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: \$5 000.

”.

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**8. Section 27 amended**

Section 27(2)(c) is amended by deleting “2 months” and inserting instead —

“ 21 days ”.

5 **9. Section 40 amended**

Section 40(3) is repealed.

**10. Section 45 amended**

Section 45(2)(g) is amended by deleting “clause 2(1)(e) of the Glossary” and inserting instead —

10 “ section 9AA(1)(c) ”.

**11. Section 46 and Schedule 1 inserted**

After section 45 the following section and Schedule are inserted —

“

15 **46. Transitional provisions**

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

**Schedule 1 — Transitional provisions**

[s. 46]

20 **Division 1 — Provisions for the *Pay-roll Tax Assessment Amendment Act 2008***

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

25 A notice under regulation 26(1) or (2) of the *Pay-roll Tax Assessment Regulations 2003* in relation to the assessment year commencing on 1 July 2008 (whether given before, on

or after 1 July 2008) has effect as if it were given under section 9BH(1) or (2), which ever is relevant.

2. **Liability to tax if the *Pay-roll Tax Assessment Amendment Act 2008* comes into operation after the start of the assessment year**

5

(1) This clause applies if the *Pay-roll Tax Assessment Amendment Act 2008* receives the Royal Assent later than 1 July 2008.

10

(2) A person's liability to pay-roll tax under this Act for the assessment year commencing on 1 July 2008 is to be determined as if the *Pay-roll Tax Assessment Amendment Act 2008* had come into operation on 1 July 2008.

”.

**12. Glossary amended**

15

(1) The Glossary clause 1 is amended as follows:

(a) in the definition of “defined superannuation benefit” by deleting “scheme” and inserting instead —  
“ fund ”;

20

(b) in the definition of “defined superannuation benefit” by deleting “participant’s” in each place where it occurs and inserting instead —  
“ member’s ”;

25

(c) in the definition of “individual superannuation guarantee shortfall” by deleting “*Superannuation Guarantee (Administration) Act 1992* of the Commonwealth” and inserting instead —  
“ Superannuation Guarantee Act ”;

30

(d) in the definition of “value”, paragraph (b), by deleting “clause 7” and inserting instead —  
“ section 9BB ”;

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- (e) in the definition of “value”, paragraph (c), by deleting “clause 6” and inserting instead —  
“ section 9BI ”;
- 5 (f) in the definition of “value”, paragraph (d), by deleting “clause 3” and inserting instead —  
“ section 9HB ”;
- (g) in the definition of “value”, paragraph (e), by deleting “clause 6” and inserting instead —  
“ section 9HA ”;
- 10 (h) in the definition of “wages” by deleting “definition given in clause 2” and inserting instead —  
“ meaning given in section 9AA ”;
- (i) by inserting in the appropriate alphabetical positions —  
“
- 15 “**actual value**”, of a fringe benefit, has the meaning given in section 9BB(2);
- “**Australian superannuation fund**” means a superannuation fund that —
- 20 (a) was established in Australia, or has any asset situated in Australia; and
- (b) has its central management and control in Australia;
- “**defined benefit fund**” has the meaning given to “defined benefit superannuation scheme” in section 6 of the
- 25 Superannuation Guarantee Act;
- “**director**” of a company includes a member of the governing body of the company;
- “**FBT year**” means a year ending on 31 March;
- 30 “**ITA Act**” means the *Income Tax Assessment Act 1997* of the Commonwealth;
- “**motor vehicle allowance**” means an allowance paid by an employer to a person who provides or maintains a motor vehicle used for business journeys;

**“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;

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

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

**“superannuation fund”** includes —

15 (a) a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

(b) any other form of superannuation, provident or retirement fund or scheme including —  
20 (i) the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth; and

25 (ii) a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth;

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

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

**“WA taxable wages”** has the meaning given in section 6A.

35 (j) by deleting the definitions of “assessable income”, “Australian superannuation scheme”, “eligible termination payment”, “‘otherwise deductible’ rule”,

”;

5 “participant”, “regulated superannuation fund”,  
“superannuation fund”, “superannuation guarantee  
charge”, “superannuation scheme”, “unfunded public  
sector superannuation scheme”, “WA taxable wages”  
and “work-related benefit”.

(2) The Glossary clauses 2 to 12 are repealed.

**Division 3 — Amendments to commence on 1 July 2009**

**13. Section 31 amended**

10 Section 31(4) is amended by deleting all of the subsection from  
and including “if the Commissioner” and inserting a full stop  
instead.

**14. Section 32 amended**

Section 32(3) and (4) are repealed and the following subsection  
is inserted instead —

15 “  
(3) The Commissioner may exclude a person from a group  
in accordance with section 38.  
”.

**15. Section 33 amended**

20 Section 33(7) is amended by deleting “related corporation” and  
inserting instead —

“ related body corporate ”.

**16. Section 35 replaced by sections 35A to 35D**

25 Section 35 is repealed and the following sections are inserted  
instead —

“  
**35A. Groups arising from tracing of interests in  
corporations**

30 (1) An entity and a corporation form part of a group if the  
entity has a controlling interest in the corporation.

- (2) 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
  - 5 (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%.
- (3) The Commissioner may exclude an entity from a group in accordance with section 38.
- 10 (4) For the purposes of this section —
- “associated person”** means a person who is associated with another person in accordance with any of the following —
- 15 (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 20 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 25 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 30 scheme) of which the trustee is a trustee;
- “entity”** means —
- (a) a person; or

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(b) 2 or more persons who are associated persons;

5 **“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 —

- 10 (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;
- 15 (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;
- 20 (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;
- 25 (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.
- 30



**35B. Direct interests**

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

**35C. Indirect interests**

- (1) An entity has an **“indirect interest”** in a corporation if the corporation is linked to another corporation (the **“directly controlled corporation”**) in which the entity has a direct interest.

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- (2) A corporation is linked to a directly controlled corporation if the corporation is part of a chain of corporations —
- 5 (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 —
- 10 (a) the value of the direct interest of the entity in the directly controlled corporation;
- 15 (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.
- 20

**35D. Aggregate interests**

- (1) An entity has an “**aggregate interest**” in a corporation if —
- 25 (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 —
- 30 (a) the value of the direct interest (if any) of the entity in the corporation;



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**19. Glossary amended**

The Glossary clause 1 is amended as follows:

- (a) by inserting the following in the appropriate alphabetical position —

5

“

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

”;

- (b) by deleting the definition of “related corporation”.

**Part 3 — Amendment of the *Pay-roll Tax Assessment Regulations 2003***

**20. The regulations amended**

5 The amendments in this Part are to the *Pay-roll Tax Assessment Regulations 2003*.

**21. Regulation 5 amended**

Regulation 5 is amended by deleting “clause 2(1)(e) in the Glossary to” and inserting instead —

“ section 9AA(1)(c) of ”.

10 **22. Regulation 6 amended**

Regulation 6(c) is deleted.

**23. Regulations 12 and 14 amended**

Regulations 12 and 14 are amended by deleting “clause 6 in the Glossary to” and inserting instead —

15 “ section 9BI of ”.

**24. Regulations 16 to 18 repealed**

Regulations 16, 17 and 18 are repealed.

**25. Regulations 19 to 26 repealed**

Regulations 19, 20, 21, 22, 23, 24, 25 and 26 are repealed.

20 **26. Heading to Part 3 amended**

The heading to Part 3 is deleted and the following heading is inserted instead —

“

**Part 3 — Allowances**

25

”.

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**27. Regulations 28 and 29 repealed**

Regulations 28 and 29 are repealed.

**28. Regulation 30 amended**

5 Regulation 30 is amended by deleting “The number” and inserting instead —

“ For the purposes of section 9FA(2), the number ”.

**29. Regulation 31 repealed**

Regulation 31 is repealed.

**30. Part 3 Division 2 repealed**

10 Part 3 Division 2 is repealed.

**31. Regulation 41 amended**

15 Regulation 41(1) is amended by deleting “If an amount contributed to a superannuation scheme is taken by clause 8 in the Glossary to the Act to be paid” and inserting instead —

“  
If a superannuation contribution to a superannuation fund is taken by section 9CB of the Act to be wages paid  
”.

20 **32. Regulation 42 amended**

(1) Regulation 42(1) is amended by deleting “participant” and inserting instead —

“ member of a fund ”.

25 (2) Regulation 42(2) and (4) are amended by deleting “participants in a scheme” and inserting instead —

“ members ”.

- (3) Regulation 42(3) is amended by deleting “participant” and inserting instead —

“ member ”.

**33. Regulation 43 repealed**

5 Regulation 43 is repealed.

**34. Regulation 44 amended**

- (1) Regulation 44(1), (2), (3) and (4) are amended by deleting “participant” and inserting instead —

“ member ”.

- 10 (2) Regulation 44(1), (2) and (3) are amended by deleting “participants” and inserting instead —

“ member ”.

**35. Glossary amended**

The Glossary clause 1 is amended as follows:

- 15 (a) in the definition of “redundancy benefits scheme” by deleting “as defined in clause 1 in the Glossary to the Act”;
- (b) in the definition of “vehicle” by deleting “vehicle;” and inserting instead —
- 20 “ vehicle. ”;
- (c) by deleting the definitions of “actual value method”, “adjustment period”, “contribution day”, “employee share acquisition scheme”, “estimated value method”, “FBT year”, “fringe benefits tax”, “grossed-up value”,
- 25 “motor vehicle allowance”, “qualified valuer”, “recognised financial market”, “unlisted public unit trust” and “WA fringe benefits”.

Note: The heading to regulation 42 will be altered by deleting “participants” and inserting instead “members”.

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**36.        Power to amend or repeal regulations unaffected**

This Part does not prevent the *Pay-roll Tax Assessment Regulations 2003* from being amended or repealed under the *Pay-roll Tax Assessment Act 2002*.

