# TAXATION LEGISLATION AMENDMENT BILL 2015

## EXPLANATORY MEMORANDUM

This Bill primarily seeks to amend the *Pay-roll Tax Assessment Act 2002* to introduce a gradual diminishing tax free threshold from 1 July 2015. The Bill also seeks to make minor amendments to the *Duties Act 2008* and the *Land Tax Assessment Act 2002*.

The introduction of a diminishing payroll tax exemption threshold is consistent with the approach taken by Queensland and the Northern Territory. Under the proposed arrangement, the benefit of the tax free threshold will gradually phase out for employers or groups of employers with annual taxable wages in Australia between $800,000 and $7.5 million. Large businesses with payrolls of $7.5 million or more will pay payroll tax on their entire payroll from 2015-16.

Approximately 17,000 employers will be affected by these amendments. Of those employers, around 5,000 will have payrolls in excess of $7.5 million and therefore be required to pay up to an additional $44,000 a year in payroll tax.

The savings of $397 million represent about 10 per cent of the announced $3.8 billion savings measures, with the majority of the remaining amount of savings to be achieved through expenditure restraint. The Government will continue to work hard to control public expenditure growth and to ensure the tax burden placed on employers is minimised.

The Bill also contains amendments to the Duties Act to extend a duty concession to a custodian of a trustee of a superannuation fund in certain circumstances.

Under the Duties Act, nominal duty of $20 applies to the sale of property by a person to the trustee of a superannuation fund where only that person can be the member of the fund or the property is held solely for the benefit of that person.

Previously, a superannuation fund could not finance the purchase of property with debt. However, the Commonwealth has changed its *Superannuation Industry (Supervision) Act 1993* to permit purchases of property with debt if the property is purchased and held by a custodian of the trustee of the superannuation fund.

As the property is purchased by a custodian, rather than the trustee, the current duty concession does not apply. Accordingly, this Bill amends the Duties Act to permit a concession for the custodian on the same terms that apply to a direct purchase of property by a trustee of a superannuation fund. These amendments commence from the day after the Royal Assent and will have a minimal financial impact.

The Land Tax Assessment Act has for some time included clawback provisions that apply when land that has been subject to a residential, primary production business or dwelling park exemption is subdivided. The clawback of tax applies for a period of five years, including the year the land was subdivided.

The Act currently provides an exclusion from the clawback provisions for primary production business or dwelling park land that is compulsorily acquired. The Bill contains amendments to exclude private residential property that was subdivided as a result of a compulsory acquisition, bringing it into line with the existing provisions. The amendments apply from the day after the Royal Assent and will have a minimal financial impact.

Further amendments to the Land Tax Assessment Act contained in this Bill restore the policy intent of anti-avoidance provisions aimed at preventing persons from disaggregating the value of their land holdings for land tax assessment purposes by transferring minor interests in the properties to third parties. The amendments allow the Commissioner to make a retrospective determination of the tax liability, generally limited to five assessment years, disregarding the interests of the minority land holders. The amendments commence from the day after the Royal Assent and will have a minimal financial impact.

The Bill also includes other minor amendments to the Land Tax Assessment Act.

## Part 1 - Preliminary

**Clause 1:** **Short title**

This clause provides that the short title of this Bill is the *Taxation Legislation Amendment Act 2015*.

**Clause 2:** **Commencement**

This clause provides the commencement dates for this Bill.

Paragraph (a) provides that Part 1 commences on the day on which the Royal Assent is received (***assent day***).

Paragraph (b) provides that Part 4 –

(i) commences on 1 July 2015 if assent day is not later than that day; or
(ii) is deemed to have commenced on 1 July 2015 if assent day is later than that day.

Paragraph (c) provides that the rest of the Act comes into operation on the day after assent day.

## Part 2 – *Duties Act 2008* amended

**Clause 3:** **Act amended**

This clause provides that the amendments in this Part are to the *Duties Act 2008*.

**Clause 4:** **Sections 122 and 123 replaced**

Section 122 of the Duties Act provides for nominal duty to be charged on the transfer of, or agreement for the transfer of, dutiable property by a person to the trustee of a complying superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth).

An example of an agreement for the transfer of dutiable property is a contract to purchase land.

The section requires there to be consideration for the transaction. Membership of the superannuation fund must be limited to the transferor of the dutiable property, otherwise the property must be held in the fund specifically for the transferor. The property must be held in the fund as a retirement benefit for the transferor.

Pursuant to the Superannuation Industry (Supervision) Act, the legal interest in a property with an associated debt cannot be held by the trustee of a fund. The property must be purchased under a limited recourse borrowing arrangement, with legal title to the asset being held by a limited recourse trustee (known as a custodian) in a separate trust.

Any income from the property while the arrangement is in place accrues to the trustee of the superannuation fund. When the loan is repaid, the custodian transfers legal title to the property to the trustee. This transfer is chargeable with nominal duty under section 126 of the Duties Act.

Section 123 of the Duties Act imposes a subsequent liability to transfer duty in circumstances where nominal duty has been charged on a dutiable transaction under section 122, and a restriction imposed by that section in order to qualify for nominal duty ceases to apply.

Section 122 does not currently allow for nominal duty to be charged when a person transfers property to a custodian who would be holding the property for the trustee on the same terms.

These amendments extend the concession to transfers to custodians in these circumstances, which also necessitate amendments to section 123.

Accordingly, this clause replaces current sections 122 and 123.

**122. Relevant superannuation transactions for consideration**

Subsection (1) provides that nominal duty is chargeable on a ‘relevant superannuation transaction’ if there is, or will be, consideration for the transaction.

Consideration is not limited to monetary consideration. It includes the undertaking by a trustee of a superannuation fund to hold the property for the benefit of the transferor.

Subsection (2) provides that a reference in this section to a ‘relevant superannuation transaction’ is to a transfer of, or an agreement for the transfer of, dutiable property by a person (the transferor) to a trustee, or a custodian of a trustee, of a superannuation fund that meets the criteria specified in paragraphs (a) and (b).

These requirements must be satisfied as at the liability date for the transaction, even where the transfer is to a custodian of a trustee.

Subsection (3) defines the property to which new section 122 applies. It has the effect that the dutiable property, the proceeds from the sale of that property and any net income from the property while held by the custodian must be held for the benefit of the transferor.

Subsection (4) provides that an application is required for an assessment or reassessment to be made under section 122.

**123. Subsequent liability in certain circumstances**

Subsection (1) provides that a reference in this section to a 'subsequent event' is to an event which has the effect that a superannuation fund ceases to be an 'approved superannuation fund', as defined in section 122(2) as inserted above.

Subsection (2) provides that if, after a transaction is duty endorsed under section 122, a subsequent event takes place in relation to the superannuation fund while the dutiable property the subject of the transaction or part of it, is held by a custodian of a trustee of the fund, or in the fund, then subsection (3) applies.

For example, a superannuation fund may have been an approved superannuation fund in respect of a relevant superannuation transaction on the basis that (*inter alia*) only the transferor of the dutiable property could be a member of the fund. If the fund's rules were subsequently amended to allow additional members (whether or not anyone else actually became a member), then this would constitute a subsequent event.

Subsection (3) provides that if an event, as set out in subsection (2), occurs there is taken to be a transfer of the original dutiable property, to the extent that it is still held by the custodian of a trustee of the fund or in the fund, and a duty liability is triggered at that date.

The effect of the provision is to remove the benefit of the concession on the original transaction.

Subsection (4) provides that a trustee, or custodian of a trustee, of the fund, as is relevant, must lodge a transfer duty statement not later than two months after a subsequent event takes place.

This statement takes the place of a written instrument evidencing the deemed transfer under subsection (3).

A penalty of $20,000 is provided for a failure to comply with this requirement.

Subsection (5) provides that the person liable to pay the duty is a trustee, or a custodian of a trustee, of the fund, as is relevant.

**Clause 5:** **Section 126 amended**

This clause corrects a minor grammatical error in the definition of the term ***relevant entity***.

**Part 3 – *Land Tax Assessment Act 2002* amended**

**Clause 6:** **Act amended**

This clause provides that the amendments in this Part are to the *Land Tax Assessment Act 2002.*

**Clause 7:** **Section 14 amended**

Section 14 of the Land Tax Assessment Act applies when land that was exempt or partially exempt on the basis of being private residential property is subdivided.

Where this section applies, tax is reassessed for five financial years, commencing with the year in which the subdivision occurred, in respect of that portion of the land other than where the private residence is situated.

Currently, a compulsory acquisition by a government authority may trigger the application of the retrospective assessment provisions.

This clause amends section 14(1) by providing that for land tax to be payable in accordance with the section, the subdivision must not have been carried out only for the purpose of defining an area of land to be taken or resumed under an enactment relating to the compulsory acquisition of land.

This ensures that land owners will not be penalised by the reassessment provisions where the sole reason for the subdivision of their land was to facilitate a compulsory resumption by a government entity.

The amendments reflect the current administrative practice of the Commissioner of State Revenue as set out in Commissioner's Practice LT 2 'Newly Subdivided Residential Property'.

**Clause 8:** **Section 43A amended**

Section 43A of the Land Tax Assessment Act provides a concession in respect of newly subdivided land that is to be used for residential purposes. Where the concession applies, land tax is levied based on the *en globo* (that is, non-subdivided) value of lots owned by developers at 30 June for one assessment year after the creation of the lots.

Applications for the concession are required to be received by the Commissioner within the time specified. However, pursuant to section 43A(3) of the Land Tax Assessment Act, the Commissioner may extend the time for lodging an application to a date no later than 1 July of the following year if the Commissioner is satisfied that there are reasonable grounds for doing so.

Section 43A(4) of the Land Tax Assessment Act provides that a decision made under subsection (3) is non-reviewable, that is, not subject to any objection or appeal.

This clause deletes section 43A(4).

This will have the effect that any decision of the Commissioner under section 43A(3), on an application for an extension of time in which to apply for the concession, will now be subject to the objection and review provisions of the *Taxation Administration Act 2003*.

**Clause 9:** **Section 45A amended**

Sections 45A and 45B of the Land Tax Assessment Act are anti-avoidance provisions.

Section 45A empowers the Commissioner to determine that a minor interest in a lot or parcel of land is to be disregarded if the Commissioner is of the opinion that the interest was created for the purpose of reducing the amount of land tax payable.

For example, a person may own two investment properties which are subject to land tax on the aggregated unimproved values of those properties. The person may transfer a one per cent interest in one of the properties to their spouse. This would create different ownership for each of the properties, thereby avoiding the aggregation provisions of the Act. As land tax is calculated on a progressive scale based on unimproved value, this would have the effect of reducing the overall land tax payable.

Where the Commissioner makes such a determination, section 45B then provides that the owner of the minor interest is to be taken not to be an owner of the lot or parcel of land for the purposes of the Act. Land tax is assessed as if the land was wholly owned by the owner of the lot or parcel who does not have the minor interest.

Where the Commissioner has made a determination that a minor interest is to be disregarded, it was the policy intent and practice of the Commissioner to make a reassessment of land tax from the time the minor interest was created, subject to the five year limitation period for making a reassessment as set out in section 17 of the Taxation Administration Act.

The decision of the South Australian Supreme Court in *Kalomel Nominees Pty Ltd v Commissioner of State Taxation* [2012] SASC 10 (Kalomel) has cast doubt on this practice. The decision in Kalomel was to the effect that a principal place of residence exemption granted to a minority interest holder could not be retrospectively removed.

The South Australian legislation the subject of Kalomel is similar to the Land Tax Assessment Act provisions.

Following Kalomel, where a determination has been made under section 45A, section 45B operates to deem the majority owner to be the owner of the whole of the land and subject to land tax accordingly. However, where an original assessment was issued recognising the minor interest, there is no authority to make a reassessment as the reassessment provisions do not affect any assessments made before the determination.

The amendments made under this clause support the making of reassessments as from the creation of a minor interest, subject to the limitation on the period for making a reassessment under proposed section 45B and section 17 of the Taxation Administration Act.

Section 45A(1) as currently enacted provides that the Commissioner may determine that an interest in a lot or parcel of land is to be disregarded for the purposes of this Act.

Subclause (1) amends section 45A(1) by providing further that the interest is to be disregarded ‘on and from the creation of the interest’.

Section 45A(4) provides that, upon making a determination, the Commissioner must give the owner a notice setting out the determination and the reasons for the determination.

Subclause (2) amends section 45A(4) by imposing an additional requirement that the notice should also set out the effect of the determination as described in section 45B, that is the tax consequences of the determination.

**Clause 10:** **Section 45B replaced**

This clause replaces section 45B of the Land Tax Assessment Act.

**45B. Effect of determination under s. 45A**

Subsection (1) provides that if the Commissioner makes a determination under section 45A, a minor interest is disregarded for the purposes of assessing land tax.

The effect of this is that the land will then be aggregated with any other taxable land owned by the remaining owners.

Subsection (2) authorises the Commissioner to make an assessment, or reassessment on the aggregated value of the land held in the ownership disregarding the minor interest.

Subsection (3) limits the making of a reassessment to five assessment years. This is generally consistent with the operation of the reassessment provisions in the Taxation Administration Act.

Subsection (4) provides that subsection (3):

(a) does not affect the operation of section 17(2) of the Taxation Administration Act; and

(b) applies despite section 17(4) of the Taxation Administration Act.

Section 17(4) of the Taxation Administration Act generally prevents reassessments being made more than five years after the date of the original assessment. However, section 17(2) provides that the Commissioner may make a reassessment at any time where directed in the course of review proceedings, or where there has been an evasion of tax or provision of false or misleading information. In these circumstances, the period of reassessment will not be limited.

Subject to subsection (2), the net effect of the amendments is that reassessments can only be made commencing from the assessment year in which the determination was made (if already assessed for that year), and going back to and including:

(a) the assessment year after the assessment year in which the minor interest was acquired; or

(b) the assessment year that is four years before the assessment year in which the determination was made;

whichever is later.

**Clause 11:** **Glossary amended**

Clause 3 of the Glossary to the Land Tax Assessment Act sets out the meaning of 'subdivided' in relation to land.

Subclause (1)(d)(ii) of clause 3 deals with circumstances where land is the subject of a strata plan, but the plan does not require approval from the Western Australian Planning Commission. In these circumstances the land is considered to be subdivided under the Land Tax Assessment Act when a certificate required under section 5B(2) of the *Strata Titles Act 1985* is given by a local government.

Section 5B(2) formerly required a strata plan lodged for registration to be accompanied by a certificate given by the local government in accordance with section 23 of the Strata Titles Act.

Amendments have been made to the Strata Titles Act as a consequence of the enactment of the *Building Act 2011*. Section 5B(2) of the Strata Titles Act now requires a strata plan lodged for registration to be accompanied by:

- an occupancy permit granted under an application mentioned in the Building Act section 50(1)(a); or
- a building approval certificate granted under an application mentioned in the Building Act section 50(1)(b).

Clause 3 of the Glossary requires amendment to reflect the changes that have been made to section 5B(2) of the Strata Titles Act.

Clause 11 deletes clause 3(1)(d)(ii) of the Glossary and inserts a replacement clause that refers instead to when an occupancy permit or a building approval certificate required under section 5B(2) of the Strata Titles Act is granted under an application mentioned in section 50(1)(a) or (b) of the Building Act.

**Part 4 – *Pay-roll Tax Assessment Act 2002* amended**

**Clause 12:** **Act amended**

This clause provides that the amendments in this Part are to the *Pay-roll Tax Assessment Act 2002*.

**Clause 13:** **Section 8 amended**

Section 8 of the Pay-roll Tax Assessment Act provides the annual and monthly thresholds at which payroll tax becomes payable.

This clause inserts new subsections (3) and (4) into section 8.

Under current legislation, the amount of payroll tax payable by an employer for a financial year is calculated on the difference between the wages paid by that employer in WA and some or all of the annual tax free threshold, depending on whether or not the employer pays wages for an entire financial year, and whether the employer also pays wages in other Australian states or territories.

The amendments introduce a new scheme whereby the annual tax free threshold gradually phases out where taxable wages exceed this amount.

Subsection (3) introduces the term 'upper threshold amount', which is the amount at which the annual tax free threshold phases out, resulting in an employer or group of employers paying tax on their total WA taxable wages without deduction.

From 1 July 2015, the upper threshold amount will be $7,500,000.

Subsection (4) introduces the new term 'tapering value' which uses a formula to calculate the gradual reduction in the deductable amount that employers who pay wages between the annual threshold amount and the upper threshold amount may claim against their WA taxable wages.

Any change in the annual threshold amount or the upper threshold amount will result in a change to the tapering value without a requirement for this subsection to be amended.

For the financial year beginning on 1 July 2015, the tapering value will equal 8/67, resulting from the calculation of $800,000/($7,500,000 - $800,000).

**Clause 14:** **Sections 10 to 14 replaced**

This clause replaces sections 10 to 14 of the Pay-roll Tax Assessment Act and adds a number of new sections for determining the amount of payroll tax payable by non-group employers.

A non-group employer is an employer who is not a member of a group under Part 4 of the Act.

**10. Annual tax liability: local non-group employers**

New section 10 provides for the calculation of the annual payroll tax liability for a *local non-group employer* who pays taxable wages for the whole or part of an assessment year.

A local non-group employer pays wages in WA only.

Subsection (1) provides the basis for determining the amount of payroll tax payable by a local non-group employer for the whole of an assessment year.

Subsection (1)(a) provides that, if the taxable wages paid for the assessment year are less than or equal to the annual threshold amount, the tax payable is nil.

Subsection (1)(b) provides that, if the taxable wages paid for the assessment year are greater than or equal to the upper threshold amount for that year, payroll tax is payable on the employer's total taxable wages without any deduction.

Subsection (1)(c) provides that, if the taxable wages paid for the assessment year are between the annual and upper threshold amounts, the amount of payroll tax payable is calculated by applying the payroll tax rate to the difference between the amount of taxable wages paid and the deductable amount calculated under subsection (2).

Subsection (2) provides the formula for calculating the deductable amount for the purposes of subsection (1)(c).

The formula provides for a gradual diminishing of the deductible amount as the wages paid or payable increase to the upper threshold amount.

**Example**

A local non-group employer pays taxable wages of $1,470,000 for the financial year beginning on 1 July 2015.

The deductable amount would be calculated as follows:

> annual threshold amount – [(total taxable wages – annual threshold amount) x tapering value]
>
> $800,000 – [($1,470,000 - $800,000) x (8/67)] = $720,000

Payroll tax would be payable on the difference between the wages paid of $1,470,000 and the deductable amount of $720,000 which is $750,000.

Subsection (3) provides the basis for determining the amount of payroll tax payable by an employer who is a local non-group employer for part of an assessment year.

The effect of this subsection is to replicate the calculations in subsection (1) using annual and upper threshold amounts that are apportioned under section 11A in accordance with the period that the employer was a local non-group employer for that assessment year.

Subsection (3)(a) provides that, if the taxable wages are less than or equal to the apportioned annual threshold amount, the tax payable is nil.

**Example**

A local non-group employer pays taxable wages of $375,000 for the 183 day period between 1 July 2015 and 30 December 2015.

Under section 11A(1), the apportioned annual threshold amount is equal to:

annual threshold x (no. days in part-year/no. days in the year)

$800,000 x (183/366) = $400,000

As the wages of $375,000 for the part-year are below the apportioned annual threshold amount of $400,000, the amount of payroll tax payable is nil.

Subsection (3)(b) provides that, if the taxable wages for part of an assessment year are greater than or equal to the apportioned upper threshold amount, payroll tax is payable on the employer's total wages without any deduction.

**Example**

A local non-group employer pays wages of $5,500,000 for the 244 days between 1 July 2015 and 29 February 2016.

Under section 11A(2), the apportioned upper threshold amount is equal to:

upper threshold x (no. of days in part-year/no. days in the year)

$7,500,000 x (244/366)

= $5,000,000

As the employer's taxable wages for the part-year are above the apportioned upper threshold amount of $5,000,000, payroll tax is payable on the total taxable wages of $5,500,000.

Subsection (3)(c) provides that, if the taxable wages for part of an assessment year are between the apportioned annual and upper threshold amounts, the amount of payroll tax payable is equal to the payroll tax rate applied to the difference between the taxable wages and a deductable amount calculated under subsection (4).

Subsection (4) provides the formula for calculating the deductable amount for the purposes of subsection (3)(c).

The formula provides for a gradual diminishing of the deductible amount as the taxable wages paid or payable increase to the apportioned upper threshold amount.

**Example**

A local non-group employer pays wages of $2,000,000 for the 122 days between 1 March 2016 and 30 June 2016.

Under section 11A(1), the apportioned annual threshold amount is equal to:

> annual threshold x (no. of days in part-year/no. days in the year)
>
> $800,000 x (122/366)
>
> = $266,667

Under section 11A(2), the apportioned upper threshold amount is equal to:

> upper threshold x (no. of days in part-year/no. days in the year)
>
> $7,500,000 x (122/366)
>
> = $2,500,000

As the wages of the employer fall within the apportioned annual and upper threshold amounts, the deductable amount is equal to:

> apportioned annual threshold amount – [(total taxable wages – apportioned annual threshold amount) x tapering value]
>
> $266,667 - [($2,000,000 - $266,667) x (8/67)] = $59,702

Payroll tax would be calculated under subsection (3)(c) on $1,940,298, being the difference between the taxable wages of $2,000,000 and the deductable amount of $59,702.

Subsection (5) provides that the apportioned annual threshold amount is calculated in accordance with section 11A(1).

Subsection (6) provides that the apportioned upper threshold amount is calculated in accordance with section 11A(2).

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

This section provides the formulas for apportioning the annual and upper threshold amounts for the purpose of section 10 for an employer who is a local non-group employer for part of a year. Both amounts are apportioned based on the number of days that an employer is a local non-group employer in the assessment year.

Subsection (1) provides the formula for calculating the apportioned annual threshold amount.

Subsection (2) provides the formula for calculating the apportioned upper threshold amount.

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

Payroll tax is an annual tax payable by periodic return, which may be monthly or quarterly. At the end of each assessment year or part thereof, the tax liability is reconciled on an annual or part-year basis, as the case requires, and an appropriate adjustment is made for the tax paid during the year.

This section provides for the calculation of the payroll tax liability of a local non-group employer who remits payroll tax by way of periodic returns.

The method of calculation replicates the calculation for a full or part year (under new section 10) but is based on the number of days in the return period and the monthly threshold amount in section 8(2) of the Act.

Subsection (1) provides the basis for determining the amount of payroll tax payable for a progressive return period or part of a progressive return period during an assessment year.

Subsection (1)(a) provides that, if the total wages paid during a return period or part-period are less than or equal to the apportioned threshold amount, determined in accordance with proposed section 12(1), for the return period, the tax payable is nil.

Subsection (1)(b) provides that, if the total wages paid during a return period or part-period are greater than or equal to the upper threshold amount apportioned for that period, in accordance with proposed section 12(2), payroll tax is payable on the employer's total taxable wages without any deduction.

Subsection (1)(c) provides that, if the total wages paid during a return period or part-period are between the apportioned annual threshold amount and apportioned upper threshold amount, the amount of payroll tax payable is equal to the payroll tax rate applied to the difference between the total wages and a deductable amount calculated under subsection (2).

Subsection (2) provides the formula for calculating the deductable amount for the purpose of subsection (1)(c).

The formula provides for a gradual diminishing of the deductible amount as taxable wages increase to the apportioned upper threshold amount.

**Example**

A local non-group employer who lodges payroll tax returns on a quarterly basis pays taxable wages of $300,000 for the 92 days between 1 July 2015 and 30 September 2015.

The apportioned threshold for this period is calculated under section 12(1) as:

> No. of months in progressive return period x monthly threshold amount x (No. days taxable wages paid or payable/No. days in progressive return period)
>
> 3 x $66,667 x (92/92) = $200,001

The deductable amount for the employer is equal to:

> apportioned threshold amount – [(total taxable wages – apportioned threshold amount) x tapering value]
>
> $200,001 - [($300,000 - $200,001) x (8/67)] = $188,061

Payroll tax would be calculated under subsection (1)(c) on $111,939, being the difference between the taxable wages of $300,000 and the deductable amount of $188,061.

Subsection (3) provides that the apportioned annual threshold amount for progressive payroll tax returns is calculated in accordance with section 12(1).

Subsection (4) provides that the apportioned upper threshold amount for progressive payroll tax returns is calculated in accordance with section 12(2).

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

This section provides the formulas for calculating the apportioned threshold amount and apportioned upper threshold amount for progressive returns under section 11.

Subsection (1) provides that the apportioned threshold amount for a progressive return period is equal to the number of months in the return period times the monthly threshold amount times the proportion of days in the period for which the employer was paying taxable wages.

Subsection (2) provides that the apportioned upper threshold amount for a progressive return period is equal to the number of months in the return period times one-twelfth of the upper threshold amount (to reflect a monthly calculation) times the proportion of days in the period for which the employer was paying taxable wages.

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

New section 13 provides for the calculation of the annual payroll tax liability of an *interstate non-group employer*.

An interstate non-group employer pays wages in WA and in one or more other Australian jurisdictions during an assessment year.

Under the payroll tax scheme that existed prior to these amendments, an employer would only be entitled to a proportion of the annual threshold amount equal to the proportion of their WA taxable wages to their total Australian taxable wages. Payroll tax would be calculated on the difference between the employer's WA taxable wages and the apportioned threshold amount.

Under the amended scheme, where the employer's Australian taxable wages are between the annual and upper threshold amounts, the deductible amount gradually diminishes to nil as the wages increase between those amounts. It then further reduces based on the proportion of the employer's WA taxable wages to their total Australian taxable wages. No deduction applies where the employer's Australian taxable wages are equal to or exceed the upper threshold amount.

Subsection (1) provides that 'Australian taxable wages' are WA taxable wages and interstate taxable wages. These terms are both defined in the Glossary.

This definition is purely to simplify the text of the legislation and has no other substantive effect.

Subsection (2) provides the basis for determining the amount of payroll tax payable by an employer who is an interstate non-group employer for the whole of an assessment year.

Subsection (2)(a) provides that, if the Australian taxable wages are less than or equal to the annual threshold amount for that year, the tax payable is nil.

Subsection (2)(b) provides that, if the Australian taxable wages are greater than or equal to the upper threshold amount for that year, payroll tax is payable on the total WA taxable wages without any deduction.

Subsection (2)(c) provides that, if the Australian taxable wages are between the annual threshold amount and the upper threshold amount, the amount of payroll tax payable is equal to the payroll tax rate applied to the difference between the amount of WA taxable wages and a deductable amount calculated under subsection (3).

Subsection (3) provides the formula for calculating the deductable amount for the purpose of subsection (2)(c).

The formula provides for a gradual diminishing of the deductable amount as Australian taxable wages increase to the upper threshold amount. This is then apportioned based on the proportion of Australian taxable wages that are WA taxable wages.

**Example**

For the financial year beginning on 1 July 2015, an interstate non-group employer pays taxable wages of $1,470,000 made up of $490,000 in Western Australia and $980,000 in South Australia.

The deductable amount for the employer would be calculated as follows:

> (annual threshold amount – [(total Australian taxable wages – annual threshold amount) x tapering value]) x (total WA taxable wages/total Australian taxable wages)
>
> ($800,000 – [($1,470,000 - $800,000) x (8/67)]) x ($490,000/$1,470,000) = $240,000

Payroll tax would be calculated on $250,000, being the difference between the WA taxable wages of $490,000 and the deductable amount of $240,000.

Subsection (4) is used to determine the amount of payroll tax payable by an employer who is an interstate non-group employer for part of an assessment year.

The effect of this subsection is to replicate the calculations in subsection (2) using the annual and upper threshold amounts as apportioned under proposed section 14 in accordance with the period that the employer was an interstate non-group employer for that assessment year.

Subsection (4)(a) provides that, if the Australian taxable wages for part of an assessment year are less than or equal to the apportioned annual threshold amount for that year, the tax payable is nil.

Subsection (4)(b) provides that, if the Australian taxable wages for part of an assessment year are greater than or equal to the apportioned upper threshold amount for that year, payroll tax is payable on the employer's WA taxable wages without any deduction.

Subsection (4)(c) provides that, if the Australian taxable wages for part of an assessment year are between the apportioned annual threshold amount and the apportioned upper threshold amount, then the amount of payroll tax payable is equal to the payroll tax rate applied to the difference between the WA taxable wages and a deductable amount calculated under subsection (5).

Subsection (5) provides the formula for calculating the deductable amount for the purpose of subsection 4(c).

The calculation of the deductable amount is a two-step process that involves first calculating the gradual diminishing of the deductable amount as the Australian taxable wages increase to the apportioned upper threshold amount, then apportioning this amount based on the proportion of Australian taxable wages that are WA taxable wages.

**Example**

An interstate non-group employer pays taxable wages in Australia totalling $300,000 (consisting of $250,000 in WA and $50,000 in Victoria) for the 92 days between 1 July 2015 and 30 September 2015.

The apportioned annual threshold for this period is calculated under section 14(1) as equal to:

> annual threshold amount x (No. days in part-year/No. days in the year)
>
> $800,000 x (92/366) = $201,093

The deductable amount for the employer would be calculated as follows:

> (apportioned annual threshold amount – [(total Australian taxable wages – apportioned annual threshold amount) x tapering value]) x (total WA taxable wages/total Australian taxable wages)
>
> ($201,093 – [($300,000 - $201,093) x (8/67)]) x ($250,000/$300,000) = $157,736

Payroll tax would be calculated on $92,264, being the difference between the WA taxable wages of $250,000 and the deductable amount of $157,736.

Subsection (6) provides that the apportioned annual threshold amount is calculated in accordance with section 14(1).

Subsection (7) provides that the apportioned upper threshold amount is calculated in accordance with section 14(2).

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

This section provides the formulas for apportioning the annual and upper threshold amounts for the purpose of section 13 for an employer who is an interstate non-group employer for part of a year. Both amounts are apportioned based on the number of days that an employer is an interstate non-group employer in the assessment year.

Subsection (1) provides the formula for calculating the apportioned annual threshold amount.

Subsection (2) provides the formula for calculating the apportioned upper threshold amount.

**Clause 15:** **Section 17 amended**

Section 17 of the Pay-roll Tax Assessment Act provides for the calculation of annual payroll tax liability for groups of employers based on the total wages paid by all members of the group during the assessment year.

Subclause (1) inserts a definition of Australian taxable wages, which are WA taxable wages and interstate taxable wages. Both of these terms are defined in the Glossary and, in conjunction with subclause (2), the inclusion is purely to simplify the text of the legislation and has no substantive effect.

Subclause (2) replaces each occurrence of 'WA taxable wages or interstate taxable wages' with the term 'Australian taxable wages'.

Subclause (3) deletes subsection (2) and inserts new subsections (2) and (3A).

Subsection (2) provides the basis for calculating the amount of payroll tax payable by a group of employers where, at all times during the assessment year, there is at least one member of the group that pays Australian taxable wages, whether or not it is the same member.

The amount of payroll tax payable by a group is the same as the amount of payroll tax payable by a non-group employer with the same composition and amount of Australian taxable wages as the group. As such, calculations under this subsection will be the same as calculations under subsection 13(2).

Subsection (3A) provides for the calculation of the deductable amount used in subsection (2)(c)(ii). The calculations for this amount are the same as those in new section 13(3).

**Example**

For the financial year beginning on 1 July 2015, ABC Pty Ltd and XYZ Pty Ltd constitute a group under the Pay-roll Tax Assessment Act.

ABC Pty Ltd pays taxable wages of $490,000 in WA, while XYZ Pty Ltd pays taxable wages of $980,000 in South Australia. The total amount of Australian taxable wages paid by the group is $1,470,000.

The deductable amount for the group would be calculated as follows:

> (annual threshold amount – [(total Australian taxable wages – annual threshold amount) x tapering value]) x (total WA taxable wages/total Australian taxable wages)
>
> ($800,000 – [($1,470,000 - $800,000) x (8/67)]) x ($490,000/$1,470,000) = $240,000

Payroll tax for the group would be payable on $250,000, being the difference between the WA taxable wages of $490,000 and the deductable amount of $240,000.

Subclause (4) inserts the term 'the ***part-year***' to subsection (3), which is used in later subsections to refer to the part of the assessment year in which at least one member of the group is paying Australian taxable wages.

The subclause also replaces the phrase 'WA taxable wages or interstate taxable wages' with the term 'Australian taxable wages', which is to simplify the text of the legislation and has no other substantive effect.

Subclause (5) deletes subsection (4) and inserts new subsections (4), (5), (6) and (7).

Subsection (4) provides for the calculation of the amount of payroll tax payable by a group of employers where the group only pays Australian taxable wages for part of the assessment year.

The amount of payroll tax payable by a group is the same as the amount of payroll tax payable by a non-group employer with the same composition and amount of Australian taxable wages as the group. As such, calculations under this subsection will be the same as calculations under subsection 13(4).

Subsection (5) provides a formula for calculating the deductable amount used in subsection (4)(c)(ii). The calculations for this amount are the same as those in new section 13(5).

**Example**

For the 92 days between 1 July 2015 and 30 September 2015, ABC Pty Ltd and XYZ Pty Ltd form a payroll tax group.

During this time, ABC Pty Ltd pays Australian taxable wages totalling $200,000 which consists of $150,000 in WA and $50,000 in Victoria. XYZ Pty Ltd pays WA taxable wages of $100,000. The total amount of Australian taxable wages paid by the group is $300,000.

The apportioned annual threshold for this period is calculated under section 18(1) as equal to:

> annual threshold amount x (No. days in part-year/No. days in the year)
>
> $800,000 x (92/366) = $201,093.

The deductable amount for the employer would be calculated as follows:

> (apportioned annual threshold amount – [(total Australian taxable wages – apportioned annual threshold amount) x tapering value]) x (total WA taxable wages/total Australian taxable wages)
>
> ($201,093 – [($300,000 - $201,093) x (8/67)]) x ($250,000/$300,000) = $157,736

Payroll tax for the group would be payable on $92,264, being the difference between the WA taxable wages of $250,000 and the deductable amount of $157,736.

Subsection (6) provides that the apportioned annual threshold amount for a group of employers that only pays Australian taxable wages for part of an assessment year is calculated in accordance with section 18(1).

Subsection (7) provides that the apportioned upper threshold amount for a group of employers that only pays Australian taxable wages for part of an assessment year is calculated in accordance with section 18(2).

**Clause 16:** **Section 18 replaced**

This clause replaces section 18 of the Pay-roll Tax Assessment Act.

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

This section provides the formulas for calculating the apportioned annual and upper threshold amounts for a group that only pays Australian taxable wages for part of the assessment year. Both amounts are apportioned based on the number of days in the year that the group is paying Australian taxable wages. These amounts are used in section 17.

Subsection (1) provides the formula for calculating the apportioned annual threshold amount.

Subsection (2) provides the formula for calculating the apportioned upper threshold amount.

**Clause 17:** **Section 22A deleted**

This clause deletes section 22A, which contained specific provisions relating to the 2004-05 assessment year. These provisions are outside the reassessment period of five years set by the Taxation Administration Act and are no longer relevant.

**Clause 18:** **Schedule 1 amended**

This clause inserts provisions ensuring that the amendments contained in this Act have no effect on assessment years that commence before 1 July 2015.

**Clause 19:** **Glossary amended**

This clause amends the Glossary to remove the definition of ***apportioned threshold amount***, and to include self-explanatory definitions of ***tapering value*** and ***upper threshold amount***.