

## BUSINESS TAX REVIEW (ASSESSMENT) BILL 2003

### EXPLANATORY MEMORANDUM

Prior to the February 2001 State election, the Government committed to undertake a review of business taxes in Western Australia in its first year of office. The commitment was confirmed with the announcement of the Review of State Business Taxes in the 2001-02 Budget.

The main objective of the Review was to make recommendations on how to improve the efficiency, equity and simplicity of the State's tax system, with a particular focus on minimising compliance costs.

The Government tasked the Department of Treasury and Finance with conducting the Review. Following submissions from industry, taxpayer and community groups, and the use of an independent Reference Committee as a "sounding board" for reform proposals, Treasury and Finance presented its final report of the Review to the Treasurer on 28 February 2002.

Given the extensive package of reforms proposed by the report, the Government released, on 14 June 2002, a Draft White Paper for public comment titled "Streamlining Western Australia's Tax System – Fewer, Fairer and Simpler". The full report of the Review of State Business Taxes was also made publicly available at that time.

The Reference Committee was reconvened and expanded to consider the submissions responding to the public release of the Draft White Paper, and to provide an independent view of any proposed changes to the package of reforms.

On 22 January 2003, the Treasurer unveiled the Government's response to the Draft White Paper, indicating an intention to introduce legislation into the Parliament to put into effect the changes to the tax system.

This Bill, together with the Business Tax Review (Taxing) Bill 2003, seeks to implement the Business Tax Review recommendations for pay-roll tax and land tax.

This Bill also includes a minor additional amendment in the land tax legislation to provide an exemption for life tenancies held in trust where the property is used as the principal place of residence of the life tenant.

#### PART 1 – PRELIMINARY

##### Clause 1: Short Title

This clause provides that the Act may be cited as the *Business*

*Tax Review (Assessment) Act 2003.*

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

This clause provides the commencement provisions for the Act.

Subclause (1) provides that, subject to this section, the amendments in this Act operate from 1 July 2003.

Subclause (2) provides that section 8 is taken to have come into operation immediately after the *Land Tax Assessment Act 2002* came into operation. Section 8 provides a land tax exemption for life interests held by an executor under the terms of a Will.

Subclause (3) provides that section 9 is taken to have come into operation on 1 July 2002. Section 9 amends the *Land Tax Assessment Act 1976* to provide for the land tax exemption for life interests held by an executor under the terms of a Will to have retrospective application to 1 July 2002.

**PART 2 – LAND TAX EXEMPTION FOR NEWLY SUBDIVIDED LAND**

This measure seeks to broaden the land tax base by abolishing the concession for land developers.

The concession, introduced in 1996, operates such that the subdivider is charged land tax at the "en globo" valuation rate for single residential lots subdivided in the previous financial year, and remaining in the ownership of the subdivider at 30 June in any year until the following 30 June. The concession was intended to increase buffer stock of residential lots available for sale and to reduce seasonal variation in the release of new lots. However, there is a paucity of evidence to suggest that the concession has achieved this aim. It was considered that the continued provision of concessions to land developers was inequitable on the basis that similar concessions are not provided to the majority of other industry sectors. It was considered more equitable to utilise the increased revenue of \$2.5 million per year from this measure to implement a flatter land tax scale

During the consultation process, concerns were expressed by land development industry groups that the concession has been effective in smoothing out cycles in land production, and that land held by land developers should be considered as trading stock and should receive different land tax treatment to land held by end users. LandCorp also expressed similar concerns.

Although sharing industry group concerns, the Reference Committee nevertheless supported the recommendation on the basis that the revenue

collected from abolishing the concession assisted towards achieving the revenue neutrality of the reform package.

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

This clause specifies that the amendments effected in Part 2 are to the *Land Tax Assessment Act 2002* ("the Act").

**Clause 4:** **Section 13 amended**

This clause repeals existing section 13(3) of the Act. This provision specified that a reference to the "concessional unimproved value" of a new lot in a land tax Act is that given under section 41 of the Act.

**Clause 5:** **Section 41 repealed**

This clause repeals existing section 41 of the Act, which extended the concession for newly subdivided land.

**Clause 6:** **Glossary amended**

Paragraph (a) amends Clause 1 of the Glossary by deleting the definitions of "concessional unimproved value" and "original lot" as these terms will no longer be used in the Act.

Paragraph (b) removes the reference to the repealed sections 41 and 13(3) in the definition of "unimproved value".

**Clause 7:** **Financial years before the commencement day**

This clause ensures the concession remains applicable for assessment years prior to 2003/04.

Subclause (1) provides that despite any amendment effected by this Part, the Act, as in force prior to the commencement day, applies in all respects for all assessment periods prior to the commencement of this Part.

Subclause (2) inserts a self-explanatory definition of the term "commencement day".

## **PART 3 – LAND TAX EXEMPTION FOR LIFE TENANTS**

As a result of amendments to implement the 2001/02 Budget, an executor or administrator of a deceased estate owning land as trustee for an individual who has a life interest in a property that is their principal place of residence, is liable for land tax on the property. This outcome is inconsistent with the policy intent of the amendments.

This amendment will restore equity with executors or administrators of deceased estates who, as trustees, own land which is exempt from land tax because the property is the primary residence of an individual who has a right of residence under a Will.

The following conditions must be met at midnight 30 June for the exemption to apply for the following land tax assessment year (eg 30 June 2003 for the 2003/04 land tax assessment year):

- an executor of a Will as trustee must own the property. To be an owner for the purposes of the exemption, the legal title must be vested in the name of the executor. Section 8 of the *Administration Act 1903* provides that all real estate of a deceased person owned at his death, as from the date of death, passes and vests in the executor or administrator to whom probate has been granted;
- an individual identified in the Will must have an equitable interest in the estate of freehold in possession as a life tenant for the term of their own life or that of another;
- the individual must use the property as their principal place of residence. This condition means that the exemption will not be available if the life tenant does not occupy the land as their primary residence.

A partial exemption will apply under section 18 of the Act where an executor or administrator owns land, as identified by this section, together with others, or where part of the land is occupied for non-exempt purposes.

The Public Trustee's Office has been consulted and supports the amendment.

The measure is estimated to have a minimal impact on the revenue and will apply retrospectively from 1 July 2002.

**Clause 8:** *Land Tax Assessment Act 2002 amended*

Subclause (1) specifies that the amendments effected in this section are to the *Land Tax Assessment Act 2002*.

Subclause (2) deletes section 22(b) and inserts a new paragraph (b). The new paragraph is required to allow an exemption from land tax for private residential property owned by an executor or administrator as trustee, where an individual identified in a Will has an equitable interest in the freehold as a life tenant and uses the property as his/her primary residence.

**Clause 9:** *Land Tax Assessment Act 1976 amended*

Subclause (1) specifies that the amendments in this section are

to the *Land Tax Assessment Act 1976*.

Subclause (2)(a) inserts a new paragraph (xa) into clause 9(a) of the Schedule to allow an exemption from land tax for private residential property owned by an executor or administrator as trustee, where an individual identified in a Will has an equitable interest in the freehold as a life tenant and uses the property as his/her primary residence.

Subclause (2)(b) inserts a reference to the new paragraph (xa) into clause 9(a)(xi)(l) of the Schedule to exempt land where owners of part of the land are executor or executors as in paragraph (xa).

Subclause (2)(c) inserts a reference to the new paragraph (xa) into clause 9(b)(ib)(III) of the Schedule to allow an exemption from land tax for a corporation as executor that owns the land as executor as in paragraph (xa).

Subclause (2)(d) inserts a reference to the new paragraph (xa) into clause 9(b)(iva)(l) of the Schedule to limit the exemption from land tax in paragraph 9(a)(xi) of the Schedule to the extent of the proportion of the land held by a part owner who as executor, allows a person to use the land as their sole or principal place of residence.

It was necessary to amend the *Land Tax Assessment Act 1976* to provide for the amendments to apply retrospectively to 1 July 2002, as this is the operative Act prior to 1 July 2003 when the *Land Tax Assessment Act 2002* commences.

**Clause 10:** Requirement to reassess

This clause provides that the Commissioner of State Revenue must make any reassessment necessary, to give effect to the amendments in this Part. This will ensure that any assessment made prior to the commencement of these provisions can be reassessed to apply the exemption.

**PART 4 – SINGLE MARGINAL RATE OF PAY-ROLL TAX**

This measure seeks to replace the current variable marginal pay-roll tax rate scale with a single marginal rate of 6.0% above an exemption threshold of \$750,000.

Moving to a single rate of pay-roll tax will remove distortions and inequities caused by the current pay-roll tax regime, improve interstate harmonisation, and reduce compliance and administration costs.

This measure is estimated to cost \$7.8 million in 2003-04 and \$24.9 million in the three years to 2005-06. The revenue loss will be approximately offset by the gain from including eligible termination payments in the pay-roll tax base.

It is argued that an effect of the current rate scale is to discourage increased employment at payrolls for which the marginal rate is higher, and discourage the growth of smaller employers.

Under the proposed single marginal rate, the pay-roll tax for each additional dollar of wages will be the same for all employers, thereby removing distortions and inequities caused by the variable marginal rate scale.

It is estimated that around 53% of pay-roll tax payers will benefit from the single marginal rate. Of those employers facing an increase in their pay-roll tax bill, the average rise will be around 11%.

The single marginal rate system will improve interstate harmonisation and be much simpler, reducing both compliance and administration costs.

Although the single marginal rate pay-roll tax scale was for the most part supported in submissions to the Review, there was some concern for employers who would pay more pay-roll tax under the proposed new scale. Transitional arrangements were suggested by the Chamber of Commerce and Industry and State Development agencies in order to reduce the impact of any increase in pay-roll tax liabilities. However, such arrangements would involve a significant revenue cost that would need to be offset elsewhere in the package of measures.

This measure will operate from 1 July 2003.

Complementary amendments for this change are also included in the Business Tax Review (Taxing) Bill 2003.

**Clause 11: The Pay-roll Tax Assessment Act 2002 amended**

This clause provides that the amendments in Part 4 are to the *Pay-roll Tax Assessment Act 2002*.

**Clause 12: Section 8 amended**

This clause amends section 8 to provide for the new annual and monthly threshold amounts.

Subclause (1) provides for an annual threshold amount of \$750,000 from 1 July 2003.

Subclause (2) provides for a monthly threshold amount of

\$62,500 from 1 July 2003.

**Clause 13:** **Section 9 repealed**

This clause repeals section 9. This section provided for the Commissioner to determine a rate of tax to be paid each month by an interstate employer or the designated group employer of a group. This section is no longer required as the rate of tax for all employers will be 6%.

**Clause 14:** **Section 10 amended**

This clause amends section 10, as the annual threshold amount is now \$750,000 and therefore is not required to be phased out at certain wage levels.

Subclause (1) amends section 10(1) which provides for the calculation of a tax liability for a local non-group employer for the whole of an assessment year.

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) provides that pay-roll tax will be calculated on the total amount of WA taxable wages for the year, less the annual threshold amount for the assessment year. This is required as the annual threshold amount is no longer phased out above certain wage levels.

Subclause (2) amends section 10(2) which provides for the calculation of a tax liability for a local non-group employer for part of an assessment year.

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) provides that the threshold amount to be allowed will be the amount apportioned for the number of days that the employer was a local non-group employer. This calculation is provided for in section 12(1).

**Clause 15:** **Section 11 amended**

This clause amends section 11, which provides for the calculation of the tax payable with returns for local non-group employers, where the tax is payable for a month or part of a month.

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) provides that the threshold amount to be allowed will be calculated in accordance with section 12(2).

**Clause 16:** **Section 12 replaced**

This clause repeals section 12 and inserts a new section 12.

Subsection (1) provides the calculation for apportioning the annual threshold amount where an employer is a local non-group employer for only part of an assessment year.

Subsection (2) provides the calculation for apportioning the monthly threshold amount for a local non-group employer for part of a month.

**Clause 17:** **Section 13 amended**

This clause amends section 13, as the annual threshold amount is now \$750,000 and is not phased out at certain wage levels. However, the threshold is apportioned based upon the proportion of the employer's wages that are WA taxable wages. This ensures that an employer does not obtain the full benefit of any tax free threshold applicable in other jurisdictions, as well as the full threshold in WA.

Subclause (1) amends section 13(1) which provides for the calculation of the tax liability for an interstate non-group employer for the whole of an assessment year.

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) provides that the threshold amount to be allowed is to be calculated in accordance with section 14(1).

Subclause (2) amends section 13(2), which provides for calculating the tax liability for an interstate non-group employer for part of an assessment year.

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) provides that the threshold amount to be allowed is to be calculated in accordance with section 14(2).

**Clause 18:** **Section 14 replaced**

This clause repeals section 14 and replaces it with a new section 14.

Subsection (1) provides the calculation for apportioning the annual threshold amount where an employer is an interstate non-group employer for the whole year. The threshold is apportioned on the basis of the proportion of the employer's total taxable wages that are WA taxable wages.

Subsection (2) provides the calculation for apportioning the annual threshold amount where an employer is an interstate non-group employer for only part of an assessment year. The threshold is apportioned as in subsection (1) and is also apportioned on the basis of the number of days in the part of the assessment year that the employer was an interstate non-group employer.

**Clause 19:** **Section 15 amended**

This clause amends section 15, which provides for the calculation of the tax payable with returns for interstate non-group employers.

Subclause (1) makes two amendments to section 15(1).

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) deletes the reference to subsection (4), as there will now only be one subsection under which the Commissioner will nominate a deduction.

Subclause (2) repeals section 15(2), (3), (4) and (5) and inserts new subsections (2) and (3).

Subsection (2) provides for the Commissioner to nominate an amount to be deducted from returns, having regard to the amounts of WA taxable wages and interstate taxable wages previously paid or payable and to any other relevant matters.

It is intended that the nominated amount for the first three months of the assessment year (July to September) will be based upon actual WA taxable wages and interstate taxable

wages paid or payable in the assessment year preceding the previous assessment year. Once the actual WA taxable wages and interstate taxable wages for the previous assessment year are known, a new amount will be nominated to apply to returns for October to June.

This will remove the requirement for most employers to provide estimated wages at the beginning of each assessment year. Estimates will now only be required for those new or recent registrations where there is no actual wage history.

Paragraph (b) allows the Commissioner to nominate another amount at his or her discretion, or on the request of an employer under subsection (3).

Subsection (3) allows an employer to ask the Commissioner to nominate a different amount if the employer expects that the amounts of WA taxable wages and interstate taxable wages payable for the assessment year will vary significantly from those previously paid or payable.

**Clause 20:** **Section 17 amended**

This clause amends section 17, as the annual threshold amount is now \$750,000 and is not phased out at certain wage levels. However, the threshold is apportioned based upon the proportion of the group's wages that are WA taxable wages. This ensures that a group does not obtain the full benefit of any tax free threshold applicable in other jurisdictions, as well as the full threshold in WA.

Subclause (1) amends section 17(2), which provides for the calculation of the tax liability for a group for the whole assessment year.

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) provides that the threshold amount to be allowed is to be calculated in accordance with section 18(1).

Subclause (2) amends section 17(4), which provides for the calculation of the tax liability for a group for part of an assessment year.

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) provides that the threshold amount to be allowed is to be calculated in accordance with section 18(2).

**Clause 21:** **Section 18 replaced**

This clause repeals and replaces section 18. The new section sets out the calculation of the threshold amounts for groups.

Subsection (1) provides the calculation of the annual threshold amount for a group for the whole year. The threshold is apportioned on the basis of the proportion of the group's total taxable wages that are WA taxable wages.

Subsection (2) provides the calculation of the threshold amount for a group for only part of an assessment year. The threshold is apportioned as in subsection (1) and is also apportioned on the basis of the number of days in the part of the assessment year.

**Clause 22:** **Section 19 amended**

This clause amends section 19, which provides for the calculation of the tax payable with returns for groups.

Subclause (1) amends section 19(1) to delete the reference to "appropriate rate of pay-roll tax" and replace it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Subclause (2) amends section 19(2).

Paragraph (a) deletes the reference to "appropriate rate of pay-roll tax" and replaces it with "pay-roll tax rate". This is required as pay-roll tax is now imposed at a single rate of 6%.

Paragraph (b) deletes the reference to subsection (5), as there will now only be one subsection under which the Commissioner will nominate a deduction.

Subclause (3) repeals section 19(3), (4), (5) and (6) and inserts new subsections (3) and (4).

Subsection (3) provides for the Commissioner to nominate an amount to be deducted from returns, having regard to the amounts of WA taxable wages and interstate taxable wages previously paid or payable by the group and to any other relevant matters.

It is intended that the nominated amount for the first three

months of the assessment year (July to September) will be based upon actual WA taxable wages and interstate taxable wages paid or payable in the assessment year preceding the previous assessment year. Once the actual WA taxable wages and interstate taxable wages for the previous assessment year are known, a new amount will be nominated to apply to returns for October to June.

This will remove the requirement for most groups to provide estimated wages at the beginning of each assessment year. Estimates will now only be required for those new or recent registrations where there is no actual wage history.

Paragraph (b) allows the Commissioner to nominate another amount at his or her discretion, or on the request of a member of a group under subsection (4).

Subsection (4) allows a member of a group to ask the Commissioner to nominate a different amount if the member expects that the amounts of WA taxable wages and interstate taxable wages payable for the assessment year will vary significantly from those previously paid or payable.

**Clause 23:** **Section 23 amended**

This clause amends section 23 to delete subsections (2) and (3) and replace them with new subsections (2) and (3).

Subsection (2) applies to non-group employers who pay WA taxable wages or interstate taxable wages for only part of an assessment year. It allows the Commissioner to treat such employers as if they had been employers for the whole assessment year, where he is satisfied that the employer had conducted the trade or business in Australia during the whole assessment year.

Subsection (3) applies where a non-group employer has conducted the trade or business in Australia during part only of an assessment year. It provides that the employer's pay-roll tax liability is to be assessed as if the employer had paid or been liable to pay wages only during that part of the assessment year.

**Clause 24:** **Section 27 amended**

This clause repeals section 27(1) and inserts new subsections (1) and (1a).

Subsection (1) provides that if a non-group employer who lodges monthly returns pays or is liable to pay any interstate

taxable wages for the assessment year, then an additional return must be lodged for the year, specifying the amount of interstate taxable wages paid or payable by the employer for the year.

Subsection (1a) provides that if a member of a group pays or is liable to pay interstate taxable wages for an assessment year, then the DGE of the group must lodge an additional return for the assessment year, specifying the amount of interstate taxable wages paid or payable by each member of the group for the year.

**Clause 25: Section 29 amended**

This clause amends section 29(2) to remove unnecessary restrictions on the Commissioner's ability to exempt an employer from lodging monthly returns.

**Clause 26: The Glossary amended**

This clause amends the Glossary.

Paragraph (a) deletes the definitions of "allowable deduction" and "appropriate rate" as the concept of an allowable deduction is no longer necessary and there is only one rate of 6% for all employers.

Paragraph (b) inserts definitions of "apportioned threshold amount" and "pay-roll tax rate" in their appropriate alphabetical positions. These definitions are self-explanatory.

## PART 5 – ELIGIBLE TERMINATION PAYMENTS

This measure seeks to improve the efficiency of pay-roll tax and broaden the tax base by including eligible termination payments (ETPs).

The inclusion of ETPs in the tax base, linked to section 27A of the Commonwealth's *Income Tax Assessment Act 1936*, will result in greater harmonisation between the States. The ETPs that are to be subject to pay-roll tax will only include those payments made by employers, to ensure that double taxation of ETPs does not arise.

It is expected that the impact of this measure will be fairly evenly spread across all employers who are subject to payroll tax, with the average pay-roll tax assessment of employers estimated to rise by less than 0.7%.

**Clause 27: The *Pay-roll Tax Assessment Act 2002* amended**

This clause provides that the amendments in Part 5 are to the *Pay-roll Tax Assessment Act 2002*.

**Clause 28:** **The Glossary amended**

Subclause (1) inserts definitions of the following self-explanatory terms in the appropriate alphabetical positions of the glossary:

- assessable income; and
- eligible termination payment (a copy of section 27A of the *Income Tax Assessment Act 1936* of the Commonwealth is in attachment A).

Subclause (2) inserts a new paragraph into the definition of "wages" in clause 2(1) of the Glossary of the Act.

Paragraph (a) deletes "and" after paragraph (h) of the definition of "wages".

Paragraph (b) inserts a new paragraph (j). This paragraph operates to include as wages, an eligible termination payment paid or payable by an employer as a consequence of the retirement from, or termination of, any office or employment of a person. Wages would include that part of the payment that would be included as part of the person's assessable income, if the whole of the eligible termination payment were made to the person. This applies whether or not the payment is made to the person or to any other person or body.

It should be noted that the term "retiree" has been used to define the person who is retiring, or has been terminated from, any office or employment.

This alleviates confusion that might have otherwise arisen had the retiree not been distinguished from any other person.