

EXPLANATORY MEMORANDUM

PAY-ROLL TAX AMENDMENT (DEBT AND DEFICIT REMEDIATION) BILL 2017

This Bill seeks to amend the *Pay-roll Tax Act 2002* to introduce a temporary progressive payroll tax rate scale for five years commencing 1 July 2018.

The introduction of the progressive payroll tax rate scale was announced as part of the 2017-18 Budget measures to repair the State's finances. This initiative is expected to raise an estimated \$435 million over the period from 2018-19 to 2020-21. The proposed amendments will impact less than one per cent of businesses in Western Australia.

Currently, an employer or group of employers are not subject to payroll tax if their Australian taxable wages are below the tax free threshold of \$850,000. A flat payroll tax rate of 5.5 per cent is imposed on the amount by which an employer's Western Australian taxable wages exceed the tax free threshold, which gradually diminishes as the Australian taxable wages increase. The tax free threshold is reduced to nil where an employer's wages exceed \$7.5 million.

These amendments do not affect the operation of the tax free threshold, and will not have any impact on the calculation of tax payable by employers who pay up to \$100 million in wages in a year. The flat rate of 5.5 per cent will remain applicable for all those employers.

Under the proposed arrangements, employers who pay in excess of \$100 million in wages will be subject to a progressive payroll tax rate scale, which operates on the basis that the rate of payroll tax progressively increases as the employer's wages increase.

To give effect to the new progressive payroll tax rate scale, formulas have been devised which take into account all relevant factors, such as whether the employer operates interstate, operates as part of a group, or operates for only part of a financial year, and which apportion relevant thresholds according to the proportion of Western Australian wages to Australian taxable wages. The rate determined by the formula is then applied to the employer's Western Australian taxable wages.

Although the formulas calculate a single rate of tax to be applied to the whole of the employer's Western Australian taxable wages, the overall effect of these formulas will be that a marginal rate of 6 per cent will be applied to wages of more than \$100 million but not more than \$1.5 billion, and a marginal rate of 6.5 per cent will be applied to wages of more than \$1.5 billion.

The payroll tax rate reverts to a flat rate of 5.5 per cent once the progressive tax rate ends on 30 June 2023.

Clause 1: Short title

This clause provides that the short title of this Act is the *Pay-roll Tax Amendment (Debt and Deficit Remediation) Act 2017*.

Clause 2: Commencement

Sections 1 and 2 of the Act come into operation on the day on which the Act receives the Royal Assent. The rest of the Act comes into operation on the day after the date of the Royal Assent.

Clause 3: Act amended

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

Clause 4: Part 1 heading inserted

This clause inserts a new heading, 'Part 1 – Preliminary', before section 1 of the Pay-roll Tax Act. The Act will be divided into three parts with Part 1 dealing with the preliminary matters, Part 2 imposing payroll tax on wages, and Part 3 setting out the rates of payroll tax that apply from 1 July 2018 to 30 June 2023.

Clause 5: Part 2 heading inserted

This clause inserts the heading, 'Part 2 – Imposition of pay-roll tax', after section 4 of the Act.

Clause 6: Section 5 amended

Section 5 imposes payroll tax on wages paid or payable and sets the applicable rates for the relevant periods.

Subclause (1) amends section 5(2) to provide the existing payroll tax rate of 5.5 per cent applies to wages paid or payable during the period of 1 January 2005 to 30 June 2018.

Subclause (2) inserts section 5(3) to introduce the progressive payroll tax scale for the five-year period from 1 July 2018 to 30 June 2023 (defined as the sliding scale period).

The rates that apply during the sliding scale period are set out in the newly inserted Part 3 of the Act. Division 1 of Part 3 sets out the rate that applies for local non-group employers, Division 2 sets out the rate for interstate non-group employers, and Division 3 sets out the rate for employers who are members of groups.

Subclause (2) also inserts section 5(4) to provide the payroll tax rate on wages paid or payable on or after 1 July 2023 is 5.5 per cent.

Clause 7:

Part 3 inserted

The newly inserted Part 3 of the Act sets out the formulas for calculating the payroll tax rates that apply from 1 July 2018 to 30 June 2023.

Division 1 – Rates for local non-group employers

6. Rates for whole or part of assessment year

Division 1 provides for the payroll tax rates for local non-group employers. A local non-group employer is an employer who pays wages only in Western Australia (WA) and is not grouped for payroll tax purposes with any other business.

Section 6 as inserted sets out the formulas to determine the payroll tax rate that applies to an amount calculated under section 10 of the *Pay-roll Tax Assessment Act 2002* where an employer is a local non-group employer for the whole or part of an assessment year.

Subsection (1) provides if an employer is a local non-group employer for the whole or part of an assessment year during the sliding scale period, the rate of payroll tax is the rate determined under the items of the Table.

The equations in the Table calculate a rate in respect of either a complete year or part of a year to accommodate an employer who does not pay wages for a full year, for example, where an employer ceases to employ during the year.

Item 1 of the Table provides the rate of 5.5 per cent applies to the amount of WA taxable wages where that amount does not exceed \$100,000,000 multiplied by Y.

Y is defined in section 6(4) as the number of days in the assessment year during which WA taxable wages were paid or payable by the employer, divided by the number of days in the assessment year.

Example 1

A local non-group employer pays WA taxable wages of \$80,000,000 for the 2018-2019 assessment year.

As the amount of WA taxable wages (\$80,000,000) is not more than \$100,000,000 multiplied by Y which is calculated as 365 days divided by 365 days (that is, \$100,000,000), the rate that applies is 5.5 per cent as set out in item 1 in the Table.

The total payroll tax payable by the local non-group employer for the assessment year is \$4,400,000 (calculated as 5.5 per cent of WA taxable wages of \$80,000,000).

Item 2 in the Table in section 6(1) provides the rate that applies to a local non-group employer who pays WA taxable wages of more than \$100,000,000 multiplied by Y but not more than \$1,500,000,000 multiplied by Y for part or whole of an assessment year, is to be determined by the formula set out in subsection (2).

Item 3 in the Table in section 6(1) provides the rate that applies to a local non-group group employer who pays WA taxable wages of more than \$1,500,000,000 multiplied by Y for part or whole of an assessment year is to be determined by the formula set out in subsection (3).

Subsection (2) sets out the formula to determine the rate for Item 2 in the Table where the WA taxable wages paid or payable by a local non-group employer exceeds \$100,000,000 multiplied by Y but is not more than \$1,500,000,000 multiplied by Y.

Example 2

A local non-group employer pays WA taxable wages of \$55,000,000 for 181 days from 1 January 2019 to 30 June 2019.

The amount of WA taxable wages falls within item 2 in the Table because the WA wages paid of \$55,000,000 is more than \$100,000,000 multiplied by Y (calculated as 181 days divided by 365 days) but not more than \$1,500,000,000 multiplied by Y.

The rate that applies under item 2 is worked out in accordance with the formula set out in section 6(2) which is calculated as follows:

$$\frac{(5,500,000 \times Y) + 0.06 (W - (100,000,000 \times Y))}{W} \times 100$$

W is defined in subsection (4) as the total WA taxable wages paid or payable by the employer during the assessment year or part year.

Y is calculated as 181 days divided by 365 days.

The rate is calculated as:

$$[((5,500,000 \times (181/365)) + 0.06 \times (\$55,000,000 - (100,000,000 \times (181/365)))) / \$55,000,000] \times 100$$

= 5.5492 per cent (calculated to four decimal places in accordance with subsection (5)).

The payroll tax payable by the local non-group employer is \$3,052,060 (calculated as 5.5492 per cent of \$55,000,000).

Example 3

A local non-group employer pays WA taxable wages of \$150,000,000 for the 2018-19 assessment year.

The amount of WA taxable wages falls within item 2 of the Table because the WA wages paid of \$150,000,000 is more than \$100,000,000 multiplied by Y (calculated as 365 days divided by 365 days) but not more than \$1,500,000,000 multiplied by Y.

The rate is calculated as follows:

$$\frac{(5,500,000 \times 1) + 0.06 (150,000,000 - (100,000,000 \times 1))}{150,000,000} \times 100$$

The rate that applies for item 2 of the table is 5.6667 per cent (calculated to four decimal places in accordance with subsection (5)).

The payroll tax payable by the local non-group employer is calculated as follows:

$$5.6667 \text{ per cent} \times \$150,000,000 = \$8,500,050$$

Example 4

A local non-group employer pays WA taxable wages of \$1,400,000,000 for the 2018-19 assessment year.

The amount of WA taxable wages falls within item 2 of the Table because the WA wages paid of \$1,400,000,000 is more than \$100,000,000 multiplied by Y (calculated as 365 days divided by 365 days) but not more than \$1,500,000,000 multiplied by Y.

In accordance with the formula under section 6(2), the rate is calculated as follows:

$$\frac{[(5,500,000 \times 1) + 0.06 \times (1,400,000,000 - (100,000,000 \times 1))]}{1,400,000,000} \times 100$$

The rate that applies for item 2 of the table is 5.9643 per cent (calculated to four decimal places in accordance with subsection (5)).

The payroll tax payable by the local non-group employer is calculated as follows:

$$5.9643 \text{ per cent} \times \$1,400,000,000 = \$83,500,200$$

Subsection (3) sets out the formula to determine the rate for item 3 in the Table where the WA taxable wages paid or payable by a local non-group employer exceeds \$1,500,000,000 multiplied by Y.

Example 5

A large local non-group employer pays \$2,500,000,000 in wages for the assessment year of 1 July 2018 to 30 June 2019.

The amount of WA taxable wages falls within item 3 of the Table because the WA wages paid of \$2,500,000,000 is more than \$1,500,000,000 multiplied by Y (calculated as 365 days divided by 365 days).

The rate that applies under item 3 is worked out in accordance with the formula set out in section 6(3) which is calculated as follows:

$$\frac{(89,500,000 \times Y) + 0.065 \times (W - (1,500,000,000 \times Y))}{W} \times 100$$

$$[((89,500,000 \times 1) + 0.065 \times (\$2,500,000,000 - (1,500,000,000 \times 1))) / \$2,500,000,000] \times 100$$

The rate that applies for item 3 of the table is 6.1800 per cent (calculated to four decimal places in accordance with subsection (5)). The payroll tax payable by the local non-group employer is \$154,500,000 (calculated as 6.1800 per cent of \$2,500,000,000).

Subsection (4) defines W and Y for the purposes of the formulas set out in section 6.

Subsection (5) provides that the rates calculated under subsections (2) and (3) for items 2 and 3 in the Table respectively are to be calculated to four decimal places.

7. Rates for progressive return period or part of period

Under the payroll tax scheme, employers are required to lodge monthly returns although the Commissioner may grant permission for returns to be lodged on a quarterly or annual basis. The term 'progressive return period' refers to the period to which each return relates.

Payroll tax is assessed in respect of each progressive return period and paid with the lodgement of the return. At the end of each assessment year, the tax liability is reconciled on an annual or part-year basis and an appropriate adjustment is made for the tax paid during the year.

Newly inserted section 7 of the Pay-roll Tax Act sets out the formulas to determine the rates that apply for local non-group employers for each progressive return period.

Subsection (1) provides the rate of payroll tax payable by a local non-group employer for a progressive return period or for part of a progressive return period in an assessment year during the sliding scale period is determined under the items of the Table.

Pursuant to item 1 of the Table, the rate of 5.5 per cent applies to determine the payroll tax payable if the total WA taxable wages paid or payable by the local non-group employer is not more than \$100,000,000 multiplied by M and P, where:

- a) M is the number of months in the progressive return period divided by 12; and
- b) P is the number of days in the progressive return period during which WA taxable wages were paid or payable by the employer, divided by the total number of days in the progressive return period.

Example 6

A local non-group employer who lodges payroll tax returns on a monthly basis pays taxable wages in WA of \$8,000,000 for the entire month of July 2019.

The rate that applies is 5.5 per cent at item 1 of the Table as the amount of WA taxable wages (\$8,000,000) is not more than \$100,000,000 multiplied by M and P calculated as follows:

$$\$100,000,000 \times (1/12) \times (31/31) = \$8,333,333$$

Accordingly, the total payroll tax payable by the employer for the July 2019 return is \$440,000 (calculated as 5.5 per cent of \$8,000,000).

Item 2 of the Table provides the rate that applies where the amount of WA taxable wages is more than \$100,000,000 multiplied by M and P but not more than \$1,500,000,000 multiplied by M and P is calculated in accordance with the formula in section 7(2).

Item 3 of the Table provides the rate that applies where the amount of WA taxable wages is more than \$1,500,000,000 multiplied by M and P is calculated in accordance with the formula in section 7(3).

Subsection (2) sets out the formula to determine the rate of payroll tax for the purposes of item 2 in the Table.

Example 7

A local non-group employer who lodges payroll tax returns on a monthly basis and pays WA taxable wages of \$10,000,000 for the month of July 2019.

As the WA taxable wages (\$10,000,000) is more than \$100,000,000 multiplied by M and P (\$8,333,333) but not more than \$1,500,000,000 multiplied by M and P (\$125,000,000), the rate that applies is calculated under subsection (2) in accordance with item 2 in the Table as follows:

$$\frac{(5,500,000 \times M \times P) + 0.06 \times (W - (100,000,000 \times M \times P))}{W} \times 100$$

$$(((5,500,000 \times (1/12) \times 1) + 0.06 \times (\$10,000,000 - (100,000,000 \times (1/12) \times 1))) / \$10,000,000) \times 100$$

= 5.5833 per cent (calculated to four decimal places in accordance with section 7(5)).

The payroll tax payable by the employer for the month of July 2019 is \$558,330 (calculated as 5.5833 per cent of \$10,000,000).

Subsection (3) sets out the formula to determine the rate of payroll tax for the purposes of item 3 in the Table.

Example 8

A large local non-group employer lodges payroll tax returns on a monthly basis and begins operating their business in WA part way through July 2019. The employer pays WA taxable wages of \$85,000,000 for 20 days in July 2019.

As the WA taxable wages (\$85,000,000) is more than \$1,500,000,000 multiplied by M (1/12) and P (20/31) (\$80,645,161), the rate that applies is calculated under subsection (3) in accordance with item 3 in the Table. The rate is calculated as follows:

$$\frac{(89,500,000 \times M \times P) + 0.065 \times (W - (1,500,000,000 \times M \times P))}{W} \times 100$$

$$(((89,500,000 \times (1/12) \times (20/31)) + 0.065 \times (\$85,000,000 - (1,500,000,000 \times (1/12) \times (20/31)))) / \$85,000,000) \times 100$$

= 5.9940 calculated to four decimal places in accordance with subsection (5). The payroll tax payable by the employer for the July 2019 return is \$5,094,900 (calculated as 5.9940 per cent of \$85,000,000).

Subsection (4) defines M, P and W for the purposes of the formulas set out in section 7.

Subsection (5) provides the rates calculated under subsections (2) and (3) for items 2 and 3 of the Table respectively are to be calculated to four decimal places.

Division 2 – Rates for interstate non-group employers

8. Rates for whole or part of assessment year

Division 2 provides for the payroll tax rates for interstate non-group employers. An interstate non-group employer is an employer who pays wages both in Western Australia and at least one other Australian State or Territory and is not grouped for payroll tax purposes with any other business.

Section 8 as inserted sets out the formulas to determine the payroll tax rate where an employer is an interstate non-group employer for the whole or part of an assessment year.

Subsection (1) provides the rate of payroll tax payable by an interstate non-group employer for the whole or part of an assessment year during the sliding scale period is determined under the items of the Table.

Item 1 in the Table provides the rate of 5.5 per cent applies where Australian taxable wages paid or payable by the employer during the year or part year are not more than \$100,000,000 multiplied by Y. Subsection (4) defines Y as the number of days in the assessment year during which Australian taxable wages were paid or payable by the employer, divided by the number of days in the assessment year.

Item 2 in the Table provides where an interstate non-group employer pays Australian taxable wages that are more than \$100,000,000 multiplied by Y but not more than \$1,500,000,000 multiplied by Y during the year or part year, the payroll tax rate is calculated in accordance with subsection (2).

Item 3 in the Table provides where an interstate non-group employer pays Australian taxable wages that are more than \$1,500,000,000 multiplied by Y during the year or part year, the payroll tax rate is calculated in accordance with subsection (3).

Subsection (2) sets out the formula to calculate the rate that applies for the purposes of item 2 in the Table to subsection (1).

The method of calculation to determine the rate for an interstate non-group employer replicates the calculation for a full or part year for local non-group employers (section 6(2)) but is based on the total Australian taxable wages paid or payable by the employer during the year or part year and the number of days in the assessment year during which Australian taxable wages were paid or payable.

The rate calculated under subsection (2) is then applied to WA taxable wages to determine the tax payable by the interstate non-group employer.

Subsection (3) provides the formula to determine the rate for the purposes of item 3 in the Table to subsection (1) where an interstate non-group employer pays Australian taxable wages of more than \$1,500,000,000 multiplied by Y.

As with subsection (2), the formula replicates the calculation for a full or part year for local non-group employers (section 6(3)), but is based on the total Australian taxable wages and the number of days in the assessment year during which Australian taxable wages were paid or payable.

Subsection (4) defines W and Y for the purposes of the formulas set out in section 7. W represents the Australian taxable wages paid or payable by the interstate non-group employer and Y is the number of days in the assessment year during which Australian taxable wages were paid or payable.

Subsection (5) provides that the rates calculated under subsections (2) and (3) are to be calculated to four decimal places.

Subsection (6) provides that if a non-group interstate employer fails to lodge the annual reconciliation return required under section 27(1) of the Pay-roll Tax Assessment Act within 21 days of the end of the assessment year, the rate of payroll tax payable by the employer for the year or part-year is 6.5 per cent.

Subsection (7) provides that subsection (6) does not apply if the Commissioner has made a determination under proposed section 23C of the Pay-roll Tax Assessment Act. The Pay-roll Tax Assessment Amendment (Debt and Deficit Remediation) Bill 2017 inserts section 23C into the Pay-roll Tax Assessment Act.

Section 23C enables the Commissioner to determine a lesser rate if the Commissioner has sufficient information to determine the rate that would apply. The employer may also request the Commissioner to determine a lesser rate than 6.5 per cent by applying in the approved form and providing the Commissioner with the relevant information required.

9. Rates for progressive return period

Section 9 provides the rates of payroll tax payable by an interstate non-group employer for a progressive return period in an assessment year is the same as the rates set out in sections 8(1) to (5) if the Commissioner has made a nomination under section 23A(1)(a) of the Pay-roll Tax Assessment Act. Section 23A will be inserted by the Pay-roll Tax Assessment Amendment (Debt and Deficit Remediation) Bill.

Under section 23A(1)(a) of the Pay-roll Tax Assessment Act, the Commissioner may nominate an Australian taxable wages that are estimated to be payable by an interstate non-group employer and the number of days in the assessment year which is estimated that Australian taxable wages will be payable.

For example, the Commissioner may nominate an amount of Australian taxable wages based on wages paid in previous assessment years. An employer can apply to the Commissioner to make or vary the nomination in the approved form and by providing the relevant information required.

As interstate employers may experience logistical problems with calculating the actual Australian taxable wages paid or payable, section 23A(1)(a) allows a nomination to be made based on an estimate of the wages expected to be paid in WA and throughout Australia during the year. At the end of the financial year, when actual Australian taxable wages are known, any required adjustments are made.

Once a nomination has been made under 23A(1)(a) of the Pay-roll Tax Assessment Act, the nominated amounts are used to determine the rate that would apply under section 8 as if the nominated amount of Australian taxable wages and the number of days during which the wages were paid were the actual amounts and days.

If a nomination is not made, the rate that applies to calculate payroll tax is 6.5 per cent.

Division 3 – Rates for group members

10. Rates for whole or part of assessment year

Division 3 of the Act sets out the payroll tax rates for employers who are members of a group. Section 10 sets out how to determine the payroll tax rate where an employer is a member of a group of employers for the whole or part of an assessment year. A group consists of related businesses constituted under Part 4 of the Pay-roll Tax Assessment Act.

Subsection 1 provides that section 10 applies to an employer if they are a member of a group in which at least one member pays or is liable to pay Australian taxable wages during an assessment year or part-year, regardless of whether any other member of the group pays or is liable to pay Australian taxable wages throughout the assessment year or part-year.

Subsection 2 provides the rate of payroll tax payable by a group of employers for whole or part of an assessment year during the sliding scale period is determined under the items of the Table.

Item 1 in the Table provides the rate of 5.5 per cent applies where the Australian taxable wages paid or payable by the group during the year or part year is not more than \$100,000,000 multiplied by Y. Subsection (5) defines Y as the number of days in the assessment year during which Australian taxable wages were paid or payable by at least one group member, divided by the number of days in the assessment year.

Item 2 in the Table provides where the Australian taxable wages of the group are more than \$100,000,000 multiplied by Y but not more than \$1,500,000,000 multiplied by Y, the rate of payroll tax is calculated under subsection (3).

Item 3 in the Table provides the rate of payroll tax for a group that pays Australian taxable wages of more than \$1,500,000,000 multiplied by Y is to be calculated under subsection (4).

Subsection (3) sets out the equation to determine the rate for the purposes of item 2 in the Table where the group's Australian taxable wages are more than \$100,000,000 multiplied by Y but not more than \$1,500,000,000 multiplied by Y.

The method of calculation to determine the rate replicates the calculation for a full or part year for local non-group employers (section 6(2)) but is based on the total Australian taxable wages paid or payable by the group during the year or part year and the number of days in the assessment year during which Australian taxable wages were paid or payable by at least one member of the group.

The rate is applied to the WA taxable wages paid by each member of the group.

Subsection (4) sets out the equation to determine the rate for the purposes of item 3 in the Table where the group's Australian taxable wages are more than \$1,500,000,000 multiplied by Y.

As with subsection (3), the formula replicates the calculation for a full or part year for local non-group employers (section 6(3)), but is based on the Australian taxable wages paid or payable by all group members during the year or part year and the number of days in the assessment year during which Australian taxable wages were paid or payable by at least one member of the group.

Subsection (5) defines W and Y for the purposes of section 10. W represents the Australian taxable wages paid or payable by all group members and Y is the number of days in the assessment year during which Australian taxable wages were paid or payable by at least one member of the group.

Subsection (6) provides the rates calculated by the equations in subsections (3) and (4) are to be calculated to four decimal places.

Subsection (7) provides that if the designated group employer fails to lodge an annual reconciliation return under section 27(1a) of the Pay-roll Tax Assessment Act within 21 days of the end of the assessment year, the rate of payroll tax payable by the group is 6.5 per cent.

Subsection 8 provides subsection (7) does not apply if the Commissioner has determined a lesser rate applies under section 23C of the Pay-roll Tax Assessment Act based on information the Commissioner has or on application by a member of the group.

11. Rates for progressive return period

Section 11 as inserted sets out how to calculate the rate of payroll tax payable by a group member for a progressive return period in an assessment year.

The section provides if a nomination has been made under new section 23A(1)(b) of the Pay-roll Tax Assessment Act (which will be inserted by the Pay-roll Tax Assessment Amendment (Debt and Deficit Remediation) Bill 2017), the payroll tax rate that applies will be the rate determined under sections 10(1) to (6) as if the nominated amounts of Australian taxable wages and the nominated days during which wages were payable were the actual amounts and days.

Under section 23A(1)(b) of the Pay-roll Tax Assessment Act, the Commissioner may nominate Australian taxable wages that are estimated to be payable by all group members during an assessment year and the number of days in the assessment year which is estimated that Australian taxable wages will be payable.

An employer can apply to the Commissioner to make or vary the nomination in the approved form and by providing the relevant information required.

If an amount is not nominated, the default rate of 6.5 per cent will apply.