

Passed by both Houses



New South Wales

State Revenue Legislation Further Amendment Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

State Revenue Legislation Further Amendment Bill 2010

Act No , 2010

An Act to make miscellaneous amendments to certain State revenue legislation.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *State Revenue Legislation Further Amendment Act 2010*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:
 - (a) Schedule 1 [1]—1 July 2010,
 - (b) Schedules 1 [2]–[7] and 2—1 January 2011,
 - (c) Schedule 3—31 December 2010,
 - (d) Schedule 4—1 July 2011.

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 54 Change in trustees

Insert “to a trustee of a self managed superannuation fund,” after “special trustee,” in section 54 (2A).

[2] Section 59B Change in custodians

Omit “the trustee” from section 59B (b) and (c) wherever occurring.

Insert instead “a trustee”.

[3] Section 61 Transfers of property in connection with persons changing superannuation funds

Insert “, or an agreement to transfer,” after “transfer of” wherever occurring in section 61 (1A) (a), (b), (c) and (d).

[4] Section 61 (1A) (c1)

Insert after section 61 (1A) (c):

- (c1) a transfer of, or an agreement to transfer, marketable securities from the trustee of a superannuation fund, or a custodian of the trustee of a superannuation fund, made in exchange for the issue of units in a pooled superannuation trust, to a trustee of the pooled superannuation trust,

[5] Section 61 (2)

Insert “relevant” before “transfer”.

[6] Section 61 (2A)

Insert after section 61 (2):

- (2A) This section applies despite section 18 (2) and (3).

[7] Section 62A Transfers to self managed superannuation funds

Omit section 62A (3). Insert instead:

- (3) Duty of \$500 is chargeable on a transfer of, or an agreement to transfer, dutiable property from a person (the *transferor*) to the custodian of the trustee of a self managed superannuation fund but only if:
 - (a) the transferor is the only member of the superannuation fund, or
 - (b) the property is to be used solely for the purpose of providing a retirement benefit to the transferor.

- (4) This section does not apply in respect of a transfer of, or an agreement to transfer, dutiable property if, as a result of the transfer, the superannuation fund will cease to be a complying superannuation fund.

[8] Section 65 Exemptions from duty

Omit section 65 (17). Insert instead:

(17) Pharmacists' body corporate

No duty is chargeable under this Chapter on the transfer of, or an agreement to transfer, dutiable property in the following cases:

- (a) dutiable property of a partnership carrying on the business of a pharmacist before 25 February 2008 that is transferred or agreed to be transferred to a pharmacists' body corporate (within the meaning of Schedule 5F to the *Health Practitioner Regulation National Law (NSW)*), if the members of the partnership immediately before the transfer or agreement is first executed are all directors and shareholders of the pharmacists' body corporate and there are no other directors or shareholders of that pharmacists' body corporate,
- (b) dutiable property of a pharmacist carrying on the business of a pharmacist before 25 February 2008 that is transferred or agreed to be transferred to a pharmacists' body corporate (within the meaning of Schedule 5F to the *Health Practitioner Regulation National Law (NSW)*), if the pharmacist is the sole director and shareholder of that pharmacists' body corporate.

[9] Section 150 What are "interests" and "significant interests" in landholders?

Omit "(within the meaning of Division 974 of the *Income Tax Assessment Act 1997* of the Commonwealth)" from section 150 (1A).

[10] Section 150 (4) and (5)

Omit section 150 (4). Insert instead:

- (4) In determining whether a person has a significant interest in a landholder, a distribution of property to any person in the person's capacity as the holder of a debt interest is to be disregarded.

- (5) In this section:
debt interest has the same meaning as it has in Division 974 of the *Income Tax Assessment Act 1997* of the Commonwealth.
person includes a landholder.

[11] Section 267 Exemptions

Insert after section 267 (7A):

- (7AA) Duty under this Chapter is not chargeable in respect of an application to register a motor vehicle in the name of a member or former member (within the meaning of the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth) who suffers from an impairment assessed under that Act to constitute at least 50 impairment points, and who is eligible for, in receipt of, or has at any time received compensation or a special rate disability pension under that Act.

[12] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2010

[13] Schedule 1, Part 34

Insert after Part 33:

Part 34 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2010

88 Application of amendments

An amendment made to this Act by the *State Revenue Legislation Further Amendment Act 2010* does not apply in respect of a dutiable transaction for which liability for duty arose before the commencement of the amendment.

89 Changes to landholder duty provisions

The amendments made to section 150 of this Act by the *State Revenue Legislation Further Amendment Act 2010* have effect as if they had been made by Schedule 1 to the *State Revenue Legislation Further Amendment Act (No 2) 2009* and had commenced on the date of commencement of that Schedule.

Note. See clause 80. Schedule 1 to the *State Revenue Legislation Further Amendment Act (No 2) 2009* commenced on 1 December 2009.

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Schedule 1 Amendment of Duties Act 1997 No 123

[14] Dictionary

Omit the definition of *mortgage* from clause 1.

[15] Dictionary

Insert in alphabetical order in clause 1:

self managed superannuation fund means a complying superannuation fund within the meaning of section 42A of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21

[1] Section 13A First home owner grant cap

Omit section 13A (2) (a). Insert instead:

(a) \$835,000, or

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2010

[3] Schedule 1, Part 9

Insert after Part 8:

Part 9 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2010

16 Change to first home owner grant cap

- (1) The amendment to section 13A made by the *State Revenue Legislation Further Amendment Act 2010* does not apply in respect of an eligible transaction that has a commencement date that is before 1 January 2011.
- (2) Section 13A, as in force immediately before the amendment, continues to apply in respect of such an eligible transaction.

Schedule 3 Amendment of Land Tax Management Act 1956 No 26

[1] Section 3A Special trust—meaning

Omit “12 months after the date of death of the testator, or such further period as may be approved by the Chief Commissioner in a particular case” from section 3A (4) (e).

Insert instead “2 years after the date of death of the testator”.

[2] Schedule 1A Principal place of residence exemption

Omit “12 months” from clause 9 (2) (a) and (3) wherever occurring.

Insert instead “2 years”.

[3] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1A (1):

State Revenue Legislation Further Amendment Act 2010

[4] Schedule 2, Part 25

Insert after Part 24:

Part 25 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2010

52 Application of amendments

The amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2010* apply only:

- (a) in respect of a death occurring on or after 1 January 2010, and
- (b) to the assessment of land tax liability in respect of the 2011 land tax year and subsequent land tax years.

Schedule 4 Amendment of Payroll Tax Act 2007 No 21

[1] Section 3 Definitions

Omit “within the meaning of section 139GCD of the *Income Tax Assessment Act 1936* of the Commonwealth” from the definition of *share* in section 3 (1).

[2] Section 18 Inclusion of grant of shares and options as wages

Omit section 18 (1). Insert instead:

- (1) For the purposes of this Act, *wages* include the grant of a share or an option to an employee by an employer in respect of services performed by the employee if the share or option is an ESS interest (within the meaning of section 83A–10 of the *Income Tax Assessment Act 1997* of the Commonwealth) and is granted to the employee under an employee share scheme (within the meaning of that section).

Note. A grant of a share or an option to an employee by an employer that is not an ESS interest will be taxable as a fringe benefit under Division 2 of this Part.

[3] Section 19 Choice of relevant day

Omit section 19 (2). Insert instead:

- (2) A share or option is *granted* to a person if:
 - (a) another person transfers the share or option to that person (other than, in the case of a share, by issuing the share to that person), or
 - (b) in the case of a share—another person allots the share to that person, or
 - (c) in the case of an option—another person confers the option on, or otherwise creates the option in, that person, or
 - (d) the person otherwise acquires a legal interest in the share or option from another person, or
 - (e) the person acquires a beneficial interest in the share or option from another person.
- (2A) To avoid doubt, if an employee acquires a right to be granted a share or an option, or some other material benefit, at the election of the employer, the share or option is not granted until the employer elects to grant the share or option.

[4] Section 19 (3) and (4)

Omit the subsections. Insert instead:

- (3) The *vesting date* in respect of a share is one of the following dates (whichever happens first):
 - (a) the date on which the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded),
 - (b) the date at the end of the period of 7 years from the date on which the share is granted to the employee.
- (4) The *vesting date* in respect of an option is one of the following dates (whichever happens first):
 - (a) the date on which the share to which the option relates is granted to the employee,
 - (b) the date on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vested in him or her,
 - (c) the date at the end of the period of 7 years from the date on which the option is granted to the employee.

[5] Section 23 Value of shares and options

Omit "market" from section 23 (1).

[6] Section 23 (2)–(7)

Omit section 23 (2)–(5). Insert instead:

- (2) The value of a share or an option is:
 - (a) the market value, or
 - (b) the amount determined as provided for by the Commonwealth income tax provisions.
- (3) The employer may elect the method by which the value of a share or an option is determined in any return lodged under this Act.
- (4) However, the Chief Commissioner may determine the method by which the value of a share or an option is determined if the grant of the share or option is not included as wages in a return lodged by an employer as required by this Act.
- (5) In determining the market value of a share or option, anything that would prevent or restrict conversion of the share or option to money is to be disregarded.

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- (6) The Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications:
- (a) the value of an option is to be determined as if it were a right to acquire a beneficial interest in a share,
 - (b) a reference to the acquisition of a beneficial interest in a share or right is to be read as a reference to the grant of a share or an option.
- (7) In this section, *Commonwealth income tax provisions* means section 83A–315 of the *Income Tax Assessment Act 1997* of the Commonwealth and the regulations made for the purposes of that section.

Note. See Division 83A of the *Income Tax Assessment Regulations 1997* of the Commonwealth for the relevant regulations.

[7] Section 24 Inclusion of shares and options granted to directors as wages

Omit section 24 (1). Insert instead:

- (1) For the purposes of this Act, *wages* include the grant of a share or an option by a company to a director of the company who is not an employee of the company by way of remuneration for the appointment or services of the director.

[8] Section 24 (4)

Insert after section 24 (3):

- (4) However, if wages referred to in this section are fringe benefits, the value of the wages is to be determined in accordance with Division 2 of this Part (and not this Division).

[9] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[10] **Schedule 3, Part 7**

Insert after Part 6:

**Part 7 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2010**

20 Assessment and payment of payroll tax in relation to employee shares and options

Anything done or omitted to be done by an employer in connection with the assessment and payment of payroll tax, in respect of a month occurring after June 2009 and before July 2011, that would have been validly done or omitted to be done had the amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2010* been in force, is taken to have been validly done or omitted.

Note. This provision validates a decision by an employer to treat the grant of a share or an option to an employee that is not an ESS interest as a fringe benefit under Division 2 of Part 3 of this Act and to determine the value of those fringe benefits in accordance with those provisions, rather than by reference to Division 4 of Part 3 of this Act.

21 Determination of vesting date and value of employee shares and options

- (1) Division 4 of Part 3 of this Act continues to apply in respect of a share or an option granted before 1 July 2011 that constituted wages under old section 18, whether or not the grant of the share or option would constitute wages under new section 18, if the relevant day in relation to the grant of the share or option is not a day occurring before 1 July 2011.

Note. For example, a share granted before 1 July 2011 that is not an ESS interest continues to be treated as wages under Division 4 of Part 3 of this Act if the vesting date for the share did not occur before 1 July 2011 and the employer did not elect to treat the date of the grant as the relevant day.

- (2) The assessment amendments apply in respect of any such share or option.
- (3) Accordingly, the vesting date and the value of the share or option are to be determined in accordance with the assessment amendments.
- (4) This clause does not apply in respect of a share or an option granted before 1 July 2011 if the liability for payroll tax in respect

of the grant is determined in accordance with Division 2 of Part 3 (as permitted by clause 20).

(5) In this clause:

assessment amendments means the amendments made by Schedule 4 [4]–[6] to the *State Revenue Legislation Further Amendment Act 2010*.

new section 18 means section 18 as amended by the *State Revenue Legislation Further Amendment Act 2010*.

old section 18 means section 18 as in force immediately before 1 July 2011.

relevant day—see section 18 (3).