

# State Revenue Legislation Amendment Act 2012 No 20

[2012-20]



New South Wales

## Status Information

### Currency of version

Repealed version for 12 April 2012 to 1 July 2012 (accessed 19 November 2024 at 3:24)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.7.2012.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 July 2012

# State Revenue Legislation Amendment Act 2012 No 20



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# State Revenue Legislation Amendment Act 2012 No 20



New South Wales

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

## 1 Name of Act

This Act is the *State Revenue Legislation Amendment Act 2012*.

## 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 [17], [18] and [22]—1 July 2012,
  - (b) Schedule 3—1 July 2012.

## Schedule 1 Amendment of **Duties Act 1997 No 123**

### [1]-[16] (Repealed)

### [17] Section 163C Exemption for “top hatting” arrangements

Omit the section.

### [18] Chapter 11, Part 1

Insert before section 274:

## **Part 1 Corporate reconstructions and consolidations**

### **273A Definitions**

- (1) In this Part:

***corporate consolidation transaction***—see section 273D.

**corporate group**—see section 273E.

**corporate reconstruction transaction**—see section 273C.

**corporation** includes a unit trust scheme.

**security**, of a corporation, means:

- (a) in the case of a corporation other than a unit trust scheme, an issued share of the corporation, or
  - (b) in the case of a unit trust scheme, a unit issued under the scheme.
- (2) A reference in this Part to anything done by or held by a unit trust scheme (including any voting control held by a unit trust scheme) is a reference to anything done by or held by a trustee of the unit trust scheme as trustee of that unit trust scheme.

### **273B Exemption for corporate reconstruction and corporate consolidation transactions**

- (1) Duty under this Act is not chargeable on a transaction if the Chief Commissioner is satisfied, on application by a party to the transaction, that:
- (a) the transaction is a corporate reconstruction transaction, and
  - (b) the transaction, or the series of transactions of which the transaction is a part, is undertaken for the purpose of either or both of the following:
    - (i) changing the structure of a corporate group,
    - (ii) changing the holding of assets within a corporate group, and
  - (c) the transaction, or the series of transactions of which the transaction is a part:
    - (i) is not undertaken for a purpose of avoiding or reducing duty under this Act on another transaction, and
    - (ii) is not undertaken for the sole or dominant purpose of avoiding or reducing a liability for tax, other than duty under this Act, under a law of an Australian jurisdiction.
- (2) Duty under this Act is not chargeable on a transaction if the Chief Commissioner is satisfied, on application by a party to the transaction, that the transaction is a corporate consolidation transaction.

### **273C Corporate reconstruction transaction**

For the purposes of this Part, a **corporate reconstruction transaction** means:

- (a) a transfer, or agreement for sale or transfer, of dutiable property between corporations that are members of the same corporate group, or
- (b) a surrender of an interest in land by a corporation to a corporation who is a member of the same corporate group, or
- (c) a vesting of dutiable property if the dutiable property was held, immediately before the vesting, and continues to be held, immediately after the vesting, by corporations who are members of the same corporate group, or
- (d) an acquisition of an interest in a landholder (within the meaning of Chapter 4) by a corporation if the interest is acquired from another corporation who is a member of the same corporate group, or
- (e) an application to register a motor vehicle as a result of a transfer of the vehicle between corporations who are members of the same corporate group.

### **273D Corporate consolidation transaction**

- (1) For the purposes of this Part, a **corporate consolidation transaction** means an acquisition of an interest in a landholder (within the meaning of Chapter 4) that:
  - (a) is made to interpose a corporation (**the head corporation**) between another corporation (**the affected corporation**) and the holders of the affected corporation's securities, and
  - (b) is an acquisition of securities of:
    - (i) the affected corporation by the head corporation for which the only consideration given by the head corporation is the issue or transfer of its securities to the person from whom the affected corporation's securities were acquired, or
    - (ii) the head corporation by a holder of securities of the affected corporation.
- (2) An acquisition of an interest in a landholder is not a corporate consolidation transaction if, immediately before the acquisition, the head corporation held dutiable property or a vehicle or an interest in a corporation.
- (3) An acquisition of an interest in a landholder is not a corporate consolidation transaction unless, immediately after the issue or transfer of the head corporation's securities:
  - (a) each person who holds those securities (**a security holder**) is a person who held securities of the affected corporation immediately before the securities of the affected corporation were acquired by the head corporation, and

- (b) the proportion of those securities held by each security holder is the same as proportion of the securities of the affected corporation held by each security holder before the issue or transfer.

### **273E Meaning of “corporate group”**

- (1) For the purposes of this Part, a **corporate group** consists of a parent corporation and its subsidiaries.
- (2) A corporation is the **parent corporation** of another corporation (which is the **subsidiary** of the first corporation) if the first corporation, directly or indirectly:
  - (a) holds at least 90% of the securities of the other corporation, and
  - (b) holds voting control over the other corporation.
- (3) The first corporation holds **voting control** over the other corporation if the first corporation has the ability to cast, or control the casting of, at least 90% of the maximum number of votes that may be cast at a general meeting of that corporation (other than votes to which a person is entitled under the provisions of a debenture or trust deed securing the issue of a debenture).
- (4) The corporate group for a corporation, all of the securities of which are stapled to the securities of one or more other corporations, includes all of those other corporations and their subsidiaries.
- (5) A corporation that is a unit trust scheme is taken to be a member of a corporate group for the purposes of a corporate reconstruction transaction if the transaction is between the trustee of the unit trust scheme, acting as trustee of the scheme, and another corporation that is a member of the same corporate group as the unit trust scheme.
- (6) A corporation is not a member of a corporate group for the purposes of a corporate reconstruction transaction if the corporation is acting in the capacity of trustee of:
  - (a) a unit trust scheme that is not a member of the same corporate group as the other party to the transaction, or
  - (b) a discretionary trust, or
  - (c) a trust (not being a unit trust scheme) for any person who is not a member of the corporate group.

### **273F Applications for exemptions**

- (1) An application for an exemption from duty for a corporate reconstruction transaction or a corporate consolidation transaction is to be made to the Chief

Commissioner:

- (a) in the approved form, and
  - (b) before the date of the transaction or no later than 5 years after the date of assessment of the transaction.
- (2) An exemption may be granted with or without conditions.
- (3) It is a condition of every exemption granted in relation to an application made before the date of the relevant transaction that the applicant must notify the Chief Commissioner in writing as soon as practicable if there is any material change on or before that date in the matters disclosed in the application.
- (4) The Chief Commissioner must reassess any duty charged on a transaction if an exemption is granted after the date of assessment of the transaction.
- (5) The Chief Commissioner may revoke an exemption for a corporate reconstruction transaction if the Chief Commissioner is satisfied, because of new information not disclosed in the application for exemption, that the exemption should not have been granted.
- (6) The Chief Commissioner must assess the liability for duty on a corporate reconstruction transaction for which an exemption is revoked and each member (at the date of the transaction) of the corporate group to which the transaction relates is jointly and severally liable to pay the duty chargeable on the transaction.

## **Part 2 Other exemptions**

**[19]-[21] (Repealed)**

**[22] Section 281 Corporate reconstructions**

Omit the section.

**[23]-[29] (Repealed)**

## **Schedule 2 (Repealed)**

## **Schedule 3 Amendment of [Payroll Tax Act 2007 No 21](#)**

**[1] Section 53 Maternity and adoption leave**

Omit section 53 (4). Insert instead:

- (4) In subsection (3):

- (a) a reference to 14 weeks maternity leave or 14 weeks adoption leave includes a reference to an equivalent period of leave at a reduced rate of pay, and
- (b) a reference to wages paid or payable in respect of a period of leave is a reference to the total wages that would normally have been paid or payable for that period of leave.

**Note—**

For a part-time employee, the exemption may apply to wages paid or payable for maternity leave or adoption leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.

**[2] Schedule 2 NSW specific provisions**

Omit clause 13A (4). Insert instead:

(4) In subclause (3):

- (a) a reference to 14 weeks paternity leave includes a reference to an equivalent period of leave at a reduced rate of pay, and
- (b) a reference to wages paid or payable in respect of a period of leave is a reference to the total wages that would normally have been paid or payable for that period of leave.

**Note—**

For a part-time employee, the exemption may apply to wages paid or payable for paternity leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.

**[3] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2012*

Any Act that amends this Act

**[4] Schedule 3, Part 8**

Insert after Part 7:

**Part 8 Provision consequent on enactment of [State Revenue](#)**



## Legislation Amendment Act 2012

### **22 Maternity, adoption and paternity leave**

The amendments made to this Act by the *State Revenue Legislation Amendment Act 2012* have effect in respect of wages paid or payable on or after 1 July 2012.