



New South Wales

# State Revenue Legislation Further Amendment Bill 2010

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Duties Act 1997*:
  - (i) to extend certain duty concessions under that Act and to provide for new concessions, and
  - (ii) for law revision purposes,
- (b) to amend the *First Home Owner Grant Act 2000* to increase the first home owner grant cap,
- (c) to amend the *Land Tax Management Act 1956* to extend certain land tax concessions under that Act,
- (d) to amend the *Payroll Tax Act 2007* to make further provision with respect to liability for payroll tax in respect of shares or options granted to employees by employers.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

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

### **Duties concessions**

**Schedule 1 [1]** extends an existing duty concession that applies to certain transfers of dutiable property that are made as a consequence of the retirement of a trustee or the appointment of a new trustee. Duty of \$50 will be charged on such a transfer that is made to a trustee of a self managed superannuation fund if the Chief Commissioner is satisfied that the transfer is not part of a scheme for conferring an interest on a new trustee or other person to the detriment of the beneficial interest or potential beneficial interest of any person. An existing duty concession does not apply to such a transfer because generally in self managed superannuation funds the trustees will be beneficiaries under the trust. **Schedule 1 [15]** inserts a definition of *self managed superannuation fund* in the Dictionary.

**Schedule 1 [4]** extends an existing duty concession that applies to certain transfers of dutiable property that are made in connection with a person changing superannuation funds. The amendment provides for payment of duty at the concessional rate of \$500 on a transfer of 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 where the transfer is made in connection with changing superannuation funds.

**Schedule 1 [3]** makes it clear that the same concessions that apply to a transfer made in connection with a person changing superannuation funds also apply in respect of an agreement to transfer that is made in that regard. **Schedule 1 [6]** makes it clear that duty will be charged on both the agreement and the transfer at the concessional rate of \$500 (or the ad valorem rate, if lower). **Schedule 1 [5]** is a consequential amendment.

**Schedule 1 [7]** provides for a concession in respect of a transfer of, or an agreement to transfer, dutiable property that is made to the custodian of the trustee of a self managed superannuation fund by the sole member of that superannuation fund. Duty is charged at the concessional rate of \$500.

**Schedule 1 [7]** also provides that the concessional rate for transfers to a self managed superannuation fund does not apply if, as a result of the transfer, the fund ceases to be a complying superannuation fund.

**Schedule 1 [11]** updates a provision that exempts from duty an application to register a motor vehicle that is made by a war veteran entitled to a pension under the *Veterans' Entitlements Act 1986* of the Commonwealth, so that the provision extends to other defence force officers entitled to similar benefits under the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth.

### **Other amendments**

**Schedule 1 [10]** clarifies that debt interests are to be disregarded in determining whether a person has a significant interest in a landholder, in the same way as they are disregarding in determining whether a person has an interest in a landholder.

**Schedule 1 [9]** is a consequential amendment.

**Schedule 1 [14]** removes the definition of *mortgage* from the Dictionary to the *Duties Act 1997* because it is inconsistent with changes made to the concessional provisions applying to mortgage-backed securities and asset-backed securities by the *State Revenue Legislation Amendment Act 2010*.

**Schedule 1 [8]** updates a reference to the *Pharmacy Practice Act 2006*, which has been replaced by the *Health Practitioner Regulation National Law (NSW)*.

**Schedule 1 [2]** ensures that a duty concession that applies when there is a change in custodians of a trust applies even if the trustee of the trust has changed since the retiring custodian was appointed.

**Schedule 1 [12]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

**Schedule 1 [13]** provides for transitional matters.

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

**Schedule 2 [1]** increases the eligibility cap for the first home owner grant from \$750,000 to \$835,000. The increase applies in respect of eligible transactions occurring on or after 1 January 2011 (see **Schedule 2 [3]**). **Schedule 2 [2]** enables savings and transitional regulations to be made as a consequence of the amendment.

### **Schedule 3      Amendment of Land Tax Management Act 1956 No 26**

Currently, a trust established by will is not a special trust for land tax purposes for the period of 12 months after the death of the testator. **Schedule 3 [1]** extends that period to 2 years and removes the Chief Commissioner's discretion to approve longer periods in particular cases.

**Schedule 3 [2]** extends the period during which land used as a principal place of residence by the owner of the land continues, after the death of the owner, to be exempt from land tax from 12 months to 2 years.

**Schedule 3 [3]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 3 [4]** provides that the amendments apply only in respect of a death occurring on or after 1 January 2010 and 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**

**Schedule 4 [2]** provides that a grant of a share or an option to an employee by an employer, in respect of services performed by the employee, constitutes wages for the purposes of Division 4 of Part 3 of the *Payroll Tax Act 2007* (the *principal Act*) only if the share or option is an ESS interest and is granted to the employee under an employee share scheme (within the meaning of section 83A–10 of the *Income Tax Assessment Act 1997* of the Commonwealth). A grant of a share or an option to an employee by an employer that is not an ESS interest under an employee share scheme will be taxable as a fringe benefit under Division 2 of Part 3 of the principal Act. **Schedule 4 [7] and [8]** make consequential amendments to make it clear that the grant of a share or option by a company to one of its directors (who is not an employee of the company) is to be taxed under Division 4 of Part 3 of the principal Act, or as a fringe benefit, even if it is not an ESS interest granted under an employee share scheme.

An employer can elect to treat either the date on which a share or an option is granted to an employee or the vesting date for the share or option as the date on which the wages are taken to be paid for the purposes of payroll tax. **Schedule 4 [3]** sets out the circumstances in which a share or option is taken to be *granted* to a person for the purpose of determining when payroll tax is payable. The provision replaces a reference to a repealed provision of the *Income Tax Assessment Act 1936* of the Commonwealth which set out those circumstances. **Schedule 4 [4]** provides that the vesting date of a share or option is taken to be the date at the end of 7 years after the grant of the share or option, if it has not occurred before that date.

The principal Act currently provides that the value of shares or options is to be determined in accordance with provisions of the *Income Tax Assessment Act 1936* of the Commonwealth that have been repealed. **Schedule 4 [6]** provides that the value of shares or options is either the market value or the amount determined in accordance with new provisions in the *Income Tax Assessment Act 1997* of the Commonwealth. The employer may elect the method by which the value of the share or option is determined in any return lodged by the employer. **Schedule 4 [5]** is a consequential amendment.

**Schedule 4 [1]** removes a reference in the definition of *share* in the principal Act to a provision of the *Income Tax Assessment Act 1936* of the Commonwealth that has been repealed. As a result, a “stapled security” will have its ordinary meaning for the purposes of the definition, as it does in other legislation.

**Schedule 4 [9]** enables savings and transitional provisions to be made as a consequence of the proposed amendments.

**Schedule 4 [10]** inserts savings and transitional provisions that:

- (a) validate any decision made by an employer before the commencement of the proposed amendments to treat the grant of a share or an option as a fringe benefit for the purposes of payroll tax (rather than as a share or option under

Division 4 of Part 3 of the principal Act) if that decision would have been validly made had the proposed amendments been in force, and

- (b) allow for certain shares or options to continue to be treated as shares or options to which Division 4 of Part 3 (as amended by the proposed Act) applies, even if, as a result of the amendments, the shares or options should be treated as fringe benefits under Division 2 of that Part, if the shares or options were granted before 1 July 2011 (the commencement date for the proposed amendments).



First print



New South Wales

# State Revenue Legislation Further Amendment Bill 2010

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New South Wales

# State Revenue Legislation Further Amendment Bill 2010

No. , 2010

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**A Bill for**

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

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>State Revenue Legislation Further Amendment Act 2010</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) The following provisions commence, or are taken to have commenced, on the dates indicated:	7 8
(a) Schedule 1 [1]—1 July 2010,	9
(b) Schedules 1 [2]–[7] and 2—1 January 2011,	10
(c) Schedule 3—31 December 2010,	11
(d) Schedule 4—1 July 2011.	12

<b>Schedule 1</b>	<b>Amendment of Duties Act 1997 No 123</b>	1
<b>[1]</b>	<b>Section 54 Change in trustees</b>	2
	Insert “to a trustee of a self managed superannuation fund,” after “special trustee,” in section 54 (2A).	3 4
<b>[2]</b>	<b>Section 59B Change in custodians</b>	5
	Omit “the trustee” from section 59B (b) and (c) wherever occurring.	6
	Insert instead “a trustee”.	7
<b>[3]</b>	<b>Section 61 Transfers of property in connection with persons changing superannuation funds</b>	8 9
	Insert “, or an agreement to transfer,” after “transfer of” wherever occurring in section 61 (1A) (a), (b), (c) and (d).	10 11
<b>[4]</b>	<b>Section 61 (1A) (c1)</b>	12
	Insert after section 61 (1A) (c):	13
	(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,	14 15 16 17 18
<b>[5]</b>	<b>Section 61 (2)</b>	19
	Insert “relevant” before “transfer”.	20
<b>[6]</b>	<b>Section 61 (2A)</b>	21
	Insert after section 61 (2):	22
	(2A) This section applies despite section 18 (2) and (3).	23
<b>[7]</b>	<b>Section 62A Transfers to self managed superannuation funds</b>	24
	Omit section 62A (3). Insert instead:	25
	(3) Duty of \$500 is chargeable on a transfer of, or an agreement to transfer, dutiable property from a person (the <i>transferor</i> ) to the custodian of the trustee of a self managed superannuation fund but only if:	26 27 28 29
	(a) the transferor is the only member of the superannuation fund, or	30 31
	(b) the property is to be used solely for the purpose of providing a retirement benefit to the transferor.	32 33

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(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.	1 2 3 4
<b>[8]</b>	<b>Section 65 Exemptions from duty</b>	5
	Omit section 65 (17). Insert instead:	6
	(17) <b>Pharmacists' body corporate</b>	7
	No duty is chargeable under this Chapter on the transfer of, or an agreement to transfer, dutiable property in the following cases:	8 9
	(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 <i>Health Practitioner Regulation National Law (NSW)</i> ), 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,	10 11 12 13 14 15 16 17 18 19
	(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 <i>Health Practitioner Regulation National Law (NSW)</i> ), if the pharmacist is the sole director and shareholder of that pharmacists' body corporate.	20 21 22 23 24 25 26
<b>[9]</b>	<b>Section 150 What are "interests" and "significant interests" in landholders?</b>	27 28
	Omit "(within the meaning of Division 974 of the <i>Income Tax Assessment Act 1997</i> of the Commonwealth)" from section 150 (1A).	29 30
<b>[10]</b>	<b>Section 150 (4) and (5)</b>	31
	Omit section 150 (4). Insert instead:	32
	(4) In determining whether a person has a significant interest in a landholder, a distribution of property to the person in the person's capacity as the holder of a debt interest is to be disregarded.	33 34 35

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(5)	In this section:	1
	<i>debt interest</i> has the same meaning as it has in Division 974 of the <i>Income Tax Assessment Act 1997</i> of the Commonwealth.	2
	<i>person</i> includes a landholder.	3
		4
<b>[11]</b>	<b>Section 267 Exemptions</b>	5
	Insert after section 267 (7A):	6
(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 <i>Military Rehabilitation and Compensation Act 2004</i> 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.	7
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<b>[12]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	15
	Insert at the end of clause 1 (1):	16
	<i>State Revenue Legislation Further Amendment Act 2010</i>	17
<b>[13]</b>	<b>Schedule 1, Part 34</b>	18
	Insert after Part 33:	19
	<b>Part 34 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2010</b>	20
		21
		22
<b>88</b>	<b>Application of amendments</b>	23
	An amendment made to this Act by the <i>State Revenue Legislation Further Amendment Act 2010</i> does not apply in respect of a dutiable transaction for which liability for duty arose before the commencement of the amendment.	24
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<b>89</b>	<b>Changes to landholder duty provisions</b>	28
	The amendments made to section 150 of this Act by the <i>State Revenue Legislation Further Amendment Act 2010</i> have effect as if they had been made by Schedule 1 to the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> and had commenced on the date of commencement of that Schedule.	29
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	<b>Note.</b> See clause 80. Schedule 1 to the <i>State Revenue Legislation Further Amendment Act (No 2) 2009</i> commenced on 1 December 2009.	34
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State Revenue Legislation Further Amendment Bill 2010

Schedule 1      Amendment of Duties Act 1997 No 123

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- [14] Dictionary** 1  
Omit the definition of *mortgage* from clause 1. 2
- [15] Dictionary** 3  
Insert in alphabetical order in clause 1: 4  
*self managed superannuation fund* means a complying 5  
superannuation fund within the meaning of section 42A of the 6  
*Superannuation Industry (Supervision) Act 1993* of the 7  
Commonwealth. 8

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<b>Schedule 2</b>	<b>Amendment of First Home Owner Grant Act 2000 No 21</b>	1
		2
<b>[1]</b>	<b>Section 13A First home owner grant cap</b>	3
	Omit section 13A (2) (a). Insert instead:	4
	(a) \$835,000, or	5
<b>[2]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	6
	Insert at the end of clause 1 (1):	7
	<i>State Revenue Legislation Further Amendment Act 2010</i>	8
<b>[3]</b>	<b>Schedule 1, Part 9</b>	9
	Insert after Part 8:	10
<b>Part 9</b>	<b>Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2010</b>	11
		12
		13
<b>16</b>	<b>Change to first home owner grant cap</b>	14
(1)	The amendment to section 13A made by the <i>State Revenue Legislation Further Amendment Act 2010</i> does not apply in respect of an eligible transaction that has a commencement date that is before 1 January 2011.	15
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(2)	Section 13A, as in force immediately before the amendment, continues to apply in respect of such an eligible transaction.	19
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<b>Schedule 3</b>	<b>Amendment of Land Tax Management Act 1956 No 26</b>	1
		2
<b>[1]</b>	<b>Section 3A Special trust—meaning</b>	3
	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).	4
	Insert instead “2 years after the date of death of the testator”.	5
		6
<b>[2]</b>	<b>Schedule 1A Principal place of residence exemption</b>	7
	Omit “12 months” from clause 9 (2) (a) and (3) wherever occurring.	8
	Insert instead “2 years”.	9
		10
<b>[3]</b>	<b>Schedule 2 Savings and transitional provisions</b>	11
	Insert at the end of clause 1A (1):	12
	<i>State Revenue Legislation Further Amendment Act 2010</i>	13
<b>[4]</b>	<b>Schedule 2, Part 25</b>	14
	Insert after Part 24:	15
	<b>Part 25 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2010</b>	16
		17
		18
	<b>52 Application of amendments</b>	19
	The amendments made to this Act by the <i>State Revenue Legislation Further Amendment Act 2010</i> apply only:	20
		21
	(a) in respect of a death occurring on or after 1 January 2010, and	22
		23
	(b) to the assessment of land tax liability in respect of the 2011 land tax year and subsequent land tax years.	24
		25

<b>Schedule 4</b>	<b>Amendment of Payroll Tax Act 2007</b>	1
	<b>No 21</b>	2
<b>[1]</b>	<b>Section 3 Definitions</b>	3
	Omit “within the meaning of section 139GCD of the <i>Income Tax Assessment Act 1936</i> of the Commonwealth” from the definition of <i>share</i> in section 3 (1).	4 5
<b>[2]</b>	<b>Section 18 Inclusion of grant of shares and options as wages</b>	6
	Omit section 18 (1). Insert instead:	7
	(1) For the purposes of this Act, <i>wages</i> 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 <i>Income Tax Assessment Act 1997</i> of the Commonwealth) and is granted to the employee under an employee share scheme (within the meaning of that section).	8 9 10 11 12 13 14
	<b>Note.</b> 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.	15 16 17
<b>[3]</b>	<b>Section 19 Choice of relevant day</b>	18
	Omit section 19 (2). Insert instead:	19
	(2) A share or option is <i>granted</i> to a person if:	20
	(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	21 22 23
	(b) in the case of a share—another person allots the share to that person, or	24 25
	(c) in the case of an option—another person confers the option on, or otherwise creates the option in, that person, or	26 27
	(d) the person otherwise acquires a legal interest in the share or option from another person, or	28 29
	(e) the person acquires a beneficial interest in the share or option from another person.	30 31
	(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.	32 33 34 35

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<b>[4] Section 19 (3) and (4)</b>	1
Omit the subsections. Insert instead:	2
(3) The <i>vesting date</i> in respect of a share is one of the following dates (whichever happens first):	3
(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),	4
(b) the date at the end of the period of 7 years from the date on which the share is granted to the employee.	5
(4) The <i>vesting date</i> in respect of an option is one of the following dates (whichever happens first):	6
(a) the date on which the share to which the option relates is granted to the employee,	7
(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,	8
(c) the date at the end of the period of 7 years from the date on which the option is granted to the employee.	9
<b>[5] Section 23 Value of shares and options</b>	10
Omit “market” from section 23 (1).	11
<b>[6] Section 23 (2)–(7)</b>	12
Omit section 23 (2)–(5). Insert instead:	13
(2) The value of a share or an option is:	14
(a) the market value, or	15
(b) the amount determined as provided for by the Commonwealth income tax provisions.	16
(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.	17
(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.	18
(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.	19

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(6)	The Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications:	1
(a)	the value of an option is to be determined as if it were a right to acquire a beneficial interest in a share,	2
(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.	3
(7)	In this section, <i>Commonwealth income tax provisions</i> means section 83A–315 of the <i>Income Tax Assessment Act 1997</i> of the Commonwealth and the regulations made for the purposes of that section.	4
	<b>Note.</b> See Division 83A of the <i>Income Tax Assessment Regulations 1997</i> of the Commonwealth for the relevant regulations.	5
<b>[7]</b>	<b>Section 24 Inclusion of shares and options granted to directors as wages</b>	6
	Omit section 24 (1). Insert instead:	7
(1)	For the purposes of this Act, <i>wages</i> 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
<b>[8]</b>	<b>Section 24 (4)</b>	9
	Insert after section 24 (3):	10
(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).	11
<b>[9]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	12
	Insert at the end of clause 1 (1):	13
	<i>State Revenue Legislation Further Amendment Act 2010</i>	14

<b>[10] Schedule 3, Part 7</b>	1
Insert after Part 6:	2
<b>Part 7 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2010</b>	3 4 5
<b>20 Assessment and payment of payroll tax in relation to employee shares and options</b>	6 7
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 <i>State Revenue     Legislation Further Amendment Act 2010</i> been in force, is taken to have been validly done or omitted.	8 9 10 11 12 13 14
<b>Note.</b> 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.	15 16 17 18 19
<b>21 Determination of vesting date and value of employee shares and options</b>	20 21
(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.	22 23 24 25 26 27
<b>Note.</b> 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.	28 29 30 31 32
(2) The assessment amendments apply in respect of any such share or option.	33 34
(3) Accordingly, the vesting date and the value of the share or option are to be determined in accordance with the assessment amendments.	35 36 37
(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	38 39

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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).

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