

South Australia

# Payroll Tax (Miscellaneous) Amendment Act 2012

An Act to amend the *Payroll Tax Act 2009*.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Payroll Tax (Miscellaneous) Amendment Act 2012*.

### 2—Commencement

This Act will come into operation on 1 July 2013.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Payroll Tax Act 2009*

### 4—Amendment of section 3—Interpretation

Section 3, definition of *share*—delete "within the meaning of section 139GCD of the *Income Tax Assessment Act 1936* of the Commonwealth"

### 5—Amendment of section 18—Inclusion of grant of shares and options as wages

Section 18(1)—delete subsection (1) and substitute:

- (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.

### 6—Amendment of section 19—Choice of relevant day

- (1) Section 19(2)—delete subsection (2) and substitute:

- (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.

- (2) Section 19(3) and (4)—delete subsections (3) and (4) and substitute:
- (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.

#### **7—Amendment of section 23—Value of shares and options**

- (1) Section 23(1)—delete “market”
- (2) Section 23(2) to (5)—delete subsections (2) to (5) (inclusive) and substitute:
- (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 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.
- (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.

## **8—Amendment of section 24—Inclusion of shares and options granted to directors as wages**

(1) Section 24(1)—delete subsection (1) and insert:

(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.

(2) Section 24—after subsection (3) insert:

(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—Amendment of section 53—Maternity and adoption leave**

Section 53(4)—delete subsection (4) and substitute:

(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.

**Example—**

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.

## 10—Amendment of Schedule 3—Transitional provisions

Schedule 3—after Part 2 insert:

### **Part 3—Transitional provisions—Employee shares and options**

#### **1—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 2013, that would have been validly done or omitted to be done had the amendments made to this Act by the *Payroll Tax (Miscellaneous) Amendment Act 2012* 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.

#### **2—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 2013 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 2013.

**Note—**

For example, a share granted before 1 July 2013 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 2013 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 2013 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 1).
- (5) In this clause—

*assessment amendments* means the amendments made by sections 6 and 7 of the *Payroll Tax (Miscellaneous) Amendment Act 2012*;

*new section 18* means section 18 as amended by the *Payroll Tax (Miscellaneous) Amendment Act 2012*;

*old section 18* means section 18 as in force immediately before 1 July 2013;

*relevant day*—see section 18(3).