



AUSTRALIAN CAPITAL TERRITORY

Rates and Land Tax (Amendment) Act (No. 2) 1992

No. 55 of 1992

An Act to amend the *Rates and Land Tax Act 1926*

[Notified in ACT Gazette S162: 25 September 1992]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Rates and Land Tax (Amendment) Act (No. 2) 1992*.

Principal Act

2. In this Act, “Principal Act” means the *Rates and Land Tax Act 1926*.¹

Interpretation

3. Section 4 of the Principal Act is amended by omitting from subsection (1) the definition of “owner” and substituting the following definition:

“ ‘owner’, in relation to a parcel of land, means the registered proprietor of an estate or interest in that parcel, and includes a mortgagee in possession;”.

Revaluation following clerical error or changed circumstances

4. Section 10 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “most”;
- (b) by omitting from paragraph (1) (b) “most” (first occurring);
- (c) by omitting from subsection (1) “most recently determined or redetermined” (last occurring) and substituting “then recently determined or redetermined”; and
- (d) by adding at the end the following subsection:

“(3) In subsection (1), a reference to a recent determination or redetermination of the unimproved value of a parcel of land (not being a reference to the most recent) shall be read as a reference to any of the last 3 determinations or redeterminations of that parcel.”.

Application of determination or redetermination to rates

5. Section 11 of the Principal Act is amended—

- (a) by omitting from paragraph (3) (a) “last previous determination or redetermination under section 7 or 8” and substituting “relevant previous determination or redetermination”; and
- (b) by adding at the end the following subsection:

“(4) A reference in this section to rates shall be read as including a reference to land tax.”.

Substitution

6. Section 22A of the Principal Act is repealed and the following section substituted:

Imposition

“22A. (1) Land tax at the appropriate rate referred to in subsection (2) is imposed for a year in respect of each parcel of rateable land that is not exempt from land tax.

“(2) For the purposes of subsection (1), the appropriate rate is—

- (a) except where paragraph (b) applies—1.0% per annum; or
- (b) if land tax at the rate specified in paragraph (a) is not paid on or before the due date for the payment of that tax—the determined percentage per annum;

of the unimproved value of the parcel of land.

“(3) In subsection (2), ‘determined percentage’ means a percentage determined by the Minister by notice in the *Gazette* for the purposes of this section.

“(4) A notice under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Exempt land

7. Section 22B of the Principal Act is amended—

(a) by inserting after paragraph (1) (a) the following paragraph:

“(aa) a parcel of land leased for residential purposes that was on the prescribed date the principal place of residence of a person having a life or term interest in the parcel under a will;”;

(b) by omitting subsection (1A) and substituting the following subsection:

“(1A) For the purposes of paragraph (1) (a), a parcel of land does not cease to be the principal place of residence of its owner by reason only that the owner does not occupy the parcel for a period not exceeding—

(a) if—

- (i) the Commissioner is satisfied that the reason for the owner’s absence is his or her, or his or her spouse’s, current employment with an employer residing or carrying on business in the Territory;
- (ii) the Commissioner is satisfied that the owner intends to reside in the Territory at the end of the absence; and
- (iii) where the same owner has benefited from an exemption from land tax in respect of any parcel of land by virtue of the operation of this paragraph—the owner has resided in the Territory continuously for the period of 2 years preceding the absence;

3 tax assessment periods;

- (b) if the Commissioner is satisfied that the owner has, on compassionate grounds, a compelling reason for not occupying the parcel for a period (the ‘absence period’) not exceeding a tax assessment period—that absence period; or
- (c) in any other case—12 months.”; and
- (c) by omitting subsection (3) and substituting the following subsection:
 - “(3) In this section—
 - ‘owner’, in relation to a parcel of land, does not include—
 - (a) a body corporate or a person in whom the parcel is vested as a trustee;
 - (b) a mortgagee in possession; or
 - (c) a person who, as one of joint tenants or tenants in common, is entitled to an estate or interest in the parcel but only as to an undivided share of less than one-fifth unless each of the others has the same entitlement;
 - ‘spouse’, in relation to an owner of a parcel of land, includes a person of the opposite sex who lives with the owner as his or her spouse on a *bona fide* domestic basis although not legally married to the owner.”.
 - ‘tax assessment period’ means the maximum period during which an assessment of the amounts of land tax payable in respect of parcels of land leased for residential purposes has been made only once;

Application for exemption of residential land

- 8. Section 22BA of the Principal Act is amended—
 - (a) by inserting in subsection (1) “, (aa)” after “22B (1) (a)”; and
 - (b) by inserting in paragraph (2) (a) “, (aa)” after “22B (1) (a)”.

Insertion

9. After section 22D of the Principal Act, the following section is inserted:

Residential flats

“22DA. (1) Where a building on a parcel of land comprises 2 or more residential flats and another part of the building is occupied by the owner of the parcel as his or her principal place of residence—

- (a) that parcel shall not be taken to be leased for residential purposes for the purposes of section 22B; and
- (b) that part of the building that is so occupied shall, for the purposes of that section, be taken to be a separate parcel of land leased for residential purposes.

“(2) For the purposes of section 22A, the unimproved value of a parcel of land referred to in subsection (1) shall be an amount that is such a proportion of the amount that would, but for this subsection, be the unimproved value of that parcel as the Commissioner determines to be fair and reasonable having regard to the floor area of the part of the building occupied by the owner as his or her principal place of residence.”.

Payment of land tax

10. Section 22E of the Principal Act is amended by omitting all subsections after subsection (3) and substituting the following subsections:

“(4) Where the date of the notice in respect of land tax for a year given under section 22C to the owner of a parcel of rateable land is a date later than 28 days before the last instalment day in that year, that tax is payable on the due date for the payment of that tax.

“(5) A person may pay the land tax in respect of which a notice of assessment has been given—

- (a) if the amount payable is for a year and any arrears of land tax in respect of previous years have been paid in full—by paying, on or before the due date for the payment of the land tax, the amount of the land tax;
- (b) if the amount payable is for part of a year—by paying the amount of the land tax on or before the due date for the payment of that tax;

(c) by paying instalments—

- (i) the number and amount of which are ascertained in accordance with subsection (7);
 - (ii) the first of which is paid on or before the due date for the payment of that tax; and
 - (iii) the remainder of which are paid on or before the succeeding instalment days in the year in respect of which the tax is imposed; or
- (d) by paying such amounts on such days as the person wishes, but so that the total amount paid by the person on or before a day in a year is not less than the total amount that the person would have paid on that day if the person were paying the tax by instalments in accordance with paragraph (c).

“(6) Where an amount ascertained for the purposes of this section contains a fraction of a cent—

- (a) a fraction of a cent that does not exceed half a cent shall be disregarded; and
- (b) a fraction of a cent that exceeds half a cent shall be regarded as 1 cent.

“(7) For the purpose of paragraph (5) (c)—

- (a) the number of instalments is a number equal to one more than the number of instalment days remaining, after the due date for the payment of the tax, in the year in respect of which the tax is imposed;
- (b) the amount of each instalment, disregarding any remainder, is a whole dollar amount calculated by dividing the total amount of tax payable by the number of instalments ascertained in accordance with paragraph (a); and
- (c) the amount of the first instalment shall include the sum of each remainder, if any, ascertained in respect of each instalment in accordance with paragraph (b).

“(8) Where a parcel of land is subject to land tax for a part only of a year, the amount of tax payable in respect of that year is the amount that bears the same proportion to the amount of land tax that would have been payable if that parcel had been subject to land tax for the whole of the year as the number of days in that part of the year bears to 365.

“(9) If the amount of land tax paid for a year by an owner of a parcel of land to which subsection (8) applies exceeds the amount payable by the owner under that subsection, the owner is entitled to a refund of the excess.”.

Objections

11. Section 22GE of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “or”;
- (b) by inserting after paragraph (1) (b) the following paragraph:
 - “(ba) a decision of the Commissioner under subsection 22DA (2) determining a fair and reasonable proportion of an unimproved value; or”; and
- (c) by inserting after paragraph (3) (a) the following paragraph:
 - “(aa) (in the case of a decision referred to in paragraph (1) (ba)) if satisfied that the determination of the fair and reasonable proportion of the unimproved value was incorrect—redetermine that proportion;”.

Insertion

12. After section 28A of the Principal Act the following section is inserted:

Interest on refund

“28B. (1) Where the Commissioner is satisfied that it is just and equitable that interest on an amount overpaid by way of rates or land tax should be paid to the owner of a parcel of land, the Commissioner may cause interest—

- (a) at a rate determined by the Minister by notice in the *Gazette*; and
- (b) calculated as from the date on which the overpayment was made or such later date as the Commissioner considers appropriate;

to be paid to the owner.

“(2) A notice under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Application and transitional

13. (1) Paragraphs 22B (1) (aa) and 22B (1A) (a) of the Principal Act as amended by this Act apply in relation to the year that commenced on 1 July 1991 and each subsequent year.

(2) Paragraph 22B (1A) (b) of the Principal Act as amended by this Act applies in relation to the year that commenced on 1 July 1992 and each subsequent year.

(3) Notwithstanding subsections (1) and (2), a parcel of land that, immediately before the commencement of this Act, was exempt from land tax by virtue of the operation of paragraph 22B (1A) (a) or (b) of the Principal Act shall, subject to the Principal Act as amended by this Act, be taken to be exempt from land tax by virtue of the operation of paragraph 22B (1A) (a) or (b), as the case requires, of the Principal Act as so amended.

(4) Paragraph 22A (2) (b), and subsections 22E (4) to (9) (inclusive), of the Principal Act as amended by this Act apply in relation to the year commencing on 1 July 1993 and each subsequent year.

NOTE

1. Reprinted as at 31 March 1992. See also Act No. 31, 1992.

[Presentation speech made in Assembly on 8 September 1992]

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