



AUSTRALIAN CAPITAL TERRITORY

## **Rates and Land Tax (Amendment) Act (No. 2) 1994**

No. 101 of 1994

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

*[Notified in ACT Gazette S289: 22 December 1994]*

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) 1994*.

#### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

#### **Principal Act**

3. In this Act, “Principal Act” means the *Rates and Land Tax Act 1926*.<sup>1</sup>

#### **Interpretation**

4. Section 4 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definitions of “lease” and “owner”; and
- (b) by inserting in subsection (1) the following definitions:
  - “ ‘Commonwealth authority’ means a body, whether incorporated or not, established by or under an Act of the Commonwealth;

‘lease’ means a lease from the Commonwealth or the Territory and includes an agreement with the Commonwealth or Territory—

- (a) for a lease of a parcel of land; or
- (b) for the tenancy or occupation of a parcel of land;

‘owner’, in relation to a parcel of land, means—

- (a) the registered proprietor of an estate or interest in the parcel;
- (b) a mortgagee in possession of the parcel; or
- (c) a person holding the parcel of land under a sublease from the Territory, where the parcel of land held by the Territory is held under a lease from the Commonwealth;

but does not include the registered proprietor of an estate or interest in a lease granted by a person other than the Territory or the Commonwealth;”.

### **Revaluation following error or changed circumstances**

**5.** Section 10 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “a clerical” and substituting “an”; and
- (b) by adding at the end the following subsection:

“(4) In subsection (1)—

‘error’ includes—

  - (a) an error in the making of a valuation on which a determination is based; and
  - (b) the duplication of an error made in relation to an earlier determination.”.

### **Exempt land**

**6.** Section 22B of the Principal Act is amended—

- (a) by omitting from paragraph (b) of the definition of “owner” in subsection (3) “or”;
- (b) by adding at the end of paragraph (c) of the definition of “owner” in subsection (3) “or”; and
- (c) by adding at the end of the definition of “owner” in subsection (3) the following paragraph:

“(d) a person referred to in paragraph (c) of the definition of ‘owner’ in subsection 4 (1);”.

### **Substitution**

7. Section 22GF of the Principal Act is repealed and the following section substituted:

#### **Review of decisions**

“22GF. Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Commissioner—

- (a) redetermining the fair and reasonable proportion of the unimproved value of a parcel of land under paragraph 22GE (3) (aa);
- (b) reassessing the amount of penalty tax (if any) payable under paragraph 22GE (3) (b); or
- (c) dismissing an objection under paragraph 22GE (3) (c).”.

#### **Notification of decision**

8. Section 22GH of the Principal Act is amended by omitting from subsection (1) “of a decision dismissing an objection under subsection 22GE (3)”.

#### **Notice of transfer**

9. Section 23 of the Principal Act is amended by omitting paragraphs (2) (d) and (f).

#### **Insertion**

10. After section 28B of the Principal Act the following section is inserted:

#### **Review of decision that land rateable**

“28C. (1) Where the Commissioner makes a decision that a parcel of land is not land referred to in paragraph 6 (1) (b) or (c), he or she shall, within 28 days of making the decision, give the owner of the parcel notice of the decision.

“(2) Where the owner of a parcel of land has been given notice in accordance with subsection (1), he or she may, within 28 days of being so notified, apply in writing to the Commissioner for reconsideration of the decision on the grounds specified in the application.

“(3) After considering an application under subsection (2), the Commissioner shall—

- (a) if satisfied that the parcel of land is land referred to in paragraph 6 (1) (b) or (c)—notify the owner accordingly; or
- (b) if not so satisfied—refuse the application.”.

**Substitution**

11. Section 30A of the Principal Act is repealed and the following sections are substituted:

**Review of interest decision**

“30. (1) Where the Commissioner makes a decision under subsection 28B (1)—

- (a) refusing to cause interest to be paid to the owner of a parcel of land; or
- (b) causing interest to be paid to the owner of a parcel of land for a lesser period of time than the period during which an amount was overpaid by way of rates or land tax;

he or she shall, within 28 days of making the decision, give the owner of the parcel notice of the decision.

“(2) Where the owner of a parcel of land has been given notice in accordance with subsection (1), he or she may, within 28 days of being so notified, apply in writing to the Commissioner for reconsideration of the relevant decision on the grounds specified in the application.

“(3) After considering an application in relation to a decision referred to in paragraph (1) (a), the Commissioner shall—

- (a) if satisfied that it is just and equitable that interest should be paid—cause interest to be paid to the owner; or
- (b) if not so satisfied—refuse the application.

“(4) After considering an application in relation to a decision referred to in paragraph (1) (b), the Commissioner shall—

- (a) if satisfied that interest should have been paid under subsection 28B (1) in relation to the period applied for—cause interest to be paid to the owner in relation to that period; or
- (b) if not so satisfied—refuse the application.

“(5) Interest under paragraphs (3) (a) and (4) (a)—

- (a) shall be calculated at the rate determined for the purposes of paragraph 28B (1) (a); and
- (b) if paid pursuant to paragraph (3) (a)—may be calculated from the date on which the relevant overpayment was made or such later date as the Commissioner considers appropriate.

**Review of decisions**

“31. Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Commissioner—

- (a) under paragraph 28C (3) (b) refusing an application;

- (b) under paragraph 29 (2) (a) varying a determination;
- (c) under paragraph 29 (2) (b) confirming a determination;
- (d) under paragraph 30 (3) (a) paying interest for a lesser period than that applied for; or
- (e) under paragraph 30 (3) (b) or (4) (b) refusing an application.

### **Notification of decisions**

“32. Where a decision of the kind referred to in section 31 is made, the Commissioner shall give notice in writing of the decision to the applicant.

### **Contents of notice**

“32A. A notice under section 32 shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

### **Substitution**

**12.** Sections 33 and 34 of the Principal Act are repealed and the following sections substituted:

### **Giving effect to Tribunal’s decisions**

“33. (1) Within 60 days after a decision in relation to this Act by the Administrative Appeals Tribunal becomes final, the Commissioner shall take any action, including amending any relevant assessment, that is necessary to give effect to the decision.

“(2) If no appeal to a court from—

- (a) a decision of the Administrative Appeals Tribunal in relation to this Act; or
- (b) the decision of the Supreme Court or the Federal Court in an appeal to the Court in relation to the Administrative Appeals Tribunal’s decision;

is instituted within 30 days after the day on which the decision (or the later or latest of those decisions) is made, the decision of the Administrative Appeals Tribunal shall be taken, for the purposes of subsection (1), to have become final at the end of that period.

### **Effect of pending objection, review or appeal**

“34. The fact that a consideration of an objection, or a review or appeal in relation to a decision, is pending does not in the meantime interfere with or affect the assessment or decision to which the objection, review or appeal relates, and rates, land tax, penalty tax and any interest payable in respect of those rates or that land tax or penalty tax may be recovered as if no consideration, review or appeal were pending.

**Reduction of amounts payable**

“34A. If, as a result of a decision under this Act by the Commissioner, the Administrative Appeals Tribunal or a court, an amount of rates, land tax or penalty tax is reduced, the amount by which it is reduced shall be taken never to have been payable.”.

**Further amendments**

**13.** The Principal Act is further amended as set out in the Schedule.

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**SCHEDULE**

Section 13

**FURTHER AMENDMENTS****Subsection 4 (2)—**

Omit all the words after “on and after”, substitute “1 July 1971, be read as a reference to a period of 12 months commencing on 1 July”.

**Paragraphs 5 (1) (b) and (c)—**

Omit “ninety-nine”, substitute “99”.

**Subsection 6 (2)—**

Omit “the last preceding subsection”, substitute “subsection (1)”.

**Subsection 10 (1)—**

Insert “or her” after “his”.

**Subsection 10 (2)—**

Omit “the last preceding subsection, he”, substitute “subsection (1), he or she”.

**Paragraph 15 (5AA) (b)—**

Omit “one”, substitute “1”.

**Paragraph 15 (5A) (a)—**

Omit “one”, substitute “1”.

**Subsection 15 (7)—**

(a) Omit “the next succeeding subsection”, substitute “subsection (8)”.

(b) Omit “three hundred and sixty-five”, substitute “365”.

**Subsection 15 (8)—**

Omit “three hundred and sixty-five”, substitute “365”.

**Subsection 15 (9)—**

Omit “the last preceding subsection”, substitute “subsection (8)”.

**SCHEDULE**—continued

**Subsection 15 (10)—**

- (a) Omit “subsections (7) or (8) of this section”, substitute “subsection (7) or (8)”.
- (b) Insert “or her” after “him”.

**Section 17—**

- (a) Omit “one”, substitute “1”.
- (b) Insert “or her” after “his”.

**Subsection 18 (1)—**

- (a) Omit “thirty”, substitute “30”.
- (b) Omit “the last preceding section”, substitute “section 17”.

**Paragraph 18 (1) (c)—**

Omit “seven”, substitute “7”.

**Subsection 18 (4)—**

- (a) Omit “sixteen”, substitute “16”.
- (b) Omit “the next succeeding section”, substitute “section 19”.
- (c) Insert “or her” after “him”.

**Subsection 18 (6)—**

- (a) Omit “sixteen”, substitute “16”.
- (b) Insert “or her” after “him”.
- (c) Omit “the next succeeding section”, substitute “section 19”.

**Subsection 19 (1)—**

- (a) Omit “one”, substitute “1”.
- (b) Omit “seventeen of this Act”, substitute “17”.
- (c) Omit “powers under the last preceding section”, substitute “or her powers under section 18”.

**Subsection 19 (2)—**

- (a) Omit “one”, substitute “1”.
- (b) Omit “seventeen of this Act”, substitute “17”.

**SCHEDULE—continued****Section 21—**

- (a) Omit “seventeen of this Act”, substitute “17”.
- (b) Omit “one”, substitute “1”.
- (c) Omit “nineteen of this Act”, substitute “19”.

**Paragraph 22 (5) (b)—**

Omit “one”, substitute “1”.

**Paragraph 22B (1) (a)—**

Omit “one”, substitute “1”.

**Sub-subparagraph 22B (1) (b) (ii) (A)—**

Omit “one”, substitute “1”.

**Subsection 22B (3) (definition of “owner”, paragraph (c))—**

Omit “one” (first occurring), substitute “1”.

**Subparagraph 22D (2) (b) (ii)—**

Omit “two”, substitute “2”.

**Paragraph 22D (2) (e)—**

Omit “three hundred and sixty-five”, substitute “365”.

**Paragraph 22E (7) (a)—**

Omit “one”, substitute “1”.

**Section 22G—**

- (a) Omit “seventeen”, substitute “17”.
- (b) Omit “nineteen”, substitute “19”.

**Subsection 24 (1)—**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or she” after “he”.

**Subsection 24A (1)—**

Omit “one”, substitute “1”.

**Paragraph 24A (4) (e)—**

- (a) Omit “(4), sections 22F”, substitute “(4) and sections 22F”.
- (b) Omit “and subsection 34 (2)”.



**SCHEDULE**—continued

**Paragraph 24A (5) (b)—**

Omit “one”, substitute “1”.

**Paragraph 26 (1) (b)—**

Omit “sixteen”, substitute “16”.

**Paragraph 29 (2) (a)—**

Insert “or she” after “he”.

10 *Rates and Land Tax (Amendment) (No. 2) No. 101, 1994*

**SCHEDULE**—continued

**NOTE**

1. Reprinted as at 31 August 1993. See also Act No. 90, 1993; Nos. 33, 38, 60 and 81, 1994.

*[Presentation speech made in Assembly on 10 November 1994]*

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