

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

RATES AND LAND TAX (AMENDMENT) BILL (NO. 2) 1994

EXPLANATORY MEMORANDUM

Circulated by the Authority of the Chief Minister and Treasurer

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RATES AND LAND TAX (AMENDMENT) BILL (NO. 2) 1994

Outline

The Rates and Land Tax Act 1926 (the Act) provides for the imposition of rates and land tax on parcels of land in the ACT.

This Bill amends the Act to more adequately reflect current land ownership requirements, provides for correction of errors in valuation processes and allows greater objection and appeal rights to persons adversely affected by administrative decisions.

The Bill also amends by schedule various provisions in the Act to introduce gender neutral language and replace written numbers with numerals.

Financial Implications

The changes, while protecting the rates and land tax revenue base, have no direct financial implications.

**DETAILS OF THE RATES AND LAND TAX
(AMENDMENT) BILL (NO. 2) 1994**

Short Title

Clause 1 - provides for the short title for this Act to be the Rates and Land Tax (Amendment) Act (No. 2) 1994.

Commencement

Clause 2 - provides for this Act to commence on notification in the Gazette.

Principal Act

Clause 3 - refers to the Principal Act being amended, being the Rates and Land Tax Act 1926.

Interpretation

Subclause 4(a) - amends section 4(1) of the Principal Act by omitting from subsection (1) the definitions of "lease" and "owner".

Subclause 4(b) substitutes new definitions for "Commonwealth authority", "lease" and "owner".

"Commonwealth authority" is defined to include any body established under a Commonwealth law.

"lease" is clarified to mean a lease from the Crown, including an agreement for a lease, or an agreement for the tenancy or occupation of land from the Crown.

The new definition of "owner" restricts owner to a person holding land or an interest in land directly from the Crown and mortgagees in possession. The change to the definition of lease and owner will, among other things, ensure that persons in a landlord and tenant arrangement cannot take advantage of the principal place of residence exemption for land tax purposes;

Revaluation following error or changed circumstances

Clause 5 - amends section 10 of the Principal Act to provide for the Commissioner to redetermine land valuations where any error occurs in determining the unimproved value of a parcel of land.

An error is defined to include any error which occurs in the valuation or determination of land values, including any duplication of such an error in subsequent valuations.

Previously the Principal Act only allowed errors of a clerical nature made by the Commissioner to be corrected. The new provision will allow the correction of any errors, including errors which may have occurred during the valuation processes or where an error has been carried forward to subsequent years.

Exempt land

Clause 6 - excludes persons holding land under a sublease from the Territory or Commonwealth from being able to receive an exemption from land tax on a residential property. The amendment ensures only persons who own property which they occupy as their principal place of residence are eligible for exemption from residential land tax.

Substitution

Clause 7 - repeals section 22GF of the Principal Act and substitutes a new section 22GF. Section 22GF provided a general right of appeal to the Administrative Appeals Tribunal.

Review of Decisions

New section 22GF of the Principal Act provides that a land tax payer may appeal to the Administrative Appeals Tribunal against a decision of the Commissioner in respect of the following matters:

- a) a determination of the unimproved value of the taxable proportion of a parcel of land on which is constructed a building comprising 2 or more residential flats;
- b) a reassessment of penalty tax; and
- c) the dismissing of an objection of the taxpayer.

The broadened provisions now allow taxpayers to also appeal to the AAT where the Commissioner has partially allowed an objection. Previously a taxpayer could only appeal to the AAT where the Commissioner had dismissed an objection in its entirety.

Notification of decision

Clause 8 - amends section 22GH of the Principal Act to require the Commissioner to provide notice to a taxpayer regarding their right of appeal to the Administrative Appeals Tribunal in respect of the broadened provisions contained in new section 22GF.

Notice of transfer

Clause 9 - amends section 23 of the Principal Act by omitting the requirement for the transferor and transferee of an estate or interest in land in the Territory, to provide details relating to "the purpose for which the land is used" and "the value of any goods transferred because of the transfer". Such information is no longer needed for the purposes of the Principal Act.

Insertion

Clause 10 - inserts a section 28C in the Principal Act.

Review of decision that land rateable

New section 28C makes provision in respect of subsections 6(1)(b) and (c) of the Principal Act for:

- 1) the Commissioner to notify an owner within 28 days of making a decision not to allow an exemption from rates to certain land, such as land claimed to be the site of a benevolent institution, a building used exclusively for public charitable purposes or a church or other building used exclusively for public worship;
- 2) the owner, if dissatisfied, to object against the Commissioner's decision within 28 days of receiving the notice; and
- 3) for the Commissioner to consider the objection and notify the owner of the decision as to the liability of the land to rates.

These new provisions now extend the right of objection to ratepayers whose land has been assessed as rateable under subsections 6(1)(b) and (c) of the Principal Act.

Substitution

Clause 11 - repeals section 30A of the Principal Act and substitutes new sections 30, 31, 32 and 32A. (Section 31 includes the right to appeal against a decision or an objection against a determined land value, previously contained in section 30A).

Review of interest decision

New section 30 makes provision in respect of subsection 28B(1) of the Principal Act for:

- 1) the Commissioner to notify an owner within 28 days of making a decision refusing to pay interest on an overpaid amount of rates or land tax, or to pay interest on an overpaid amount of rates or land tax for a lesser period of time than that sought;

- 2) the owner, if dissatisfied, to object against the Commissioner's decision within 28 days of receiving the notice; and
- 3) the Commissioner to consider the objection and either refuse it, or pay interest (at a level determined by the Minister in respect of overpaid rates and land tax, currently 5.25%), or to pay interest for the period of time sought by the taxpayer.

Previously rate and land tax payers had no right of objection under the Act against a decision of the Commissioner on these matters.

Review of Decisions

New section 31 sets out the further decisions of the Commissioner which may be appealed to the Administrative Appeals Tribunal. Such decisions include:

- a) a decision that a parcel of land is rateable because:
 - 1) it is not the site of a benevolent institution;
 - 2) the building on the land is not being used exclusively for public charitable purposes; or
 - 3) it is not a site of a church or other building used exclusively for public worship;
- b) a decision to vary a determination of an unimproved value of a parcel of land to a value which is different to the value sought by the owner or a decision to leave a determined value unchanged; and
- c) a decision to not pay interest on an overpaid amount of rates or land tax or not pay interest for the period sought by the taxpayer.

Notification of decisions

New section 32 requires the Commissioner to notify a person of a decision referred to in section 31.

Contents of Notice

New section 32A requires that the notice issued under section 32 shall meet the requirements of the Administrative Appeals Tribunal's Code of Practice. The Code will include the need to advise a person of their rights where the person is not satisfied with a decision and that the person may request a statement of the reason as to why the Commissioner made the decision, if that reason is not in the notice provided.

Substitution

Clause 12 repeals section 33 and 34 of the Principal Act and substitutes similar provisions, including new section 34A, which are consistent with the Taxation (Administration) Act 1987 in respect of other tax laws. Sections 33, 34 and 34A provide for the payment of rates and or land tax pending review of a decision of the Commissioner, for the implementation of a decision following an appeal and for amounts of rates and land tax in excess of amounts determined following a decision of the Commissioner, Administrative Appeals Tribunal or a Court to be taken to have never been payable, respectively.

New section 33 requires the Commissioner to implement within 60 days a decision handed down by the Administrative Appeals Tribunal unless there is an appeal made to the Court within 30 days of making the decision.

This change will remove the need to refund and then recover tax debts subject to appeal processes depending on the outcome of each successive action.

New section 34 makes rates, land tax, penalty tax and any interest owing in respect of such charges payable irrespective of whether an objection, review or appeal is pending.

New section 34A provides for extinguishing that part of a rates, land tax or penalty tax debt which exceeds the amount owing as a result of a decision of the Commissioner, Tribunal or a Court, following an objection or appeal.

Sections 33, 34 and 34A bring the Principal Act into line with the objection and appeal provisions at sections 93, 94 and 95 of the Taxation (Administration) Act 1987.

Further amendments

Clause 13 - amends the Principal Act, as indicated in the Schedule, to remove sexist language and alters the drafting style by changing written numbers to numerical symbols.