

2009

**The Legislative Assembly for
Australian Capital Territory**

**Rates and Land Tax Legislation
Amendment Bill 2009**

Explanatory Statement

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Rates and Land Tax Legislation Amendment Bill 2009

Summary

The *Rates and Land Tax Legislation Amendment Bill 2009* (the Bill) amends the *Rates Act 2004* (the Rates Act), the *Land Tax Act 2004* (the Land Tax Act), and the *Land Titles (Unit Titles) Act 1970* (the Land Titles (Unit Titles) Act). It amends both the Rates Act and the Land Tax Act because they are cognate Acts, and because it introduces certain amendments that are common to both.

The Bill amends the Rates Act in 3 respects. The amendments:

1. make the registration of a units plan for the subdivision of a parcel of land contingent on the payment of all outstanding rates liabilities for the parcel;
2. ensure that redeterminations of unimproved land values for error or changed circumstances are applied across all affected years for the determination of an average unimproved value; and
3. clarify that the definition of an ‘owner’ of a parcel of land includes owners who have obtained effective ownership of the land, but who have not become the registered proprietor of the land.

The Bill also amends the Land Tax Act in 3 respects. The amendments:

4. make the registration of a units plan for the subdivision of a parcel of land contingent on the payment of all outstanding land tax liabilities for the parcel;
5. clarify that the definition of an ‘owner’ of a parcel of land includes owners who have obtained effective ownership of the land, but who have not become the registered proprietor of the land; and
6. provide a stronger mechanism to help ensure that property owners (or their agents) notify the Commissioner for ACT Revenue about the rental status of a property.

Overview

The following is an overview of the amendments made by the Bill.

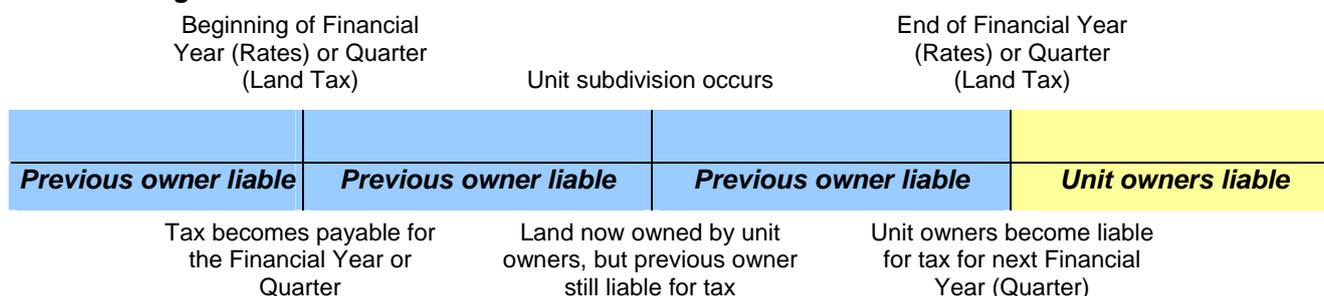
Amendments 1 & 4: *Payment of taxes before subdivision*

When an existing parcel of land is ‘unit titled’ it is subdivided into a number of smaller parcels. For example, this occurs when a developer purchases a parcel of land and builds a block of apartments on it. Before the units plan creating the subdivision is registered, the developer holds a lease over the whole parcel of land. However, when the units plan is registered, that lease comes to an end and each owner of each unit on the units plan becomes the owner of a separate lease for each unit.

Currently, rates (land tax) is imposed on the proportion of a unit owner’s ownership of the total number of units in the units plan. Each unit owner’s liability to rates (land tax) starts at the beginning of the financial year (quarter) after the registration of

the unit plan occurs (unless it occurs on the first day of the financial year (quarter)). A graphical representation of this is at Diagram 1:

Diagram 1



In contrast, for an ordinary transfer of land the liability to taxes flows directly with the ownership of the land. Consequently, the rates (land tax) for a parcel of land become payable by the new owners at the time they become the owner of the land, rather than at the beginning of the next financial year (quarter). This is because rates and land tax are a ‘charge’ over the owner’s interest in the parcel of land.

The amendments have the effect of making the registration of a units plan conditional on the payment of all outstanding amounts of rates (land tax) that are payable by the owner of the parcel of land during the financial year (quarter) in which the registration of the units plan is to occur. The amendments achieve this effect by requiring certification from the Commissioner for ACT Revenue to be provided to the Registrar-General of Land Titles verifying that any rates (land tax) payable by the owner of the parcel of land have been paid in full for the financial year (quarter) in which the registration of the units plan will occur.

Amendment 2: *Unimproved values – redeterminations*

The Rates Act and the Land Tax Act use the unimproved values of land in the 3 years before the financial year that the rates (land tax) are payable in order to calculate the amount of rates (land tax) payable each year (quarter). The unimproved values of all parcels of land in the ACT are determined as of 1 January each year.

The Rates Act allows for redeterminations of those values where a clerical error has occurred in determining the values, or where a change in circumstances during the year causes the unimproved value of the land to change.

The amendments seek to address doubt regarding whether or not the current provisions allow a redetermination of an unimproved value to be applied across all affected unimproved values used to determine rates or land tax for a parcel of land.

Accordingly, the amendments will allow the Commissioner for ACT Revenue to rectify errors in unimproved valuations so as to ensure that accurate valuations are used in determining a rates or land tax liability across all affected years that are used to calculate an average unimproved value.

Amendments 3 & 5: *Meaning of an ‘owner’ of a parcel of land*

The Rates Act and the Land Tax Act impose rates and land tax on persons who are owners of land. *Inter alia*, the Acts define ‘owner’ as a person who is the registered proprietor of the land.

In ordinary conveyancing practice, a person becomes the owner of a parcel of land when the sale of the land is completed (i.e. at settlement). After the sale is completed, the person then becomes the registered proprietor of the land (however, this is not necessarily done instantaneously).

Accordingly, the amendments will clarify that a person who has obtained effective ownership of a parcel of land, but who may not yet have become the registered proprietor of that parcel of land, is the ‘owner’ of that parcel of land for the purposes of the Rates Act and Land Tax Act.

Amendment 6: *Notification of when a property becomes rented*

The Land Tax Act requires owners of residential properties who rent out their property to pay land tax. Owners must notify the Commissioner for ACT Revenue within 30 days of the property becoming rented, or within 30 days of becoming the owner of the property if it will continue to be rented out after the change of ownership.

The amendments seek to provide a more robust mechanism to support the existing requirement for owners to notify the Commissioner when a property becomes rented. The amendments do this by extending the requirement to notify the Commissioner to agents (such as real estate agents, accountants, and solicitors) entrusted by the owner with the management of the parcel of land. This is in addition to the existing obligation that will continue to apply to the owners themselves. However, despite these amendments owners will still remain liable to any interest and or penalty tax payable in relation to any failure to notify the Commissioner of the rental in accordance with the Land Tax Act.

The amendments also improve the mechanism for the notification of the rental status of a property by highlighting that—

1. if an Approved Form is prescribed under the *Taxation Administration Act 1999*, then that form must be used by an owner or their agent in notifying the Commissioner of the rental status of a property; and
2. failing to notify the Commissioner of the rental of a property is a criminal offence under the *Taxation Administration Act 1999*; and
3. knowingly avoiding to disclose a liability to pay land tax is a criminal offence under the *Taxation Administration Act 1999*.

Financial Implications

The bill is expected to be revenue neutral.

Commencement Date

The amendments will commence on 1 January 2010.



Details of the Rates and Land Tax Legislation Amendment Act 2009

Clause 1 – Name of Act

This clause provides that the amending Act is named the *Rates and Land Tax Legislation Amendment Act 2009*.

Clause 2 – Commencement

This clause provides that the Act commences on 1 January 2010.

Clause 3 – Legislation amended—pt 2

This clause provides that Part 2 of the Act makes amendments to the *Land Tax Act 2004*.

Clause 4 – Section 14

This clause implements the measures described in Amendment 6 of the summary and overview above.

The purpose of the changes made by this clause is to provide a stronger mechanism to ensure compliance with the requirement to notify the Commissioner when a parcel of land becomes rented.

The changes strengthen the existing legislative mechanism by—

1. requiring agents to notify the Commissioner of the rental if the owner of the parcel of land has entrusted the agent with the management of the parcel of land. For the purposes of the amendments, an agent includes agents such as real estate agents, accountants, and solicitors; and
2. highlighting that an Approved Form made under section 139C of the *Taxation Administration Act 1999* must be used to tell the Commissioner about the rental; and
3. highlighting that a failure to tell the Commissioner about the rental is a criminal offence under the *Taxation Administration Act 1999*.

Notwithstanding the changes, the amendments do not imply that agents are liable to pay interest and penalty tax under section 19A of the Land Tax Act for a failure to

notify the Commissioner of the rental of the parcel. Accordingly, the amendments will have the effect that the owner of the parcel will remain liable for interest and penalty tax under section 19A of the Land Tax Act if their agent fails to comply with the notification requirement.

Clause 5 – Dictionary, definition of *owner*, new paragraph (aa)

This clause implements the measures described in Amendment 5 of the summary and overview above.

The purpose of this clause is to ensure that a person who obtains effective ownership of a parcel of land (but who has not been registered as the registered proprietor of the parcel of land) cannot escape liability for tax under the Land Tax Act commencing on the date they obtain effective ownership of the parcel. In this manner, the amendments will ensure that the liability to taxation under the Land Tax Act passes at the same time that effective ownership of the land passes, and that the person who is the effective owner of the parcel bears the tax burden associated with the parcel when they become its effective owner.

Clause 6 – Dictionary, definition of *unit owner*

This clause is consequential to the implementation of the measures described in Amendment 5 of the summary and overview above. Its purpose is analogous to that described in clause 5 to the extent that a unit of a units plan is involved instead of a parcel of land.

Clause 7 – Legislation amended—pt 3

This clause provides that Part 3 of the Act makes amendments to the *Land Titles (Unit Titles) Act 1970*.

Clause 8 – Registration of units plan, New Section 7 (1) (e)

This clause implements the measures described in Amendments 1 and 4 of the summary and overview above.

The purpose of this clause is to ensure that any amounts of tax payable under the Rates Act and the Land Tax Act are paid in full before the registrar-general of land titles can register a units plan under the Land Titles (Unit Titles) Act.

The clause achieves this purpose by requiring that the Commissioner certify that any amounts of tax payable have been paid in full for—

1. the financial year in which the registration is to occur (in the event an amount of tax is payable under the Rates Act); or
2. the quarter in which the registration is to occur (in the event an amount of tax is payable under the Land Tax Act).

Clause 9 – Legislation amended—pt 4

This clause provides that Part 4 of the Act makes amendments to the *Rates Act 2004*.

Clause 10 – Dictionary, Section 3, note 1

This clause is consequential to the amendments described in clause 6 above. It replaces the previous example of a signpost definition that is no longer applicable because of the amendment of the definition of unit owner made by clause 6.

Clause 11 – Meaning of *unimproved value*, Section 6 (3), definition of *prescribed date*, paragraph (c)

This clause is consequential to the amendments described in clause 15 below. It is made due to the updating of section 11 of the Rates Act.

Clause 12 – First determination of unimproved value, Section 9 (3)

This clause clarifies that the reference to rates in section 9 (3) is actually a reference to a parcel of land.

Clause 13 – Section 9 (4)

This clause clarifies that the reference to rates in section 9 (4) is actually a reference to a parcel of land.

Clause 14 – Annual redeterminations, Section 10 (2)

This clause clarifies that the reference to rates in section 10 (2) is actually a reference to a parcel of land.

Clause 15 – Section 11

This clause implements the measures described in Amendment 2 of the summary and overview above.

The purpose of this clause is to ensure that if the commissioner redetermines an unimproved value of a parcel of land due to an error that occurred when it was previously determined, or due to a change in circumstances that led to the redetermination, then the redetermination can be applied to any average unimproved value that is affected by the redetermination.

Accordingly, the amendments have the effect that if the commissioner redetermines the unimproved value of a parcel of land due to an error that occurred in any previous determination of the unimproved value, then the average unimproved value that applies in the circumstances can be recalculated in order to take account of the redetermined unimproved value. The example to section 11 is provided to illustrate how section 11 operates.

Similarly, if the commissioner redetermines the unimproved value of the parcel due to a change in circumstances that has occurred since any previous determination of the

unimproved value of the parcel, then the amendments will allow the average unimproved value to be recalculated to take account of the redetermined unimproved value by applying the redetermined unimproved value on a pro-rata basis to the average unimproved value for any affected year. The example to section 11A is provided to illustrate how section 11A operates.

Clause 16 – Dictionary, definition of *owner*, new paragraph (ia)

This clause implements the measures described in Amendment 3 of the summary and overview above.

The purpose of this clause is to ensure that a person who obtains effective ownership of a parcel of land (but who has not been registered as the registered proprietor of the parcel of land) cannot escape liability for tax under the Rates Act commencing on the date they obtain effective ownership of the parcel. In this manner, the amendments will ensure that the liability to taxation under the Rates Act passes at the same time that effective ownership of the land passes, and that the person who is the effective owner of the parcel bears the tax burden associated with the parcel when they become its effective owner.

Clause 17 – Dictionary, definition of *unit owner*

This clause is consequential to the implementation of the measures described in Amendment 3 of the summary and overview above. Its purpose is analogous to that described in clause 16 to the extent that a unit of a units plan is involved instead of a parcel of land.

