



AUSTRALIAN CAPITAL TERRITORY

Rates and Land Tax (Amendment) Act (No. 3) 1991

No. 55 of 1991

An Act to amend the Rates and Land Tax Act 1926

[Notified in ACT Gazette S98: 2 October 1991]

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. 3) 1991*.

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 inserting in subsection (1) the following definition:

“ ‘penalty tax’ means additional tax payable under section 22EB;”.

Insertion

4. Before section 22A of the Principal Act the following section is inserted in Division 1 of Part IV:

Interpretation

“22AAB. In this Part—

‘prescribed date’ means—

- (a) in relation to the year expiring on 30 June 1992—1 August 1991; and
- (b) in relation to a subsequent year—1 July in that year.”.

Exempt land

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

(a) by omitting subsection (1) and substituting the following subsections:

“(1) Subject to section 22BA, the following parcels of land are exempt from land tax imposed under section 22A:

- (a) a parcel of land leased for residential purposes that was on the prescribed date the principal place of residence of the owner of the parcel or, if there were then joint owners, the principal place of residence of one or more of them;
- (b) a parcel of land leased for residential purposes that—
 - (i) was not occupied on or before the prescribed date; and
 - (ii) had been purchased on or before that date—
 - (A) and was intended to be used as the principal place of residence of the owner or, if there were then joint owners, as the principal place of residence of one or more of them; or
 - (B) for sale before the prescribed date immediately following the next prescribed date;
- (c) a parcel of land leased primarily for the purpose of primary production;

- (d) a parcel of land owned by the Commissioner for Housing appointed under the *Housing Assistance Act 1987*;
- (e) land leased under the *Leases Act 1918* for the development of the land to the extent necessary to make the land suitable for subdivision into parcels of land to be leased;
- (f) land being used for a prescribed purpose.

“(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 the reason for the owner’s absence is related to his or her employment or occupation—3 years if he or she occupies the parcel for a continuous period of 2 years in any period of 5 years commencing on a prescribed date;
- (b) if the Commissioner is satisfied that by reason of the death or illness of any person or on some other compassionate ground the owner has a compelling reason for not occupying the parcel for a longer period than 12 months—that longer period; or
- (c) in any other case—12 months.”; and

(b) by omitting subsection (3) and substituting the following subsection:

“(3) In paragraphs (1) (a) and (b)—

‘owner’, in relation to a parcel of land, does not include a body corporate or a person in whom the parcel is vested as a trustee.”.

Insertion

6. After section 22B of the Principal Act the following sections are inserted:

Application for exemption of residential land

“22BA. (1) Paragraphs 22B (1) (a) and (b) do not apply in respect of a parcel of land unless—

- (a) the person who was the owner on the relevant prescribed date has applied in writing to the Commissioner for the parcel to be treated as exempt from land tax;
- (b) the application sets out the grounds on which it is made;
- (c) the owner has furnished the Commissioner with such further information (if any) as the Commissioner requests for the purpose of determining whether the parcel is exempt from land tax; and
- (d) an instrument referred to in paragraph (2) (a) relating to the parcel is in force.

“(2) After considering the application, the Commissioner shall—

- (a) if satisfied that paragraph 22B (1) (a) or (b), as the case requires, applies—by instrument, declare that the parcel is exempt from land tax; or
- (b) if not so satisfied—notify the owner in writing of the reasons why he or she is not so satisfied and that the parcel is not exempt from land tax.

“(3) If the Commissioner revokes an instrument referred to in paragraph (2) (a), he or she shall cause notice in writing of the revocation to be served on the owner of the relevant parcel of land.

Change in circumstances in relation to exempt residential land

“22BB. The owner of a parcel of land leased for residential purposes that is exempt from land tax shall, within 30 days, notify the Commissioner in writing of any change in circumstances in relation to that land which, if it had occurred on the last prescribed date, would have resulted in the parcel not being exempt from land tax.

Power to obtain further information

“22BC. (1) Where the Commissioner believes on reasonable grounds that a person is able to give information or produce documents that may be used for the purpose of ascertaining or assessing the liability of a person for land tax, the Commissioner may, by notice in writing served on that person, require the person—

- (a) to give any such information to the Commissioner within the time and in the manner specified in the notice;
- (b) to attend before the Commissioner or another person specified in the notice at a specified time and place (being a time and place that are reasonable in the circumstances) and to answer questions for that purpose; or
- (c) to produce any such document to the Commissioner or another person specified in the notice, in accordance with that notice.

“(2) The Commissioner or another person before whom a person is required to attend may require evidence to be given on oath or by affirmation, and for that purpose the Commissioner or the other person may administer an oath or affirmation.

Self-incrimination

“22BD. (1) A person is not excused from giving information, answering a question or producing a document in compliance with a notice served under section 22BC on the ground that the giving of the information, the answering of the question or the production of the document might tend to incriminate the person.

“(2) The information, answer or document obtained under subsection (1), or any information, document or thing obtained as a direct or indirect consequence of that information, answer or document, is not admissible in evidence against the person in proceedings other than proceedings for an offence under this Act or for the recovery of land tax.”.

Insertion

7. After section 22EA of the Principal Act the following sections are inserted:

Penalty tax

“22EB. (1) Where the owner of a parcel of land—

- (a) fails to furnish any information as required by this Act; or

- (b) provides any such information, whether orally or in writing, that is false or misleading in a material particular;

the owner is liable to pay, as a penalty, an additional amount equal to double the amount of any land tax payable in respect of that parcel of land.

“(2) The Commissioner shall assess the amount of penalty tax payable by an owner of a parcel of land under subsection (1) and shall, as soon as practicable after making the assessment, give the owner written notice of the assessment and of the due date for payment of the penalty tax.

Refund or remission of penalty tax

“22EC. Where the Commissioner is satisfied that it is fair and reasonable that all or part of any penalty tax payable or paid in respect of a parcel of land should be remitted or refunded, the Commissioner may remit or refund the relevant amount to the owner of the parcel of land.”

Insertion

8. After Division 2 of Part IV of the Principal Act the following Divisions are inserted:

“Division 3—Offences

Interpretation

“22GA. In this Division—

‘duly authorised officer’, in relation to a matter, means an officer duly authorised by the Commissioner in respect of that matter;

‘statement’ means a statement made orally, in writing, by means of a data processing device or in any other way but does not include a document produced pursuant to paragraph 22BC (1) (c).

Failure to provide information

“22GB. A person who—

- (a) fails, without reasonable excuse, to furnish any information as required by this Act or to comply with any requirement of the Commissioner made in pursuance of this Act; or
- (b) without reasonable excuse, refuses or neglects—
- (i) to attend and give evidence when required;
 - (ii) to answer truthfully and fully any questions put to the person; or

- (iii) to produce any records required;
- by the Commissioner or a duly authorised officer shall be guilty of an offence punishable, on conviction, by a fine not exceeding—
- (iv) in the case of a natural person— \$2,000; or
 - (v) in the case of a body corporate—\$10,000.

False or misleading statements

“22GC. A person who, knowingly or recklessly—

- (a) makes a statement to the Commissioner or a duly authorised officer that is false or misleading in a material particular; or
- (b) omits from a statement made to the Commissioner or a duly authorised officer any matter or thing without which such statement is false or misleading in a material particular;

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) in the case of a natural person—\$2,000; or
- (d) in the case of a body corporate—\$10,000.

Avoiding land tax

“22GD. A person who knowingly avoids—

- (a) disclosing facts or circumstances material to the person’s liability for land tax or penalty tax; or
- (b) paying an amount of land tax or penalty tax that the person is liable to pay;

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (c) in the case of a natural person—\$5,000; or
- (d) in the case of a body corporate—\$25,000.

“Division 4—Objections and Review

Objections

“22GE. (1) An owner of a parcel of land who is dissatisfied with—

- (a) a decision of the Commissioner under paragraph 22BA (2) (b) that the parcel is not exempt from land tax;
- (b) a decision of the Commissioner revoking an instrument referred to in paragraph 22BA (2) (a); or

- (c) an assessment of penalty tax;

may lodge with the Commissioner a written objection to the decision within 60 days, or such longer period as the Commissioner allows, after service of notice of the decision or assessment on the owner.

“(2) An objection shall state the grounds on which it is made.

“(3) After considering the objection, the Commissioner shall—

- (a) (in the case of a decision referred to in paragraph (1) (a) or (b)) if satisfied that the parcel is exempt from land tax—reverse the decision objected to and refund to the owner any land tax paid;
- (b) (in the case of a decision referred to in paragraph (1) (c)) if satisfied that any penalty tax has been incorrectly assessed—reassess the amount of penalty tax (if any) payable and refund to the owner any excess paid; or
- (c) if not so satisfied—dismiss the objection.

“(4) The Commissioner shall cause written notice of his or her decision on an objection to be given to the owner of the parcel of land.

Review of decisions

“22GF. Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Commissioner dismissing an objection under subsection 22GE (3).

Notification of decision

“22GH. (1) A notice given under subsection 22GE (4) of a decision dismissing an objection under subsection 22GE (3) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal, within 28 days after the date of service of the notice, for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

“(2) The validity of a decision or an assessment referred to in subsection 22GE (1) shall not be taken to have been affected by a failure to comply with subsection (1).

Effect of pending objection or review

“22GI. The fact that a consideration of an objection, or a review in relation to a decision or assessment, is pending does not in the meantime interfere with or affect the decision or assessment to which the objection or review relates, so that land tax or penalty tax may be assessed and recovered as if no consideration or review were pending.”.

Further amendments

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

Liability for land tax during year 1991-92—leased residential land

10. Where a parcel of land ceases to be exempt from land tax by reason only of the amendments of the Principal Act effected by this Act, then, in relation to the year commencing on 1 July 1991, that land is subject to land tax for the period commencing on 1 August 1991 and ending at the expiration of 30 June 1992, and subsection 22E (8) of the Principal Act as amended by this Act applies in relation to that land accordingly.

SCHEDULE

Section 9

FURTHER AMENDMENTS OF PRINCIPAL ACT

Subsection 13 (3)—

Omit the subsection.

Section 21A—

Insert “(including penalty tax)” after “land tax” (wherever occurring).

Subsection 22A (3)—

Omit the subsection.

Section 22G—

Insert “(including penalty tax)” after “land tax” (wherever occurring).

Section 24—

Insert “(including penalty tax)” after “land tax” (wherever occurring).

Subsection 35 (1)—

Insert “(including penalty tax)” after “land tax” (wherever occurring).

NOTE

1. Ordinance No. 6, 1926 as amended to date. For previous amendments see Note 1 to Act No. 27, 1991 and see also Acts Nos. 27 and 28, 1991.

[Presentation speech made in Assembly on 12 September 1991]

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