



Australian Capital Territory

# Revenue Legislation Amendment Act 2015

A2015-49

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
<b>Part 2</b>	<b>Duties Act 1999</b>	
4	Payment of duty—'off the plan' purchase agreements Section 16A (1)	3
5	Section 16A (2) (a)	3

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	Page	
6	Deceased estates New section 69 (2) to (4)	3
7	Sections 70A and 91A	4
8	Rate of duty Section 208 (1)	4
9	Corporate reconstructions—concessional duty for motor vehicle registration applications Section 208AA	4
10	New section 209C	5
11	New section 232A	5
12	Objections Section 252 (d), (j) and (u)	7
13	New section 252 (zb)	7
14	Dictionary, definitions of <i>scheme</i> and <i>tax avoidance scheme</i>	7
<b>Part 3</b>	<b>First Home Owner Grant Act 2000</b>	
15	Meaning of <i>new home</i> —div 2.3 Section 12B (2), new definition of <i>occupied</i>	9
16	Meaning of <i>eligible transaction</i> etc Section 13 (4) (a) and (6) (a)	9
17	Section 13 (7), definition of <i>contract for the purchase of a home</i>	9
18	Section 13 (7), new definition of <i>contract for the purchase of a new home</i>	9
19	Notification of decision Section 24 (2)	9
<b>Part 4</b>	<b>Land Rent Act 2008</b>	
20	Discount—application Section 10 (2) (a) (ii)	10
21	Discount—eligibility Section 11 (1) (b)	10
22	Discount—decision on application Section 12 (3) (b)	10
23	New section 30A	11

---

	Page
<b>Part 5</b>	<b>Land Tax Act 2004</b>
24	Land exempted from land tax Section 11 (2) 12
25	Land tax for part of quarter Section 18 (2), formula 12
26	Interest and penalty tax payable on land tax if no disclosure Section 19A (1) (a) 12
27	Section 19A (1) (b) 13
28	Section 19A (5) (a) 13
29	Sections 20 to 25 13
30	Objections New section 38 (ba) 13
31	Review of decisions by ACAT Section 39 (1) 13
<b>Part 6</b>	<b>Payroll Tax Act 2011</b>
32	Meaning of <i>relevant contract</i> —div 3.7 Section 32 (2) (c) 14
33	Section 32 (3) 14
<b>Part 7</b>	<b>Rates Act 2004</b>
34	Sections 22 to 27 15
35	Objections New section 70 (aa) 15
36	Review by ACAT Section 73 (1) 15
<b>Part 8</b>	<b>Taxation Administration Act 1999</b>
37	Notice of assessment, reassessment or withdrawal of assessment Section 14 (1), note 16
38	Remission of interest Section 29 (1), note 16
39	Table 34 16
40	New division 7.3 17
41	New section 73A 24

## Contents

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		Page
42	Decisions reviewable by commissioner only Schedule 2, section 2.2 (a)	25
43	Dictionary, new definitions	25



Australian Capital Territory

# Revenue Legislation Amendment Act 2015

A2015-49

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An Act to amend legislation about revenue, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Revenue Legislation Amendment Act 2015*.

### 2 Commencement

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

### 3 Legislation amended

This Act amends the following legislation:

- *Duties Act 1999*
- *First Home Owner Grant Act 2000*
- *Land Rent Act 2008*
- *Land Tax Act 2004*
- *Payroll Tax Act 2011*
- *Rates Act 2004*
- *Taxation Administration Act 1999*.

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## Part 2 Duties Act 1999

### 4 Payment of duty—‘off the plan’ purchase agreements Section 16A (1)

*omit everything before paragraph (a), substitute*

- (1) Liability for duty on an ‘off the plan’ purchase agreement arises on the first of the following to happen:

### 5 Section 16A (2) (a)

*substitute*

- (a) is payable within 14 days after the first of the events in subsection (1) (a) to (d) happens; and

### 6 Deceased estates New section 69 (2) to (4)

*insert*

- (2) Subsection (3) applies if a transfer of dutiable property is made under, but only partly in conformity with, a trust contained in the will of a deceased person or arising on an intestacy (the *trust*).
- (3) The dutiable value of the property is worked out as follows:

$$X - Y$$

*X* means, if all the dutiable property were transferred in conformity with the trust—the unencumbered value of the property.

**Y** means the unencumbered value of the express beneficial interest in the property transferred in conformity with the trust.

**Example—dutiable value**

Under a will, Brad is entitled to a 2/3 share in a house and Josh is entitled to a 1/3 share. The unencumbered value of the house is \$480 000. Josh and Brad agree that Brad will buy Josh's share in the house. With the consent of Josh and Brad, the legal personal representative of the deceased person under the will transfers the whole of the interest in the house to Brad (the *relevant transfer*). The commissioner determines that the unencumbered value of the express beneficial interest in the property transferred to Brad in conformity with the trust under the will is \$320 000. The dutiable value of the relevant transfer is \$160 000.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (4) For subsection (3), a person does not have an *express beneficial interest* in property the subject of a discretionary trust.

**7 Sections 70A and 91A**

*omit*

**8 Rate of duty  
Section 208 (1)**

*omit*

and section 208AA

**9 Corporate reconstructions—concessional duty for motor vehicle registration applications  
Section 208AA**

*omit*



**10 New section 209C**

*insert*

**209C Status of forces agreements**

- (1) Duty under this chapter is not chargeable on an application to register a motor vehicle if the vehicle is subject to a status of forces agreement.
- (2) In this section:

*status of forces agreement* means an agreement between the Commonwealth and another country allowing for the importation of vehicles by visiting military personnel.

**11 New section 232A**

*in chapter 11, insert*

**232A Corporate reconstruction transactions**

- (1) Duty under this chapter is not chargeable on a corporate reconstruction transaction that is approved by the commissioner in accordance with any guideline determined under subsection (3).
- (2) An approval for subsection (1) may be given subject to conditions.
- (3) The Minister may determine guidelines for approvals.
- (4) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

(5) In this section:

***corporate reconstruction transaction*** means—

- (a) a dutiable transaction where property is—
  - (i) transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group; or
  - (ii) vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group; or
- (b) the making of a relevant acquisition, if by the acquisition property is—
  - (i) transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group; or
  - (ii) vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group; or
- (c) an application to register a motor vehicle if—
  - (i) the application is made by a member of a group of corporations; and
  - (ii) immediately before the application was made, the vehicle was registered in the name of another member of the same group.

***corporation*** includes a unit trust scheme.

***dutiable transaction***—see section 7 (2).

***relevant acquisition***, in relation to a person—see section 86.

**12**      **Objections**  
**Section 252 (d), (j) and (u)**

*omit*

**13**      **New section 252 (zb)**

*insert*

- (zb) under section 232A (2) imposing a condition on an approval made under section 232A (1).

**14**      **Dictionary, definitions of *scheme* and *tax avoidance scheme***

*substitute*

*scheme* includes—

- (a) any plan, action or conduct of a person; and
- (b) any trust, agreement, arrangement or other understanding between people, whether oral or in writing, whether express or implied and whether or not it is intended to be legally binding; and
- (c) any series or combination of schemes mentioned in paragraphs (a) and (b).

***tax avoidance scheme*** means a scheme by which a person obtains or seeks to obtain a reduction in, or exemption from, tax that would otherwise be payable and where it would be reasonable to conclude that the person entered into or carried out the scheme principally for the purpose of obtaining the reduction or exemption, having regard to—

- (a) the way in which the scheme was entered into or carried out; or
- (b) the form and substance of the scheme; or

- (c) the time when the scheme was entered into and the length of time during which it was carried out; or
- (d) the extent to which the scheme reduces the tax that would be otherwise payable; or
- (e) whether the scheme has resulted in, or can reasonably be expected to result in, a change in any person's financial position, or in any other consequence for any person; or
- (f) the nature of any connection (whether of a business, family or any other nature) between the person and a person mentioned in paragraph (e).

## Part 3 First Home Owner Grant Act 2000

### 15 Meaning of *new home*—div 2.3 Section 12B (2), new definition of *occupied*

*insert*

*occupied*, in relation to a home, includes occupation of the home on a short-term basis, regardless of the length of occupation or the intended length of occupation.

### 16 Meaning of *eligible transaction etc* Section 13 (4) (a) and (6) (a)

*omit*

contract for the purchase of a home

*substitute*

contract for the purchase of a new home

### 17 Section 13 (7), definition of *contract for the purchase of a home*

*omit*

### 18 Section 13 (7), new definition of *contract for the purchase of a new home*

*insert*

*contract for the purchase of a new home* means a contract for the acquisition of a relevant interest in land on which a home is built.

### 19 Notification of decision Section 24 (2)

*omit*

without conditions

## Part 4 Land Rent Act 2008

### 20 Discount—application Section 10 (2) (a) (ii)

*substitute*

- (ii) if the total income of each lessee is more than the income threshold amount in the year in which the application is made—for that year; and

### 21 Discount—eligibility Section 11 (1) (b)

*omit*

income threshold amount; and

*substitute*

income threshold amount for—

- (i) the year in which the application for discounted land rent is made; and
- (ii) the year before the application is made; and

### 22 Discount—decision on application Section 12 (3) (b)

*substitute*

(b) in any other case—

- (i) the day on which the application for the discount was received by the commissioner; or
- (ii) any other day, including a day before the application was received, which the commissioner considers appropriate.

**23 New section 30A***insert***30A Remission of land rent**

- (1) The Minister may remit the land rent, or part of the land rent, payable for a lease if the Minister is satisfied that it is fair and reasonable in the circumstances.
- (2) The Minister may make guidelines for the exercise of a function under this section.
- (3) A guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## Part 5 Land Tax Act 2004

### 24 Land exempted from land tax Section 11 (2)

*substitute*

- (2) A corporation carrying on business as a builder or land developer may apply, in writing, to the commissioner for a declaration that a parcel of land owned by the corporation is exempt from land tax for 2 years beginning on the 1st day of the 1st quarter after the corporation becomes the owner of the parcel if—
- (a) the parcel is used by the corporation only to construct new residential premises; and
  - (b) the new residential premises are to be sold by the corporation when finished.

### 25 Land tax for part of quarter Section 18 (2), formula

*omit*

quarter day

*substitute*

quarter days

### 26 Interest and penalty tax payable on land tax if no disclosure Section 19A (1) (a)

*omit*

under section 9 (1) (a)



**27 Section 19A (1) (b)**

*after*

land rented)

*insert*

or section 14A (Commissioner to be told if residential land owned by an individual as trustee)

**28 Section 19A (5) (a)**

*after*

section 14

*insert*

or section 14A

**29 Sections 20 to 25**

*omit*

**30 Objections  
New section 38 (ba)**

*insert*

(ba) a decision under section 36 (1) to refuse to remit interest payable by a person in relation to land tax;

**31 Review of decisions by ACAT  
Section 39 (1)**

*after*

section 38

*insert*

, other than a decision mentioned in section 38 (ba)

## Part 6 Payroll Tax Act 2011

### 32 Meaning of *relevant contract*—div 3.7 Section 32 (2) (c)

*after*

services

*insert*

solely for or

### 33 Section 32 (3)

*substitute*

- (3) Subsection (2) does not apply—
- (a) to a contract if the services supplied under the contract include services that are not mentioned in that subsection; or
  - (b) if the commissioner decides that the contract under which the services are supplied was entered into with an intention of, directly or indirectly, avoiding or evading payment of tax by anyone.

## Part 7 Rates Act 2004

### 34 Sections 22 to 27

*omit*

### 35 Objections New section 70 (aa)

*before paragraph (a), insert*

(aa) a decision under section 43 (1) to refuse to remit interest payable by a person in relation to rates;

### 36 Review by ACAT Section 73 (1)

*after*

section 70

*insert*

, other than a decision mentioned in section 70 (aa)

## Part 8 Taxation Administration Act 1999

### 37 Notice of assessment, reassessment or withdrawal of assessment Section 14 (1), note

*omit*

the notice of assessment must be an internal review notice

*substitute*

the commissioner must give an internal review notice to the taxpayer

### 38 Remission of interest Section 29 (1), note

*omit*

in accordance with a taxpayer's application

### 39 Table 34

*substitute*

**Table 34 Rates of penalty tax**

column 1 item	column 2	column 3	column 4	
		basic rate	reduced rate	
			voluntary disclosure	disclosure before investigation
1	taxpayer took reasonable care	0%	0%	0%
2	circumstances beyond taxpayer's control	0%	0%	0%

column 1 item	column 2	column 3	column 4	
		basic rate	reduced rate	
			voluntary disclosure	disclosure before investigation
3	<ul style="list-style-type: none"> <li>tax default</li> <li>failure to take reasonable care with reasonable excuse</li> </ul>	25%	5%	20%
4	failure to take reasonable care	50%	10%	40%
5	intentional disregard of tax law	75%	15%	60%
6	concealment	90%	90%	90%

#### 40 New division 7.3

*insert*

### Division 7.3 Tax in arrears—sale of land

#### 56F Application—div 7.3

This division applies to a tax under the following tax laws:

- the *Land Tax Act 2004*;
- the *Rates Act 2004*.

**56G Definitions—div 7.3**

(1) In this division:

*owner*, of a parcel of land means—

- (a) the registered proprietor of an interest in the parcel, other than an interest in a lease granted by a person other than the Territory or the Commonwealth; or
- (b) if the registered proprietor has sold the interest to another person (the *new owner*) and the new owner is in possession of the parcel but not yet registered as the proprietor—the new owner; or
- (c) a mortgagee in possession of the parcel; or
- (d) a person holding the parcel under a sublease from the Territory, if the Territory holds the parcel under a lease from the Commonwealth; or
- (e) for a parcel held under a declared land sublease—the sublessee.

*parcel*, of land, includes—

- (a) a part of a parcel of land that is separately held by an occupier, tenant, lessee or owner; and
- (b) land held under a declared land sublease.

(2) In this section:

*declared land sublease*—see the [Planning and Development Act 2007](#), section 312C.

**56H Tax payable is charge on land**

- (1) Tax payable in relation to a parcel of land is a charge on the interest held by the owner of the parcel.
- (2) The charge takes priority over a sale, conveyance, transfer, mortgage, charge, lien or encumbrance in relation to the parcel.
- (3) The charge does not have effect against an honest purchaser of the parcel of land for value if—
  - (a) the purchaser had obtained a certificate under—
    - (i) for tax payable under the *Land Tax Act 2004*—the *Land Tax Act 2004*, section 41 (Certificate of land tax and other charges) in relation to the parcel before the purchase; or
    - (ii) for tax payable under the *Rates Act 2004*—the *Rates Act 2004*, section 76 (Certificate of rates and other charges) in relation to the parcel before the purchase; and
  - (b) at the time of purchase, the purchaser did not have notice of liability under the charge.

**56I Notice of tax in arrears**

- (1) If tax payable for a parcel of land has been in arrears for at least 1 year, the commissioner may give the owner of the parcel written notice that the tax is in arrears.
- (2) At any time after giving notice, the commissioner may declare, in writing, that the tax for the parcel of land is in arrears.
- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (4) If the commissioner makes a declaration under subsection (2), the commissioner must give additional public notice that the tax for the parcel of land is in arrears.

*Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1). The requirement in s (4) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

### **56J Sale of land for nonpayment of tax**

- (1) This section applies if—
- (a) a parcel of land is held by the owner under a lease from the Commonwealth for a term of years; and
  - (b) the commissioner has complied with section 56I in relation to the parcel; and
  - (c) tax payable for the parcel is in arrears for at least 90 days after the day of notification under section 56I in relation to the parcel.
- (2) The commissioner may apply to a court of competent jurisdiction for an order for the sale of—
- (a) the lease; and
  - (b) any improvements made on or to the parcel of land under the lease.
- (3) In the application, the commissioner may ask that the proceeds of the sale also be applied in paying the total amount of any other tax liability under this Act in arrears for 1 or more related parcels of land stated in the application.



- (4) If the court is satisfied that this section applies to the parcel, the court may—
- (a) order the sale by public auction of the parcel, or as much of the parcel as will be enough to pay the total of the following:
    - (i) the total amount of tax liability under this Act in arrears for the parcel at the time the court makes the order;
    - (ii) costs and expenses in relation to the declaration, application and sale in relation to the parcel;
    - (iii) if the commissioner has made a request mentioned in subsection (3) in the application in relation to another parcel of land and the court is satisfied that the parcel is a related parcel of land—the total amount of any tax liability under this Act in arrears for the other parcel, at the time the court makes the order; and
  - (b) order that the proceeds be paid into court; and
  - (c) order that the title to the parcel be transferred to the purchaser free from mortgages and other encumbrances.
- (5) The proceeds of the sale must be applied in the following order:
- (a) first, the commissioner is entitled to be paid the total of the amounts mentioned in subsection (4) (a) (i) and (ii);
  - (b) second, a person who was a mortgagee of the parcel before the sale is entitled to be paid the amount owing to the person under the mortgage (or, if that amount is more than the amount of any remaining proceeds, the remaining proceeds);
  - (c) third, subject to subsection (9), the commissioner is entitled to be paid the total of amounts to which subsection (4) (a) (iii) applies (or, if that amount is more than the amount of any remaining proceeds, the remaining proceeds);

- (d) finally, subject to subsection (10), the person who was the owner of the parcel before the sale is entitled to be paid any balance.
- (6) The commissioner must be paid out of court any amounts to which the commissioner is entitled under subsection (5) without a court order.
- (7) If a person who was the owner or mortgagee of the parcel before the sale hands over to the court the certificate or other title to the parcel, the person must be paid out of court any amount to which the person is entitled under subsection (5) without a court order.
- (8) If there were 2 or more mortgagees of the parcel before the sale, the court may make the orders about their respective entitlements that the court considers just.
- (9) On application by a person who has an interest in the land otherwise than as owner or mortgagee, the court may order that the person is entitled to be paid the value of the person's interest (as decided by the court) in priority to the commissioner's entitlement under subsection (5) (c).
- (10) On application by any other interested person, the court may order payment out of court of all or part of any balance to a person other than the person who was the owner before the sale if the court considers it just to do so.
- (11) Any sale of the parcel or a part of the parcel under this section must be abandoned if the owner pays—
- (a) the total tax liability under this Act in arrears for the parcel at the time of the payment; and
  - (b) the costs and expenses incurred up to the time of payment in relation to the declaration, application and sale in relation to the parcel; and

- (c) the costs and expenses reasonably incurred in relation to the abandonment of the sale; and
- (d) if the commissioner has made a request under subsection (3) in the application in relation to 1 or more related parcels of land—the total amount of any tax liability under this Act in arrears for the related parcel or parcels at the time of the payment.

**Example—par (c)**

advising the public that an auction has been cancelled

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (12) In this section:

*costs and expenses* includes legal costs.

*related*—a parcel of land is a *related* parcel of land in relation to another parcel of land if—

- (a) the parcels have the same owner; and
- (b) the commissioner has complied with section 56H in relation to them.

**56K Application may relate to more than one parcel**

- (1) The commissioner may make a single application under section 56I in relation to more than 1 parcel of land even if—
  - (a) the parcels belong to different owners; or
  - (b) the notices under section 56I for the parcels were given at different times.

- (2) If the commissioner makes an application in relation to 2 or more parcels of land, the following provisions apply:
- (a) if the parcels or 2 or more of them have the same owner—the court may, on application by the commissioner, make a single order under section 56J in relation to all of those parcels;
  - (b) the court may make the orders about apportionment of tax, and any other amounts payable, that the court considers just;
  - (c) if the court makes an order under paragraph (a)—the court may, on application by the commissioner, also make any consequential or ancillary orders that the court considers appropriate.

**41 New section 73A**

*insert*

**73A Appointment of acting commissioner**

The director-general or the under treasurer may appoint a person to act in the position of commissioner for 3 months or less, during—

- (a) any vacancy in the position, whether or not an appointment has previously been made to the position; or
- (b) any period when the commissioner cannot for any reason exercise the functions of the position.

**42 Decisions reviewable by commissioner only  
Schedule 2, section 2.2 (a)**

*omit*

in accordance with the taxpayer's application

**43 Dictionary, new definitions**

*insert*

***owner***, of a parcel of land, for division 7.3 (Tax in arrears—sale of land)—see section 56G.

***parcel***, of land, for division 7.3 (Tax in arrears—sale of land)—see section 56G.

***under treasurer*** means the person exercising the functions of the under treasurer in the public service.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 29 October 2015.

**2 Notification**

Notified under the [Legislation Act](#) on 24 November 2015.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Revenue Legislation Amendment Bill 2015, which was passed by the Legislative Assembly on 17 November 2015.

Acting Clerk of the Legislative Assembly

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