

1991

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

**RATES AND LAND TAX (AMENDMENT) BILL (NO. 3) 1991**

**EXPLANATORY MEMORANDUM**

**Circulated by the Authority of the Chief Minister**

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**Outline of Amendment**

The Rates and Land Tax Act 1926 (the Act) provides for the imposition of municipal rates and land tax in the Australian Capital Territory.

This Bill amends the Act by extending land tax liability to land previously exempt, with effect from 1 August 1991.

**Expansion of Land Tax Base**

The existing land tax base has been expanded to impose land tax on previously exempt residential land other than where used as the principal place of residence of an owner.

**Financial Implications**

Additional revenue from expansion of the land tax base is estimated to be \$6.9 million in a full year. Administrative costs of \$175,000 will be involved in 1991/92, with ongoing costs estimated at \$57,000 per annum.

Details of the proposed Bill are attached.

DETAILS OF THE RATES AND LAND TAX (AMENDMENT) BILL (NO. 3)  
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Short title

Clause 1 - provides for the short title for this Act to be the Rates and Land Tax (Amendment) Act (No. 3) 1991.

Principal Act

Clause 2 - refers to the Principal Act being amended, being the Rates and Land Tax Act 1926.

Interpretation

Clause 3 - amends section 4 of the Principal Act by inserting a definition in subsection (1) for "penalty tax" which means additional tax payable under section 22EB.

Insertion

Clause 4 - provides that the following section is inserted immediately before section 22A of the Principal Act.

Interpretation

Clause 22AAB provides that for the purposes of this Part "prescribed date" for determining tax liability is:

- a) 1 August 1991, in relation to the year expiring on 30 June 1992,
- b) 1 July in relation to subsequent years.

Exempt Land

Sub-clause 5(a) amends section 22B of the Principal Act by omitting subsection (1) and substituting a new subsection (1) which provides that subject to section 22BA certain parcels of land are exempt from land tax imposed under section 22A of the Principal Act. The effect of the provision is that all rateable land in the ACT is subject to land tax except:-

- a) residential leases that on the prescribed date are the principal place of residence of an owner,
- b) new residential leases on which buildings are being erected which have not been occupied on or before the prescribed date and which are to be:

- i) used as the principal place of residence of an owner or in the case of joint owners, at least one of the owners; or
- ii) sold before the next prescribed date;
- c) a parcel of land leased primarily for primary production - primary production is defined under subsection 22B(2) of the Principal Act and includes cultivation of land, maintenance of animals, fishing and forest operations etc;
- d) a parcel of land owned by the Commissioner for Housing - such land would be used for the purpose of providing rental accommodation;
- e) land leased under the Leases Act 1918 for developing to the point where it can be subdivided into blocks suitable for sale for erecting buildings on;
- f) land being used for a prescribed purpose - this subparagraph allows the Executive to provide by regulation other exempt categories of land;

A new subsection (1A) is inserted which provides that for the purpose of determining if a parcel of land is the principal place of residence of an owner, an absence:

- a) of more than twelve months as a result of the death or illness of the owner or another person, or for reasons connected with the owner's employment or occupation; and
- b) of less than twelve months in any other case,

does not of itself mean that the parcel of land will lose its exemption as the principal place of residence of the owner.

Sub-clause 5(b) amends section 22B of the Principal Act by omitting subsection (3) and substituting a new subsection (3) which makes body corporate and trustee residential land owners liable for land tax on a residential lease.

#### Insertion

Clause 6 - Provides for the insertion of provisions after section 22B in relation to seeking exemption for residential land.

#### **"Application for exemption of residential land"**

A new section 22BA(1) provides that the exemption of residential land provided by paragraphs 22B(1)(a) and (b) applies only where:-

- a) the owner has applied in writing to the Commissioner for ACT Revenue for the land to be exempt;
- b) the application sets out the reasons why the land should be considered exempt;
- c) the owner provides any further information requested by the Commissioner for ascertaining the status of the land.

Under subsection 22BA(2) after considering the application the Commissioner is required to:

- a) if satisfied that an exemption from land tax under paragraphs 22B (1)(a) or (b) applies, exempt that parcel of residential land by instrument; or
- b) if not satisfied inform the owner why the land is not exempt.

The Commissioner is also required, under subsection 22BA(3), to notify an owner of land in writing where an exemption from land tax given under paragraph 22B(1)(a) or (b) has been revoked.

#### "Change in circumstances in relation to exempt residential land"

Section 22BB requires the owner of a parcel of exempt residential land to notify the Commissioner for ACT Revenue in writing, within 30 days, of any change in circumstances in relation to the land which, had it occurred on the last prescribed date, would have made that parcel of land taxable.

A change in circumstances would include the house being sold, rented or leased to some other person, or occupied by some other person while the owner lives elsewhere.

#### "Power to obtain further information"

Subsection 22BC(1) allows the Commissioner for ACT Revenue to obtain information, orally, in writing or by the production of documents from any person served with a notice requesting such information. A notice would only be served on a person whom it is believed on reasonable grounds could assist with assessing the liability of a person to land tax.

Under subsection 22BC(2) evidence (in the form of oral or written statements, etc), may be given on oath or by affirmation as required by the Commissioner, or another person, who would administer such an oath or affirmation, prior to taking such evidence.

### **"self-incrimination"**

Under subsection 22BD(1) a person is required to give information, in writing, orally or by production of documents, irrespective of whether such information may incriminate that person.

By virtue of subsection 22BD(2) any information obtained in accordance with section 22BD(1), or obtained as a consequence of the provision of such information, can only be used as evidence against the person in proceedings for an offence under the Principal Act (as amended) or in the recovery of land tax.

### **Insertion**

Clause 7 - inserts after section 22EA of the Principal Act provisions in relation to penalty tax.

Under subsection 22EB(1) an owner of a parcel of land is liable to pay penalty tax equal to double the amount of land tax owing, in addition to the land tax, if that person:

- a) fails to furnish any information as required by the Act, or
- b) provides any such information, whether orally or in writing that is false or misleading.

Under subsection 22EB(2) the Commissioner for ACT Revenue is required to assess the penalty tax owing, after considering all circumstances regarding an owner's failure to meet tax obligations under the Principal Act, and 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"**

Section 22EC provides for the Commissioner for ACT Revenue to remit all or any part of an amount of penalty tax, payable or paid, where the Commissioner is satisfied that such action is fair and reasonable.

### **Insertion**

Clause 8 - provides for Divisions 3 and 4 which deal with offence, objection and appeal provisions to be inserted after Division 2 of Part IV of the Principal Act.

### **Division 3 - Offences**

#### **"Interpretation"**

Section 22GA provides that in Division 3 in respect of offences:

"duly authorised officer" means an officer duly authorised by the Commissioner for ACT Revenue to undertake investigations in respect of the Principal Act.

"Statement" means a statement made orally, in writing, by means of a data processing device or in any other way in connection with an investigation under the Principal Act, but does not include a document which may be used for assessing land tax liability pursuant to paragraph 22BC(1)(c).

#### **"Failure to provide information"**

Section 22GB provides that a person who fails, refuses or neglects, without reasonable excuse, to provide information, orally, in writing or by the production of documents to the Commissioner for ACT Revenue for the purpose of enabling a proper assessment of liability for land tax, or fails to comply with any requirement made by the Commissioner regarding a land tax issue, shall be guilty of an offence punishable on conviction by a fine not exceeding \$2,000 for a natural person or \$10,000 for a body corporate.

#### **"False or misleading statements"**

Section 22GC provides that a person who, in connection with a land tax issue, knowingly or recklessly makes a statement or omits any matter or thing from a statement made to the Commissioner for ACT Revenue or a duly authorised officer, which makes the statement false or misleading in anyway is guilty of an offence punishable on conviction by a fine not exceeding \$2,000 for a natural person or \$10,000 for a body corporate.

#### **"Avoiding or evading land tax"**

Section 22GD provides that a person who deliberately avoids providing information in connection with that person's land tax liability or avoids paying land or penalty tax which that person is liable to pay, is guilty of an offence, punishable on conviction, by a fine not exceeding \$5,000 for a natural person or \$25,000 for a body corporate.

#### Division 4 - Objections and Review

##### "Objections"

Section 22GE(1) allows a person to lodge an objection with the Commissioner for ACT Revenue in respect of a decision:

- a) about that person's property not being exempt from land tax; or
- b) on the severity of a penalty imposed in respect of that person's failure to meet an obligation imposed by Section 22EB of the Act (failure to provide, or provision of false or misleading, information in connection with a tax issue).

The objection must be in writing and be lodged with the Commissioner within sixty days of being advised of the decision.

Subsection 22GE(2) requires that the objection will state the reasons for which it is being made. For example, it is being made against a decision that the property is not exempt from land tax, when the person may be able to prove that although being absent from the property for some period, the property had not been tenanted but had been kept available for occupation as the principal place of residence of the owner, as and when required, and therefore should be exempt from land tax.

Subsections 22GE(3) and (4) provide for the Commissioner to consider an objection and vary the previous decision or dismiss the objection, as necessary, refund any moneys where appropriate, and notify the person of the result of the objection.

##### "Review of decisions"

Under section 22GF the Commissioner's decision to dismiss an objection is liable to review by the Administrative Appeals Tribunal, where a person adversely affected makes application to the Tribunal. An application must be made within 28 days of receipt of the Commissioner's decision to dismiss an objection.

##### "Notification of decision"

Under section 22GH(1) where the Commissioner for ACT Revenue dismisses an objection and notifies the owner of the decision pursuant to section 22GE, the Commissioner must also advise the land owner that:

- a) application may be made to the Administrative Appeals Tribunal within 28 days for a review of the decision; and
- b) the person is entitled upon request, to a statement of the reasons why the objection was unsuccessful unless such information has already been provided in accordance with section 26 of the Administrative Appeals Tribunal Act 1989.

In accordance with subsection 22GH(2) the Commissioner's decision to dismiss an objection is valid even though the person who lodged the objection has not been notified of the avenues of appeal under the Administrative Appeals Tribunal Act 1989.

#### **"Effect of pending objection or review"**

Under section 22GI a person is required to pay, within the required time, any assessed land and penalty tax irrespective of whether an objection or appeal has been lodged.

#### **Further Amendments**

Clause 9 - provides for the Schedule to the Principal Act to contain consequential amendments and an amendment removing a superfluous provision, as indicated below.

**Subsection 13(3) is omitted.**

Subsection 13(3) provides for rates not to be imposed at a percentage greater than 4% of the unimproved value of a parcel of land in any rating year. This imposed a control over the setting of tax rates by determination by the Minister. The percentage of the unimproved capital value that is used for levying rates is now set in the Principal Act under subsection 13(1), as opposed to being determined by the Minister. Subsection 13(3) is therefore superfluous.

**Section 21A - insert "including penalty tax" after "land tax" (wherever occurring).**

Section 21A makes rates, land tax, interest costs and expenses, and now penalty tax, charges on the land.

#### **Subsection 22A(3) is omitted**

Subsection 22A(3) provides for land tax not to be imposed at a greater percentage than 4% of the unimproved value of a parcel of land in any tax year. As the percentage of the unimproved capital value that is used for levying land tax is now set in the Principal Act under subsection 22A(1), as opposed to being set by determination, subsection 22A(3) has no effect and is therefore superfluous.

Section 22G - insert "including penalty tax" after "land tax" (wherever occurring).

Section 22G provides for certain recovery provisions that apply for the recovery of rates to also apply for land tax. These provisions include sale of land, the inclusion of interest and recovery costs in arrears, recovery from a debtor of the taxpayer, etc, and now the recovery of penalty tax.

Section 24 - insert "including penalty tax" after "land tax" (wherever occurring).

Section 24 clarifies the liability of joint owners to rates and land tax and now penalty tax.

Subsection 35(1) - insert "including penalty tax" after "land tax" (wherever occurring).

Section 35(1) makes a certificate made by the Commissioner in respect of an amount of rates, land tax and now penalty tax owing, evidence of the matter stated in the certificate in proceedings under the Act.

#### Liability for tax

Clause 10 - provides for residential land which becomes liable for land tax by this amendment to be liable in the 1991/92 financial year for the period 1 August 1991 to 30 June 1992.