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

REVENUE LEGISLATION AMENDMENT BILL 2016

EXPLANATORY STATEMENT

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Summary

The Revenue Legislation Amendment Bill 2016 amends the following taxation legislation:

- the *Duties Act 1999* (Duties Act);
- the *Rates Act 2004* (Rates Act); and
- the *Taxation Administration Act 1999* (TAA).

Overview

The Revenue Legislation Amendment Bill 2016 amends various taxation Acts to improve the Territory's revenue collection system for taxpayers and administrators. The amendments in the Bill:

- address risks to revenue;
- improve the clarity and quality of tax legislation; and
- simplify administrative processes.

Duties Act

'Off the plan' purchase agreements

This Bill makes minor amendments to section 16A of the Duties Act, which sets out the timeframes for duty payment in relation to the purchase of an 'off the plan' residence. The amendments update and clarify the language used.

Declared affordable house and land packages

This Bill repeals declared affordable house and land package provisions. At the time of establishment of the ACT Government's Affordable Housing Action Plan in 2007, a declared affordable house and land package was determined as one for which the combined contract price did not exceed \$300,000.

The declaration was revoked in 2010 to simplify the process of levying duty, and to avoid complexities of amending the instrument annually to reflect indexation of the combined house and land contract threshold.

Recognised stock exchanges

This Bill also repeals section 252A of the Duties Act, which allows the Minister to declare a recognised stock exchange by disallowable instrument.

The effect of declaring recognised stock exchanges was limited to duty on unquoted marketable securities. However, this form of duty ceased applying to transactions first executed on or after 1 July 2010. Since that time section 252A has had no practical effect.

Rates Act

Definition of 'relevant date'

To work out rates for a parcel of land, the unimproved value (UV) is required. Under section 6 of the Rates Act the UV is assessed by reference to the relevant date. In the dictionary to the Rates Act, **relevant date** is defined for a parcel of land as 'a date when a determination of the unimproved value of the parcel is or is to be made'.

While this definition is rather ambiguous, in practice the relevant date is always the 1 January immediately before the beginning of the financial year. However, only section 10 of the Rates Act pinpoints the 1 January date.

The ambiguity can lead to disputes where owners argue for a UV determination to be made with reference to a different date – such as the 'prescribed date', meaning the date when a parcel of land becomes rateable.

This Bill removes the references in the Rates Act to the concept of a 'relevant date'. In place of a 'relevant date', the Bill inserts clear references to a 1 January base date for UV determinations.

Division 5.2 amendments

Division 5.2 of the Rates Act applies to owners who intend to develop land partly for residential and partly for commercial purposes, with rates applying in an appropriate proportion.

The division makes numerous references to the 'intended' development and use of a parcel. It is very difficult administratively to measure an owner's intention, leading to uncertainty (especially when intentions change).

This Bill amends the division to remove references to the owner's intention. Under the amended division, the owner of the eligible parcel must satisfy the Commissioner for ACT Revenue (the Commissioner) that the parcel is entirely undeveloped, or alternatively that development approval has been given in respect of the parcel, and the owner's intention is to start the development within two years of making the application.

Division 5.2 will now cease applying to a parcel of land if development has not started on the parcel, or if any development has not materially affected the permitted use of the parcel, within two years after the application.

TAA

Powers of valuers

The ACT Valuation Office (ACTVO) is part of the ACT Revenue Office responsible for independently assessing land valuations.

Under the Duties Act, the Commissioner may require valuations to be conducted in several circumstances. For example, the Commissioner may require a Crown lease to be valued if the Commissioner is not satisfied with the unencumbered value determined by the granting body (section 22 (4)).

Under the Rates Act the Commissioner annually determines unimproved values of parcels of land to work out their rates liability (part 2).

ACTVO valuers also have responsibilities under the *Lands Acquisition Act 1994* to determine the market value of interests in land, and under the *Planning and Development Act 2007* for the purposes of the Lease Variation Charge.

To conduct valuations, ACTVO valuers regularly need to enter and inspect properties. At present this is facilitated by a delegation of section 83 of the Act from the Commissioner to valuers.

This Bill grants authorised valuers a dedicated and narrower power of entry, modelled on section 83 of the TAA but separate from the power of entry granted to authorised officers.

This will reinforce the independence of valuers by appointing them under a separate process to revenue compliance officers. This approach is broadly aligned with the powers of government valuers in other jurisdictions. See, for example, section 74 of the *Valuation of Land Act 1916* (NSW).

As a consequential amendment, authorised valuers will hold separate identity cards to authorised officers. Also, obstructing or hindering an authorised valuer (during an investigation into a taxpayer's tax liability) will attract increased penalty tax under section 34 in the same manner as authorised officers.

Service of documents

The Bill modernises drafting language in the TAA by replacing references to 'serving' a document with 'giving' a document under several sections of the Act. This is supported by section 245 of the *Legislation Act 2001*, which states part 19.5 of that Act (Service of documents) applies to legislation regardless of the specific words used to describe the service of documents.

Human rights

The amendments to the TAA give authorised valuers the power to enter and inspect property for valuation purposes. The amendments therefore engage the right to privacy under section 12 (a) of the *Human Rights Act 2004*. Section 12 (a) provides everyone has the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'.

Section 28 of the *Human Rights Act 2004* provides human rights are ‘subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society’. In deciding whether a limit is reasonable, all relevant factors must be considered including:

- the nature of the right affected;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

It is considered the new power of entry by valuers is a reasonable limitation on the right to privacy. The provisions are based on standard provisions relating to entering premises when consent is required. The provisions are drafted to be consistent with the *Human Rights Act 2004*, particularly the right to privacy.

Nature of right affected

The power of entry under new division 9.2A of the TAA will allow for lawful interference with a person’s real property. This could affect a person’s privacy, family, home or correspondence and may be exercised without consent in some circumstances.

The right to privacy extends to arbitrary interference, even when authorised by law. Such interference should be in accordance with the provisions, aims and objectives of the *Human Rights Act 2004* and be reasonable in the particular circumstances.

Importance and purpose of the limitation

The purpose of the limitation is to ensure compliance with particular Acts. Property valuers need to personally inspect a property to complete a full and accurate valuation based on their professional opinion and observations.

Without an ACTVO valuer’s informed opinion, the Commissioner may not be able to issue assessments for the correct amount of tax liability. Fairness and equity is better achieved by ensuring all taxpayers pay the correct amounts of tax in accordance with the law.

Nature and extent of the limitation

Exercise of the new power is limited in the following ways:

- It can only be exercised by appointed people.
- It can only be exercised to conduct a valuation under certain Acts.
- Entry cannot occur at an unreasonable time.
- The power cannot be exercised in relation to residential or private business premises unless the occupier acknowledges consent in writing.

- Authorised valuers under division 9.2A cannot do some of the things authorised officers can do under division 9.2, such as seize and remove documents or inspect gaming machines.
- Authorised valuers can only require the assistance they reasonably need to exercise their power.
- If the occupier requests to see an authorised valuer's identity card, the authorised valuer must produce it or leave the premises.

Relationship between limitation and purpose

There is a rational connection between the power of entry and the issue it addresses: the possibility that a property has not been correctly valued. An incorrect value can lead to a shortfall in the amount of tax paid in relation to the property.

While the power of entry engages the right to privacy, it enables valuers to exercise their professional function of conducting valuations for the Commissioner.

Less restrictive means

It is considered there are no less restrictive means reasonably available to achieve the purpose, as valuers need to be physically present at or inside properties to inspect them.

As noted above, the power of entry is already narrowed in several ways from the power available to authorised officers.

Commencement

The amendments will commence on 1 September 2016.

Details of the Revenue Legislation Amendment Bill 2016

Part 1 Preliminary

Clause 1 Name of Act

This clause provides the name of the Act is the *Revenue Legislation Amendment Act 2016*.

Clause 2 Commencement

This clause provides the Act commences on 1 September 2016.

Clause 3 Legislation amended

This clause provides the Act amends the following legislation:

- *Duties Act 1999* (Duties Act);
- *Rates Act 2004* (Rates Act); and
- *Taxation Administration Act 1999* (TAA).

Clause 4 Legislation repealed

This clause provides all instruments made under section 252A of the Duties Act are repealed. Section 252A is repealed by another amendment.

Part 2 Duties Act 1999

Clause 5 Payment of duty—‘off the plan’ purchase arrangements Section 16A (1) (b)

Section 16A of the Duties Act provides the time limits in which duty is payable for residential off the plan arrangements.

This clause updates the word ‘assigned’ to ‘transferred’ to be consistent with the language of the Duties Act as a whole. It also removes the reference to transferring ‘part of’ an interest for logical consistency.

Clauses 6 and 7

These clauses omit references to declared affordable house and land packages in section 16A as a consequence of another amendment.

Clause 8 Declaration of affordable house and land packages Section 16B

This clause repeals section 16B, which provides for the declaration of affordable house and land packages.

Clause 9 **What is the *dutiable value* of dutiable property?**
Section 20 (2)

This clause omits a reference to declared affordable house and land packages as a consequence of another amendment.

Clause 10 **Section 20 (3)**

This clause updates language as a consequence of the omission of references to declared affordable house and land packages.

Clause 11 **Section 20 (7), definition of *declared affordable house and land package***

This clause omits a reference to declared affordable house and land packages as a consequence of another amendment.

Clause 12 **Declaration of recognised stock exchanges**
Section 252A

This clause omits section 252A of the Duties Act, which allows the Minister to declare recognised stock exchanges by disallowable instrument. The section has had no practical effect since the abolition of duty on unquoted marketable securities in 2010.

Clause 13 **Dictionary, definition of *recognised stock exchange***

This clause omits the definition of *recognised stock exchange* as section 252A has been repealed by another amendment.

Part 3 ***Rates Act 2004***

Clauses 14 to 17

These clauses amend references to ‘relevant date’ under the definition of *unimproved value* in section 6 of the Rates Act. The term ‘relevant date’ is substituted with the term *base date*.

Clause 18 **Sections 9 and 10**

This clause updates section 9 to amend references to the ‘relevant date’. Section 9 now requires the Commissioner for ACT Revenue (the Commissioner) to determine the first unimproved value for a parcel of land as at 1 January in the financial year preceding the one in which the parcel became rateable.

This clause also updates section 10 to amend references to the ‘relevant date’. Section 10 now requires the Commissioner to redetermine the unimproved value for a parcel of land as

at 1 January. The unimproved value as at 1 January in a year applies in relation to the financial year immediately following that date.

Clauses 19 to 21

These clauses update section 11 to fix the date as at which a redetermination for error may be made to be 1 January in a particular year.

Clause 22 Redetermination—change of circumstances Section 11A (5) (a)

This clause updates section 11A to remove references to the ‘relevant date’.

Clause 23 Application by owner of eligible parcel of land Section 31 (1)

This clause introduces a new requirement into section 31 of the Rates Act, which provides when an owner of an eligible parcel of land may apply for the parcel to be dealt with under division 5.2 of the Act.

The amended section imposes a new requirement that, when an owner of an eligible parcel makes an application:

- the parcel of land is entirely undeveloped when the application is made; or
- the owner has development approval to undertake commercial and residential development on the parcel when the parcel is made, and intends to start the development within two years of making the development application.

Clause 24 New section 31 (3) (aa)

This clause requires the owner to provide a copy of the development approval with an application under section 31.

Clause 25 End of application of div 5.2 New section 36 (1) (aa)

This clause amends section 36 to provide division 5.2 also stops applying to a parcel if development has not commenced within two years of the application being made on the parcel which the development application relates.

The division also stops applying if development has started, but the development has not materially affected the ability to use the parcel for purposes permitted by the lease.

Clause 26 Section 36 (3)

This clause corrects an incorrect cross-reference.

Clause 27 Dictionary, definition of *relevant date*

This clause omits the definition of *relevant date* from the dictionary as a consequence of other amendments.

Part 4 *Taxation Administration Act 1999*

**Clause 28 Increase in penalty tax for concealment
Section 34 (c)**

Section 34 increases the penalty tax payable for a tax default to 90 per cent if, among other things, the taxpayer hinders or obstructs an authorised officer exercising functions under division 9.2 for the purposes of determining the taxpayer's tax liability.

This clause extends the application of section 34 (c) to hindering or obstructing an authorised valuer under new division 9.2A.

Section 34 only applies in the context of a tax investigation, and does not apply when the valuation has been undertaken for the purpose of a non-tax law.

**Clause 29 Orders to comply with requirements
Section 71 (4)**

This clause amends section 71 (4) to reflect current drafting practice and changes 'serve a copy' to 'give a copy'. This is supported by the interpretations of these terms under section 245 of the *Legislation Act 2001*.

**Clause 30 Powers of entry and inspection
Section 83 (1) (c)**

This clause corrects an incorrect reference to 'tax officer' in section 83. The rest of the section refers to an 'authorised officer'.

**Clause 31 Section 83 (4)
New definition of *identity card***

This is a technical amendment that removes the definition of *identity card* from the dictionary and inserts it into section 83 (4) as a defined term for that section. This is the only section that is relevant to the definition.

Clause 32 New division 9.2A

This clause inserts a new division into the TAA relating to authorised valuers. In comparison to the existing division 9.2, for authorised officers, division 9.2A uses updated drafting language and model provisions which are compatible with the *Human Rights Act 2004*.

Section 90A Definitions—div 9.2A

This section defines terms for division 9.2A.

Importantly, it defines an **occupier** of premises as including a person believed on reasonable grounds to be an occupier, and a person apparently in charge of the premises.

Section 90B Appointment of authorised valuers

This section empowers the Commissioner to appoint a person as an authorised valuer for the TAA.

Section 90C Authorised valuers—functions

This section outlines the functions of authorised valuers.

The main function of authorised valuers is to conduct a valuation for the purposes of one or more of the following Acts: the Duties Act, the Rates Act, the *Lands Acquisition Act 1994* and the *Planning and Development Act 2007*. Valuers can also exercise other functions given to them by law.

Section 90D Authorised valuers—identity cards

This section requires the Commissioner to issue identity cards to authorised valuers.

Section 90E Power to enter premises

This section gives authorised valuers the power to enter premises at reasonable times to conduct valuations under the Duties Act, the Rates Act, the *Lands Acquisition Act 1994* or the *Planning and Development Act 2007*. This extends to entering land around or part of premises to ask for consent to entry, and the ability to enter premises without payment of an entry fee. Entry into a part of premises used only for residential or private business purposes is not authorised unless consent is given in accordance with section 90G.

Section 90F Production of identity card

This section requires an authorised valuer to produce an identity card when asked by the occupier.

Section 90G Consent to entry

This section outlines how an authorised valuer can seek the occupier's consent to entry. If the authorised valuer complies with subsection (1), and the occupier gives consent, the valuer must ask the occupier to sign an acknowledgement of consent containing the content required by subsection (2). Subsection (4) provides for the effect of an acknowledgement of consent in any court proceedings.

Section 90H General powers on entry into premises

An authorised valuer who enters premises may do one or more of these things:

- inspect or examine the premises or anything at the premises;
- take measurements;
- take photographs, films, or audio, video or other recordings;
- require the occupier, or anyone at the premises, to produce documents or anything else reasonably needed to exercise a function under this division;
- require the occupier, or anyone at the premises, to give the authorised valuer copies of documents produced that are reasonably needed to exercise a function under division 9.2A; and
- require the occupier, or anyone at the premises, to give the authorised valuer reasonable assistance to exercise a function under division 9.2A.

It is an offence under subsection (2) if a person does not take reasonable steps to comply with any of these requirements.

As noted above, section 90H grants a narrower set of powers to authorised valuers than the set available to authorised officers under section 83 of the TAA. Unlike authorised officers, authorised valuers are not able to seize and remove documents, inspect gaming machines, or require information or answers from any person on the premises unless it would reasonably assist the valuer.

Clause 33 Dictionary, new definitions

This clause inserts new definitions into the dictionary in light of new division 9.2A.

Clause 34 Dictionary, definition of *identity card*

This is a technical amendment removing the definition of *identity card* from the dictionary. The definition is now included as part of section 83, as per the amendments made by Clause 31.

Clause 35 Dictionary, new definition of *occupier*

This clause inserts a new definition into the TAA of *occupier*. This term is defined under new section 90A (Clause 32) as including a person believed on reasonable grounds to be an occupier, and a person apparently in charge of the premises.

Clause 36 Dictionary, definition of *tax officer*, new paragraph (a), new subparagraph (iia)

This clause ensures that the definition of *tax officer* includes an authorised valuer.

One of the purposes of this amendment is to clarify authorised valuers are also bound by the secrecy provisions under division 9.4 of the TAA.

Clause 37 **Further amendments, mentions of *served on***

This clause updates language in line with current drafting practice, by substituting the term 'served on' with 'given to' under the TAA.