

LAND TAX MANAGEMENT (AMENDMENT) ACT, 1983
No. 171

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 171, 1983.

An Act to amend the Land Tax Management Act, 1956, to increase the deductions from the taxable value of land owned by taxpayers, and to make further provision relating to the imposition, assessment and collection of land tax. [Assented to, 31st December, 1983.]

See also Land Tax (Amendment) Act, 1983.

Land Tax Management (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Land Tax Management (Amendment) Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on 31st December, 1983.

Principal Act.

3. The Land Tax Management Act, 1956, is referred to in this Act as the Principal Act.

Amendment of Act No. 26, 1956.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Savings and transitional provisions.

5. (1) The amendments made by this Act and the Land Tax (Amendment) Act, 1983, shall not affect the liability of any person for land tax incurred before 31st December, 1983, in accordance with the provisions

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of the Principal Act and the Land Tax Act, 1956, and that person is liable to pay any such tax in all respects as if this Act and the Land Tax (Amendment) Act, 1983, had not been enacted.

(2) Section 9 (2A) (a) of the Principal Act, as amended by this Act, does not apply to the determination of the taxable value of land subject to a discretionary trust for the purposes of the assessment of land tax payable for the period of 12 months commencing on 1st January, 1984.

(3) The liability to pay additional land tax imposed under section 40 of the Principal Act, as amended by this Act, applies to any land tax (within the meaning of that section) which remains unpaid on 31st December, 1983, but additional land tax under section 40 (2) (b) of that Act, as so amended—

- (a) is not payable upon the expiration of a period of 6 months ending before 31st December, 1983; and
- (b) which would, but for this paragraph, be payable upon the expiration of a period of 6 months ending before 1st February, 1984, shall be deemed to be payable upon the expiration of the period ending on 1st February, 1984, and upon the expiration of each successive period of 6 months after 1st February, 1984.

(4) The power conferred by section 47 (2A) of the Principal Act, as amended by this Act, may be exercised in relation to land sold under section 602 of the Local Government Act, 1919, notwithstanding that the land was sold before 31st December, 1983.

(5) The amendment made to section 72 (1) of the Principal Act by this Act applies only to a period occurring after 31st December, 1983.

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SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section-3 (1), definition of "Discretionary trust"—

After the definition of "Company", insert:—

"Discretionary trust" means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, is required to be determined by a person either in respect of the identity of beneficiaries, or quantum of interest to be taken, or both, but does not include—

- (a) a trust which is solely a charitable trust; or
- (b) a trust which is, by or under the regulations, declared not to be a discretionary trust for the purposes of this Act.

(b) Section 3 (1), definition of "Residential unit"—

Omit paragraph (b), insert instead:—

- (b) is used and occupied as his or her principal place of residence, and for no other purpose, by a person entitled so to do by reason of the person's being—
 - (i) a joint owner of the parcel of land on which the building is erected who has entered into an arrangement with the other joint owners of that land whereby the person has the exclusive right to occupy that flat (whether jointly with one or more of the co-owners or not); or
 - (ii) the owner of shares in a company that owns the parcel of land on which the building is erected, unless the person is such an owner by reason only of being a trustee.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 3 (3)—

After “land” where firstly occurring, insert “or a flat”.

(d) Section 3 (3) (a), (b)—

After “land” wherever occurring, insert “or flat”.

(e) Section 3 (4)—

After section 3 (3), insert:—

(4) For the purposes of this Act, land does not cease to be subject to a discretionary trust by reason only of a vesting of capital or income—

(a) which is revocable; or

(b) which, in the opinion of the Chief Commissioner, is not permanent.

(2) (a) Section 9 (2A)—

After section 9 (2), insert:—

(2A) Except as provided by section 27 (2A), a deduction prescribed by subsection (3) shall not be made in respect of land—

(a) subject to a discretionary trust; or

(b) owned by a company classified under section 29 as a non-concessional company.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 9 (3), (3A)—

Omit section 9 (3), insert instead:—

(3) For the purpose of subsection (2), the deduction in relation to all the land owned by a person shall be—

- (a) where the total land value of the land does not exceed \$50,000—an amount equal to that total land value; or
- (b) where the total land value of the land exceeds \$50,000 but is less than \$75,000—an amount equal to \$50,000 less \$2 for every \$1 by which that total land value exceeds \$50,000,

and where land owned by a person is used, either wholly or in part, by the person, either alone or jointly (whether as partners or otherwise) with other persons, for the purpose of maintaining a registered flock of stud sheep, in addition to any other amount applicable under this subsection, an amount calculated at the rate of \$18 for every stud ewe owned by the person.

(3A) For the purpose of subsection (3)—

(a) “registered” means registered—

- (i) in the New South Wales section of the Australian Stud Merino Flock Register compiled by the New South Wales Sheepbreeders’ Association;
- (ii) with the Australian Society of Breeders of British Sheep, the New South Wales Branch of the Australian Corriedale Association, the Poll-Dorset Association, the Polwarth Sheepbreeders’ Association of Australia, the Australian Zenith Sheepbreeders’ Association, the Perrendale Sheepbreeders’ Society, the South Suffolk Sheepbreeders’ Association; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (iii) with any other sheepbreeders' association or society which the Chief Commissioner is satisfied is a recognised registry of a flock of any breed of stud sheep;
 - (b) the number of stud ewes owned by a person shall be the total number of sheep classified as ewes in the flock return last furnished to the sheepbreeders' association or society referred to in paragraph (a) prior to the year for which land tax is being levied and certified by the association or society, on the basis of the return, as being owned by the person; and
 - (c) where a flock of stud sheep registered as referred to in paragraph (a) is owned by a number of persons jointly (whether as partners or otherwise), each of those persons shall be deemed to own such a number of the total stud ewes, as determined in accordance with paragraph (b), as is proportionate to the interest of the person in the joint ownership.
- (3) (a) Section 10 (1) (f)—
- Omit the paragraph, insert instead:—
- (f) land owned by or in trust for, and used and occupied solely by—
 - (i) an association of employees or employers registered as an organization under the Conciliation and Arbitration Act 1904 of the Commonwealth;
 - (ii) a trade union of employees registered under the Trade Union Act 1881;
 - (iii) an industrial union of employers or employees registered under the Industrial Arbitration Act, 1940;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (iv) the Labor Council of New South Wales or any other association of bodies of a kind referred to in subparagraphs (i)–(iii); or
 - (v) a company in which shares representing not less than 85 per cent of the paid-up capital thereof are held by or in trust for a body referred to in subparagraphs (i)–(iv),
not being land of which any part is used for the purpose of a commercial activity open to members of the public;
- (b) Section 10 (1) (g) (iii)—
After “building”, insert “(not being a building of which any part is used for the purpose of a commercial activity open to members of the public)”.
- (c) Section 10 (1) (r) (i)—
After “them”, insert “unless the owner or each of the owners, as the case may be, who so used and occupied the lot is such an owner by reason only of being a trustee”.
- (d) Section 10 (1) (r) (ii)—
After “flats”, insert “and unless the owner or each of the owners, as the case may be, who so used and occupied the land is such an owner by reason only of being a trustee”.
- (e) Section 10 (2) (a)—
After “subsection (1)”, insert “(f) or”.
- (f) Section 10 (2) (a)—
Omit “10c (a)”, insert instead “10c (1) (a)”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(g) Section 10 (2A), (2B)—

After section 10 (2), insert:—

(2A) Where—

- (a) part of any land or part of a building is used, or intended to be used, for the purpose of a commercial activity open to members of the public; and
- (b) the provisions of subsection (1) (f) or (g) (iii) would apply to the land or building if no part of the land or building were so used, or intended to be so used,

the land value of that land or of the land on which that building is erected shall, for the purposes of the assessment of land tax, be reduced to an amount which bears the same proportion to that land value as the rental value of the part so used, or intended to be so used, bears to the total rental value of that land or building, as the case may be.

(2B) For the purposes of subsection (1) (f), the use or occupation of any land or part of any land by any body, being a body of a kind referred to in subsection (1) (f)—

- (a) which is affiliated with the body by, or in trust for, which the land is owned;
- (b) with which the body referred to in paragraph (a) is affiliated; or
- (c) which is controlled by, or controls, the body referred to in paragraph (a),

shall not be deemed to be use or occupation by a person other than the body by, or in trust for, which the land is owned.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 10c (2)—

At the end of section 10c, insert:—

(2) In subsection (1), “building site” means a parcel of land referred to in section 13 (2) (a) (i) or (iii) of the Sydney Cove Redevelopment Authority Act, 1968.

(5) (a) Section 23 (1) (b)—

Omit “into possession;”, insert instead “into possession.”.

(b) Section 23 (1)—

Omit “but any such mortgagee or person in possession shall, if the mortgagor makes default in the payment of land tax in respect of the land during or after the said period of three years, be responsible for the payment of the land tax due by the mortgagor, which payment shall be deemed to be made by him on behalf of the mortgagor.”.

(c) Section 23 (3)—

After section 23 (2), insert:—

(3) Nothing in this section affects section 46.

(6) (a) Section 27 (2)—

Omit “paragraph (d) of subsection (3) of section 9”, insert instead “section 9 (3)”.

(b) Section 27 (2A)—

After section 27 (2), insert:—

(2A) Where a joint owner of land is—

(a) a trustee under a discretionary trust to which the land is subject; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) a company classified under section 29 as a non-concessional company,

no regard shall be had to the existence of the discretionary trust or classification, as the case may be, in relation to the joint assessment and liability of the joint owners of the land as referred to in subsection (2), but regard shall be had to the existence of the discretionary trust or classification, as the case may be, in relation to the separate assessment and liability of the joint owners as referred to in subsection (3).

(7) Section 29—

Omit the section, insert instead:—

Related companies.

29. (1) For the purposes of this section, 2 companies are related to each other—

(a) if one of those companies—

(i) controls the composition of the board of directors of the other company;

(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the other company; or

(iii) holds more than one-half of the issued share capital of the other company;

(b) if the same person—

(i) controls the composition of the board of directors of each of those companies;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of each of those companies; or
 - (iii) holds more than one-half of the issued share capital of each of those companies;
- (c) if—
- (i) more than one-half of the issued share capital of one of those companies (in this paragraph referred to as “the first company”) is held by the other company (in this paragraph referred to as “the second company”) together with the shareholders of the second company; **and**
 - (ii) the proportion of the issued share capital of the second company held by shareholders of the first company is more than the difference between one-half and the proportion of the issued share capital of the first company held by the second company; or
- (d) if one of those companies is related to a company to which the other of those companies is related (including a company which is related to the other of those companies by reason of another application or other applications of this paragraph).
- (2) For the purposes of subsection (1)—
- (a) companies may be related to each other notwithstanding that those companies do not own land in New South Wales;
 - (b) a reference in that subsection to the issued share capital of a company does not include a reference to any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) subject to paragraphs (d) and (e), any shares held or power exercisable by any person or company as a trustee or nominee for any other person or company shall be treated as also held or exercisable by that other person or company;
- (d) any shares held or power exercisable by a person or company by virtue of the provisions of any debentures of another company, or of a trust deed for securing any issue of any such debentures, shall be disregarded;
- (e) any shares held or power exercisable by, or by a nominee for, any person or company (not being held or exercisable as mentioned in paragraph (d)) shall be treated as not held or exercisable by that person or company if the ordinary business of that person or company includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with that person or company within the meaning of the Companies (New South Wales) Code; or
- (f) without limiting by implication the circumstances in which the composition of a company's board of directors is to be taken to be controlled by a person or another company, the composition of a company's board of directors shall be taken to be controlled by a person or another company if that person or other company, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors.

(3) The Chief Commissioner, in assessing the land tax payable by companies that are related to each other and that own land in New South Wales—

- (a) may assess—
 - (i) all those companies separately;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (ii) all those companies jointly; or
 - (iii) any 2 or more of those companies jointly and the remainder separately; and
- (b) shall classify—
- (i) 1 of those companies, or, where a joint assessment is made, the companies jointly assessed, as a concessional company; and
 - (ii) the remainder (if any) as non-concessional companies, and the companies shall be liable accordingly.
- (4) Where 2 or more companies are jointly assessed under subsection (3), those companies shall, for the purposes of that assessment, be deemed to be a single company.
- (5) Where 2 or more companies related to each other are liable for land tax (whether assessed separately or jointly), the companies shall have such rights of contribution or indemnity between themselves as are just.

(8) Section 40—

Omit the section, insert instead:—

Additional land tax in case of default.

40. (1) In this section, “land tax” includes—
- (a) additional land tax payable on an amended assessment; and
 - (b) additional land tax imposed under section 72 and included in an assessment,
- but does not include additional land tax imposed under this section.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) If any land tax is not paid before the expiration of the time allowed in section 9A (2) (c) or in section 39 (whether or not extension of time for payment, or payment by instalments, is allowed by the Chief Commissioner under section 41), there shall be payable by way of penalty—

- (a) upon the expiration of that time—additional land tax equal to 10 per cent of the amount then unpaid; and
- (b) upon the expiration of each successive period of 6 months after the expiration of that time—additional land tax equal to 10 per cent of the amount then unpaid.

(3) The Chief Commissioner may, in such cases as the Chief Commissioner thinks fit, remit the whole or any part of the additional land tax imposed under this section.

(9) (a) Section 41 (b)—

Omit “warrant; or”, insert instead “warrant.”.

(b) Section 41 (c)—

Omit the paragraph.

(10) (a) Section 46 (1) (a)—

Omit “any lease or occupied by any person, then the lessee or occupier shall”, insert instead “any mortgage or lease or occupied by any person, then the mortgagee, lessee or occupier shall, upon being served with a notice by the Chief Commissioner requiring payment thereof,”.

(b) Section 46 (1) (b)—

Before “lessee”, insert “mortgagee,”.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 46 (1), proviso—

Omit “demand made or action brought”, insert instead “the demand for payment made”.

(d) Section 46 (3)—

After section 46 (2), insert:—

(3) A reference in this section to a mortgagee includes a reference to a person owning an estate or interest in land by way of security for money.

(11) Section 47 (2A)—

After section 47 (2), insert:—

(2A) Where any land sold under section 602 of the Local Government Act, 1919, is liable to a charge under subsection (1), the Chief Commissioner may release the land from the charge on payment of that part of the proceeds of sale under section 606 of that Act that is available to pay the land tax in respect of the land.

(12) Section 50 (1E), (1F)—

After section 50 (1D), insert:—

(1E) The Board may, in such cases as it thinks fit, defer payment of the whole or any part of any land tax which a person is liable to pay for such period as the Board thinks fit.

(1F) Where the Board defers payment of land tax as referred to in subsection (1E), it may make the deferment subject to such conditions as it thinks fit and it may revoke the deferment at any time.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(13) Section 72 (1)—

Omit “ten per centum”, insert instead “20 per cent”.
