

# **LAND TAX MANAGEMENT (AMENDMENT) ACT 1990 No. 35**

NEW SOUTH WALES



## **TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Land Tax Management Act 1956 No. 26
4. Explanatory notes

SCHEDULE 1—AMENDMENTS

---

# LAND TAX MANAGEMENT (AMENDMENT) ACT 1990 No. 35

NEW SOUTH WALES



## Act No. 35, 1990

An Act to amend the Land Tax Management Act 1956 to make further provision with respect to exemptions from and reductions in land tax, land tax certificates and record keeping; and for other purposes.  
[Assented to 22 June 1990]

**The Legislature of New South Wales enacts:**

**Short title**

**1.** This Act may be cited as the Land Tax Management (Amendment) Act 1990.

**Commencement**

**2. (1)** This Act commences on the date of assent, except as provided by this section.

**(2)** Schedule 1 (1), (2) and (4)-(6), and section 3 in its application to those provisions, commence on 31 December 1990.

**(3)** Schedule 1 (3), and section 3 in its application to that provision, are to be taken to have commenced on 31 December 1989.

**Amendment of Land Tax Management Act 1956 No. 26**

**3.** The Land Tax Management Act 1956 is amended as set out in Schedule 1.

**Explanatory notes**

**4.** Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**Amendment - discretionary trusts**

**(1) Section 3 (Definition)**

In the definition of "Discretionary trust" in section 3 (1), after paragraph (a) (ii), insert:

- (iii)** has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested in the event that a discretion conferred under the trust is exercised; or

SCHEDULE 1 - AMENDMENTS - *continued*

**Explanatory note - item (1)**

Item (1) will widen the definition of “discretionary trust” to include those cases where the vesting of capital or income of the trust has occurred but where the capital or income can be divested by the exercise of a discretion conferred under the trust. The amendment will make it clear that the definition includes all cases in which the interests of the beneficiaries are dependent on the exercise of a discretion by the trustee. Under the Act, a discretionary trust is not entitled to the general exemption threshold to which most other landowners are entitled.

**Amendment - reductions for residential units and flats**

(2) Sections 9B, 9C:

After section 9A, insert:

**Reduction in adjusted value for residential units**

9B. (1) For the purpose of assessing land tax, the adjusted value of land on which a residential unit is situated is to be reduced as follows:

- (a) if the land is jointly owned and the ownership of an interest in the land gives the owner of the interest an exclusive right to occupy a residential unit on the land, the adjusted value is to be reduced by the allowable proportion for each such residential unit;
- (b) if the land is owned by a company in which all the issued shares are owned by persons each of whom, because of that share ownership, has an exclusive right to occupy a part of a building on the land, the adjusted value is to be reduced by the allowable proportion for each residential unit in the building.

(2) The allowable proportion for a residential unit is as determined in accordance with whichever of the following paragraphs is applicable in the particular case:

- (a) in the case of land for which an apportionment factor has been determined and included in a valuation list under section 58B of the Valuation of

SCHEDULE 1—AMENDMENTS - *continued*

Land Act 1916—the proportion determined in accordance with the following calculation:

$$(1-\text{apportionment factor for the land}) \times \frac{\text{floor area of the residential unit}}{\text{total floor area of all residential units on the land}}$$

- (b) if paragraph (a) is not applicable—the proportion specified in an application for a reduction under this section as the fair and reasonable proportion of the adjusted value of the land to be attributed to the residential unit, unless paragraph (c) is applicable;
- (c) if the Chief Commissioner is not satisfied as to the fairness and reasonableness of the proportion referred to in paragraph (b)—the proportion that the floor area of the residential unit bears to the total floor area that is separately occupied, or capable of being used for separate occupation, in the building in which the residential unit is situated.

(3) The reduction under this section applies in respect of a particular residential unit only if the following requirements are satisfied:

- (a) there must be at least one other residential unit in the building (but this is qualified by subsection (7));
- (b) the area of the parcel of land concerned must be not more than 2100 square metres unless (if it exceeds that area) the Chief Commissioner is satisfied that the whole of the parcel is reasonably used in connection with the occupation of the building of which the residential unit forms part;
- (c) none of the owners or shareholders entitled to occupy the residential unit is to be a company or a company jointly with another person or persons (except a trustee company acting in its representative capacity).

(4) If a reduction in adjusted value is not authorised by this section merely because of subsection (3) (b), there is

SCHEDULE 1 - AMENDMENTS - *continued*

nevertheless to be a reduction in adjusted value calculated in accordance with the following formula:

$$\frac{\text{reduction in adjusted value}}{\text{adjusted value}} = \frac{R \times X}{A}$$

where:

R = the reduction that would have been applicable but for subsection (3) (b);

A = a number that is the area of the parcel of land in square metres;

X = whichever is the greater of the following:

(a) 2100; or

(b) a number that is an area in square metres (up to the area of the parcel) that the Chief Commissioner is satisfied is reasonably used in connection with the occupation of the building of which the residential unit forms part.

(5) Unless the land concerned is land to which subsection (2) (a) applies, there is to be no reduction under this section unless:

(a) application has been made for the reduction specifying the proportion that in the applicants' opinion is a fair and reasonable proportion of the adjusted value of the land to be attributed to the residential unit; and

(b) the application is made by all the owners of the land or (in the case of land owned by a company) by the secretary or one or more shareholders of the company; and

(c) the application is made in a form approved by the Chief Commissioner.

(6) There is to be no reduction under this section if the building on the land, or the buildings on the land together, comprise 2 residential units and the land is exempted from taxation under this Act.

SCHEDULE 1 - AMENDMENTS - *continued*

(7) The Chief Commissioner can determine that subsection (3) (a) is to be ignored in the case of a particular residential unit that is the only residential unit in the building of which it forms part if satisfied:

- (a) that at least one other flat in the building is used and occupied for residential purposes and for no other purpose by a person other than a joint owner or a shareholder referred to in paragraph (b) of the definition of "residential unit" in section 3 (1); and
- (b) that there is such a joint owner or shareholder who, if the flat were vacant, would be entitled to occupy it by virtue of being such a joint owner or shareholder.

**Reduction in adjusted value for flats that are not residential units**

9C. (1) For the purpose of assessing land tax, the adjusted value of land on which is situated a flat that is not a residential unit is to be reduced by the allowable proportion in relation to the flat.

(2) The allowable proportion for a flat is as determined in accordance with whichever of the following paragraphs is applicable in the particular case:

- (a) in the case of land for which an apportionment factor has been determined and included in a valuation list under section 58B of the Valuation of Land Act 1916—the proportion determined in accordance with the following calculation:

$$(1\text{—apportionment factor for the land}) \quad \times \quad \frac{\text{floor area of the flat}}{\text{total floor area of all flats on the land}}$$

- (b) if paragraph (a) is not applicable—the proportion specified in an application for a reduction under this section as the fair and reasonable proportion of the adjusted value of the land to be attributed to the flat, unless paragraph (c) is applicable;

SCHEDULE 1 - AMENDMENTS - *continued*

(c) if the Chief Commissioner is not satisfied as to the fairness and reasonableness of the proportion referred to in paragraph (b)—the proportion that the floor area of the flat bears to the total floor area (including the floor area of the flat) of all the buildings on the parcel of land on which the flat is situated.

(3) The reduction under this section applies only if the following requirements are satisfied:

- (a) the flat must be used and occupied by the owner of the land as his or her principal place of residence and for no other purpose (in which connection the use or occupation under lease or licence for residential purposes of not more than 1 room in the flat is to be ignored);
- (b) the occupier of the flat must be the owner or one of the owners of the land on which the flat is situated;
- (c) an owner of the land who occupies the flat must not be an owner merely because of being a trustee;
- (d) the area of the parcel of land concerned must be not more than 2100 square metres;
- (e) the owner of the land must not be a company or company jointly with another person or other persons, except in either case a trustee company acting in its representative capacity.

(4) If a reduction in adjusted value is not authorised by this section merely because of subsection (3) (d), there is nevertheless to be a reduction in adjusted value calculated in accordance with the following formula:

$$\text{reduction in adjusted value} = R \times \frac{2100}{A}$$

where:

R= the reduction that would have been applicable but for subsection (3) (d);

A= a number that is the area of the parcel of land in square metres.



SCHEDULE 1 - AMENDMENTS - *continued*

(5) Unless the land concerned is land to which subsection (2) (a) applies, there is to be no reduction under this section unless:

- (a) application has been made for the reduction by all the owners of the land, specifying the proportion that in their opinion is a fair and reasonable proportion of the adjusted value of the land to be attributed to the flat; and
- (b) the application is made in a form approved by the Chief Commissioner.

(6) There is to be no reduction under this section if the building on the land, or the buildings on the land together, comprise 2 flats and the land is exempted from taxation under this Act.

**Explanatory note - item (2)**

Item (2) re-enacts provisions that currently appear in the Land Tax Act 1956 dealing with land tax concessions available to owner-occupiers of certain residential units or flats (e.g. residential units held under joint ownership or company title arrangements or a flat attached to commercial premises).

Currently<sup>9</sup> the concession operates by way of a proportional reduction in the amount of land tax that would otherwise be payable on the land. The proportion is based on an estimate (made by the land's owner or the Chief Commissioner) of the proportion of the value of the land that is attributable to the residential unit or flat.

In future, there will be a proportional reduction in the value of the land on which land tax is calculated. Use will also be made of any available determination by the Valuer-General as to the proportion of the land's rental value attributable to non-residential use, in preference to the estimate currently used.

**Amendment - continuation of exemption after death of owner-occupier**

(3) Section 10A:

After section 10, insert:

SCHEDULE 1 - AMENDMENTS - *continued*

**Residential use and occupation - concession on death of owner**

10A. (1) If immediately before the death of a person the person was an owner of land and used and occupied the land as his or her principal place of residence and for no other purpose, liability for land tax in respect of the land is to be assessed as if the person had not died and had continued to so use and occupy the land.

(2) Subsection (1) operates only until whichever of the following happens first:

- (a) a period of 12 months expires after the date of the deceased's death;
- (b) the deceased's interest in the land vests in a person (other than as the deceased's personal representative) pursuant to the administration of the deceased's estate.

(3) If the deceased's interest in the land has not vested in a person (except as the deceased's personal representative) within 12 months after the deceased's death, the Chief Commissioner may extend (and further extend) the period of 12 months referred to in subsection (2) but only if satisfied that:

- (a) a person is using and occupying the land as his or her principal place of residence and for no other purpose; and
- (b) that person is likely to be a person in whom the deceased's interest in the land vests pursuant to the administration of the deceased's estate.

(4) Such an extension or further extension by the Chief Commissioner can only be granted in writing and can be withdrawn by the Chief Commissioner at any time by notice in writing given to the deceased's personal representative.

(5) This section does not apply if the deceased's interest in the land ceased on his or her death.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) In this section:

"**land**" includes a lot under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986.

**Explanatory note - item (3)**

Item (3) inserts a new provision into the Act under which the residential use and occupation of land by the owner of the land will be notionally continued after the person's death for a period of 12 months or until the land vests in a person when the estate is distributed (whichever is sooner). This will result in a limited continuation of the exemption from land tax for land used and occupied by the owner as his or her principal place of residence and will avoid the anomalous situation where land occupied by the beneficiary to whom the land will pass is not exempt during the administration of the estate because the beneficiary does not occupy it as owner. The Chief Commissioner is empowered to extend the period of the exemption if the estate has not been distributed within 12 months.

**Amendment - related companies**

(4) Section 29 (**Related companies**):

(a) Omit section 29 (1) (b), insert instead:

(b) if the same person has, or the same persons have together, a controlling interest under any of the following subparagraphs in one of the companies and a controlling interest under the same or another of the following subparagraphs in the other company

(i) a person has, or persons have together, a controlling interest in a company if that person or those persons acting together can control the composition of the board of directors of the company;

(ii) a person has, or persons have together, a controlling interest in a company if that person is or those persons acting together are in a position to cast or control the casting of more than half of the maximum number

SCHEDULE 1 - AMENDMENTS - *continued*

of votes that might be cast at a general meeting of the company;

- (iii) a person has, or persons have together, a controlling interest in a company if that person holds or those persons acting together hold more than half of the issued share capital of the company;

(b) After section 29 (2) (a), insert:

- (a1) in subsection (1) (b), "**person**" includes company;

**Explanatory note - item (4)**

Item (4) (a) alters the concept of “related companies” so that companies will be considered to be related if 2 or more persons together have a controlling interest in them. Currently, 1 person alone must have a controlling interest for the companies to be considered to be related. The effect of companies being related is that their land ownership is “grouped” and the general exemption threshold is applied to the group's land and not to the land ownership of each company in the group individually.

Item (4) (b) makes it clear that “person” includes company in the provision being amended.

**Consequential amendments**

(5) Section 27 (**Joint owners**):

Omit section 27 (3A), insert instead:

(3A) A person who is a joint owner of land is not to be separately assessed and liable in respect of the person's interest in the land if:

- (a) because of an agreement between all the owners of the land the person's individual interest confers on him or her an exclusive right of occupancy (whether jointly with one or more of the co-owners or not) of a residential unit, or a flat that is not a residential unit, situated on the jointly owned land; and
- (b) a reduction in respect of the residential unit or flat is required under section 9B or 9C.

SCHEDULE 1 - AMENDMENTS - *continued*

- (6) Section 34 (**Meaning of land tax payable in respect of certain land**):
- (a) From section 34 (1), omit "Except as provided by subsection (2), where", insert instead "Where".
  - (b) Omit section 34 (2).

**Explanatory note - items (5) and (6)**

Items (5) and (6) are consequential on item (2).

**Amendment - garnishment**

- (7) Section 46A:

After section 46, insert:

**Collection of land tax from persons owing money to taxpayer**

46A. (1) The Chief Commissioner may, by notice in writing (a copy of which is to be served on the taxpayer), require:

- (a) any person by whom any money is due or accruing or may become due to a taxpayer; or
- (b) any person who holds or may subsequently hold money for or on account of a taxpayer; or
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a taxpayer; or
- (d) any person having authority from some other person to pay money to a taxpayer,

to pay the money (or so much of it as is sufficient to pay the land tax due by the taxpayer) to the Chief Commissioner on the money's becoming or being held, or within such further time as the Chief Commissioner allows.

(2) A person given a notice under this section must comply with it.

Maximum penalty: 10 penalty units.

SCHEDULE 1- AMENDMENTS- *continued*

- (3) When a payment is made pursuant to such a notice:
- (a) it is to be regarded as having been made under the authority of the taxpayer and of all other persons concerned, and the person making the payment is indemnified in respect of it; and
  - (b) the payment is in reduction of the amount of land tax due by the taxpayer.

(4) If land tax due by the taxpayer is paid before any payment is made by a person in accordance with this section, the Chief Commissioner must promptly give notice to the person of the payment and that notice relieves the person of the requirement to make a payment pursuant to this section.

- (5) In this section:  
"land tax" includes any judgment debt and costs in respect of any land tax

(6) This section binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Explanatory note - item (7)**

Item (7) will empower the Chief Commissioner to direct persons who owe money to or hold money for a person who is liable to pay land tax to pay that money to the Chief Commissioner in satisfaction of the land tax liability concerned.

**Amendment - land tax certificates**

- (8) Section 47 (**Land tax to be first charge on land**):
- (a) Omit section 47 (1A), insert instead:

(1A) The Chief Commissioner is to issue a certificate showing if there is any land tax charged on land on application by a purchaser, vendor, mortgagee, lessee or occupier of the land and payment of the prescribed fee (or the making of arrangements satisfactory to the Chief Commissioner for its payment).

SCHEDULE 1- AMENDMENTS - *continued*

(b) Omit section 47 (1C)-(1G), insert instead:

(1C) A certificate issued by the Chief Commissioner under this section is conclusive evidence of the matter certified in favour of any person (whether or not the person is the person to whom the certificate was issued) except a person who:

- (a) had notice, when the certificate was issued, of land tax charged on the land that the certificate failed to disclose; or
- (b) was an owner of the land when the certificate was issued.

(1D) If a certificate issued under this section ("the original certificate") is conclusive evidence in favour of a person, the person is entitled, on application and payment of the prescribed fee under subsection (1A), to be issued with a certificate that is to the same effect as the original certificate and such a certificate is to be regarded as having been issued when the original certificate was issued.

**Explanatory note - item (8)**

Item (8) will widen the class of persons who are entitled to rely on a certificate under section 47 of the Act (certificate as to the amount of land tax owing on land). Currently, a certificate can be relied on only by a purchaser for value, mortgagee, lessee or occupier to whom the certificate was issued and by any succeeding purchaser or mortgagee. No protection is afforded if the person to whom the certificate was issued knew it was wrong. The proposed amendment will enable a certificate to be relied on by any person (whether or not it was issued to that person) except a person who, at the time it was issued, knew it was wrong or was the owner of the land. The amendment will also permit the Chief Commissioner to issue certificates without requiring the prior payment of the appropriate fee if satisfactory arrangements for payment of the fee are in place.

SCHEDULE 1 - AMENDMENTS - *continued*

**Amendment - keeping of records**

(9) Section 68A:

After section 68, insert:

**Keeping of records by owners of land**

68A. (1) The regulations may make provision requiring owners of land or specified classes of owners of land to keep specified records concerning land owned by them.

(2) The regulations may specify the form in which any such record is to be kept and the particulars it is to contain.

(3) A person to whom such a requirement applies:

(a) must comply with the requirement; and

(b) must, unless the regulations otherwise provide, retain a record made for the purposes of such a requirement for at least 5 years after the end of the tax year to which the ownership of the land concerned related.

Maximum penalty 10 penalty units.

**Explanatory note - item (9)**

Item (9) authorises the making of regulations requiring owners of land to keep records concerning their land holdings. Records made will have to be retained for 5 years, unless the regulations otherwise provide.

**Amendment – transitional provisions**

(10) Schedule 2 (**Savings and transitional provisions**):

After clause 9, insert:

*Land Tax (Amendment) Act 1990 and Land Tax  
Management (Amendment) Act 1990*

**Amendments not to affect previous liabilities**

10. The amendments made by the Land Tax (Amendment) Act 1990 and the Land Tax Management



SCHEDULE 1 - AMENDMENTS - *continued*

(Amendment) Act 1990 do not affect any existing liability for land tax, except as provided by clause 11.

**Special provision for retrospective changes to Land Tax Act 1956**

11. (1) This clause applies to an assessment of land tax on the taxable value of land owned by a person at midnight on 31 December 1989.

(2) The Chief Commissioner is, under section 16, to make such amendments to an assessment to which this clause applies as may be necessary to give effect to section 3AE (Levy of land tax after 31 December 1989) of the Land Tax Act 1956.

(3) A person's liability under an assessment to which this clause applies is to be regarded as the liability under that assessment as required to be amended by the Chief Commissioner (whether or not the assessment has actually been amended).

(4) If a certificate is issued under section 47 that conflicts with an earlier certificate under that section because of an amendment to an assessment required by this clause:

- (a) the later certificate replaces the earlier certificate; and
- (b) the earlier certificate has no further operation.

**Land tax certificates**

12. Section 47 (as amended by the Land Tax Management (Amendment) Act 1990) applies to a certificate issued under that section before (as well as after) the commencement of the amendments made to that section by that Act.

**Applications for reductions—residential units and flats**

13. An application for a reduction under section 3A or 3C of the Land Tax Act 1956 is to be regarded as an

SCHEDULE 1 - AMENDMENTS - *continued*

application for a reduction under section 9B or 9C, as appropriate, of this Act.

**Explanatory note – item (10)**

Item (10) inserts transitional provisions consequent on the enactment of the proposed Land Tax (Amendment) Act 1990 and Land Tax Management (Amendment) Act 1990. Provision is made for the amendment of tax assessments to give effect to the retrospective changes to the tax rate and taxable value threshold. The amendments to section 47 (Land tax certificates) are to apply to certificates issued before (as well as after) the amendments commence.

---

*[Minister's second reading speech made in—  
Legislative Assembly on 9 May 1990  
Legislative Council on 6 June 1990]*