

LAND TAX MANAGEMENT (AMENDMENT) ACT 1991
No. 47

NEW SOUTH WALES



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LAND TAX MANAGEMENT (AMENDMENT) ACT 1991
No. 47

NEW SOUTH WALES



Act No. 47, 1991

An Act to amend the Land Tax Management Act 1956 to make further provision with respect to existing land tax exemptions, lessees of public land and land tax refunds and to enact provisions concerning unoccupied residential land and joint owners of flats; and for related purposes. [Assented to 11 December 1991]

Land Tax Management (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Land Tax Management (Amendment) Act 1991.

Commencement

2. (1) This Act commences or is taken to have commenced on 31 December 1991, except as provided by subsection (2).

(2) Schedule 1 (12) is taken to have commenced on 31 December 1990.

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: exemption for primary production land

(1) Section 10 (**Land exempted from tax**):

In section 10 (1) (p) (ii), after “planning instrument or”, insert “(in the case of land not within a zone under a planning instrument)”.

Explanatory note

Item (1) alters current provisions for the exemption of land used for primary production. Under one limb of the exemption, land used for primary production is exempt if the land is within a rural or non-urban zone under a planning instrument or alternatively is land that the Chief Commissioner is satisfied is rural land. The amendment will restrict the availability of the alternative to unzoned land

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SCHEDULE 1—AMENDMENTS—*continued***Amendment: clarification of new rental accommodation provisions**(2) Section 10H (**Exemption—new rental accommodation**):

Omit section 10H (2) (a), insert instead:

- (a) the whole of the land is used and occupied as the principal place of residence of one or more persons and for no other purpose; and

(3) Section 10J (**Reduction—new rental accommodation**):

Omit section 10J (b), insert instead:

- (b) only part of the land is used and occupied as the principal place of residence of one or more persons and for no other purpose,

Explanatory note

Items (2) and (3) amend existing provisions conferring land tax exemption in respect of new rental accommodation to make it clear that the exemption applies only to the extent that the land concerned is used and occupied for residential purposes and does not apply to any part of the land that is not so used and occupied

Amendment: exemption for certain boarding-houses(4) Section 10Q (**Exemption—boarding-houses for low-income persons**):

- (a) In the definition of “boarding-house” in section 10Q (1), after “force”, insert “or which are the subject of a residential tenancy agreement under the Residential Tenancies Act 1987”.
- (b) Omit section 10Q (2).

Explanatory note

Item (4) extends the land tax exemption for boarding-houses for low-income persons to the whole of the State by removing the restriction on the location of a boarding-house (currently the exemption is limited to the metropolitan areas of Sydney, Newcastle and Wollongong). The definition of “boarding-house” is amended to make it clear that a boarding-house does not include premises the subject of a residential tenancy agreement.

SCHEDULE 1—AMENDMENTS—*continued*

Amendment: exemption for unoccupied residential land

(5) Section 10T:

After section 10S, insert:

Concession for unoccupied land intended to be owner's principal place of residence

10T. (1) If the Chief Commissioner is satisfied that the owner of land (or, if there are joint owners, any one or more of them) intends to use and occupy the land as his or her principal place of residence, that intended use and occupation of the land is to be regarded as its actual use and occupation for the purposes of section 10 (1) (r), (1) (u), (4) and (5).

(2) This section does not apply unless:

- (a) the land is within a residential zone under a planning instrument or, if not within a zone under a planning instrument, is land that the Chief Commissioner is satisfied is to be used for residential purposes; and
- (b) the Chief Commissioner is satisfied that the intended use and occupation of the land is not unlawful; and
- (c) while the owner is the owner, the land is not used or occupied except as his or her principal place of residence.

(3) A person is not entitled to have his or her intended use and occupation of land taken into account for land tax purposes if the person is entitled to have his or her actual use and occupation of other land taken into account under section 10 (1) (r), (1) (u), (4) or (5).

(4) This section applies to a person's ownership of land only for the 2 tax years immediately following the tax year in which the person became owner, unless the Chief Commissioner extends or further extends its operation in a particular case on the basis of an acceptable delay in that case.

(5) An acceptable delay is a delay in the commencement or completion of the building or other work necessary to enable the intended use and occupation of the land to become its actual use and occupation that the Chief Commissioner is satisfied is due primarily to reasons beyond the control of the owner.

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SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Item (5) extends the exemption from land tax for a person's principal place of residence to land that a person intends will become his or her principal place of residence. An example of this is where a person buys land on which to build or rebuild a house. Under the present law the land is liable to land tax because it is not being used and occupied by the owner as his or her principal place of residence (i.e. the owner is living elsewhere while the house is under construction). The amendment will remove this anomaly by "deeming" the proposed use and occupation of the land to be its actual use and occupation, thereby attracting the exemption for land used and occupied as the owner's principal place of residence. A person will not be able to claim the exemption under this section if the person is already entitled to the principal place of residence exemption for other land. The concession conferred by the new provision will apply for 2 tax years after purchase of the land. The Chief Commissioner can extend this 2 year period in a particular case if satisfied that any delay in the commencement or completion of the building or rebuilding of the house is due primarily to reasons beyond the control of the owner.

Amendment: refunds of overpayments of tax**(6) Section 16 (Amendment of assessments):**

Omit section 16 (5).

(7) Section 50A:

After section 50, insert:

Refund of certain overpayments

50A. (1) The Chief Commissioner is to refund any overpayment received by the Chief Commissioner under this Act:

- (a) if an amended assessment issued in accordance with this Act has the effect of reducing the liability concerned; or
- (b) in any other case, if the Chief Commissioner receives an application for a refund of the overpayment within 3 years from the end of the tax year to which the overpayment relates or from the date on which the payment was made, whichever is later.

(2) The Chief Commissioner may, in a particular case, dispense with the need for an application for a refund.

SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Items (6) and (7) clarify the Chief Commissioner's power to refund an overpayment received under the Act. The new provision reproduces an existing provision that requires the Chief Commissioner to refund an overpayment that results from the amendment of an assessment and allows the Chief Commissioner, in any other case, to refund an overpayment within 3 years from the end of the tax year to which the overpayment relates or from the date of the payment, whichever is later.

Amendment: joint owners of block of flats etc.

- (8) Section 9B (**Reduction in adjusted value for residential units**):

Omit the section.

- (9) Section 9C (**Reduction in adjusted value for flats**):

(a) From section 9C (1), omit "that is not a residential unit".

(b) After section 9C (6), insert:

(7) This section does not apply to land to which section 21B applies.

- (10) Section 21B:

After section 21A, insert:

Joint owners of block of flats etc. to be regarded as owners of strata lots

21B. (1) This section applies to land if:

- (a) the land is owned by joint owners; and
- (b) the ownership of an interest in the jointly owned land gives the owner an exclusive right to occupy part of a building on the land (whether jointly with one or more of the co-owners or not); and
- (c) part or all of the building comprises at least one flat; and
- (d) the area of the land is not more than 2,100 square metres or the Chief Commissioner is satisfied that the whole of the land is reasonably used in connection with the occupation of the building.

(2) For the purposes of assessing land tax in respect of land to which this section applies:

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) each part of a building in which such an exclusive right of occupancy exists is considered to be a separate parcel (the “notional parcel”); and
- (b) each person who has that exclusive right of occupancy is considered to be the owner (or the persons who jointly have that exclusive right of occupancy are considered to be joint owners) of the notional parcel; and
- (c) each such notional parcel is considered to be a strata lot under the Strata Titles Act 1973; and
- (d) section 27 does not apply to the joint ownership of the whole of the land but does apply to the joint ownership (if applicable) of each notional parcel.

(3) For the purposes of the application of section 95 (Land tax) of the Strata Titles Act 1973 to and in respect of a notional parcel that under this section is considered to be a strata lot, the proportion that the unit entitlement of that lot bears to the aggregate unit entitlement is:

- (a) unless paragraph (b) applies, the proportion represented by the owner’s or joint owners’ interest in the land; or
- (b) if the Chief Commissioner is not satisfied as to the fairness and reasonableness of the proportion obtained in accordance with paragraph (a), the proportion arrived at by the Chief Commissioner on a redetermination in accordance with subsection (4).

(4) The Chief Commissioner’s redetermination is to be by reference to the proportion that the floor area of the notional parcel concerned bears to the total floor area that is separately occupied, or is capable of being used for separate occupation, on the land.

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

- (a) From section 27 (3A) (a), omit “a residential unit, or a flat that is not a residential unit,” insert instead “a flat”.
- (b) From section 27 (3A) (b), omit “residential unit or flat is required under section 9B or”, insert instead “flat is required under section”.

SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Items (8)–(11) provide that, for land tax purposes, joint owners of premises comprising a flat or flats (whether or not other premises are involved) who have exclusive occupancy rights for particular parts of the premises are to be considered the individual owners of those parts and require each part to be treated as a separate strata title lot. The value of the land will be apportioned among the joint owners in proportion to their individual interests in the land or (if the Chief Commissioner is not satisfied that the proportion is a fair and reasonable proportion) in proportion to the floor area of the premises occupied by the joint owner.

Amendment: deferral of liability of lessees of land owned by Crown etc.(12) Schedule 2 (**Savings and transitional provisions**):

From clause 3, omit “1 January 1991”, insert instead “1 January 1992”.

Explanatory note

Item (12) defers for 1 year the commencement of an amendment made by the Land Tax Management (Amendment) Act 1988 that made the lessees of land owned by local councils, county councils and public authorities liable to land tax. This is an interim measure pending the new provisions to be inserted by items (13)–(15) which will clarify and consolidate the provisions concerning the land tax payable on land owned by the Crown, local councils, county councils and public authorities. The proposed amendment is commenced retrospectively on 31 December 1990.

Amendment: liability of lessees of land owned by Crown etc.(13) Section 3 (**Definitions**):

- (a) From the definition of “Owner” in section 3 (1), omit paragraph (b).
- (b) From paragraph (c) of the definition of “Owner” in section 3 (1), omit “paragraph (b)”, insert instead “section 21C”.
- (c) Omit section 3 (5).

(14) Section 10 (**Land exempted from tax**):

Omit section 10 (1) (a).

*Land Tax Management (Amendment) 1991*SCHEDULE 1—AMENDMENTS—*continued*

(15) Section 21C:

Before section 22, insert:

Liability of lessees of land owned by Crown etc.

21C. (1) The Crown, a local council, a county council or a public authority is not liable for land tax in respect of land it owns (except as specifically provided by Part 3).

(2) A lessee (other than a sub-lessee) of land or part of land owned by the Crown, a local council, a county council or a public authority is for land tax purposes to be considered the owner of a parcel of land (“the notional parcel”) consisting of the land or part leased. The Crown, local council, county council or public authority is then not to be considered owner of the notional parcel.

(3) If there are joint lessees, they are to be considered to be joint owners of the notional parcel.

(4) For the purposes of determining the lessee’s land tax liability when the notional parcel consists of a part of land, the adjusted value of the notional parcel is:

(a) unless paragraph (b) applies, the adjusted value calculated in accordance with the following formula:

$$\text{adjusted value of the notional parcel} = \text{adjusted value of the entire parcel} \times \frac{\text{rental value of the notional parcel}}{\text{rental value of the entire parcel}}$$

(b) if the Chief Commissioner is not satisfied that the adjusted value obtained in accordance with paragraph (a) is fair and reasonable, such proportion of the adjusted value of the entire parcel as the Chief Commissioner considers fair and reasonable.

(5) In this section, “**part of land**” includes a building on land and part of a building on land.

(6) This section does not apply to the following leases:

(a) a lease or a lease of a class prescribed as exempt from this section;

(b) a lease to which section 21 applies;

SCHEDULE 1—AMENDMENTS—*continued*

- (c) a lease of land from the Crown (other than the Crown in the capacity of a public authority) entered into or renewed before 1 January 1987 the terms of which relating to rental payable have not been varied since that date;
- (d) a lease of land from a local council, a county council or a public authority entered into or renewed before 1 January 1991 the terms of which relating to rental payable have not been varied since that date;
- (e) a lease of land owned by a public authority that is liable to land tax in respect of that land under Part 3;
- (f) a lease the term of which (including any term available under an option) is less than 12 months;
- (g) a lease in respect of which the lessee is the Crown, a local council, a county council or a public authority.

(16) Section 47 (**Land tax to be first charge on land**):

After section 47 (3), insert:

- (4) This section does not apply to land to which section 21C applies.

Explanatory note

Items (13)–(16) clarify and consolidate the provisions dealing with the land tax liability of persons leasing land from the Crown, councils or public authorities and the method of calculating the land tax payable by such persons. The new provisions generally have the same effect as the provisions they replace in that the lessee is made the owner of the land for land tax purposes while the true owner (the Crown etc.) is exempt. The new provisions make it clear that the liability falls on the head-lessee (not a sub-lessee) whether or not the head-lessee occupies the land. It will now also be possible to apportion the value of land when a lessee does not occupy the whole of the land. The new provisions will not apply to occupation under a licence or a short term lease. The current exemption from liability for land tax for persons occupying land owned by councils or public authorities under a lease is changed by applying the exemption to leases entered into or renewed prior to 1 January 1991 (rather than 1 January 1989 as at present).

Amendment: definition of public authority(17) Section 3 (**Definitions**):

From section 3 (1), omit the definition of “Public authority”, insert instead:

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SCHEDULE 1—AMENDMENTS—*continued*

“Public authority” means a person or body declared by the regulations to be a public authority for the purposes of this Act.

Explanatory note

Item (17) substitutes the definition of “public authority” so that public authorities will now be listed in the regulations rather than in the Act. This will enable the list of public authorities to be readily updated.

Amendment: savings and transitional provisions(18) Schedule 2 (**Savings and transitional provisions**):

After clause 16, insert:

Land Tax Management (Amendment) Act 1991

Operation of amendments

17. The amendments made by the Land Tax Management (Amendment) Act 1991 (except the amendment made to clause 3 of this Schedule) do not apply in respect of a tax year before the tax year that commences on 1 January 1992 and do not affect any existing liability for land tax.

Explanatory note

Item (18) makes it clear that the amendments made by the proposed Act (except item (12)) will not operate until the 1992 tax year. The amendment made by item (12) concerning the deferral of liability for land tax of certain lessees of land owned by local councils, county councils or public authorities is commenced retrospectively on 31 December 1990.

*[Minister’s second reading speech made in—
Legislative Assembly on 12 November 1991
Legislative Council on 3 December 1991]*