

## LAND TAX MANAGEMENT (AMENDMENT) BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Land Tax (Amendment) Bill 1988.

The object of this Bill is to amend the Land Tax Management Act 1956—

- (a) to provide a 5 year land tax exemption for new residential rental accommodation where building work starts on or after 2 June 1988 but before 1 January 1994; and
- (b) to provide an exemption from land tax for land owned by certain approved persons that is the subject of a rental-purchase scheme; and
- (c) to replace the present qualification on the exemption for land used for primary production that is owned by a public company (90 per cent of gross income to be derived from primary production) with the qualification that if the land is zoned other than "rural" it must be used for the purpose of carrying on a business of primary production; and
- (d) to abolish the concession presently available in respect of stud ewes; and
- (e) to extend the exemption for primary production land to include land used for commercial fishing (including oyster farming) and the commercial raising of non-domestic animals; and
- (f) to provide that a certificate under section 47 of that Act as to land tax charged on land is conclusive evidence in favour not only of a genuine purchaser for value (as at present) but also of any successor in title to the purchaser and any subsequent mortgagee; and
- (g) to provide that a genuine mortgagee, lessee or occupier may obtain and rely upon a section 47 certificate obtained at the time of entering into the relevant mortgage, lease or occupation agreement; and
- (h) to limit the application of section 46 of that Act (which empowers the Chief Commissioner to collect unpaid land tax from a mortgagee) to mortgages entered into on or after 31 December 1983, being the date of commencement of application of the original provision to mortgagees; and

*Land Tax Management (Amendment) 1988*

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- (i) to provide a means by which a mortgagee, lessee or occupier of land who is required to pay land tax on behalf of a defaulting taxpayer can be released from liability on payment of an amount calculated as the land tax referable to the land concerned; and
- (j) to extend liability for tax to non-exempt lessees of land owned by public authorities, county councils and local councils, with effect from the 1991 tax year; and
- (k) to amend the exemption provisions applying to certain bodies which are not carried on for pecuniary profit to ensure that the exemption is available only if their constitutions prevent the members from obtaining a financial benefit in the event of a winding up; and
- (l) to restore the exemption for all land owned by charitable and educational institutions and religious societies where the land is used by a non-exempt body for commercial purposes; and
- (m) to restore the exemption from stamp duty in respect of a family home held in the name of a family company on 31 December 1975, where the home is transferred to the principal shareholders; and
- (n) to empower the Chief Commissioner to amend an assessment at any time where the taxpayer has failed to disclose all relevant information; and
- (o) to require land tax returns to be lodged by 31 January in each land tax year; and
- (p) to modernise the objections and appeals provisions of that Act along the lines of those in the Stamp Duties Act 1920; and
- (q) to increase the amount of land tax which may be written off by the Chief Commissioner without reference to the Hardship Board from \$40 to \$1,000; and
- (r) to combat a tax avoidance scheme by enabling the Chief Commissioner to appeal to a Strata Titles Board against unreasonable allocations of strata unit entitlements; and
- (s) to enact savings and transitional provisions; and
- (t) to make various minor or consequential amendments.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on 31 December 1988.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments.

### SCHEDULE 1—AMENDMENTS

#### **5 year exemption for new residential rental accommodation**

The Bill inserts provisions into the Principal Act that exempt from land tax new residential rental accommodation for a period of 5 years. The main features of the exemption are as follows:

- it applies to new dwellings, or those created by conversion of an existing building, where building or construction work started on or after 2 June 1988 but before 1 January 1994;
- the dwelling must be used and occupied as a person's principal place of residence pursuant to a residential tenancy agreement and must not be used or occupied by the owner of the land;

### *Land Tax Management (Amendment) 1988*

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- if land is used partly for new residential rental accommodation and partly for other purposes, a pro-rata reduction in the adjusted value of the land is allowed based on the proportion of floor space used for new residential rental accommodation;
- the exemption (or pro-rata reduction) applies only for the 5 tax years that follow the year in which the new accommodation becomes ready for occupation;
- to qualify, new accommodation must generally become ready for occupation before 1 January 1995 (in the case of a single dwelling) or 1 January 1996 in any other case;
- the concessions do not apply automatically but must be applied for and supporting evidence furnished.

(Schedule 1 (6)—proposed sections 10H–10L).

#### **Exemption for rental purchase schemes**

The Bill inserts provisions into the Principal Act that exempt from land tax land that is the subject of certain rental-purchase schemes. The main features of the exemption are as follows:

- a person may make application to the Chief Commissioner to be approved for the purposes of the exemption;
- the ownership of land by an approved person is to be ignored for land tax purposes if the land is the subject of a “rental-purchase scheme” or is available to become subject to such a scheme;
- to be regarded as subject to a rental-purchase scheme, land must be occupied or offered for occupation pursuant to an agreement approved by the Chief Commissioner under which the occupier has an option to purchase the land;
- the land must be occupied as the occupier’s principal place of residence;
- the land must become subject to the rental-purchase scheme within 12 months after being acquired by the approved person;
- if it does not, or is sold otherwise than pursuant to the exercise of the option, the exemption is to be regarded as never having applied to the land concerned;
- the Chief Commissioner then re-assesses the approved person to recover the land tax previously exempted.

(Schedule 1 (6)—proposed sections 10M–10O).

#### **Exemption for primary production land—public companies**

The Bill amends the provision of the Principal Act dealing with the exemption from land tax of land owned by a public company that is used for primary production. Currently, the exemption applies only if the company (and any public company with which it is jointly assessed) is declared by the Governor to be subject to the exemption. Such a declaration cannot be made unless the Chief Commissioner is satisfied that 90 per cent of the gross income of the company comes from primary production. As amended, the exemption will apply automatically if the land is used for primary production with the additional requirement that, if the land is not zoned rural or non-urban (unless the Chief Commissioner is satisfied it is rural land), the land must be used for the purpose of carrying on a business of primary production. (Schedule 1 (4) (e) and (g)).

#### **Other amendments concerning primary production**

The Bill abolishes the concession presently available in respect of stud ewes. The concession operates to reduce the adjusted value of a parcel of land by \$18 for each stud ewe owned by the owner of the land. (Schedule 1 (3)).

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*Land Tax Management (Amendment) 1988*

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The Bill also amends the definition of “land used for primary production” to make it clear that the commercial raising of animals applies to wild as well as domesticated animals and to extend that definition to encompass commercial fishing and fish farming. (Schedule 1 (2) (a)).

**Certificates as to land tax charged on land**

The Bill amends section 47 of the Principal Act. That section currently provides that land tax is a charge on the land that runs with the land. The Chief Commissioner can issue a certificate on the application of the vendor or purchaser of land as to the amount of land tax charged on the land and such a certificate may be relied on by a genuine purchaser for value. As amended, the section will also allow a mortgagee, lessee or occupier of the land to apply for and rely on such a certificate. If the certificate is issued to a genuine purchaser who had no notice of an outstanding liability, it may be relied on by the purchaser and by any succeeding purchaser or mortgagee except a person who had notice of a liability when the certificate was issued. (Schedule 1 (11)).

**Liability of mortgagees, lessees and occupiers**

The Bill amends section 46 of the Principal Act which provides that where a person defaults in paying land tax, a mortgagee, lessee or occupier of the land shall be responsible for payment of the land tax. As amended, the section will permit the Chief Commissioner to release the mortgagee, lessee or occupier from liability on payment of an amount estimated to be the proportion of the land tax owing that is attributable to the land concerned. (Schedule 1 (10)).

The Bill also inserts a provision into the Principal Act that provides that section 46 of that Act does not operate to impose a liability on a mortgagee if the mortgage was entered into before 31 December 1983 (being the date that section 46 was initially extended to impose a liability on mortgagees). (Schedule 1 (17)—clause 1 of proposed Schedule 2 to the Principal Act).

**Lessees of land owned by public authorities, councils, county councils**

The Bill amends the Principal Act so as to extend liability for land tax to lessees of land owned by a local council, county council or public authority. Currently that land is exempt from land tax. The amendment does not operate until the 1991 tax year. For the purposes of land tax the lessee is regarded as the owner. (Schedule 1 (2) (b) and (4) (b)).

**Bodies not carried on for pecuniary profit**

The Bill inserts a provision into the Principal Act dealing with the exemption for certain charitable, religious and educational bodies that are not carried on for pecuniary profit. The amendment denies the exemption to such a body if its constitution provides directly or indirectly for the members or former members of the body to share in the property of the body when it is dissolved or subsequently. The Chief Commissioner can exempt a body from the new provision if satisfied that a tax evasion scheme is not involved and that the body will alter its constitution appropriately within 6 months. The Chief Commissioner’s exemption is revoked if the body’s constitution is not altered within 6 months. (Schedule 1 (6)—proposed section 10P).

The Bill also removes a qualification on the exemption granted in respect of land owned by or in trust for charitable, educational or religious bodies under section 10 (1) (d) or (e) of the Principal Act. Currently, because of that qualification, the exemption does not apply if the land or part of it is solely or principally used by a person other than the body claiming exemption and would not be exempt if that person owned it. (Schedule 1 (4) (c) and (d)).

## *Land Tax Management (Amendment) 1988*

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### **Stamp duty exemption restored**

The Bill inserts a provision into the Principal Act that was repealed in 1986. The provision operates to refund the stamp duty that would otherwise be payable where land that is owned by a company and used as the principal place of residence of a principal shareholder or principal shareholders in the company is conveyed to the shareholder or shareholders. The provision operates retrospectively so that persons who have paid stamp duty in respect of a conveyance that took effect after the provision was repealed but before it is re-enacted will be able to claim a refund of the duty. (Schedule 1 (5)—proposed section 10A).

### **Amendment of assessments**

The Bill amends the Principal Act to permit the Chief Commissioner to amend a land tax assessment at any time if the taxpayer has failed to disclose all relevant information. Currently, such an amendment can only be made within 3 years after assessment (unless the taxpayer has attempted to evade payment of land tax). (Schedule 1 (8)).

### **Filing of returns**

The Bill amends provisions in the Principal Act dealing with the persons who are required to furnish land tax returns, the time within which returns must be furnished and the information to be provided in returns. Currently, those matters are the subject of regulations and an order by the Chief Commissioner published in the Gazette. As amended, the provision will enable the classes of persons who are required to furnish a return to be fixed by order published in the Gazette. Persons required to furnish returns will be required to do so by 31 January in each year. The return must be in a form approved by the Chief Commissioner setting out the information required by the form. (Schedule 1 (7)).

### **Objections and appeals**

The Bill substitutes the provisions of the Principal Act that deal with objections and appeals against land tax assessments. The substituted provisions do not change the rights of objectors (except by extending the period within which objections must be lodged) but merely re-express those provisions to bring them into line with the equivalent provisions of the Stamp Duties Act 1920. The right of a dissatisfied objector to appeal to the Supreme Court is replaced with a right to require the Chief Commissioner to state a case for decision by the Supreme Court. The objector can dispute any fact or document stated in the case. The Supreme Court can determine the amount of land tax payable as a result of its decision. If the decision requires the Chief Commissioner to refund excess land tax, the objector is also entitled to be paid interest at the prescribed rate on the excess. (Schedule 1 (9)—proposed sections 35–38D).

### **Unreasonable strata unit allocations**

The Bill inserts a provision into the Principal Act that will allow the Chief Commissioner to seek an order under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986 against an unreasonable allocation of unit entitlements. If an order is made changing unit entitlements, the Chief Commissioner can re-assess land tax on the basis of the changed unit entitlements but not before the 1989 tax year. (Schedule 1 (13)—proposed section 65A).

### **Amount of land tax that can be written off**

The Bill changes from \$40 to \$1,000 the amount of land tax that can be written off by the Chief Commissioner without recourse to the Board constituted by the Principal Act to review land tax liability in cases of hardship. (Schedule 1 (12)).

*Land Tax Management (Amendment) 1988*

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**Other amendments**

The Bill also makes minor and consequential amendments to the Principal Act and inserts a Schedule of savings and transitional provisions.

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