

# Land Tax Act 1956 No 27

[1956-27]



New South Wales

## Status Information

### Currency of version

Historical version for 1 July 2022 to 12 January 2023 (accessed 20 July 2024 at 4:54)

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2022 No 59](#) (not commenced — commences on 13.1.2023)
  - [Property Tax \(First Home Buyer Choice\) Act 2022 No 60](#) (not commenced — commences on 16.1.2023)

### Authorisation

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File last modified 11 November 2022

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New South Wales

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# Land Tax Act 1956 No 27



New South Wales

An Act to impose a land tax upon the taxable values of certain lands; and for purposes connected therewith.

## 1 Name of Act and construction

This Act may be cited as the *Land Tax Act 1956* and shall be read and construed with the *Land Tax Management Act 1956*, in this Act hereinafter referred to as the Principal Act.

## 2 Commencement

This Act commences upon the first day of November, one thousand nine hundred and fifty-six.

### 2A Definitions

In this Act—

**foreign person** has the same meaning as in Chapter 2A of the *Duties Act 1997*.

**non-concessional company** means a company classified as a non-concessional company under section 29 of the Principal Act.

**premium rate threshold**, in relation to a land tax year, means the premium rate threshold for that land tax year as determined in accordance with section 62TBC of the Principal Act.

**residential land** has the same meaning as in Chapter 2A of the *Duties Act 1997*.

**retirement visa holder** has the same meaning as in Chapter 2A of the *Duties Act 1997*.

**surcharge land tax**—see section 5A.

**tax threshold** means—

- (a) in relation to a land tax year before the 2005 land tax year—the tax threshold determined in accordance with section 62TB of the Principal Act, and
- (b) in relation to the 2006 land tax year or any subsequent land tax year—the tax threshold determined in accordance with section 62TBA of the Principal Act.

### **3 Levy of land tax**

- (1) Except as provided by subsection (1A), in respect of the taxable value of all the land owned by any person at midnight on the thirty-first day of December in any year from 1973 to 1983, both inclusive, there shall be charged, levied, collected and paid under the provisions of the Principal Act and in the manner therein prescribed, land tax for the period of twelve months commencing on the first day of January in the next succeeding year and at the respective rates set out in Schedule 1.
- (1A) In respect of the taxable value of all the land owned at midnight on 31 December 1983 by a company classified under section 29 of the Principal Act as a non-concessional company, land tax for the period of 12 months commencing on 1 January in the next succeeding year shall, except as provided by section 27 (2A) of the Principal Act, be charged, levied, collected and paid as referred to in subsection (1) at the rate of 2.4 cents for each \$1 of the taxable value.
- (1B) (Repealed)
- (2) Where the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$50, no land tax shall be payable.
- (3) (Repealed)

### **3AA Levy of land tax after 31 December 1984**

- (1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December 1984 there shall be charged, levied, collected and paid under the provisions of the Principal Act and in the manner therein prescribed, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 2.
- (2) In respect of the taxable value of all the land owned by a person at midnight on 31 December 1984 where—
  - (a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or
  - (b) the land is subject to a discretionary trust,land tax for the period of 12 months commencing on 1 January in the next succeeding year shall, except as provided by section 27 (2A) of the Principal Act, be charged, levied, collected and paid as referred to in subsection (1) at the rate of 2.5 cents for each \$1 of the taxable value.
- (3) Where the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$50, no land tax shall be payable.
- (4) (Repealed)

**3AB Levy of land tax after 31 December 1985 and before 1 January 1988**

- (1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December 1985 or 31 December 1986 there shall be charged, levied, collected and paid under the provisions of the Principal Act and in the manner therein prescribed, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 3.
- (2) In respect of the taxable value of all the land owned by a person at midnight on 31 December 1985 or 31 December 1986 where—
  - (a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or
  - (b) the land is subject to a special trust,land tax for the period of 12 months commencing on 1 January in the next succeeding year shall, except as provided by section 27 (2A) of the Principal Act, be charged, levied, collected and paid as referred to in subsection (1) at the rate of 2 cents for each \$1 of the taxable value.
- (3) Where the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax shall be payable.
- (4) (Repealed)

**3AC Levy of land tax after 31 December 1987**

- (1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December 1987 there shall be charged, levied, collected and paid under the provisions of the Principal Act and in the manner therein prescribed, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 4.
- (2) In respect of the taxable value of all the land owned by a person at midnight on 31 December 1987 where—
  - (a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or
  - (b) the land is subject to a special trust,land tax for the period of 12 months commencing on 1 January in the next succeeding year shall, except as provided by section 27 (2A) of the Principal Act, be charged, levied, collected and paid as referred to in subsection (1) at the rate of 2 cents for each \$1 of the taxable value.

(3) Where the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax shall be payable.

(4) (Repealed)

**3AD Levy of land tax after 31 December 1988**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December 1988 there shall be charged, levied, collected and paid under the provisions of the Principal Act and in the manner therein prescribed, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 5.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December 1988 where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year shall, except as provided by section 27 (2A) of the Principal Act, be charged, levied, collected and paid as referred to in subsection (1) at the rate of 2 cents for each \$1 of the taxable value.

(3) Where the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax shall be payable.

(4) (Repealed)

**3AE Levy of land tax after 31 December 1989**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December in any year (commencing with 1989 and ending with 1995) there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 6.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December in any year (commencing with 1989 and ending with 1995) where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.5 cents for each \$1 of the taxable value.

(3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

(4) (Repealed)

### **3AF Levy of land tax after 31 December 1996**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December 1996 there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 7.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December 1996 where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.65 cents for each \$1 of the taxable value.

(3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

(4) (Repealed)

### **3AG Levy of land tax after 31 December 1997 and 31 December 1998**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December 1997 or at midnight on 31 December 1998 there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 8.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31



December 1997 or at midnight on 31 December 1998 where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.85 cents for each \$1 of the taxable value.

(3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

(4) (Repealed)

**3AH Levy of land tax after 31 December 1999 and before 31 December 2004**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December in any year (commencing with 1999 and ending with 2003) there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 9.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December in any year (commencing with 1999 and ending with 2003) where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.7 cents for each \$1 of the taxable value.

(2A) (Repealed)

(3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

(4) (Repealed)

**3AI Levy of land tax after 31 December 2004 and before 31 December 2005**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land

owned by any person at midnight on 31 December 2004 there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 10.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December 2004 where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.4 cents for each \$1 of the taxable value.

(3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

### **3AJ Levy of land tax after 31 December 2005 and before 31 December 2007**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December in any year (commencing with 2005 and ending with 2006) there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 11.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December in any year (commencing with 2005 and ending with 2006) where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.7 cents for each \$1 of the taxable value.

(3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

### **3AK Levy of land tax after 31 December 2007 and before 31 December 2008**

(1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December 2007 there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 12.

(2) In respect of the taxable value of all the land owned by a person at midnight on 31 December 2007 where—

(a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or

(b) the land is subject to a special trust,

land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.6 cents for each \$1 of the taxable value.

(3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

### **3AL Levy of land tax after 31 December 2008**

(1) In respect of the taxable value of all the land owned by any person at midnight on 31 December in any year (commencing with 2008) there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the applicable rate.

(2) For the purposes of this section, the **applicable rate** is—

(a) the rate of land tax payable as specified in Part 1 of Schedule 13, except as provided for by paragraphs (b), (c) and (d), or

(b) if the land is subject to a special trust—the rate of land tax payable as specified in Part 2 of Schedule 13, or

(c) if the owner of the land is a non-concessional company and the taxable value of group land holdings of the non-concessional company does not exceed the premium rate threshold—the rate of land tax payable as specified in Part 3 of Schedule 13, or

(d) if the owner of the land is a non-concessional company and the taxable value of group land holdings of the non-concessional company exceeds the premium rate threshold—the rate of land tax payable as specified in Part 4 of Schedule 13.

- (3) For the purposes of this section—
- (a) a reference to **group land holdings** of a non-concessional company is a reference to all land owned (whether jointly or severally) by members of the group of which the non-concessional company is a member on which land tax is payable, and
  - (b) a reference to a **group** is a reference to a group within the meaning of section 29 (7) of the Principal Act.
- (4) This section is subject to section 27 (2A) of the Principal Act (which relates to the assessment of land that is the subject of a special trust or that is jointly owned by a non-concessional company).
- (5) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

### **3A-5 (Repealed)**

### **5A Levy of surcharge land tax on residential land owned by foreign persons—2017 and subsequent land tax years**

- (1) Land tax is payable under this section in respect of residential land owned by a foreign person (**surcharge land tax**).
- (2) In respect of the taxable value of all the residential land owned by the foreign person at midnight on 31 December in any year (commencing with 2016), surcharge land tax is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act for the period of 12 months commencing on 1 January in the next succeeding year at the rate of—
- (a) in the case of all residential land owned by the foreign person at midnight on 31 December 2016—0.75% of that taxable value as assessed under the Principal Act, and
  - (b) in the case of all residential land owned by the foreign person at midnight on 31 December in the years 2017–2021—2% of that taxable value as assessed under the Principal Act, and
  - (c) in the case of all residential land owned by the foreign person at midnight on 31 December in any other year, commencing with 2022—4% of that taxable value as assessed under the Principal Act.
- (3) Surcharge land tax is payable in addition to any land tax payable in respect of the residential land under the other provisions of this Act, and is so payable even if no land tax is payable under those other provisions.
- (4) The Principal Act applies to surcharge land tax in respect of residential land owned by

a foreign person subject to the following—

- (a) surcharge land tax is payable as if the residential land were the only land owned by the foreign person,
  - (b) if the residential land is also owned by a person who is not a foreign person, the taxable value of the land is to be reduced to the proportionate value of the interest in the land of the foreign person,
  - (c) if the foreign person is a joint owner of the residential land, the person is to be individually (and not jointly) assessed and is liable in respect of the value of the person's proportionate interest in the land as if the person were the owner of a part of the land in proportion to the person's interest (and accordingly section 27 (2)–(4) of the Principal Act does not apply),
  - (d) if the Chief Commissioner is satisfied that the residential land is used for purposes other than residential purposes, the taxable value of the land is to be reduced by the apportionment factor determined in accordance with section 104ZB of the *Duties Act 1997* in relation to the land,
  - (e) if the foreign person is the trustee of a fixed trust (within the meaning of section 3A of the Principal Act) in relation to the residential land, the person is not liable to surcharge land tax,
  - (f) the provisions of the Principal Act relating to the persons who are taken to be owners of the residential land apply to surcharge land tax, except that section 23 of the Principal Act does not operate to make a mortgagee in possession an owner of the land unless the mortgagor is a foreign person,
  - (g) the person is exempt from liability to pay surcharge land tax in respect of the land for a land tax year because the land is the principal place of residence of the foreign person (and accordingly sections 9C and 9D of the Principal Act operate to reduce the land value of the land if it is the principal place of residence of the person) only if the person is eligible for the exemption under section 5B,
  - (h) the tax thresholds under Division 4A of Part 7 of the Principal Act do not apply to surcharge land tax,
  - (i) any other modification prescribed by the regulations under the Principal Act applies to surcharge land tax.
- (5) If a foreign person defaults in the payment of surcharge land tax then, without releasing the foreign person from his or her liability, the following provisions apply as long as the default continues—
- (a) if the foreign person is a joint owner of the land concerned—any other joint owner (whether or not a foreign person) is, on being served with a notice by the Chief

Commissioner requiring payment of the unpaid surcharge land tax, responsible for its payment and the unpaid tax may be recovered from that other joint owner as if he or she were the defaulting taxpayer,

- (b) if the foreign person is a beneficiary of a trust relating to the land concerned—the trustee (whether or not a foreign person) is, on being served with a notice by the Chief Commissioner requiring payment of the unpaid surcharge land tax, responsible for its payment and the unpaid tax may be recovered from that trustee as if he or she were the defaulting taxpayer,
- (c) all payments made under this subsection by that other joint owner or that trustee are taken to be made on behalf of the defaulting taxpayer,
- (d) that other joint owner or that trustee may recover from the foreign person any amount paid by that other joint owner or that trustee under this subsection.

(6) (Repealed)

**5B Surcharge land tax—residence requirement applying to principal place of residence exemption**

- (1) A person is eligible for an exemption from liability to pay surcharge land tax in respect of residential land for a land tax year because the land is the principal place of residence of the person only if—
  - (a) the person is a permanent resident at midnight on 31 December of the previous year, and
  - (b) the Chief Commissioner is satisfied that, during the land tax year, the person intends to use and occupy the land as the principal place of residence of the person in accordance with the residence requirement, and
  - (c) the person lodges a declaration with a land tax return required to be furnished under section 12 of the Principal Act for the land tax year to the effect that the person has that intention.
- (2) The person must use and occupy the land as the person’s principal place of residence for a continuous period of 200 days in the land tax year. This requirement is referred to as **the residence requirement**.
- (2A) A person does not use and occupy land as the person’s principal place of residence during a period of the person’s physical absence from Australia.
- (2B) The Chief Commissioner may, in exceptional circumstances, waive the requirement in subsection (2A) in relation to a person’s brief physical absence from Australia.
- (3) If the residence requirement is not complied with by the person, surcharge land tax liability is to be assessed or reassessed as if the person’s exemption from liability to

pay surcharge land tax for the land tax year had never applied.

- (4) The failure of the person to comply with the residence requirement is taken to be a tax default for the purposes of Part 5 of the *Taxation Administration Act 1996*.
- (5) Any interest that is payable on the tax default in accordance with Part 5 of the *Taxation Administration Act 1996* accrues on the amount of surcharge land tax assessable to the person for the period commencing on the last day allowed for furnishing the land tax return for the land tax year and ending on the day when the assessment or reassessment referred to in subsection (3) is made.

**5BA Surcharge land tax—residence requirement applying to principal place of residence exemption for retirement visa holders**

- (1) Section 5B applies to a retirement visa holder in the same way as it applies to a permanent resident, subject to any modifications prescribed by the regulations.
- (2) However, in the application of that section to the liability of a retirement visa holder to pay surcharge land tax in respect of residential land for a land tax year, the residence requirement is satisfied if the person used and occupied the land as the person's principal place of residence for a continuous period of 200 days in the previous land tax year.

**5C Surcharge land tax—certain development by Australian-based developers that are foreign persons**

- (1) An Australian corporation is entitled to a refund of an amount of surcharge land tax paid by the corporation in respect of residential land owned by the corporation at midnight on 31 December in a year (the **taxing date**) if the Chief Commissioner is satisfied that—
  - (a) a new home has been constructed on the land by the corporation or a related body corporate (before or after the taxing date) and sold by the corporation after the taxing date to a person who is not an associated person of the corporation without the home having been used or occupied for any purpose (other than as a display home) before the completion of that sale, or
  - (b) the land has been subdivided by the corporation (before or after the taxing date) for the purpose of its use for new home construction and sold by the corporation after the taxing date and after the issue of a subdivision certificate (as referred to in section 109C of the *Environmental Planning and Assessment Act 1979*) for the subdivision, or
  - (c) the land has been used by the corporation or a related body corporate, before or after the taxing date, wholly or predominantly for commercial or industrial purposes.

- (2) The amount of the refund to which an Australian corporation is entitled under this section is the amount that is determined in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette. The amount of the refund may be the full amount of surcharge land tax paid or a lesser amount (as determined in accordance with the order).
- (3) The Chief Commissioner may approve a foreign person as an exempt person for particular land if the Chief Commissioner is of the opinion that the person is likely to become entitled under this section to a refund of the full amount of surcharge land tax payable by the person in respect of the land for a land tax year.
- (4) A foreign person is exempt from liability to pay surcharge land tax in respect of land for a land tax year if the person is approved as an exempt person for the land for that land tax year.
- (5) The approval of a foreign person as an exempt person under this section is subject to the following provisions—
  - (a) an approval may be given for one or more land tax years and can be given for a land tax year before or after the end of the land tax year,
  - (b) an approval may be given subject to conditions and the approval operates subject to any such conditions,
  - (c) the conditions of an approval may be varied by the Chief Commissioner at any time by notice to the person,
  - (d) an approval can be revoked by the Chief Commissioner at any time by notice to the person,
  - (e) the revocation of an approval can be backdated to extend to a tax year in respect of which the exemption conferred by the approval has already been applied, in which case surcharge land tax is payable and is to be assessed or reassessed as if the approval had never applied in respect of that tax year.
- (6) Surcharge land tax may be refunded under this section only if an application for the refund is made—
  - (a) within 12 months after the entitling event, and
  - (b) no later than 10 years after completion of the transfer of the residential land to the Australian corporation.
- (6AA) Surcharge land tax may not be refunded under this section if—
  - (a) completion of the transfer of the residential land to the Australian corporation occurred before 21 June 2016, and



(b) an application for the refund was not made on or before 21 June 2021.

(6A) For the purposes of the *Taxation Administration Act 1996*, section 9(3)(c), a reassessment under this section is authorised to be made more than 5 years after the initial assessment.

(7) In this section—

**associated person** has the same meaning as in the *Duties Act 1997*.

**Australian corporation** means a corporation that is incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth.

**entitling event** means—

- (a) for a refund under subsection (1)(a)—the completion of the sale of the new home, or
- (b) for a refund under subsection (1)(b)—the issue of the subdivision certificate, or
- (c) for a refund under subsection (1)(c)—the start of the use of the land wholly or predominantly for commercial or industrial purposes.

**new home** has the same meaning as in the *First Home Owner Grant (New Homes) Act 2000*.

**related body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**transfer** includes an assignment and an exchange.

#### **5CA Surcharge land tax—build-to-rent properties owned by foreign persons**

- (1) An Australian corporation is entitled to a refund of an amount of surcharge land tax paid by the corporation in respect of residential land owned by the corporation at midnight on 31 December in a year (the **taxing date**), commencing with midnight on 31 December 2020 and ending with midnight on 31 December 2039, if the Chief Commissioner is satisfied that—
  - (a) a building that is taken to be build-to-rent property under section 9E of the Principal Act has been constructed on the land concerned by the corporation or a related body corporate (whether before or after the taxing date), and
  - (b) the corporation is entitled under that section to a reduction in the value of land.
- (2) The amount of the refund to which an Australian corporation is entitled under this section is the amount that is determined in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette.

- (3) The amount of the refund may be the full amount of surcharge land tax paid or a lesser amount (as determined in accordance with the order).
- (4) The Chief Commissioner may approve a foreign person as an exempt person for particular land if the Chief Commissioner is of the opinion that the person is likely to become entitled under this section to a refund of the full amount of surcharge land tax payable by the person in respect of the land for a land tax year.
- (5) A foreign person is exempt from liability to pay surcharge land tax in respect of the particular land for a land tax year if the person is approved as an exempt person for the land for that land tax year.
- (6) The approval of a foreign person as an exempt person under this section is subject to the following provisions—
  - (a) an approval may be given for one or more land tax years and can be given for a land tax year before or after the end of the land tax year,
  - (b) an approval may be given subject to conditions and the approval operates subject to any such conditions,
  - (c) the conditions of an approval may be varied by the Chief Commissioner at any time by notice to the person,
  - (d) an approval can be revoked by the Chief Commissioner at any time by notice to the person,
  - (e) the revocation of an approval can be backdated to extend to a tax year in respect of which the exemption conferred by the approval has already been applied, in which case surcharge land tax is payable and is to be assessed or reassessed as if the approval had never applied in respect of that tax year.
- (7) Without limiting subsection (6), if, within the period of 15 years after this section first applied in relation to surcharge land tax, the land concerned is subdivided or the ownership of the land is otherwise divided—
  - (a) the person whose surcharge land tax has been refunded or liability to pay the surcharge land tax has been exempted in accordance with this section must, within 1 month, inform the Chief Commissioner of the date on which the land was subdivided or the ownership of the land was otherwise divided, and
  - (b) liability for surcharge land tax in respect of the following years is to be reassessed as if this section had not applied to the person—
    - (i) the year in which the land is subdivided or the ownership of the land is otherwise divided,
    - (ii) each preceding year in which a person's liability to pay surcharge land tax was

assessed in accordance with this section, but not more than 15 preceding years, and

(c) the subdivision or division is taken to be a tax default for the purposes of Part 5 of the *Taxation Administration Act 1996*.

(8) Surcharge land tax for a land tax year may be refunded under this section only if an application for the refund is made—

(a) within 12 months after the owner of the land concerned became entitled to the refund, and

(b) not later than 10 years after the land tax year concerned.

(9) For the purposes of section 9(3)(c) of the *Taxation Administration Act 1996*, any reassessment under this section is authorised to be made more than 5 years after the initial assessment.

(10) In this section—

**Australian corporation** means a corporation that is incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth.

**related body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

#### **5D Surcharge land tax—discretionary trusts**

(1) The trustee of a discretionary trust is taken to be a foreign person in that capacity for the purposes of section 5A if the trust does not prevent a foreign person from being a beneficiary of the trust.

(2) If a discretionary trust prevents a foreign person from being a beneficiary of the trust, the trustee is not in that capacity a foreign person for the purposes of section 5A.

(3) A discretionary trust is considered to prevent a foreign person from being a beneficiary of the trust if (and only if) both of the following requirements are satisfied—

(a) no potential beneficiary of the trust is a foreign person (the **no foreign beneficiary requirement**),

(b) the terms of the trust are not capable of amendment in a manner that would result in there being a potential beneficiary of the trust who is a foreign person (the **no amendment requirement**).

#### **Note—**

Under the transitional arrangements for this section in Schedule 2 to the Principal Act, the no amendment requirement does not apply to a trust that satisfies the no foreign beneficiary requirement

immediately before the commencement of this section.

- (4) A person is a **potential beneficiary** of a discretionary trust if the exercise or failure to exercise a discretion under the terms of the trust can result in any property of the trust being distributed to or applied for the benefit of the person.

**Note—**

A potential beneficiary is not limited to persons named in the trust instrument and extends to the members of any class of persons to whom or for whose benefit trust property can be distributed or applied pursuant to the discretions of the trust.

- (5) For the removal of doubt, a person is not a potential beneficiary of a discretionary trust if the terms of the trust prevent any property of the trust from being distributed to or applied for the benefit of the person.
- (6) In this section, **property** includes money, and a reference to the distribution or application of property includes a reference to the payment of money.
- (7) (Repealed)

## 6 Land tax liability in respect of flood liable land

- (1) In this section—

**council**, in relation to any land, means the council of the area, within the meaning of the [Local Government Act 1993](#), in which the land is situated.

**flood liable land** means land which is unoccupied and which has been determined, by the council, to be (or which is, in the opinion of the Chief Commissioner) unsuitable for the erection of a building because it is liable to flooding.

- (2) Notwithstanding any other provisions of this Act or the provisions of any other Act, where a person is the owner of 2 or more parcels of land, one or more of which is flood liable land, the amount of land tax payable by that person shall, in respect only of such land as is flood liable land, be—
- (a) calculated separately in respect of each parcel of that land that is not exempt from taxation, and
- (b) so calculated in the case of each such parcel as if it were the only land owned by that person.
- (3) This section does not apply to surcharge land tax under section 5A.

## Schedule 1

(Section 3)

**Where the taxable value as assessed under  
Principal Act**

**Rates of Land Tax Payable**

does not exceed \$5,000	0.3c for each \$1
\$        \$	\$ c        \$
exceeds 5,000 but does not exceed 10,000	15.00 plus 0.45c for each \$1 in excess of 5,000
" 10,000 " " " " 20,000	37.50 " 0.6c " " " " 10,000
" 20,000 " " " " 30,000	97.50 " 0.75c " " " " 20,000
" 30,000 " " " " 40,000	172.50 " 0.9c " " " " 30,000
" 40,000 " " " " 50,000	262.50 " 1.05c " " " " 40,000
" 50,000 " " " " 60,000	367.50 " 1.2c " " " " 50,000
" 60,000 " " " " 70,000	487.50 " 1.35c " " " " 60,000
" 70,000 " " " " 80,000	622.50 " 1.5c " " " " 70,000
" 80,000 " " " " 90,000	772.50 " 1.65c " " " " 80,000
" 90,000 " " " " 100,000	937.50 " 1.8c " " " " 90,000
" 100,000 " " " " 110,000	1,117.50 " 1.95c " " " " 100,000
" 110,000 " " " " 120,000	1,312.50 " 2.1c " " " " 110,000
" 120,000 " " " " 130,000	1,522.50 " 2.25c " " " " 120,000
" 130,000	1,747.50 " 2.4c " " " " 130,000

## Schedule 2

(Section 3AA)

### Where the taxable value as assessed under the Principal Act

### Rates of Land Tax Payable

does not exceed \$55,000	nil
exceeds \$55,000 but does not exceed \$60,000	\$50 plus 0.5c for each \$1 in excess of \$55,000
exceeds \$60,000 but does not exceed \$70,000	\$75 plus 1.5c for each \$1 in excess of \$60,000
exceeds \$70,000	\$225 plus 2.5c for each \$1 in excess of \$70,000

## Schedule 3

(Section 3AB)

### Where the taxable value assessed under the Principal Act

### Rates of Land Tax Payable

is less than \$94,000	nil
is not less than \$94,000	\$100 plus 2c for each \$1 in excess of \$94,000

## Schedule 4

(Section 3AC)

### Where the taxable value assessed under the Principal Act

#### Rates of Land Tax Payable

is less than \$125,000

nil

is not less than \$125,000

\$100 plus 2c for each \$1 in excess of \$125,000

## Schedule 5

(Section 3AD)

### Where the taxable value assessed under the Principal Act

#### Rates of land tax payable

is less than \$135,000

nil

is not less than \$135,000

\$100 plus 2c for each \$1 in excess of \$135,000

## Schedule 6

(Section 3AE)

### Where the taxable value assessed under the Principal Act

#### Rates of land tax payable

is less than \$160,000

nil

is not less than \$160,000

\$100 plus 1.5c for each \$1 in excess of \$160,000

## Schedule 7

(Section 3AF)

### Where the taxable value assessed under the Principal Act

#### Rates of land tax payable

is less than \$160,000

nil

is not less than \$160,000

\$100 plus 1.65c for each \$1 in excess of \$160,000

## Schedule 8

(Section 3AG)

### Where the taxable value assessed under the Principal Act

#### Rates of land tax payable

is less than the tax threshold

nil

is not less than the tax threshold

\$100 plus 1.85c for each \$1 in excess of the tax threshold

## Schedule 9

(Section 3AH)

<b>Where the taxable value assessed under the Principal Act</b>	<b>Rates of land tax payable</b>
is less than the tax threshold	nil
is not less than the tax threshold	\$100 plus 1.7c for each \$1 in excess of the tax threshold

## Schedule 10

(Section 3AI)

<b>Taxable value assessed under Principal Act</b>	<b>Rates of land tax payable</b>
Not more than \$400,000	0.4 cents for each \$1
More than \$400,000 but not more than \$500,000	\$1,600 plus 0.6 cents for each \$1 by which the taxable value exceeds \$400,000
More than \$500,000	\$2,200 plus 1.4 cents for each \$1 by which the taxable value exceeds \$500,000

## Schedule 11

(Section 3AJ)

<b>Where the taxable value assessed under the Principal Act</b>	<b>Rates of land tax payable</b>
is not more than the tax threshold	nil
is more than the tax threshold	\$100 plus 1.7c for each \$1 in excess of the tax threshold

## Schedule 12

(Section 3AK)

<b>Where the taxable value assessed under the Principal Act</b>	<b>Rates of land tax payable</b>
is not more than the tax threshold	nil
is more than the tax threshold	\$100 plus 1.6c for each \$1 in excess of the tax threshold

## Schedule 13 Tax rates from 2009 land tax year

### Part 1 General rate (where tax threshold applies)

<b>Taxable value assessed under Principal Act</b>	<b>Rate of land tax payable</b>
is not more than the tax threshold	nil
is more than the tax threshold but not more than the premium rate threshold	\$100 plus 1.6 per cent of the amount by which the taxable value exceeds the tax threshold
is more than the premium rate threshold	\$100 plus— <ol style="list-style-type: none"> <li>1.6 per cent of the amount by which premium rate threshold exceeds the tax threshold, and</li> <li>2 per cent of the amount by which the taxable value exceeds the premium rate threshold</li> </ol>

### Part 2 Land subject to special trust

<b>Taxable value assessed under Principal Act</b>	<b>Rate of land tax payable</b>
is not more than the premium rate threshold	1.6 per cent of the taxable value
is more than the premium rate threshold	1.6 per cent of the premium rate threshold, plus 2 per cent of the amount by which the taxable value exceeds the premium rate threshold

### Part 3 Land owned by non-concessional company (group land holdings not exceeding premium rate threshold)

<b>Taxable value assessed under Principal Act</b>	<b>Rate of land tax payable</b>
is any amount	1.6 per cent of the taxable value

### Part 4 Land owned by non-concessional company (group land holdings exceeding premium rate threshold)

<b>Taxable value assessed under Principal Act</b>	<b>Rate of land tax payable</b>
is any amount	2 per cent of the taxable value