

# Land Tax Management Act 1956 No 26

[1956-26]



New South Wales

## Status Information

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### Responsible Minister

- Treasurer
- Minister for Finance

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

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# Land Tax Management Act 1956 No 26



New South Wales

An Act to make provision relating to the imposition, assessment and collection of a land tax upon unimproved values of certain lands; to repeal the *Land and Income Tax Assessment Act of 1895* and certain other Acts; to amend the *Landlord and Tenant (Amendment) Act 1948*, as amended; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act

- (1) This Act may be cited as the *Land Tax Management Act 1956*.
- (2) (Repealed)

### 2 Construction

This Act shall be read and construed subject to the *Commonwealth of Australia Constitution Act*, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

### 3 Definitions

- (1) In this Act, unless the context or subject-matter otherwise indicates or requires—

**Act** includes regulations.

**Agent** includes every person who in the State, for or on behalf of any person out of the State (in this definition termed “the principal”) has the control or disposal of any land belonging to the principal, or the control, receipt, or disposal of any rents, issues, or proceeds derived from any such land.

**assessment** means an assessment or reassessment by the Chief Commissioner under Part 3 of the *Taxation Administration Act 1996*.

**asset**, of a sub-fund of a CCIV, has the same meaning as in the *Corporations Act 2001* of the Commonwealth, section 1233H.

**CCIV** means a corporate collective investment vehicle within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

**Chief Commissioner** means the Chief Commissioner of State Revenue referred to in section 60 of the [Taxation Administration Act 1996](#).

**Company** includes all bodies or associations corporate or unincorporate.

**concessional trust** has the meaning given by section 3B.

**Crown** includes a statutory body representing the Crown.

**flat** means a room or a suite of rooms (whether or not forming part of a building or a detached building)—

- (a) used or occupied as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being used or occupied as a separate dwelling.

**joint organisation** has the same meaning as in the [Local Government Act 1993](#).

**Joint owners** means persons who own land jointly or in common, whether as partners or otherwise, and includes persons who have a life or greater interest in shares of the income from the land and persons who by virtue of this Act are deemed to be joint owners.

**lease** includes an agreement to lease.

**liabilities**, in relation to a sub-fund of a CCIV, has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth, section 1233L.

**member**, in relation to a sub-fund of a CCIV, has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth, section 1222Q(3).

**Mortgage** includes any charge whatever upon land, or interest therein, howsoever created, for the securing of money.

**Mortgagee** includes every person entitled at law or in equity to a mortgage or any part thereof.

**Owned** and similar expressions have a meaning corresponding with that of owner.

**Owner** includes—

- (a) in relation to land, every person who jointly or severally, whether at law or in equity—
  - (i) is entitled to the land for any estate of freehold in possession, or



(ii) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise,

(b) (Repealed)

(c) in relation to any leasehold estate in land, whether legal or equitable (other than under any lease to which section 21C or 21D applies), a person, or a person who is a member of a class or description of persons, prescribed for the purposes of this paragraph, and

(d) a person who, by virtue of this Act, is deemed to be the owner.

**Person** includes a company.

**Planning instrument** means an environmental planning instrument, within the meaning of the [Environmental Planning and Assessment Act 1979](#), and includes a deemed environmental planning instrument within the meaning of that Act.

**Prescribed** means prescribed by this Act or by the regulations thereunder.

**principal place of residence** of a person means the one place of residence that is, among the one or more places of residence of the person within and outside Australia, the principal place of residence of the person.

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

**record** means—

(a) a documentary record, or

(b) a record made by an electronic, electromagnetic, photographic or optical process, or

(c) any other kind of record.

**referable**, in relation to a sub-fund and a share in a CCIV, has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth, section 1230(1).

**Register** means the Register of Land Values kept under section 14CC of the [Valuation of Land Act 1916](#).

**Regulations** means regulations made under this Act.

**Residential unit** means a flat that—

(a) forms part of a building comprising two or more flats, and

- (b) is used and occupied as a principal place of residence, and for no other purpose, by a person who is a joint owner (otherwise than as a trustee) of the parcel of land on which the building is erected and who has entered into an arrangement with the other joint owners of that land under which the person has the exclusive right to occupy that flat (whether jointly with one or more of the co-owners or not).

**special trust** has the meaning given by section 3A.

**sub-fund**, of a CCIV, has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth, section 1222Q(1).

**Tax year** or **Land tax year** means a period of 12 months starting on 1 January for which land tax is leviable and payable.

**Taxpayer** means any person chargeable with land tax.

**Trustee**, in addition to every person appointed or constituted trustee by act of parties by order or declaration of a court or by operation of law, includes—

- (a) an executor or administrator, guardian, committee, receiver, or liquidator, and
- (b) every person having or taking upon himself or herself the administration or control of land affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the land of a person under any legal or other disability.

**Trustee company** means a trustee company within the meaning of the [Trustee Companies Act 1964](#) or the NSW Trustee and Guardian.

**unit trust** means a trust in respect of which the beneficiaries of the trust are owners of units in the trust and each unit holder, or each unit holder of a particular class—

- (a) is entitled, as a beneficiary of the trust, to participate in any income or capital distributions (or both) of the trust, and
- (b) the amount or proportion of any income or capital distribution to which the unit holder is entitled is based on the number or class of units owned by the person (or both).

**Note.**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) For the purposes of the definition of **Residential unit** in subsection (1) a flat used and occupied as the person's principal place of residence by a person referred to in the definition does not cease to be used and occupied by that person as the person's principal place of residence and for no other purpose by reason of the occupation under lease or licence for residential purposes of not more than one room in the flat.

(2A) (Repealed)

(3) For the purposes of the definition of **flat** in subsection (1), a building, or part of a building, used and occupied for residential purposes does not cease to be considered to be used and occupied as a separate dwelling merely because the building, or part of the building, is used for the purpose of another residential occupancy, if that residential occupancy may be disregarded for the purposes of the principal place of residence exemption under Schedule 1A.

(4) Notes included in this Act do not form part of this Act.

(5) (Repealed)

### **3A Special trust—meaning**

(1) For the purposes of this Act, a trust is a **special trust** if—

- (a) the trust property includes land, and
- (b) the trustee of the trust is the owner of the legal estate in the land, and
- (c) the trust is not a fixed trust.

(2) For the purposes of this section, a trust is a **fixed trust** if the equitable estate in all of the land that is the subject of the trust is owned by a person or persons who are owners of the land for land tax purposes (disregarding section 25 (3)).

(3) For the purpose of determining whether a trust is a fixed trust under this section, any equitable interest of the trustee as trustee of the trust is to be disregarded.

(3A) If a trust satisfies the relevant criteria, the persons who are beneficiaries of the trust under the trust deed are taken to be owners of an equitable estate in the land that is the subject of the trust and, accordingly, the trust is taken to be a fixed trust.

#### **Note.**

Under section 25, owners of an equitable estate or interest in land are liable in respect of land tax as if they were legal owners of the land. Owners of an equitable estate in land are treated as secondary taxpayers.

(3B) For the purposes of this section, the **relevant criteria** are as follows—

- (a) the trust deed specifically provides that the beneficiaries of the trust—
  - (i) are presently entitled to the income of the trust, subject only to payment of proper expenses by and of the trustee relating to the administration of the trust, and
  - (ii) are presently entitled to the capital of the trust, and may require the trustee to wind up the trust and distribute the trust property or the net proceeds of the trust property,

- (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of any discretion, or by a failure to exercise any discretion, conferred on a person by the trust deed,
  - (c) if the trust is a unit trust—
    - (i) there must be only one class of units issued, and
    - (ii) the proportion of trust capital to which a unit holder is entitled on a winding up or surrender of units must be fixed and must be the same as the proportion of income of the trust to which the unit holder is entitled.
- (4) A trust is not a **special trust**—
- (a) if the trust is solely a charitable trust, or
  - (b) if clause 9 of Schedule 1A applies in respect of the land that is the subject of the trust, or
  - (c) if the trust is a concessional trust, or
  - (d) in relation to any land tax year in which it is a superannuation trust, or
  - (e) if the trust is established by will, but only during the period ending on the expiration of 2 years after the date of death of the testator, or
  - (f) in relation to any land tax year in which it is a family unit trust, as provided by Schedule 1AA.
- (5) For the purposes of this section, a trust is a **superannuation trust** in relation to a land tax year if—
- (a) the trust was established on or before 30 June in the year before that land tax year and, in relation to the year of income ending in that year, the trust is—
    - (i) a complying superannuation fund (within the meaning of section 42 or 42A of the Commonwealth Act), or
    - (ii) a complying approved deposit fund (within the meaning of section 43 of the Commonwealth Act), or
    - (iii) a pooled superannuation trust (within the meaning of section 44 of the Commonwealth Act), or
  - (b) the trust was established after 30 June in the year before that land tax year and, as at midnight on 31 December in that year, the trust is—
    - (i) a regulated superannuation fund (within the meaning of the Commonwealth Act) or is taken to be a regulated superannuation fund under that Act, or

- (ii) an approved deposit fund (within the meaning of the Commonwealth Act), or
  - (iii) a pooled superannuation trust (within the meaning of the Commonwealth Act).
- (6) Despite anything to the contrary in this section, a trust is taken to be a special trust in relation to a land tax year if the trust is classified as a special trust in respect of that land tax year under section 25A, and the classification has effect in respect of that land tax year.
- (7) In this section—

**Commonwealth Act** means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

### **3B Concessional trust—meaning**

- (1) For the purposes of this Act, a trust is a **concessional trust** if—
- (a) the trust property includes land, and
  - (b) each person who is a beneficiary of the trust is—
    - (i) a person under the age of 18 years, or
    - (ii) a person in respect of whom a guardianship order is in force under the *Guardianship Act 1987*, or
    - (iii) a person in the relevant group within the meaning of the *Coroners Act 2009*.
- (2) For the purposes of this section, a person is a **beneficiary** of a trust if the person is a person, or a member of a class of persons—
- (a) in whose favour, by the terms of the trust, capital or income the subject of the trust may be applied—
    - (i) in the event of the exercise of a power or discretion in favour of the person, or
    - (ii) in the event that a discretion conferred under the trust is not exercised, or
  - (b) entitled or permitted, under the terms of the trust, to use and occupy land that is the subject of the trust.
- (3) For the purposes of this Act—
- (a) a **special disability trust** (within the meaning of section 1209L of the *Social Security Act 1991* of the Commonwealth or section 52ZZZW of the *Veterans' Entitlements Act 1986* of the Commonwealth) is taken to be a concessional trust, and

- (b) the principal beneficiary of the special disability trust, as referred to in section 1209M of the *Social Security Act 1991* of the Commonwealth or section 52ZZZWA of the *Veterans' Entitlements Act 1986* of the Commonwealth, is taken to be a beneficiary of the trust.

### **3C Application of Act to corporate collective investment vehicles**

- (1) For this Act, each sub-fund of a CCIV is taken to be a unit trust of which—
  - (a) the CCIV is the trustee, and
  - (b) the business, assets and liabilities of the sub-fund are the trust property, and
  - (c) the members of the sub-fund are the beneficiaries.
- (2) For a sub-fund that is taken to be a unit trust—
  - (a) a share in the CCIV that is referable to the sub-fund is taken to be a unit in the unit trust, and
  - (b) a shareholder of the share, as a member of the sub-fund, is taken to be a unit holder of the unit in the unit trust, and
  - (c) the rights, entitlements, obligations and other characteristics attaching to the share are taken, as far as practicable, to be the same rights, entitlements, obligations and other characteristics attaching to the unit.
- (3) For this Act, a CCIV is taken to be a separate person in relation to each unit trust of which it is the trustee under subsection (1).
- (4) This Act does not apply to a CCIV or the members of a sub-fund of a CCIV except as provided for by this section.
- (5) Despite another provision of this Act, a sub-fund of a CCIV, taken to be a unit trust under this section, is taken to be a special trust.

## **Part 2 Administration**

### **4 Taxation Administration Act 1996**

This Act is to be read together with the *Taxation Administration Act 1996* which makes provision for the administration and enforcement of this Act and other taxation laws.

#### **4A-6 (Repealed)**

## **Part 3 Land tax**

### **7 Land tax on taxable value of land**

Land tax at such rates as may be fixed by any Act is to be levied and paid on the taxable

value of all land situated in New South Wales which is owned by taxpayers (other than land which is exempt from taxation under this Act).

## 8 Date of ownership for purposes of land tax

Land tax shall be charged on land as owned at midnight on the thirty-first day of December immediately preceding the year for which the land tax is levied.

In this section **year** means the period of twelve months commencing on the first day of January.

## 9 Taxable value

- (1) Land tax is payable by the owner of land on the taxable value of all the land owned by that owner which is not exempt from taxation under this Act.
- (2) The taxable value of that land is the total sum of the average value of each parcel of that land.
- (3) The average value of a parcel of land is to be calculated, as provided for by section 9AA, on the basis of the land value of the land.
- (4) The land value of land, in relation to a land tax year, is the value entered in the Register as the land value of the land as at 1 July in the previous year.
- (5) The fact that there is no land value entered in the Register on 31 December in a year as the land value of the land as at 1 July in that year does not prevent land tax being levied and charged and becoming payable for any following tax year once that land value is entered in the Register and the average value is ascertained.

### 9AA Average value of land

- (1) For the purposes of this Act, the **average value** of a parcel of land is the average of the land value of the land in relation to the year for which the average value is being ascertained (the **current land tax year**) and the land value of the land in relation to the 2 preceding land tax years (the **preceding land tax years**).
- (2) If a land value adjustment is required in relation to a parcel in the current land tax year, the average value is to be determined before that land value adjustment is made (that is, on the basis of the land value without that land value adjustment) and, despite any other provision of this Act, the [Valuation of Land Act 1916](#) or the [Heritage Act 1977](#), the land value adjustment is to be applied, for the purpose of assessing land tax, to the average value of the land for that land tax year (and not the land value).
- (3) For the purposes of this section, a **land value adjustment** is—
  - (a) a **land value reduction**, being any reduction that is required to be made to the land value of land under this Act for the purpose of assessing land tax, or

(b) (Repealed)

(c) a **special allowance**, being any allowance made in respect of the land value of land under Division 3 or 4 of Part 1B of the [Valuation of Land Act 1916](#).

(4) In the case of a land value reduction, the land value adjustment is to be applied to the average value of land by applying any provision of this Act that specifies that the land value is to be reduced for the purpose of assessing land tax as if a reference to the land value of land were a reference to the average value of land.

**Note.**

For example, the reductions provided for by sections 9A, 9BA, 9C, 9D, 9E, 10 (2), (2A) and (2C), 10Q (4) and 10R (3) will now apply to the average value of the land in a land tax year and not to the land value of the land.

(5) (Repealed)

(6) In the case of a special allowance, the land value adjustment is to be applied to the average value of the land by deducting the allowance from the average value.

(7) If a parcel of land did not exist on 31 December immediately before either or both of the preceding land tax years, the average value of the land is taken to be—

(a) if the parcel did exist on 31 December immediately before one of the preceding land tax years—the average of the land value of the land in relation to the current land tax year and the land value of the land in relation to the preceding land tax year immediately before which it did exist, or

(b) in any other case—the land value of the land in relation to the current land tax year.

(8) Subsection (2) applies in relation to an average value determined as provided for by subsection (7) in the same way as it applies to an average value determined as provided for by subsection (1).

**Note.**

For example, if the newly created parcel qualifies for an allowance for subdivision under Division 4 of Part 1B of the [Valuation of Land Act 1916](#) in the current land tax year, the allowance would be applied to the average value calculated as provided for by subsection (7).

(9) The average value of a parcel of land that is heritage-protected, and that was not heritage-protected on 31 December immediately before either or both of the preceding land tax years, is to be determined as provided for by subsection (7) (as if the parcel did not exist on the date or dates of 31 December on which it was not heritage-protected).

(10) If the land value of land in relation to a land tax year is altered (whether as a result of being reascertained or on objection or appeal or for the correction of a clerical error or misdescription), the average value of the land must be reascertained on the basis



of the altered land value.

- (11) If the average value of a parcel of land, after applying a land value adjustment, is less than zero, the average value of the parcel is taken to be zero.
- (12) For the purposes of this section, land is **heritage-protected** if it is either heritage restricted (within the meaning of section 14G of the *Valuation of Land Act 1916*) or the subject of a heritage valuation under Division 6 of Part 6 of the *Heritage Act 1977*, or both.

#### **9A Concession for unutilised land value**

- (1) This section applies to land if an unutilised value allowance (as ascertained under Division 3 of Part 7) is entered in the Register in respect of the land.
- (2) For the purpose of assessing land tax, the land value of the land is to be reduced by the unutilised value allowance.
- (3) However, if the land is sold or otherwise disposed of or it ceases to be used or occupied solely as the site of a single dwelling-house, a person whose liability to pay land tax in respect of the land has been assessed in accordance with this section must, within 1 month, inform the Chief Commissioner of the date on which the land was sold or otherwise disposed of or ceased to be so used or occupied.
- (4) Liability for land tax in respect of the year in which the land is sold, disposed of, or ceases to be used or occupied solely as the site of a single dwelling-house, and in each of the preceding years (up to a maximum of 4 preceding years) in which the person's liability to pay land tax was assessed in accordance with this section is to be reassessed as if subsection (2) had not applied to the land.
- (5) For the purposes of section 9 (3) (c) of the *Taxation Administration Act 1996*, any such reassessment is authorised to be made more than 5 years after the initial assessment.
- (6) Any such re-assessment is not a relevant land tax assessment for the purposes of section 35 (1) (b) of the *Valuation of Land Act 1916* if it is based on the same land value or average value on which the original land tax assessment was based (before the reduction was made under subsection (2) of this section).
- (7) In this section, **single dwelling-house** has the same meaning as in Division 2 of Part 8 of Chapter 15 of the *Local Government Act 1993*.

#### **9B Strata**

- (1) Land tax, in the case of land subject to the *Strata Schemes Development Act 2015*, is to be levied and paid in respect of each lot comprised in a parcel.
- (2) For the purposes of this Act—

- (a) the land value of a lot comprised in a parcel is an amount that bears to the land value of the parcel (within the meaning of section 9 (4)) the same proportion as the unit entitlement of the lot bears to the aggregate unit entitlement, and
  - (b) the average value of the lot is to be ascertained on the basis of the land value of the lot, as determined under paragraph (a).
- (3) Expressions used in this section have the same meanings as in the *Strata Schemes Development Act 2015*.

### **9BA Colliery holdings**

For the purpose of assessing land tax, the land value of land within a colliery holding (within the meaning of the *Mining Act 1992*) is to be reduced by the amount recorded in the Register in relation to each parcel as the amount by which the presence of coal in that parcel increases the value of that parcel.

### **9C Reduction in land value for flats on mixed development land or mixed use land**

- (1) For the purpose of assessing land tax, the land value of mixed development land or mixed use land on which is situated a flat 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) if there is an apportionment factor entered in the Register in respect of that land value—the proportion determined in accordance with the following calculation—

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

- (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 land value of the land to be attributed to the flat, subject to subsections (2A) and (2AA).
    - (c) (Repealed)
- (2A) If there is no apportionment factor entered in the Register in respect of the land value of the land, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.
- (2AA) If a request is made under subsection (2A)—
  - (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register, and

(b) the allowable proportion for the flat must be determined in accordance with subsection (2) (a).

(2AB) Apportionment factors for the purposes of this section are to be ascertained in accordance with Division 5 or Division 5A of Part 1B of the *Valuation of Land Act 1916*, as appropriate to the land concerned. If such an apportionment factor is expressed as a percentage, the apportionment factor is, for the purposes of this section, to be converted to a fraction.

**Note.**

Divisions 5 and 5A of Part 1B of the *Valuation of Land Act 1916* allow objections to be made against the amount of an apportionment factor.

(2AC) (Repealed)

(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 (or one of the owners) as his or her principal place of residence and for no other purpose, in which connection the use of the land for the purpose of one, but not more than one, residential occupancy other than that of the owner under lease or licence from the owner may be disregarded if it is an excluded residential occupancy (within the meaning of clause 4 of Schedule 1A),

(b) (Repealed)

(c) an owner of the land who occupies the flat must not be an owner merely because of being a trustee,

(d) the land must not be owned, or jointly owned, by a person in the person's capacity as trustee of a special trust,

(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) For the purposes of determining whether a flat has been used and occupied by an owner of land as his or her principal place of residence under subsection (3) (a), clauses 8, 9 and 10 of Schedule 1A apply in respect of the flat, and that part of the land on which the flat is situated, in the same way as they apply in respect of land under the principal place of residence exemption.

**Note.**

The effect of this provision is to deem a flat to be used and occupied by the owner of the land as a principal place of residence in certain circumstances, similar to the principal place of residence exemption. As a consequence, the land value of the mixed development land or mixed use land on which the flat is situated can be reduced by the allowable proportion under this section.

- (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 land 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.
- (6A) For avoidance of doubt, if a reduction in the land value of land is required under this section and the land is jointly owned, then, for the purposes of section 27 (3) (a), the individual interest of each of the owners of the land (including the owner who occupies the flat) is to be assessed on the basis of the land value of the land as reduced under this section.
- (7) This section does not apply to land to which section 9D or 21B applies.
- (8) In this section—

***mixed development land*** has the same meaning as in Division 5 of Part 1B of the [Valuation of Land Act 1916](#).

***mixed use land*** has the same meaning as in Division 5A of Part 1B of the [Valuation of Land Act 1916](#).

#### **9D Reduction in land value for single dwellings on mixed use land**

- (1) For the purpose of assessing land tax, the land value of mixed use land on which is situated one single dwelling is to be reduced by the allowable proportion in relation to the dwelling.
- (2) The allowable proportion for the dwelling is to be determined in accordance with whichever of the following paragraphs is applicable in the particular case—
- (a) if there is an apportionment factor entered in the Register in respect of that land value—the proportion determined by deducting that apportionment factor from 1,
  - (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 land value of the land to be attributed to the dwelling, subject to subsections (3) and (4).
- (3) If there is no apportionment factor entered in the Register in respect of the land value of the land, the Chief Commissioner may request the Valuer-General to determine the

apportionment factor in respect of the land concerned.

- (4) If a request is made under subsection (3)—
- (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register, and
  - (b) the allowable proportion for the dwelling must be determined in accordance with subsection (2) (a).
- (5) Apportionment factors for the purposes of this section are to be ascertained in accordance with Division 5A of Part 1B of the *Valuation of Land Act 1916*. If such an apportionment factor is expressed as a percentage, the apportionment factor is, for the purposes of this section, to be converted to a fraction.

**Note.**

Division 5A of Part 1B of the *Valuation of Land Act 1916* allows objections to be made against the amount of an apportionment factor.

- (6) The reduction under this section applies only if the following requirements are satisfied—
- (a) the single dwelling must be used and occupied by the owner of the land (or one of the owners) as his or her principal place of residence and for no other purpose, in which connection the use of the land for the purpose of one, but not more than one, residential occupancy other than that of the owner under lease or licence from the owner may be disregarded if it is an excluded residential occupancy (within the meaning of clause 4 of Schedule 1A),
  - (b) an owner of the land who occupies the dwelling must not be an owner merely because of being a trustee,
  - (c) 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.
- (6A) For the purposes of determining whether a single dwelling has been used and occupied by an owner of land as his or her principal place of residence under subsection (6) (a), clauses 8, 9 and 10 of Schedule 1A apply in respect of the single dwelling, and that part of the land on which the dwelling is situated, in the same way as they apply in respect of land under the principal place of residence exemption.

**Note.**

The effect of this provision is to deem a single dwelling to be used and occupied by the owner of the land as a principal place of residence in certain circumstances, similar to the principal place of residence exemption. As a consequence, the land value of the mixed use land on which the single dwelling is situated can be reduced by the allowable proportion under this section.

- (7) 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 land value of the land to be attributed to the dwelling, and
  - (b) the application is made in a form approved by the Chief Commissioner.
- (8) For avoidance of doubt, if a reduction in the land value of land is required under this section and the land is jointly owned, then, for the purposes of section 27 (3) (a), the individual interest of each of the owners of the land (including the owner who occupies the dwelling) is to be assessed on the basis of the land value of the land as reduced under this section.
- (9) For the purposes of applying this section in respect of land on which there is a single dwelling and a residential occupancy other than that of the owner, the use of the land for the purpose of that other residential occupancy may be disregarded if that residential occupancy may be disregarded under the principal place of residence exemption under Schedule 1A.
- (10) This section does not apply to land to which section 21B applies.
- (11) In this section—

***mixed use land*** has the same meaning as in Division 5A of Part 1B of the [Valuation of Land Act 1916](#).

***single dwelling*** has the same meaning as it has in Division 5A of Part 1B of the [Valuation of Land Act 1916](#).

#### **9E Reduction in land value for certain build-to-rent properties**

- (1) This section applies in respect of land owned by a person at midnight on 31 December in any year (ending with midnight at the end of 31 December 2039).

**Note.**

Under section 3AL of the [Land Tax Act 1956](#), land tax is charged, levied, collected and paid for the period of 12 months commencing on 1 January in the next succeeding year for land owned at midnight on 31 December in any year. So this reduction provision applies until the end of the 2040 land tax year.

- (2) For the purpose of assessing land tax, the land value of a parcel of land is to be reduced by 50% if—
- (a) a building is situated on the land, and
  - (b) construction of the building commenced on or after 1 July 2020, and
  - (c) the Chief Commissioner is satisfied that a significant proportion of the labour force hours spent on the construction of the building involves or involved work

performed by persons whom the Chief Commissioner considers belong to any one or more of the following classes of worker—

- (i) apprentices or trainees,
- (ii) long-term unemployed workers,
- (iii) workers requiring upskilling,
- (iv) workers with barriers to employment (such as persons with disability),
- (v) Aboriginal jobseekers,
- (vi) graduates, and

(d) the Chief Commissioner is satisfied that the building is being used and occupied for a build-to-rent property in accordance with guidelines approved by the Treasurer for the purposes of this section, and

(e) an application for the reduction is made in accordance with this section.

(3) The guidelines may include provisions with respect to the following—

(a) the circumstances in which a building is taken to be a build-to-rent property, including in relation to the following—

- (i) the planning or development standards that must be complied with,
- (ii) the minimum lease conditions that must be offered to tenants of the build-to-rent property,
- (iii) the minimum scale of a building to qualify as a build-to-rent property,
- (iv) the nature of the ownership and management of the building and the land on which the building is situated,

(b) the circumstances in which the applicant is required to give an undertaking to not subdivide the land or otherwise divide the ownership of the land,

(c) other matters relating to build-to-rent properties and the land on which build-to-rent properties are situated as the Treasurer determines appropriate.

(4) The guidelines must include policies to promote the development of new affordable housing and social housing in build-to-rent properties.

(5) Without limiting the other ways in which this section may cease to apply to a person, it ceases to apply to a person if the person breaches an undertaking given as referred to in subsection (3)(b).

(6) A guideline may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind,
- or both.
- (7) If the Chief Commissioner is satisfied that only part of a parcel of land is being used and occupied for a build-to-rent property, the reduction in land value under subsection (2) is to be proportionately decreased in accordance with guidelines approved by the Treasurer for the purposes of this section.
- (8) This section does not apply to an owner of land in respect of a tax year unless—
- (a) the owner applies to the Chief Commissioner for the reduction, in the form approved by the Chief Commissioner, and
  - (b) the owner furnishes the Chief Commissioner with the evidence that the Chief Commissioner requests for the purpose of enabling the Chief Commissioner to determine whether there is an entitlement to the reduction.
- (9) However, if, within the period of 15 years after subsection (2) first applied to reduce the land value of a parcel of land, the land is subdivided or the ownership of the land is otherwise divided—
- (a) a person whose liability to pay land tax in respect of the land has been assessed 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 land tax in respect of the following years is to be reassessed as if subsection (2) 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 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*.
- (10) For the purposes of section 9(3)(c) of the *Taxation Administration Act 1996*, any such reassessment is authorised to be made more than 5 years after the initial assessment.
- (11) Any reassessment is not a relevant land tax assessment for the purposes of section 35(1)(b) of the *Valuation of Land Act 1916* if it is based on the same land value or average value on which the original land tax assessment was based (before the



reduction was made under subsection (2) of this section).

(12) In this section—

**affordable housing** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**social housing** means residential accommodation provided by a social housing provider within the meaning of the *Residential Tenancies Act 2010*.

## 10 Land exempted from tax

(1) Except where otherwise expressly provided in this Act the following lands shall, subject to sections 10B, 10D, 10E and 10P, be exempted from taxation under this Act—

(a) (Repealed)

(b) land owned by any marketing board constituted under the *Rice Marketing Act 1983*, an agricultural industry services committee constituted by the *Agricultural Industry Services Act 1998* or Local Land Services,

(c) land owned by or in trust for a public health organisation within the meaning of the *Health Services Act 1997*,

(c1) (Repealed)

(d) land owned by or in trust for a charitable body,

(e) land owned by or in trust for a religious society if the society, however formed or constituted, is carried on solely for religious, charitable or educational purposes, including the support of the aged or infirm clergy or ministers of the society, or their wives or widows or children, and not for pecuniary profit,

(f) land owned by or in trust for, and used and occupied solely by—

(i) an association of employers or employees registered as an organisation under Part IX of the *Industrial Relations Act 1988* of the Commonwealth,

(ii) (Repealed)

(iii) an industrial organisation of employers or employees within the meaning of the *Industrial Relations Act 1996*,

(iv) Unions NSW or any other association of bodies of a kind referred to in subparagraph (i) or (iii), or

(v) a company in which shares representing not less than 85 per cent of the paid-up capital thereof are held by or in trust for a body referred to in subparagraph

(i), (iii) or (iv),

not being land of which any part is used for the purpose of a commercial activity open to members of the public,

- (f1) land owned by the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983* or a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth,
- (g) land owned by or in trust for any person or society and used or occupied by that person or society solely as a site for—
- (i) a place of worship for a religious society, or a place of residence for any clergy or ministers or order of a religious society,
  - (ii) (Repealed)
  - (iii) a building (not being a building of which any part is used for the purpose of a commercial activity open to members of the public) owned and solely occupied by a society, club or association not carried on for pecuniary profit,
  - (iv) a charitable body,
  - (v) a public cemetery or crematorium,
  - (vi) a public garden, public recreation ground or public reserve,
  - (vii) a fire brigade, ambulance or mines rescue station,
  - (viii) a private health facility (within the meaning of the *Private Health Facilities Act 2007*) not carried on for pecuniary profit,
  - (ix) an authorised hospital within the meaning of the *Mental Health Act 1990* not carried on for pecuniary profit,
  - (x) (Repealed)
- (h) land owned by, or in trust for, any club or body of persons, and used primarily and principally for the purposes of any game or sport and not used for the pecuniary profit of the members of that club or body,
- (i) land owned by, or in trust for, any club or body of persons, formed for promoting or controlling horse-racing, trotting-racing or greyhound-racing and used primarily and principally for the holding of meetings for horse-racing, trotting-racing or greyhound-racing,
- (j) land used and occupied for the purpose of holding agricultural shows, or shows of a like nature and owned by, or held in trust for, a society which is established for

the purpose of holding such shows and is not carried on for the pecuniary profit of its members and applies its revenues substantially towards the promotion or holding of such shows,

- (k) land owned by a friendly society,
- (l) association property that is vested in an association under the *Community Land Development Act 2021* and is used primarily and principally—
  - (i) as an open access way or private access way within a community scheme, precinct scheme or neighbourhood scheme under the *Community Land Development Act 2021*, or
  - (ii) for the recreation of participants in such a scheme and their invitees, but is not used for a commercial purpose,
- (m) land owned by a State owned corporation (within the meaning of the *State Owned Corporations Act 1989*) specified in the regulations to the extent, and from the date (whether that date is before or after the commencement of the regulations), prescribed by the regulations in respect of the corporation,
- (n) land owned by any gas or electricity supply authority specified in the regulations (being an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*, a distributor that holds a licence to operate a distribution system under the *Electricity Supply Act 1995* or a gas distributor that holds an authorisation under the *Gas Supply Act 1996*) to the extent, and from the date (whether that date is before or after the commencement of the regulations), prescribed by the regulations in respect of such authority,
- (o) land owned by the Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch) and being the site of Anzac House,
- (p) land that is the subject of a biodiversity stewardship agreement under the *Biodiversity Conservation Act 2016*,
- (p1) land that is the subject of a conservation agreement under the *Biodiversity Conservation Act 2016* or the *National Parks and Wildlife Act 1974*, being an agreement that remains in force in perpetuity (that is, an agreement that remains in force for an indefinite period and that cannot be unilaterally terminated by the owner of the land),
- (p1A) land that is the subject of a registered Trust agreement that was referred to in section 36 of the *Nature Conservation Trust Act 2001* (being an agreement that is continued in force by clause 50 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* and that remains in force in perpetuity, as referred to in paragraph (p1)),

- (p2) land in which the Biodiversity Conservation Trust holds an interest,
  - (p3) land that is vested in, owned by, held on trust by or for, or leased by a joint government enterprise that has the function of allocating funds for water savings projects,
  - (q) land used solely as a police station,
  - (r) land that is exempt from taxation under the principal place of residence exemption, as provided for by Schedule 1A,
  - (r1) with respect to taxation leviable or payable in respect of the year commencing on 1 January 1987 or any succeeding year, land approved for multiple occupancy, and occupied, in accordance with an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979*,
  - (s) land used solely as a site for a school registered under the *Education Act 1990*,
  - (t) with respect to taxation leviable or payable in respect of the year commencing on 1 January 1975 or any succeeding year, land owned by a co-operative under the *Co-operatives National Law (NSW)* that has as its objects any of the objects listed in section 7 of the *Co-operation Act 1923*,
  - (u) land that is used solely for the provision of an approved education and care service (within the meaning of the *Children (Education and Care Services) National Law (NSW)*), but only if—
    - (i) the service is provided by an approved provider under that Law, and
    - (ii) the land is the place where children are educated or cared for by the service,
  - (v) land that is used solely for the provision of an approved education and care service (within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*), but only if—
    - (i) the service is a centre based education and care service within the meaning of that Act, and
    - (ii) the service is provided by an approved provider under that Act, and
    - (iii) the land is the place where children are educated or cared for by the service.
- (1A)-(1) (Repealed)
- (2) Where—
- (a) a building is erected on land to which the provisions of subsection (1) (f) or (g) (iii) or of section 10B or 10D (2) would apply if the building were solely occupied by the persons or bodies referred to in those provisions, and

- (b) the building is partly used or occupied, or is intended to be partly used or occupied, by persons other than those persons or bodies,

the land value of that land shall, for the purposes of the assessment of those persons or bodies, be reduced to an amount which bears the same proportion to that land value as the rental value of the part so used or occupied, or intended to be so used or occupied, by those other persons bears to the total rental value of the building.

(2A) Where—

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

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

(2AA) (Repealed)

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

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

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

(2C) If part of any land is the subject of any of the following agreements, the land value of that land is, for the purposes of the assessment of land tax, to be reduced by an amount that bears the same proportion to that land value as the area of the part that is the subject of the agreement bears to the area of the whole of the land—

- (a) a biodiversity stewardship agreement under the *Biodiversity Conservation Act 2016*,
- (b) a conservation agreement under the *Biodiversity Conservation Act 2016* or the *National Parks and Wildlife Act 1974*, being an agreement that remains in force in perpetuity (that is, an agreement that remains in force for an indefinite period and that cannot be unilaterally terminated by the owner of the land),

(c) land that is the subject of a registered Trust agreement that was referred to in section 36 of the *Nature Conservation Trust Act 2001* (being an agreement that is continued in force by clause 50 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* and that remains in force in perpetuity, as referred to in paragraph (b)).

(3) For the purposes of sub-paragraph (iii) of paragraph (g) of subsection (1), the use or occupation of any building or part of any building by any society, institution, club or association not carried on for pecuniary profit, which is affiliated with the owner of the land on which the building is erected, or with which that owner is affiliated, or which is controlled by or controls that owner, shall not be deemed to be use or occupation by a person other than the owner.

(4) Subsection (1) (g) (iii), and the other provisions of this section as they relate to that subparagraph, apply in respect of premises comprised in a strata lot as if those premises were a building erected on the site of the strata lot (and a reference to a building is to be construed as a reference to the strata lot).

(5) In this section—

**charitable body** means a body corporate, society, institution or other body carried on solely for charitable or educational purposes and not for pecuniary profit.

**strata lot** means a lot under the *Strata Schemes Development Act 2015*.

#### **10AA Exemption for land used for primary production**

(1) Land that is rural land is exempt from taxation if it is land used for primary production.

(2) Land that is not rural land is exempt from taxation if it is land used for primary production and that use of the land—

(a) has a significant and substantial commercial purpose or character, and

(b) is engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit is actually made).

(3) For the purposes of this section, **land used for primary production** means land the dominant use of which is for—

(a) cultivation, for the purpose of selling the produce of the cultivation, or

(b) the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce, or

(c) commercial fishing (including preparation for that fishing and the storage or preparation of fish or fishing gear) or the commercial farming of fish, molluscs, crustaceans or other aquatic animals, or

- (d) the keeping of bees, for the purpose of selling their honey, or
  - (e) a commercial plant nursery, but not a nursery at which the principal cultivation is the maintenance of plants pending their sale to the general public, or
  - (f) the propagation for sale of mushrooms, orchids or flowers.
- (4) For the purposes of this section, land is **rural land** if—
- (a) the land is zoned rural, rural residential, non-urban or large lot residential under a planning instrument, or
  - (b) the land has another zoning under a planning instrument, and the zone is a type of rural zone under the standard instrument prescribed under the [Environmental Planning and Assessment Act 1979](#), section 3.20, or
  - (c) the land is not within a zone under a planning instrument but the Chief Commissioner is satisfied the land is rural land.

#### **10A Land used for several purposes**

- (1) If land is used for more than one purpose and each of those purposes is an exempt purpose, the land is exempt from taxation.
- (2) A purpose for which land is used is an **exempt purpose** if land used solely for that purpose would be exempt from taxation because of its use for that purpose.

#### **10B Taxation of land owned by SAS Trustee Corporation**

Nothing in this Act operates to exempt from taxation under this Act any land owned by the SAS Trustee Corporation that is not land solely occupied by the SAS Trustee Corporation as offices from which to exercise and perform its powers, authorities, duties and functions.

#### **10C (Repealed)**

#### **10CA Taxation of land owned by Place Management NSW**

- (1) Nothing in this Act operates to exempt from land tax, or to otherwise affect the liability to land tax of, a lessee of any land—
  - (a) that is owned by Place Management NSW, and
  - (b) that was owned by the Sydney Cove Redevelopment Authority immediately before its dissolution on 1 February 1999, and
  - (c) in respect of which the Sydney Cove Redevelopment Authority was, immediately before 1 February 1999, liable for land tax under section 10C of this Act as then in force for the land tax year starting on 1 January 1999,while that land remains in the ownership of Place Management NSW.

- (2) For the purposes of this section, it is immaterial whether the lease was entered into before, on or after 1 January 1991.
- (3) This section applies to and in respect of land tax chargeable on land for the land tax year starting on 1 January 2001 and subsequent land tax years.

**10D Taxation of land owned by certain statutory corporations**

- (1) In this section **prescribed authority** means—
  - (a) (Repealed)
  - (b) a corporation constituted under section 4 or 23A of the *Growth Centres (Development Corporations) Act 1974*, or
  - (c) the New South Wales Planning and Environment Commission in respect of the development of the Sydney South West Sector.
- (2) Nothing in this Act operates to exempt from taxation under this Act any land owned by a prescribed authority that is—
  - (a) occupied by the authority as offices from which to exercise and perform its powers, authorities, duties and functions unless the land is solely so occupied, or
  - (b) land leased by the authority for commercial or industrial purposes.

**10E Taxation of land acquired for Urban Land Council**

Nothing in this Act operates to exempt from taxation under this Act any land owned by the Housing Commission of New South Wales or the New South Wales Planning and Environment Commission or any other corporation for the purposes of the Urban Land Council being land (other than land held for open space purposes) held for development.

**10F-10O (Repealed)**

**10P Limitation on exemption for charitable, educational, religious or non-profit bodies**

- (1) The exemption provided for in section 10 (1) (d), (e), (g) (iii), (g) (iv), (g) (vi), (h) or (p2) does not apply to a body referred to in any of those provisions if the Chief Commissioner is of the opinion that the constitution (by whatever name called) of the body makes provision for the distribution of the property of the body, in a dissolution of the body, in a manner that—
  - (a) would operate to vest some or all of that property in one or more of the members or former members of the body, or
  - (b) would ultimately lead (whether or not as a direct result of that dissolution) to some or all of the property of the body vesting in one or more of the members or former members of the body.



- (1A) The exemption provided for in section 10 (1) (g) (vi) does not apply if the land is—
- (a) owned by a natural person, otherwise than as a trustee, or
  - (b) owned by a natural person in trust for—
    - (i) another natural person, or
    - (ii) a body in respect of which the Chief Commissioner forms an opinion on the grounds referred to in subsection (1).
- (2) In subsection (1)—
- property** includes proceeds of the sale or other disposal of property.
- (3) The Chief Commissioner may exempt a body from the operation of subsection (1) (either in respect of the current tax year or that year and specified prior tax years) if satisfied that—
- (a) the body is not involved in a scheme or arrangement for the avoidance or evasion of land tax, and
  - (b) the constitution of the body will be altered within 6 months so that the constitution does not make provision as referred to in subsection (1).
- (4) An exemption under subsection (3) ceases if the constitution of the body is not so altered within 6 months after the exemption is granted.

**10Q Low cost accommodation—exemption/reduction**

- (1) Land is exempted from taxation under this Act leviable or payable in respect of the year commencing on 1 January 1995 or any succeeding year if—
- (a) the land is used and occupied primarily for low cost accommodation, and
  - (b) application for the exemption is made in accordance with this section, and
  - (c) the Chief Commissioner is satisfied that the land is so used and occupied in accordance with guidelines approved by the Treasurer for the purposes of this section.
- (2) The guidelines may include provisions with respect to the following—
- (a) the circumstances in which accommodation is taken to be low cost accommodation,
  - (b) the types and location of premises in which low cost accommodation may be provided,
  - (c) the number and types of persons for whom the accommodation must be provided,

- (d) the circumstances in which, and the arrangements under which, the accommodation is provided,
  - (e) maximum tariffs for the accommodation,
  - (f) periods within which tariffs may not be increased,
  - (g) the circumstances in which the applicant is required to give an undertaking to pass on the benefit of the exemption from taxation (or, if subsection (4) applies, the reduction in taxation) to the persons for whom the accommodation is provided in the form of lower tariffs.
- (3) A guideline may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind,
- or both.
- (4) If the Chief Commissioner is satisfied that part only of land or premises is used and occupied primarily for low cost accommodation in accordance with the Treasurer's guidelines, the land value of the land is to be reduced for the purposes of land tax in accordance with the principles in section 10R (3)–(3C).
- (5) This section does not apply to an owner of land in respect of a tax year unless—
- (a) the owner applies to the Chief Commissioner for the exemption or reduction, in the form approved by the Chief Commissioner, and
  - (b) the owner furnishes the Chief Commissioner with such evidence as the Chief Commissioner may request for the purpose of enabling the Chief Commissioner to determine whether there is an entitlement to the exemption or reduction.
- (6) Without limiting the other ways in which this section may cease to apply to a person, it ceases to apply to a person if the person breaches an undertaking given as referred to in subsection (2) (g).

#### **10R Retirement villages—exemption/reduction**

- (1) In this section—

***aged care establishment*** means—

- (a) any building or any part of a building used or intended to be used for the provision of residential care, within the meaning of the *Aged Care Act 1997* of the Commonwealth, by an approved provider under that Act, or

(b) any building or any part of a building used or intended to be used for the provision of respite care, within the meaning of the *Aged Care Act 1997* of the Commonwealth, by an approved provider under that Act.

**retirement village** has the same meaning as in the *Retirement Villages Act 1999*.

(2) Land is exempt from taxation under this Act if the land is used and occupied as any of the following, or any combination of the following, and for no other purpose—

(a) an aged care establishment,

(b) a retirement village.

(c) (Repealed)

(3) If the Chief Commissioner is satisfied that part only of land is used and occupied as referred to in subsection (2), the land value of the land is to be reduced for the purposes of land tax by an amount calculated as follows—

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

where—

**R**= the reduction in land value.

**A**= the land value of the land before reduction.

**B**= the area of the land used and occupied as referred to in subsection (2).

**C**= the total area of the land.

(3A) If part only of a building is used and occupied as referred to in subsection (2), a proportion (**the allowable proportion**) of the area of the land occupied by the building is to be included as part of the area of the land so used and occupied for the purpose of determining the value of “B” in the calculation under subsection (3).

(3B) The allowable proportion under subsection (3A) is the proportion specified in an application under subsection (3C) in respect of the land, subject to subsections (3D)–(3F).

(3C) Subsection (3A) does not apply unless application has been made to the Chief Commissioner by the owner of the land specifying the proportion that in the owner’s opinion is a fair and reasonable proportion of the area of land occupied by the building to be attributed to use and occupation as referred to in subsection (2). The application must be in a form approved by the Chief Commissioner and be accompanied by such supporting information as the Chief Commissioner may request.

- (3D) Despite subsection (3B), the Chief Commissioner may request the Valuer-General to determine the reduced land value to be attributed, for the purposes of assessing land tax, to that part of the land that is used or occupied otherwise than as referred to in subsection (2).
- (3E) If a request is made under subsection (3D)—
- (a) the Valuer-General must determine the reduced land value concerned, and
  - (b) the reduced land value so determined is (subject to subsection (3F)) the value of the land for land tax purposes (instead of the value obtained under subsections (3) and (3A)), and is to be entered in the Register accordingly.
- (3F) Part 3 (Notices and objections) and Part 4 (Appeals to Land and Environment Court) of the *Valuation of Land Act 1916* apply in respect of the reduced land value determined under subsection (3E) in the same way as those Parts apply in respect of a valuation under that Act.
- (4) For the purposes of this section, land does not cease to be used and occupied for the purpose of an aged care establishment or a retirement village merely because any building or improvement on the land is used or occupied for a purpose ancillary to that purpose.
- (5) This section applies to land tax payable in respect of the year commencing on 1 January 1991 and any succeeding year.

#### **10S Tax liability in respect of certain housing schemes**

- (1) In this section—
- eligible land** means—
- (a) land owned by N.S.W. Housing No. 1 Pty. Limited that the Chief Commissioner is satisfied is the subject of an arrangement known as the Public Equity Partnership Arrangement in which the New South Wales Land and Housing Corporation is a participant,
  - (b) land of which the trustee of the FANMAC Pooled Superannuation Trust No. 1 is an owner and which the Chief Commissioner is satisfied is the subject of a scheme known as the Rent/Buy Scheme in which the New South Wales Land and Housing Corporation is a participant.
- (2) Land is exempt from taxation under this Act if the land is eligible land.
- (3) This section applies in respect of the year commencing 1 January 2006 and any succeeding year.
- (4) (Repealed)

## **10T, 10U (Repealed)**

### **11 Limitation of exemption**

- (1) With respect to land which under section 10 is exempt from land tax the exemption shall be limited to the owner specified in that section, and shall not extend to any other person who is the owner of any estate or interest in the land.
- (2) This section does not apply in respect of the principal place of residence exemption (within the meaning of Schedule 1A).

**Note.**

See clause 2 (3) of Schedule 1A.

## **Part 4 Returns and liability**

### **12 Taxpayer to furnish returns**

- (1) The Chief Commissioner may by order published in the Gazette require all persons or specified classes of persons to furnish land tax returns for a specified year or years or for a specified year and each subsequent year.
- (1A) Every person subject to such a requirement in force in respect of a year shall furnish a land tax return to the Chief Commissioner on or before 31 January in that year.
- (1B) A land tax return required to be furnished by a person must—
  - (a) set out a full and complete statement of all land owned by the person at midnight on 31 December in the previous year, and
  - (b) set out, or be accompanied by, any information, as to the following, that may be required to complete the return—
    - (i) the person's land ownership,
    - (ii) the eligibility of the land for an exemption from land tax or for a reduction in the taxable value of the land.
- (1C) If land is the subject of a trust, the land tax return must also—
  - (a) set out, or be accompanied by, such information in relation to the trust and the beneficiaries of the trust as may be required to complete the return, and
  - (b) state the trustee's opinion as to whether the trust is a special trust.
- (1D) If 2 or more trustees are legal owners of the land that is the subject of the trust, the return is to be lodged jointly by those trustees.
- (2) The Chief Commissioner may at any time require any person to furnish a return or a further and fuller return setting forth a full and complete statement of all or any land

owned by the person, or in respect of which the person is agent or trustee, at midnight on the thirty-first day of December in any year including the year one thousand nine hundred and seventy-three or at midnight on the thirty-first day of October in any preceding year, with such other particulars as the Chief Commissioner requires, and whether or not any return has previously been made by that person in respect of land owned by the person, or in respect of which the person is agent or trustee, on that date.

- (3) All the provisions of this Act shall extend and apply to any return made or required in accordance with subsection (2).

### **13 (Repealed)**

### **14 Assessments to be made**

- (1) Subject to this Act and the [Taxation Administration Act 1996](#), the Chief Commissioner shall from the returns and from any other information in the Commissioner's possession or from any one or both of those sources, and whether any return has been furnished or not, cause an assessment to be made of the taxable value of the land owned by any taxpayer and of the land tax payable thereon.
- (2) An assessment can be made even if the time for lodging returns has not yet expired.

### **15 Notice of assessment to contain certain matters**

A notice of assessment under section 14 of the [Taxation Administration Act 1996](#) in relation to land tax must include a statement as to the taxable value of the land, together with such information as to the amounts determined under the [Valuation of Land Act 1916](#) as to—

- (a) the land value (or other relevant value) of the land, and
- (b) any allowances or apportionment factors relevant to the land,

from which the taxable value of the land has been derived.

### **16-19 (Repealed)**

### **20 Holder of limited estate taken to be owner**

- (1) The following persons are taken to be owners of land and are to be assessed for land tax accordingly—
- (a) the owner of any freehold estate in land less than the fee-simple (a **limited estate**),
- (b) any person entitled to an estate in the land in reversion or remainder.
- (2) For that purpose—

- (a) the owner of the limited estate is taken to be the primary taxpayer, and
  - (b) the person entitled to an estate in the land in reversion or remainder is taken to be the secondary taxpayer, and
  - (c) there is to be deducted from the land tax payable by the secondary taxpayer in respect of the land such amount (if any) as is necessary to prevent double taxation.
- (3) If the limited estate is a life estate, the life tenant under the life estate is taken to be an owner of the land to the exclusion of any person entitled to an estate in the land in reversion or remainder, but only if—
- (a) the life estate was created by the express terms of a will (and not by the exercise of a discretion conferred by a will), and
  - (b) the duration of the life estate is based on the life of the tenant and not the life of some other person.
- (4) This section does not apply if the limited estate is a freehold estate arising by virtue of a lease for life under a lease or an agreement for lease.

## **21 Conditional purchases etc**

Any person to whom the Crown has contracted to transfer the fee-simple in any land under the [Crown Land Management Act 2016](#) or under any other Act relating to the alienation or disposal of lands of the Crown, and any person who under any such Act holds land under a lease from the Crown in perpetuity, shall be deemed to be the owner of the land in fee-simple.

### **21A Company title units taken to be lots**

- (1) This section applies to land if—
- (a) 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 or one of 2 or more buildings on the land, and
  - (b) the Chief Commissioner is satisfied that the whole of the land is reasonably used in connection with the occupation of the building or buildings.
- (2) For the purposes of assessing land tax in respect of land to which this section applies—
- (a) each shareholder is deemed to be the owner of that part of the building or that building that the shareholder is entitled to occupy because of that share ownership, and

- (b) each such part of the building, or each such building, is deemed to be a lot in a freehold strata scheme under the *Strata Schemes Development Act 2015*, and
  - (c) the company is not to be regarded as the owner of the land.
- (3) For the purposes of the application of section 9B to and in respect of a part of a building, or a building, deemed by this section to be a lot, the proportion that the unit entitlement of that lot bears to the aggregate unit entitlement is—
- (a) unless paragraph (b) applies, the proportion that the deemed owner's shareholding in respect of the lot bears to the total issued share capital of the company, 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—
- (a) the proportion that the floor area of the deemed lot bears to the total floor area that is separately occupied, or capable of being used for separate occupation, in the building, or
  - (b) in the case of an entitlement to occupy one of 2 or more buildings, the proportion that the floor area of the deemed lot bears to the total floor area that is separately occupied, or capable of being used for separate occupation, in all of those buildings.
- (5) This section applies to land tax payable in respect of the year commencing on 1 January 1991 and any succeeding year.

**21B Joint owners of block of flats deemed to be owners of lots**

- (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 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—



- (a) each part of a building in which such an exclusive right of occupancy exists is deemed to be a separate parcel (the **notional parcel**), and
  - (b) each person who has that exclusive right of occupancy is deemed to be the owner (or the persons who jointly have that exclusive right of occupancy are deemed to be joint owners) of the notional parcel, and
  - (c) each such notional parcel is deemed to be a lot in a freehold strata scheme under the *Strata Schemes Development Act 2015*, 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 9B to and in respect of a notional parcel that under this section is deemed to be a 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.

### **21C Liability of lessees of land owned by Crown or local government bodies**

- (1) The Crown, a local council, a county council or a joint organisation 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 joint organisation is for land tax purposes deemed to be the owner of a parcel of land (**the notional parcel**) consisting of the land or part leased. The Crown, local council, county council or joint organisation is then not to be considered owner of the notional parcel.
- (3) If there are joint lessees, they are deemed 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 land value of the notional parcel is the land value of the entire parcel multiplied by the apportionment factor.
- (4A) For the purposes of this section, the **apportionment factor** is the proportion that the rental value of the notional parcel bears to the rental value of the entire parcel.

- (4B) The Chief Commissioner may request the Valuer-General to determine the land value of the notional parcel.
- (4BA) If a request is made under subsection (4B)—
- (a) the Valuer-General must determine the land value of the notional parcel, and
  - (b) the land value so determined is, subject to subsection (4C), the value of the notional parcel for land tax purposes, and is to be entered in the Register accordingly.
- (4BB) For the purpose of determining the average value of the notional parcel under section 9AA, if the notional parcel was not leased on 31 December immediately before either or both of the preceding land tax years (within the meaning of section 9AA (1)), the average value of the notional parcel is to be determined as provided for by section 9AA (7) (as if the notional parcel did not exist on the date or dates of 31 December on which it was not leased).
- (4C) Part 3 (Notices and objections) and Part 4 (Appeals to Land and Environment Court) of the [Valuation of Land Act 1916](#) apply in respect of the apportionment factor determined under subsection (4BA) in the same way as those Parts apply in respect of a valuation under that Act.
- (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,
  - (c) a lease of land from the Crown 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 joint organisation 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 in respect of which the Crown is liable for land tax (otherwise than under section 21CB),
  - (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 joint organisation,
  - (h) a lease of land on any part of the Island under the [Lord Howe Island Act 1953](#).

- (7) This section is taken to have applied on and from 31 December 1988 to land owned by the Crown.

**21CA Government lessor to notify lessee of land tax liability**

- (1) A Government entity that enters into a lease of land owned by the Government entity must give the lessee a land tax disclosure statement, in writing, before the lessee enters into the lease.
- (2) A **land tax disclosure statement** is a statement that advises the lessee that the lessee will be liable for land tax in respect of the land during the term of the lease if land tax is payable on the land.
- (3) Without limiting subsection (2), a land tax disclosure statement may be made—
- (a) in the terms of the lease, or
  - (b) as part of a disclosure statement for the lease that is given to the lessee before the lease is entered into.
- (4) A lessee enters into a lease when any of the following occurs (whichever happens first)—
- (a) the lessee executes the lease,
  - (b) the lessee enters into possession of the land under the lease,
  - (c) the lessee begins to pay rent under the lease.
- (5) The renewal of a lease is considered to be entry into a new lease for the term of the renewal.
- (6) The onus is on a Government entity to establish that it gave a land tax disclosure statement to a lessee before the lessee entered into the lease.
- (7) A Government entity that enters into a lease of land owned by the Government entity and that fails to comply with this section is a **non-complying lessor** for any land tax on the land that becomes payable during the term of the lease.

**Note.**

See section 21CB, which enables the Chief Commissioner to recover the land tax from the non-complying lessor if the lessee fails to pay the land tax.

- (8) This section applies to a lease only if the lessee under the lease is considered to be the owner of the land for land tax purposes because of section 21C.
- (9) In this section—

**Government entity** means the Crown, a local council or any other entity not liable for land tax in respect of land it owns under section 21C.

### **21CB Recovery of land tax from non-complying lessor**

- (1) If a lessee of land fails to pay a land tax amount in accordance with a notice of assessment issued by the Chief Commissioner, and there is a non-complying lessor for the land tax to which the assessment relates, the Chief Commissioner may serve a notice on the non-complying lessor notifying the lessor that—
  - (a) the lessee has failed to pay the land tax amount, and
  - (b) if the land tax amount is not paid by the date specified in the notice, the lessor will be liable for the land tax amount.
- (2) The date specified must be at least 21 days after service of the notice.
- (3) If the land tax amount is not paid by the date specified in the notice, the non-complying lessor is jointly and severally liable with the lessee to pay the land tax amount.
- (4) A non-complying lessor that is liable to pay a land tax amount under this section is entitled to be indemnified by the lessee for any payments made by the non-complying lessor to the Chief Commissioner to discharge liability for the land tax amount.
- (5) This section applies to a non-complying lessor that is a council despite section 741 of the [Local Government Act 1993](#).
- (6) In this section—

**land tax amount** means—

  - (a) the amount of land tax that a lessee has been assessed as being liable to pay, as set out in a notice of assessment issued to the lessee, and
  - (b) any interest or penalty tax payable in respect of that amount of tax.

**lessee** includes a former lessee.

**non-complying lessor** has the meaning given by section 21CA.

### **21D Liability of lessees of leasehold strata lots**

- (1) The lessee of land that is a leasehold strata lot is taken to be the owner of the leasehold strata lot for land tax purposes. The lessor of the lot is not to be considered to be the owner of the lot (unless the lessor is the lessee for the purposes of the [Strata Schemes Development Act 2015](#)).
- (2) Accordingly, the lessee is liable for any land tax payable in respect of the leasehold strata lot.
- (3) If there are joint lessees, they are deemed to be joint owners of the leasehold strata

lot.

- (4) This section does not apply in respect of land to which section 21C applies (land owned by the Crown, a local council, a county council or a joint organisation).
- (5) In this section—

**leasehold strata lot** means a lot in a leasehold strata scheme within the meaning of the *Strata Schemes Development Act 2015*.

**lessee**, in relation to a leasehold strata lot, means an owner, within the meaning of the *Strata Schemes Development Act 2015*, of the lot.

**lessor** means a lessor within the meaning of the *Strata Schemes Development Act 2015*.

## 22 Mortgages

No deduction from the land value of any land shall be allowed in respect of any mortgage, or in respect of any unpaid purchase money; and a mortgagor or person who holds land subject to payment of any unpaid purchase money shall be assessed and liable for land tax as if he or she were the owner of an unencumbered estate.

## 23 Mortgages

- (1) A mortgagee or other person owning any estate or interest in land by way of security for money shall not be liable to land tax in respect of that mortgage, estate or interest—

Provided that a mortgagee in possession of land, or any other person in possession of land by way of security for money shall, so long as such possession continues (though not to the exclusion of the liability of any other person) be deemed to be the owner of the land; and the mortgagor shall be deemed to be the primary taxpayer, and the mortgagee in possession to be the secondary taxpayer; and there shall be deducted from the land tax payable by the latter in respect of the land such amount (if any) as is necessary to prevent double taxation—

Provided further that the foregoing proviso shall not apply—

- (a) to any mortgagee or person in possession whose possession began before the first day of November one thousand nine hundred and fifty-six until a period of three years has elapsed since that date, or
- (b) to any mortgagee or person in possession whose possession began on or after the first day of November one thousand nine hundred and fifty-six until a period of three years after he or she has entered into possession.
- (2) For the purposes of this section a mortgagee in possession shall include a mortgagee

of land who is using such land, or who is in receipt of the rents or profits of such land, or who is in receipt of the income from any business carried on on such land, or who has appointed a receiver of the rents or profits of such land.

(3) Nothing in this section affects section 46.

## **24 Trustees**

Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he or she were beneficially entitled to the land—

Provided that where he or she is the owner of different lands in severalty, in trust for different persons who are not for any reason liable to be jointly assessed, the land tax so payable by the person shall be separately assessed in respect of each of those lands—

Provided also that when a trustee is also the beneficial owner of other land, he or she shall be separately assessed for that land, and for the land of which he or she is a trustee, unless for any reason he or she is liable to be jointly assessed independently of this section.

## **25 Equitable owner**

(1) The owner of any equitable estate or interest in land is liable in respect of land tax as if he or she were the legal owner of the estate or interest and land tax is to be assessed accordingly.

(2) For that purpose—

(a) the owner of the legal estate is taken to be the primary taxpayer and the owner of the equitable estate is taken to be the secondary taxpayer, and

(b) there is to be deducted from the land tax payable by the secondary taxpayer in respect of the land such amount (if any) as is necessary to prevent double taxation.

(3) This section does not apply in respect of land that is subject to a special trust.

(4) This section is subject to the other provisions of this Act, in particular sections 25A and 26.

## **25A Classification of trust as special trust**

(1) If land is subject to a trust, the Chief Commissioner may classify the trust as a special trust for land tax purposes—

(a) on the application of the trustee of the trust, or

(b) on the Chief Commissioner's own motion.

(2) Without limiting subsection (1) (b), the Chief Commissioner may classify a trust as a

special trust in relation to a land tax year if any information required to be provided for that land tax year in relation to the trust, the land that is the subject of the trust or the beneficiaries of the trust is not provided as required under this Act.

- (3) A classification of a trust as a special trust that is made on the application of the trustee of a trust has effect in respect of any assessment of land tax liability (being an initial assessment of land tax liability) that is made on or after the date on which the trust is classified as a special trust, and does not affect any assessment of land tax liability made before that classification.
- (4) However, if an application for classification of a trust as a special trust is duly made by the trustee within the period allowed for the lodging of an objection to a notice of assessment of land tax liability (being a notice that relates to an initial assessment of land tax liability)—
  - (a) the classification of the trust as a special trust is taken to extend to the land tax year in respect of which that notice of assessment was issued, and
  - (b) liability for that land tax is to be re-assessed accordingly.
- (5) The Chief Commissioner may revoke the classification of a trust as a special trust—
  - (a) on the application of the trustee of the trust, or
  - (b) on the Chief Commissioner's own motion.
- (6) The Chief Commissioner must revoke the classification of a trust as a special trust if the trust was classified as a special trust on the application of the trustee and an application for revocation is duly made by the trustee of the trust.
- (7) A revocation of a classification that is made on the application of the trustee of a trust has effect in respect of any assessment of land tax liability (being an initial assessment of land tax liability) that is made on or after the date on which the classification is revoked, and does not affect any assessment of land tax liability that was made before that revocation.
- (8) However, if an application for revocation is duly made by the trustee within the period allowed for the lodging of an objection to a notice of assessment of land tax liability (being an initial assessment of land tax liability), and the Chief Commissioner revokes the classification—
  - (a) the revocation is taken to extend to the land tax year in respect of which that notice of assessment was issued, and
  - (b) liability for land tax is to be re-assessed accordingly.
- (9) An application under this section is to be made in a form approved by the Chief Commissioner, and is to include such supporting information as the Chief

Commissioner requires.

- (10) The Chief Commissioner may, despite anything to the contrary in this section—
- (a) reject any application under this section if it is made in contravention of the trust or trust deed that declares the trust concerned, and
  - (b) reject any application for revocation of the classification of a trust as a special trust if any information required to be provided in relation to the trust, the land that is the subject of the trust or the beneficiaries of the trust has not been provided as required under this Act or the *Taxation Administration Act 1996*, and
  - (c) assess or re-assess any land tax liability for land the subject of a trust that is not a fixed trust on the basis of the trust being a special trust, including land tax liability in respect of land tax years that commenced or occurred before the trust was classified as a special trust.
- (11) In this section—
- fixed trust** has the meaning given by section 3A.

## 26 Purchaser and vendor

- (1) If land under the provisions of the *Real Property Act 1900* is the subject of an agreement for sale that has not been completed by transfer of the land, the person who is registered as the proprietor of the land under the *Real Property Act 1900* is taken, for the purposes of this Act, to be the owner of the land, to the exclusion of the liability of the purchaser.
- (2) If land, not being land under the provisions of the *Real Property Act 1900*, is the subject of an agreement for sale that has not been completed by conveyance of the land, the vendor of the land is taken, for the purposes of this Act, to be the owner of the land, to the exclusion of the liability of the purchaser.
- (3) However, the purchaser under the agreement for sale is taken, for the purposes of this Act, to be the owner of the land (to the exclusion of the liability of the registered proprietor or vendor) if under the terms of the agreement for sale—
- (a) the purchaser is entitled to receive, if the land is let to a tenant, any rents and profits derived from the tenancy, or
  - (b) the purchaser is entitled to exclusive possession of the land and has taken possession of the land.
- (4) In this section—
- agreement for sale** means an agreement for sale of land that is in force.



## 27 Joint owners

- (1) Joint owners of land shall be assessed and liable for land tax in accordance with the provisions of this section.
- (2) Joint owners (except those of them whose interests are exempt from taxation under this Act) are to be jointly assessed and liable in respect of the aggregate value of their proportionate interests in the land as if the land were owned by one person, without regard to their respective interests therein and without taking into account any land owned by any one of them in severalty or as joint owner with any other person (but by excluding the proportionate value of the interest of any joint owner so exempt).
- (2A) Where a joint owner of land is—
  - (a) a trustee under a special trust to which the land is subject, or
  - (b) a company classified under section 29 as a non-concessional company,no regard shall be had to the existence of the special trust or classification, as the case may be, in relation to the joint assessment and liability of the joint owners of the land as referred to in subsection (2), but regard shall be had to the existence of the special trust or classification, as the case may be, in relation to the separate assessment and liability of the joint owners as referred to in subsection (3).
- (3) Each joint owner of land shall in addition be separately assessed and liable in respect of—
  - (a) his or her individual interest in the land (as if he or she were the owner of a part of the land in proportion to his or her interest), together with
  - (b) any other land owned by him or her in severalty, and
  - (c) his or her individual interests in any other land.
- (3A) (Repealed)
- (4) The joint owners in respect of their joint assessment shall be deemed to be the primary taxpayer, and each joint owner in respect of his or her separate assessment to be a secondary taxpayer; and from the land tax payable in respect of his or her interest in the land by each joint owner under subsection (3) there shall be deducted such amount (if any) as is necessary to prevent double taxation.
- (5) A joint owner of land who is not otherwise exempt from taxation under this Act is not exempt merely because the person is a joint owner with the Commonwealth, and the person is to be assessed and liable under this section accordingly (with the interest of the Commonwealth being treated as the interest of a joint owner exempt from taxation under this Act).

**Note.**

See also Schedule 1AA in relation to family unit trusts.

**28 (Repealed)**

**29 Related companies**

- (1) For the purposes of this section, 2 companies are related to each other—
- (a) if one of those companies holds a controlling interest in the other company, or
  - (b) if the same person holds, or the same persons together hold, a controlling interest in both companies, or
  - (c) if—
    - (i) more than one-half of the issued share capital of one of those companies (in this paragraph referred to as **the first company**) is held by the other company (in this paragraph referred to as **the second company**) together with the shareholders of the second company, and
    - (ii) the proportion of the issued share capital of the second company held by shareholders of the first company is more than the difference between one-half and the proportion of the issued share capital of the first company held by the second company, or
  - (d) if one of those companies is related to a company to which the other of those companies is related (including a company which is related to the other of those companies by reason of another application or other applications of this paragraph).
- (1A) A person holds, or persons together hold, a **controlling interest** in a company if—
- (a) the person, or the persons acting together, can control the composition of the board of directors of the company, or
  - (b) the person is, or the persons acting together are, in a position to cast or control the casting of more than half of the maximum number of votes that might be cast at a general meeting of the company, or
  - (c) the person holds, or the persons acting together hold, more than half of the issued share capital of the company.
- (2) For the purposes of determining whether companies are related, the following provisions apply—
- (a) companies may be related to each other notwithstanding that those companies do not own land in New South Wales,

- (a1) in subsections (1) (b) and (1A), **person** includes company,
  - (b) a reference to the issued share capital of a company does not include a reference to any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital,
  - (c) any shares held or power exercisable by a person or company as a trustee or a nominee for another person or company—
    - (i) are to be treated as held or exercisable by that other person or company, if the trust is a fixed trust, and
    - (ii) are to be treated as not held or exercisable by the trustee or nominee (whether or not the trust is a fixed trust),
  - (d) any shares held or power exercisable by a person or company by virtue of the provisions of any debentures of another company, or of a trust deed for securing any issue of any such debentures, shall be disregarded,
  - (e) any shares held or power exercisable by, or by a nominee for, any person or company (not being held or exercisable as mentioned in paragraph (d)) shall be treated as not held or exercisable by that person or company if the ordinary business of that person or company includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with that person or company within the meaning of Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth,
  - (f) without limiting by implication the circumstances in which the composition of a company's board of directors is to be taken to be controlled by a person or another company, the composition of a company's board of directors shall be taken to be controlled by a person or another company if that person or other company, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors.
- (3) The Chief Commissioner, in assessing the land tax payable by companies that are related to each other and that own land in New South Wales—
- (a) may assess—
    - (i) all those companies separately,
    - (ii) all those companies jointly, or
    - (iii) any 2 or more of those companies jointly and the remainder separately, and

(b) shall classify—

- (i) 1 of those companies, or, where a joint assessment is made, the companies jointly assessed, as a concessional company, and
- (ii) the remainder (if any) as non-concessional companies,

and the companies shall be liable accordingly.

- (4) Where 2 or more companies are jointly assessed under subsection (3), those companies shall, for the purposes of that assessment, be deemed to be a single company.
- (5) Where 2 or more companies related to each other are liable for land tax (whether assessed separately or jointly), each company is liable jointly and severally to pay that tax.
- (6) Section 45 of the *Taxation Administration Act 1996* applies to an amount payable under subsection (5).
- (7) If a company is classified as a non-concessional company, the company, and each of the companies that are related to it, are members of the same group.

### **30-32 (Repealed)**

### **33 Deductions to prevent double taxation**

Where under this Act—

- (a) any person is deemed to be the secondary taxpayer in respect of any land or interest, and
- (b) it is provided that there shall be deducted from the land tax payable by the secondary taxpayer, in respect of the land or interest, such amount (if any) as is necessary to prevent double taxation,

the amount of the deduction (if any) shall be the lesser of the following amounts—

- (i) the amount of land tax payable in respect of the land or interest by the secondary taxpayer, or
- (ii) the amount of land tax (if any) payable in respect of the land or interest by the primary taxpayer aggregated with the amount of land tax (if any) payable in respect of the land or interest by a precedent secondary taxpayer (if any)—

Provided that the secondary taxpayer shall be assessed and liable in respect of the land or interest, notwithstanding that the primary taxpayer is exempt from taxation in respect of the land or interest, or that there is no primary taxpayer in respect of the land or interest.

### **34 Meaning of land tax payable in respect of certain land**

- (1) Where in this Act reference is made to the land tax payable by a person in respect of any land or interest, the reference is to so much of the whole land tax payable by the person as bears to the whole land tax payable by the person the proportion which the average value of the land or interest referred to bears to the average value of all the land (including any interest in land) owned by the person.
- (2) (Repealed)

## **Part 5**

### **35-38D (Repealed)**

## **Part 6 Collection and recovery of land tax**

### **39 Date for payment of land tax**

- (1) Land tax payable by a taxpayer is due and payable as required by the relevant notice of assessment served on the taxpayer concerned.
- (2) (Repealed)
- (3) No payment of land tax is required earlier than 30 days after service of the notice of assessment on the taxpayer.
- (4), (5) (Repealed)

### **40 Discount for early payment**

- (1) A person who pays land tax within 30 days after service of the notice of assessment of the land tax is entitled to a discount of the amount of land tax specified in the assessment excluding overdue land tax if—
  - (a) the whole of the amount specified in the assessment is paid, and
  - (b) no other liability in relation to land tax, interest or penalty tax is, at the time of payment, payable by the person to the Chief Commissioner (including a liability subject to objection, appeal or other dispute) or any such liability is paid in full when making the payment.
- (2) The discount is to be at the rate determined by order of the Treasurer published in the Gazette. A rate may be determined in respect of assessments generally or in relation to assessments issued in a specified land tax year.
- (3) This section has effect despite any other provision of this Act or the [Land Tax Act 1956](#).

### **41-44 (Repealed)**

#### **45 Statutes of limitations**

No statute of limitations at any time in force shall bar or affect any action or remedy for recovery of land tax.

#### **46 Remedy against other persons where taxpayer makes default**

- (1) Where a taxpayer makes a default in the payment of land tax then, without in any way releasing him or her from his or her liability, the following provisions shall apply as long as the default continues—
  - (a) If the land tax is payable in respect of land subject to any mortgage or lease or occupied by any person, then the mortgagee, lessee or occupier shall, upon being served with a notice by the Chief Commissioner requiring payment thereof, be responsible for the payment of the land tax, and it may be recovered from him or her as if he or she were the defaulting taxpayer.
  - (b) All payments made under this section by a mortgagee, lessee or occupier shall be deemed to be made on behalf of the defaulting taxpayer—

Provided that the responsibility of the lessee or occupier under this section shall only be to the extent of any rent or payments due by him or her to the taxpayer at the time of the demand for payment made by the Chief Commissioner, or from time to time accruing due thereafter.

- (2) Any payment to the Chief Commissioner under this section shall be a valid discharge to the lessee or occupier for such rent or payment due by the lessee or occupier to the taxpayer as against all other persons whomsoever.
- (3) A reference in this section to a mortgagee includes a reference to a person owning an estate or interest in land by way of security for money.
- (4) The Chief Commissioner may release a mortgagee, lessee or occupier from a liability under this section on payment of an amount that the Chief Commissioner estimates to be not less than the proportion of the land tax payable by the defaulting taxpayer in respect of the land mortgaged, leased or occupied.

#### **46A (Repealed)**

#### **47 Land tax to be first charge on land**

- (1) Land tax shall until payment be a first charge upon the land taxed in priority over all other encumbrances whatever, and where the land taxed comprises two or more parcels the land tax payable on the land taxed shall be a first charge on each and every such parcel and notwithstanding any disposition of the land or any part thereof the land or part shall continue to be liable in the hands of any purchaser or holder for the payment of the land tax so long as it remains unpaid.

(1A) The Chief Commissioner—

- (a) on the application of any person, and
- (b) on payment of a fee determined by the Chief Commissioner (or the making of arrangements satisfactory to the Chief Commissioner for its payment),

is to issue a certificate showing if there is any land tax charged on land the subject of the application.

The Chief Commissioner may include in the certificate the land value of the land and average value of the land in relation to a specified land tax year.

(1AA) In relation to an application for a certificate—

- (a) the application is to be in a form approved by the Chief Commissioner, and
- (b) a separate application must be made for each parcel of land that is separately valued under the [Valuation of Land Act 1916](#) or otherwise separately valued for the purposes of land tax assessment, and
- (c) the Chief Commissioner may require further information or evidence with respect to the land concerned, or to any other land owned by the owner of that land, before issuing the certificate.

(1B) The application fee for a certificate is to be paid in such manner as may be approved by the Chief Commissioner.

(1BA) The Chief Commissioner may determine—

- (a) the means by which a certificate may be issued, including electronically, and
- (b) the form of a certificate, including as a document or in an electronic form or a form that may be produced from an electronic message.

(1C) A certificate issued by the Chief Commissioner under this section is conclusive evidence of the matter certified against the Chief Commissioner and 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 (other than a genuine purchaser for value who has not obtained possession 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.

(1E)–(1G) (Repealed)

(2) The Chief Commissioner may release the land taxed, or any part of the land, from the charge imposed by subsection (1)—

(a) on payment of an amount the Chief Commissioner estimates to be not less than the proportion of land tax referable to the land or part, or

(b) without payment of land tax if—

(i) the Chief Commissioner is satisfied that there is no significant risk that the land tax for which the charge is imposed will not be paid, and

(ii) a person who is or may become liable to pay the land tax is not in arrears in payment of any land tax.

(2A) Where any land sold under section 713 of the [Local Government Act 1993](#) is liable to a charge under subsection (1), the Chief Commissioner may release the land from the charge on payment of that part of the proceeds of sale under sections 718 and 719 of that Act that is available to pay the land tax in respect of the land.

(3) The provisions of this section have effect despite anything contained in—

(a) section 34 or any other provision of this Act, or

(b) section 42 of the [Real Property Act 1900](#).

(4) Subsection (1) does not apply to land to which section 21A (Company title units taken to be strata lots) or section 21C (Liability of lessees of land owned by Crown or council) applies.

#### **48, 49 (Repealed)**

#### **50 Functions of Hardship Review Board**

The Hardship Review Board constituted under the [State Debt Recovery Act 2018](#) may exercise its functions under that Act and the [Taxation Administration Act 1996](#) in relation to land tax payable under this Act.

#### **50A (Repealed)**

#### **51 Definition of land tax for certain purposes of this Part**

For the purposes of sections 45, 46, 47 and 50, **land tax** includes interest and penalty tax imposed under section 72, or under section 47 or Part 5 of the [Taxation Administration Act 1996](#).



**52, 53 (Repealed)**

**Part 7 Valuation of land**

**Divisions 1-2A**

**54-62HE (Repealed)**

**Division 3 Unutilised value allowances**

**62I Purpose and interpretation of Division**

- (1) This Division applies for the purposes of section 9A (Concession for unutilised land value).
- (2) Expressions used in this Division have the same meanings as in Division 2 of Part 8 of Chapter 15 of the *Local Government Act 1993*, except to the extent that such a meaning would be inconsistent with the meaning given by this Act.

**62J Land that is eligible to have unutilised value ascertained**

- (1) Land is eligible to have an unutilised value allowance ascertained for its land value as at 1 July in a year if it satisfies the description in either of the following paragraphs as at midnight on 30 June in that year—
  - (a) a parcel of land used or occupied solely as the site of a single dwelling-house and which is, under an environmental planning instrument, zoned or otherwise designated for use for the purposes of industry, commerce or the erection of residential flat buildings,
  - (b) a parcel of land (which may comprise one or more lots or portions in a current plan within the meaning of the *Conveyancing Act 1919*) used or occupied solely as the site of a single dwelling-house and which is, under an environmental planning instrument, zoned or otherwise designated, so as to permit its subdivision for residential purposes.
  - (c) (Repealed)
- (2) (Repealed)

**62K Unutilised value allowance to be ascertained on application of owner**

- (1) The owner of land may apply to the Chief Commissioner for an unutilised value allowance to be ascertained for the land value of the land. The application must be in the form required by the Chief Commissioner and be accompanied by such supporting information as the Chief Commissioner may request.
- (1A) If satisfied that the land to which such an application relates satisfies the description in any of the paragraphs of section 62J (1), the Chief Commissioner must refer the

application to the Valuer-General for determination of an unutilised value allowance.

- (2) The Valuer-General must then ascertain the allowance if the land is eligible to have that allowance ascertained.
- (3) An allowance ascertained by the Valuer-General under this Division is to be entered by the Valuer-General in the Register in respect of the land value to which it relates and is to be shown in any assessment to which it is applicable.

**62L How unutilised value allowance is ascertained**

- (1) The unutilised value allowance for a land value is the amount calculated by deducting from the land value of the land the value that the land would have if it could be used only as the site of a single dwelling-house.
- (2) However, no account is to be taken of any portion of the land which is in excess of that which is reasonably necessary to be occupied or used in conjunction with the single dwelling-house.

**62M Unutilised value allowance to be reascertained in certain cases**

If the land value of land in respect of which an unutilised value allowance was ascertained is altered (whether as the result of being reascertained or on objection or appeal or for the correction of a clerical error or misdescription), the Valuer-General must reascertain an unutilised value allowance for that land value.

**62N Unutilised value allowance can be objected to**

- (1) An objection under Part 3 of the *Valuation of Land Act 1916* may be made to an allowance ascertained under this Division as if it were a land value.
- (2) The right to object in respect of the land value of land includes the right to object on the ground that an allowance under this Division has not been ascertained for that land value.

**Division 4 Tax threshold and premium rate threshold**

**62O (Repealed)**

**62P Tax threshold**

The tax threshold for the following land tax years is as follows—

- (a) 2006—\$352,000,
- (b) 2007—\$352,000,
- (c) 2008—\$359,000,
- (d) 2009—\$368,000,

- (e) 2010—\$376,000,
- (f) 2011—\$387,000,
- (g) 2012—\$396,000,
- (h) 2013—\$406,000,
- (i) 2014—\$412,000,
- (j) 2015—\$432,000,
- (k) 2016—\$482,000,
- (l) 2017—\$549,000,
- (m) 2018—\$629,000,
- (n) 2019—\$692,000,
- (o) 2020—\$734,000,
- (p) 2021—\$755,000,
- (q) 2022—\$822,000,
- (r) 2023—\$969,000,
- (s) for a land tax year after the 2023 land tax year—\$1,075,000.

**62Q, 62R (Repealed)**

**62S Premium rate threshold**

The premium rate threshold for the following land tax years is as follows—

- (a) 2009—\$2,250,000,
- (b) 2010—\$2,299,000,
- (c) 2011—\$2,366,000,
- (d) 2012—\$2,421,000,
- (e) 2013—\$2,482,000,
- (f) 2014—\$2,519,000,
- (g) 2015—\$2,641,000,
- (h) 2016—\$2,947,000,

- (i) 2017—\$3,357,000,
- (j) 2018—\$3,846,000,
- (k) 2019—\$4,231,000,
- (l) 2020—\$4,488,000,
- (m) 2021—\$4,616,000,
- (n) 2022—\$5,026,000,
- (o) 2023—\$5,925,000,
- (p) for a land tax year after the 2023 land tax year—\$6,571,000.

#### **62T Review of thresholds**

- (1) The Treasurer must review the tax threshold and the premium rate threshold to determine whether the thresholds continue to be appropriate in the circumstances.
- (2) The review must be undertaken by 1 June 2027.
- (3) A report on the outcome of the review must be tabled in each House of Parliament as soon as practicable after 1 June 2027.

#### **62U (Repealed)**

### **Divisions 4A, 5**

#### **62TA-62TC, 62V, 62X, 62Z, 62ZA (Repealed)**

## **Part 8 Miscellaneous**

### **63 Powers of entry and investigation**

A Judge or assessor of the Land and Environment Court is an authorised officer (within the meaning of the [Taxation Administration Act 1996](#)) for the purposes of this Act.

#### **63A (Repealed)**

### **63B Application of Act to persons or bodies having Crown immunity**

- (1) The Governor may, by order published in the Gazette, apply the whole or any specified provisions of this Act to any specified person or body (whether statutory or otherwise) that has Crown immunity.
- (2) While any such order is in force, the specified person or body is subject to the requirements of this Act accordingly.

**Editorial note.**

For orders under this section see Gazettes No 49 of 19.4.1996, p 1830, No 31 of 27.3.1997, p 1717 and No 76 of 2.7.1999, p 4643. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

#### **64 Agents and trustees**

With respect to every agent, and with respect also to every trustee, the following provisions shall apply—

- (a) He or she shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the land controlled or held by him or her in his or her representative capacity and the payment of land tax thereon.
- (b) He or she shall in respect of such land make the returns and be assessed thereon, but in his or her representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he or she is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) Where as agent or trustee he or she pays land tax, he or she is hereby authorised to recover the amount so paid from the person on whose behalf he or she paid it, or to deduct it from any money in his or her hands belonging to that person.
- (e) He or she is hereby authorised and required to retain from time to time out of any money which comes to him or her in his or her representative capacity so much as is sufficient to pay the land tax which is or will become due in respect of the land.
- (f) He or she is hereby made personally liable for the land tax payable in respect of the land if, while the land tax remains unpaid, he or she alienates, charges, or disposes of any real or personal property which is controlled or held by him or her in his or her representative capacity but he or she shall not be otherwise personally liable for the land tax.
- (g) If he or she is a trustee he or she may raise whatever moneys are necessary in order to pay the land tax by mortgage or charge with or without power of sale of any real or personal property held by him or her as such trustee, and may apply the money so raised or any other moneys in his or her possession as such trustee in paying the land tax.
- (h) He or she is hereby indemnified for all payments which he or she makes in pursuance of this Act, or by requirement of the Chief Commissioner.
- (i) For the purpose of ensuring the payment of land tax, the Chief Commissioner shall have the same remedies against all land or other property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he or she would have against the land or other property of any other taxpayer in respect of land tax, and in as full and ample a manner.

**65-67 (Repealed)**

**68 Valuer-General to furnish copies of Register of Land Values to Chief Commissioner**

On request made by the Chief Commissioner, the Valuer-General must furnish to the Chief Commissioner such copies of the Register of Land Values, and of any valuation list or supplementary list prepared by the Valuer-General, as the Chief Commissioner may require.

**68A Keeping of records by owners of land**

- (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.

**69-71 (Repealed)**

**72 Failure to furnish returns or information**

- (1) A taxpayer who fails or neglects duly to furnish any return or information as and when required by this Act or the Chief Commissioner, or who fails to include in any return any land owned by the taxpayer, is taken to have committed a tax default for the purposes of Part 5 of the *Taxation Administration Act 1996*.
- (2) In relation to the tax default—
  - (a) interest is payable in accordance with Part 5 of the *Taxation Administration Act 1996* but accrues on the amount of land tax assessable to the taxpayer for the period commencing on the last day allowed for furnishing the return or information, or the correct particulars of land ownership, and ending on—
    - (i) the day on which the return or information is furnished or the correct particulars are furnished, or
    - (ii) the day on which the assessment calculated on the basis of the return or information that is required, or the correct particulars that are required, is made, or

(iii) the day on which the whole of the land tax assessable to the person is paid, whichever occurs first, and

(b) penalty tax is payable in accordance with Part 5 of the *Taxation Administration Act 1996* on the amount of tax unpaid.

### **73 Special provisions for land subject to property tax**

- (1) A reference in section 34(1) to the average value of land owned by a person does not include the value of land subject to property tax if the person is an included owner of the land.
- (2) If the land subject to property tax is hybrid land, the value of the land subject to property tax means the value of the proportion of the land subject to property tax divided among the included owners of the land in proportion to their ownership shares.
- (3) Despite section 47, unpaid land tax is not a charge on land subject to property tax if the land was subject to property tax before the liability for the land tax arose.
- (4) Subsection (3) does not apply to hybrid land.
- (5) To avoid doubt, land becoming subject to property tax does not affect an existing charge on the land.
- (6) Terms used in this section have the same meanings as in the *Property Tax (First Home Buyer Choice) Act 2022*.

### **74-77 (Repealed)**

### **78 General penalty**

Any person guilty of a breach of this Act for which no penalty is otherwise provided shall be liable to a penalty not exceeding 2 penalty units.

### **79, 80 (Repealed)**

### **81 Repeals and refunds**

- (1) The Acts specified in Schedule 1, and to the extent to which they have not been already repealed, are hereby repealed.
- (2) (Repealed)
- (3) Any person who has paid land tax pursuant to any of the Acts specified in Schedule 1 in respect of the year that commenced on the first day of January one thousand nine hundred and fifty-six shall be refunded an amount equal to one-sixth of the land tax so paid by the person.

## 82 Regulations

- (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act.
- (2) (Repealed)
- (3) The regulations may impose penalties not exceeding 1 penalty unit for any breach thereof.

## 83 Savings and transitional provisions

Schedule 2 has effect.

## Part 9

(Repealed)

## Schedule 1AA Family unit trusts—special provisions

(Section 3A (4) (f))

### 1 (Repealed)

### 2 Family unit trust—special concession

- (1) A unit trust is a **family unit trust** in relation to the land tax year commencing on 1 January 2006 if, at midnight on 31 December 2005—
  - (a) the trust property includes land (other than land that is exempt from taxation under this Act), and
  - (b) the taxable value of that land does not exceed \$1,000,000, and
  - (c) the unit holders in the unit trust have fixed entitlements under the trust, and
  - (d) the units in the unit trust are family-owned.
- (2) The unit trust continues to be a family unit trust in relation to each subsequent land tax year unless, before the commencement of that land tax year—
  - (a) the trust acquires additional land and, as a result of that acquisition, the taxable value of the land that is the subject of the trust (and that is not exempt from taxation) exceeds \$1,000,000 (with the taxable value of the land being the taxable value for the land tax year during which the acquisition was made), or
  - (b) the unit holders cease to have fixed entitlements under the trust, or
  - (c) the units in the unit trust cease to be family-owned.



- (3) If the unit trust ceases to be a family unit trust in relation to a subsequent land tax year, it cannot then become a family unit trust again (despite any changes in the land holdings or any other circumstances of the trust).
- (4) Unit holders in a unit trust have **fixed entitlements** under the trust if—
- (a) the unit holders are entitled to a fixed proportion of the income or capital distributions of the trust (if any are made) based on the number or class of units owned by them, and
  - (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of a discretion, or by a failure to exercise a discretion, conferred on any person under the trust.
- (5) Units in a unit trust are **family-owned** if—
- (a) in the case of a unit trust where the units are owned by one person—
    - (i) the person is a non-trustee, or
    - (ii) the person is a family trustee, or
  - (b) in the case of a unit trust where the units are owned by 2 or more persons, not less than 95% of the units in the unit trust are owned by non-trustees or family trustees (or a combination of both) who are members of the same family.
- (6) A person is a member of the same family as another person if—
- (a) the person is married to the other person or is the de facto partner of the other person, or
- Note.**
- “De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).
- (b) the person is the child of the other person (whether by birth, adoption or marriage), or
  - (c) the Chief Commissioner is satisfied, on the basis of any other relationship between the persons, that they can be considered to be members of the same family.
- (7) If a person owns a unit in a unit trust as a family trustee, the person is treated as a member of the same family as another person only if the beneficiaries of the trust of which the person is family trustee—
- (a) are members of the same family as the other person, or
  - (b) if the other person is also a family trustee, are members of the same family as the beneficiaries of the trust of which the other person is family trustee.
- (8) In this clause—

**family trustee** means a person who owns a unit in a unit trust as trustee of another trust which—

- (a) has only one beneficiary, who is a natural person, or
- (b) has 2 or more beneficiaries, who are all natural persons and members of the same family.

**non-trustee** means a natural person who owns a unit in a unit trust otherwise than as trustee of another trust.

- (9) For the purposes of this clause, if a person owns a unit in a unit trust as trustee of a trust that is a superannuation trust in relation to the land tax year (within the meaning of section 3A), the members of that superannuation trust are taken to be beneficiaries of the trust.

### 3 Unit holders taken to be joint owners of land

- (1) If a unit trust is a family unit trust in relation to a land tax year, the unit holders in that unit trust are taken, for the purposes of section 27, to be joint owners of the land that is the property of the trust—
  - (a) in the same proportion as the number of units held by them, or
  - (b) if there are different classes of units in the unit trust, in the same proportion as the number of units held by them of a class that entitle the holders to participate in capital distributions of the trust.
- (2) This clause does not apply to unit holders in a unit trust which is a superannuation trust in relation to the land tax year (within the meaning of section 3A).

## Schedule 1A Principal place of residence exemption

(Section 10 (1) (r))

### Part 1 Preliminary

#### 1 Definitions

- (1) In this Schedule—

**principal place of residence exemption**—see clause 2.

**residential land**—see clause 3.

**strata lot** means a lot under the [Strata Schemes Development Act 2015](#).

**taxing date**—means midnight on the thirty-first day of December.

- (2) For the purposes of this Schedule, a reference to the owner of land includes, if there

are joint owners, any one or more of those joint owners.

## Part 2 Principal place of residence exemption

### 2 Principal place of residence exemption

- (1) Land used and occupied by the owner as the principal place of residence of the owner of the land, and for no other purpose, is exempt from taxation under this Act, in respect of the year commencing 1 January 2005 or any succeeding year, if the land is—
  - (a) a parcel of residential land, or
  - (b) a strata lot or, subject to this Schedule, land comprised of 2 or more strata lots.
- (2) Land is not used and occupied as the principal place of residence of a person unless—
  - (a) the land, and no other land, has been continuously used and occupied by the person for residential purposes and for no other purposes since 1 July in the year preceding the tax year in which land tax is levied, or
  - (b) in any other case, the Chief Commissioner is satisfied that the land is used and occupied by the person as the person's principal place of residence.
- (3) If the owner of land is entitled to the exemption conferred by this Schedule, no other person is liable to be assessed for taxation under this Act in respect of the land during the period of the owner's entitlement to the exemption.
- (4) The exemption conferred by this Schedule is referred to as the ***principal place of residence exemption***.
- (5) The principal place of residence exemption is subject to the restrictions set out in Part 4.

### 3 Residential land—meaning

- (1) In this Schedule, ***residential land*** means land that is used and occupied for residential purposes and for no other purpose, that use and occupation being use and occupation of a building or buildings designed, constructed or adapted for residential purposes, other than a building or buildings—
  - (a) comprised of strata lots or residential units, or
  - (b) containing (out of the total of all rooms in the building or buildings) occupancies other than that of the owner, or
  - (c) from any part of which income is derived.
- (2) Land does not cease to be used and occupied as provided by subclause (1) by reason

of there being on that land any building or improvement that is used or occupied for a purpose ancillary to the purposes for which the building is, or the buildings are, designed, constructed or adapted.

**Note.**

Clause 4 allows one residential occupancy to be disregarded in applying the principal place of residence exemption. Clause 5 allows the use of land for purposes ancillary to a business conducted at a different place to be disregarded in certain circumstances.

## **Part 3 Concessions in application of principal place of residence exemption**

### **4 Concession for land on which there is one other residential occupancy**

- (1) For the purposes of the principal place of residence exemption, if a building or buildings used or occupied for residential purposes contains or contain a residential occupancy other than that of the owner, the use of the building or buildings for the purpose of that residential occupancy may be disregarded if—
  - (a) the residential occupancy is an excluded residential occupancy, and
  - (b) the building contains or buildings contain (out of a total of all rooms in the building or buildings) not more than one of those excluded residential occupancies (not including the occupancy of the owner).
- (2) For the purposes of this clause, each of the following residential occupancies is an **excluded residential occupancy**—
  - (a) one room,
  - (b) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy,
  - (c) one flat,
  - (d) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy, and one room,
  - (e) one flat and one room,
  - (f) 2 rooms, each of which is separately occupied.
- (3) Accordingly, land does not cease to be residential land because there is on the land one, but not more than one, such excluded residential occupancy, even if income is derived from the residential occupancy.
- (4) If land is comprised of 2 or more lots or strata lots, the excluded residential occupancy must be located on a lot or strata lot that is also used and occupied by the owner of

the land for residential purposes.

## **5 Concession for land used for incidental business purposes**

- (1) For the purposes of the principal place of residence exemption, if land owned by a person is used and occupied by the owner primarily for residential purposes but not more than one room is used primarily for business purposes, the use of the land for the purpose of the business may be disregarded if the business is primarily conducted elsewhere.
- (2) Accordingly, land does not cease to be residential land because of the use of one room primarily for business purposes, even if income is derived from the use of the land for that purpose.
- (3) Nothing in this clause affects, or is affected by, clause 3.

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

- (1) An owner of unoccupied land is entitled to claim the land as the owner's principal place of residence if the owner intends to use and occupy the land solely as the owner's principal place of residence. In such a case, the owner is taken, for the purpose of the principal place of residence exemption, to use and occupy the unoccupied land as the owner's principal place of residence.

### **Note.**

It is an offence under section 55 of the [Taxation Administration Act 1996](#) to make a statement to a tax officer, or give information to a tax officer, orally or in writing, knowing that it is false or misleading in a material particular.

- (2) This clause does not apply unless—
  - (a) the land is unoccupied because the owner intends to carry out, or is carrying out, building or other works necessary to facilitate the owner's intended use and occupation of the land as a principal place of residence, and
  - (b) if those building or other works have physically commenced on the land, no income has been derived from the use and occupation of the land since that commencement, and
  - (c) the intended use and occupation of the land is not unlawful.
- (3) This clause applies in respect of the assessment of a person's ownership of land only in the period of—
  - (a) 4 tax years immediately following the year in which the person became owner of the land, or
  - (b) if, after the person became owner and before the building or other works physically commence, the land is used and occupied for residential purposes by

another person—4 tax years immediately following the tax year in which the other person ceases to use and occupy the land for those purposes.

(4) Without limiting subclause (3) (a)—

(a) this clause does not apply in respect of the assessment of a person's ownership of land in a period referred to in subclause (3) (b) unless the Chief Commissioner is satisfied that, by the end of the first of the 4 tax years concerned—

(i) the building or other works will be, or have been, physically commenced, or

(ii) significant steps will be, or have been, taken to enable those works to physically commence, and

(b) if the building or other works are not physically commenced by the end of that tax year (or the Chief Commissioner is not satisfied that, by the end of that tax year, significant steps have been taken to enable those works to physically commence)—

(i) the principal place of residence exemption applying by operation of this clause to the land is taken not to have applied to the land in respect of that tax year (unless subclause (3) (a) applied to the assessment in that tax year), and

(ii) land tax liability is to be assessed or reassessed accordingly.

(5) If the principal place of residence exemption applies by operation of this clause to land not actually used and occupied by a person as the person's principal place of residence on a taxing date, that exemption is revoked if the person fails to actually use and occupy the land as the person's principal place of residence by the end of the period in which this clause applies in respect of the assessment of the person's ownership of the land and to continue to so use and occupy the land for at least 6 months.

(6) The effect of the revocation is that the principal place of residence exemption is taken not to have applied to the land in respect of any tax year to which, but for the revocation, it would have applied. Land tax liability is to be assessed or reassessed accordingly.

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

(7) This clause does not apply in respect of land owned by a person if—

(a) the person or any member of the person's family (within the meaning of clause 12) is entitled to have the person's or member's actual use and occupation of other land taken into account under section 9C or 9D or under this Schedule, or

(b) the person owns land outside New South Wales that is the principal place of residence of the person or a member of the person's family (within the meaning of clause 12), or

(c) the land, or the land if combined with any adjoining land of which the person is an owner, is capable of having more than 2 residences or residential units lawfully built on it.

(7A) The Chief Commissioner may extend the period of 4 tax years in subclause (3)(a) or (b) to a period of up to 6 tax years if the Chief Commissioner is satisfied—

(a) there has been a delay in the completion of the building or other works necessary to facilitate the owner's intended use and occupation of the land as a principal place of residence, and

(b) the delay is due primarily to exceptional circumstances beyond the control of the owner, and

(c) the delay could not reasonably have been avoided by the owner.

(7B) The Treasurer may, for the purposes of subclause (7A), approve guidelines by publishing the guidelines in the Gazette.

(7C) The Chief Commissioner must, when making a decision under subclause (7A), consider any guidelines approved under subclause (7B).

(8) For the purposes of this clause—

**unoccupied land** means land that is not being used or occupied for any purpose.

## **7 Concession for change to principal place of residence**

(1) If the Chief Commissioner is satisfied that, on a taxing date (**the relevant taxing date**)—

(a) a person is the owner of land (**the former residence**) that was the principal place of residence of the person on the relevant taxing date or was the principal place of residence of the person on the preceding taxing date, and

(b) the person is the owner of other land (**the new residence**) that is being or is intended to be used and occupied by the person as the person's principal place of residence,

both the former residence and the new residence are taken, for the purpose of the principal place of residence exemption, to be used and occupied by the person as the person's principal place of residence on the relevant taxing date.

(2) This clause applies in respect of land owned by a person only if the Chief Commissioner is satisfied that—

- (a) the former residence has not been used or occupied except as the person's principal place of residence, and no income has been derived from the use or occupation of the residence, since the preceding 1 July, except—
    - (i) income derived from an excluded residential occupancy (within the meaning of clause 4), or
    - (ii) income derived under a lease or licence entered into by the purchaser under a contract for the sale of the former residence for a period pending completion of the sale, and
  - (b) the person became the owner of the new residence within the period of 6 months before the relevant taxing date, and
  - (c) since the person became owner of the new residence the new residence has not been used or occupied except—
    - (i) as the person's principal place of residence, or
    - (ii) by a tenant under a lease entered into by the previous owner.
  - (d) (Repealed)
- (3) The principal place of residence exemption cannot be claimed for both a former residence and a new residence under this clause for more than one taxing date.
- (3A) A principal place of residence exemption that applies, by operation of this clause, to land not actually used and occupied by a person at the relevant taxing date is revoked if the person is not actually using and occupying the new residence as the person's principal place of residence by the next taxing date immediately following the relevant taxing date.
- (4) The effect of the revocation is that the principal place of residence exemption is taken not to have applied in respect of the tax year to which, but for the revocation, it would have applied. Land tax liability is to be assessed or reassessed accordingly.
- (5) (Repealed)

## **8 Concession for absences from former residence**

- (1) A person is taken, for the purpose of the principal place of residence exemption, to continue to use and occupy land formerly used and occupied by the person as a principal place of residence (a **former residence**), after the person ceases to so use and occupy the former residence, if the Chief Commissioner is satisfied that—
- (a) the person used and occupied the former residence as a principal place of residence for a continuous period of at least 6 months, and
  - (b) the person does not own any other land used and occupied by the person as a



principal place of residence.

- (2) The maximum period for which a person may be taken, under this clause, to continue to use and occupy a former residence as a principal place of residence is 6 years starting at the end of the last period (of at least 6 months) during which the former residence was used and occupied by the person as a principal place of residence (not including any period for which the person may be taken, under clause 7 or this clause, to have used and occupied the former residence as a principal place of residence).
- (3) If the principal place of residence exemption applies to the former residence of a person by operation of this clause, the exemption ceases to have effect if the person is the owner of the former residence at the end of the 6-year period referred to in subclause (2) and fails—
  - (a) to resume actual use and occupation of the residence as a principal place of residence by the end of that period, and
  - (b) to continue that use and occupation for at least 6 months.
- (3A) The principal place of residence exemption also ceases to have effect if the land ceases to be capable of being used and occupied as a residence and remains incapable of being so used and occupied for a period exceeding 4 years.
- (4) Any period during which a person is in full time care is not to be counted toward the maximum period referred to in subclause (2). Accordingly, a person who is in full time care may continue to be taken to use and occupy the person's former residence as the person's principal place of residence during any period in which he or she is in full time care.
- (5) For the purposes of this clause, a person is in **full time care** during any period in which the person—
  - (a) resides at a hospital or mental hospital as a patient of the hospital, or
  - (b) resides at an aged care establishment (within the meaning of section 10R) while being provided with residential care, or respite care, or
  - (c) resides with another person (a **carer**) who is eligible for a carer payment under the [Social Security Act 1991](#) of the Commonwealth because the carer provides care to the person.
- (6) This clause applies in respect of the assessment of a person's ownership of land in a tax year only if the Chief Commissioner is satisfied that no income has been derived from the use or occupation of the former residence in the preceding tax year, except as permitted by subclause (7).
- (7) Income may be derived from the use or occupation of the former residence in a tax

year if—

- (a) the income is derived from a lease, licence or other arrangement under which a person has a right to occupy the former residence and the period for which any such right of occupation is conferred does not exceed a continuous period of 6 months, or a total period of 182 days, in the tax year, or
- (b) the income is derived from any arrangement under which a person occupies the former residence, but the income is no more than is reasonably required to cover council, water and energy rates and charges and maintenance costs of the owner in respect of the residence.

(7A) For the purposes of subclause (7), each overnight stay counts as one day.

(8) This clause is subject to clause 12 (which limits members of a family to one principal place of residence exemption).

(9) In this clause—

**hospital** means an institution at which relief is given to sick or injured people through the provision of care or treatment.

**mental hospital** means an institution conducted principally for the treatment of mentally ill persons, and includes a hospital within the meaning of the [Mental Health Act 1990](#).

## 9 Concession on death of owner

(1) If, immediately before the death of a person, the person was an owner of land and used and occupied the land as the person's principal place of residence, 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.

(1A) (Repealed)

(2) Subclause (1) operates only until whichever of the following happens first—

- (a) a period of 2 years expires after the date of the deceased person's death,
- (b) the land is transferred to any person (other than the deceased person's personal representative, or a beneficiary of the deceased person's estate).

(3) The Chief Commissioner may extend (and further extend) the period of 2 years referred to in subclause (2) (a) if—

- (a) the land has not been leased to any person since the date of the deceased person's death, and
- (b) the land has not been transferred to any person (other than the deceased

person's personal representative), and

(c) the Chief Commissioner is satisfied that—

(i) a person is using and occupying the land as the person's principal place of residence, and

(ii) 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) For the purposes of this section, if the deceased is a registered proprietor under the [Real Property Act 1900](#) in respect of the deceased's interest in the land, the deceased's interest in the land is taken to vest in another person when that other person is registered as the proprietor of that interest under that Act.

#### **10 Concession for tenancy following death of owner**

(1) For the purposes of the principal place of residence exemption, if the owner of land dies and the land is used and occupied as the principal place of residence of—

(a) a person using and occupying the land under a right of occupancy created by the will of that owner, or

(b) a person (other than a tenant) who resided with that owner immediately before the owner's death and who continues to use and occupy the land with the permission of the deceased person's personal representative, or of any other person, granted under a power or right conferred by the will of that owner or with the permission of any other person to whom the land is transferred following that death,

then the person who so uses and occupies the land is taken to be the owner of the land, but only while that use and occupation continues.

(2) A person who is taken to be the owner of land under this clause is taken to be the owner to the exclusion of any company that owns the land in its capacity as the deceased person's personal representative.

#### **10A Concession for first home owners who purchase under shared equity arrangements**

(1) The principal place of residence exemption extends to land used and occupied as the principal place of residence of a natural person who owns the land, even if the land is jointly owned by a disqualified person, if—

(a) the agreement or transfer under which the land was acquired by the natural

person was eligible under a first home owner's duty concession scheme for a shared equity concession, and

(b) an application in respect of the agreement or transfer under the relevant scheme is approved by the Chief Commissioner.

(2) For the purposes of this clause, a **disqualified person** means—

(a) a company, other than a trustee company acting in its representative capacity or a company acting in its capacity as trustee of a concessional trust, or

(b) a person who is a trustee acting in the person's capacity as trustee of a special trust.

**Note.**

Under clause 11, the principal place of residence exemption cannot be claimed in respect of land that is jointly owned by a disqualified person except in specified circumstances. This clause provides for a further exception to that general principle.

(3) However, the principal place of residence exemption does not extend to a disqualified person or to the interest of a disqualified person in the land, and clause 2 (3) does not apply to the disqualified person.

(4) Accordingly, a disqualified person who jointly owns the land is liable to be assessed for taxation under this Act in respect of the land, as provided for by section 27, exclusive of the interest of any joint owner who is exempt from taxation under the principal place of residence exemption or under clause 2 (3).

(5) This clause ceases to apply in respect of land, and is taken never to have applied, if the Chief Commissioner revokes the Chief Commissioner's approval under a first home owner's duty concession scheme of the application in respect of the agreement or transfer concerned.

(6) This clause applies despite clause 11.

(7) In this clause—

**first home owner's duty concession scheme** means the First Home Buyers Assistance Scheme under Division 1 of Part 8 of Chapter 2 of the [Duties Act 1997](#) or any of the predecessors to that scheme under that Act.

**10AA Concession for home owners who purchase under approved shared equity schemes**

The principal place of residence exemption extends to land used and occupied as the principal place of residence of a natural person who owns the land, even if the land is jointly owned by any other person, if the land was acquired by the natural person under an approved shared equity scheme (within the meaning of the [Duties Act 1997](#)).

## **10B Concession for multiple-occupancy land**

- (1) This clause applies if land owned by one person, or by 2 or more joint owners, is the site of a flat that is used and occupied by the owner, or by one of them, as a principal place of residence, and there is also situated on the land one or more other flats that are used, or adapted for use, as a separate occupation to that of the owner (not being an excluded residential occupancy that may be disregarded under clause 4).
- (2) Section 9C applies in respect of the land as if the land were mixed use land.
- (3) For the purposes of applying Division 5A of Part 1B of the *Valuation of Land Act 1916* to the land, a reference in that Division to that part of the land that is occupied or used for non-residential purposes is to be read as a reference to that part of the land that is adapted for use as a separate occupation to that of the owner (and which is not an excluded residential occupancy that may be disregarded under clause 4).
- (4) This clause does not apply to land comprised of one or more strata lots.

## **Part 4 Restrictions**

### **11 Exemption does not apply to land owned by companies and trustees**

- (1) Land is not exempt from taxation under the principal place of residence exemption if—
  - (a) the land is owned, or jointly owned, by a company, unless the land is owned or jointly owned by a trustee company acting in its representative capacity or a company acting in its capacity as trustee of a concessional trust, or
  - (b) the owner of the land, or each of the joint owners, who use and occupy the land as a principal place of residence is an owner only by reason of being a trustee, or
  - (c) the land is owned, or jointly owned, by a person who is a trustee acting in the person's capacity as trustee of a special trust.

#### **Note.**

The expression **trustee company** (as referred to in subclause (1) (a)) is defined in section 3 (1).

- (2) For the purposes of the principal place of residence exemption, land that is owned by a company acting in its capacity as trustee of a concessional trust is taken to be used and occupied as the principal place of residence of the owner of the land only if the person, or one of the persons, who so uses and occupies the land is a person who is a beneficiary of the trust.
- (3) For the purposes of this clause, land that is a parcel of residential land or a lot in a freehold strata scheme under the *Strata Schemes Development Act 2015* is owned by a company if—

- (a) the land is owned by a company, or
  - (b) the land is owned on behalf of a company and is land of which a mortgagee or person (by way of security for money) is in possession, or
  - (c) the land is owned by a trustee for or on behalf of a company, or
  - (d) a company is a joint owner of the land with any other person.
- (4) For the purposes of this clause, land that is a lot in a leasehold strata scheme under the *Strata Schemes Development Act 2015* is owned by a company if—
- (a) the lot is leased by a company, or
  - (b) the lot is leased on behalf of a company and is land of which a mortgagee or person (by way of security for money) is in possession, or
  - (c) the lot is leased by a trustee for or on behalf of a company, or
  - (d) a company is jointly assessable in respect of the lot with any other person.
- (5) For the purposes of this clause, a person is a **beneficiary** of a trust if the person is a person, or a member of a class of persons—
- (a) in whose favour, by the terms of the trust, capital or income the subject of the trust may be applied—
    - (i) in the event of the exercise of a power or discretion in favour of the person, or
    - (ii) in the event that a discretion conferred under the trust is not exercised, or
  - (b) entitled or permitted, under the terms of the trust, to use and occupy land that is the subject of the trust.
- (5A) To avoid doubt, land that is taken to be owned by more than one person under this Act is taken, for the purposes of this clause, to be jointly owned by them.

**Note.**

See, for example, sections 20 and 25.

- (6) This clause does not prevent the principal place of residence exemption applying to land owned by a company if a provision of this Act deems a natural person to be the owner of the land, to the exclusion of the company.

**Note.**

Section 20 provides for circumstances in which a life tenant is taken to be the owner of land, to the exclusion of another owner (including a company). Section 21A provides that a company title unit is not to be regarded as being owned by the company in which the relevant shares are held. Section 26 provides for circumstances in which a purchaser or vendor of land (including a company purchaser or vendor) is to be regarded as the owner of the land when the purchase is not complete.

See also clause 10 (2).

## **12 Only one principal place of residence for all members of same family**

- (1) For the purposes of the principal place of residence exemption, only one place of residence may be treated as the principal place of residence of all members of the same family.
- (2) If members of a family own (whether jointly or separately) more than one residence used and occupied by any of them as a principal place of residence, the Chief Commissioner is to treat the one place of residence elected as the principal place of residence of the family as the principal place of residence of all members of the family in respect of a tax year.
- (3) Such an election is to be made, by or on behalf of the members of the family, in writing and must be lodged with the Chief Commissioner within the period for the lodging of objections under section 89 of the [Taxation Administration Act 1996](#).
- (4) An election may be made, in respect of a tax year, by the end of the period allowed for the lodging of an objection to a notice of assessment of land tax liability (being an initial assessment of land tax liability) for that tax year.
- (5) If an election is not made, the Chief Commissioner is to treat the residence that has the highest land value for land tax purposes as the principal place of residence of all members of the family.
- (6) For the purposes of this clause, a **family** consists of the following—
  - (a) a person and the person's spouse (if any),
  - (b) any dependent child or dependent step-child of the person and the person's spouse (or of either of them) who ordinarily resides with the person or the person's spouse.
- (7) A person is the **spouse** of another person if—
  - (a) they are legally married, or
  - (b) the person is the de facto partner of the other person.
- (8) However, if the Chief Commissioner is satisfied that a person—
  - (a) is legally married to or is in a registered relationship or an interstate registered relationship, within the meaning of the [Relationships Register Act 2010](#), with another person but not cohabiting with that other person, and
  - (b) has no intention of resuming cohabitation with that other person,the person is not to be regarded as the spouse of that other person and if a dependent

child or dependent step-child of the person has a joint interest in the principal place of residence of the spouse, that interest is to be disregarded.

- (9) A person who is the child or step-child of another person is a **dependent child** or a **dependent step-child** if the person is under 18 years of age and is not legally married.
- (10) Nothing in this clause prevents more than one residence from being treated as the principal place of residence of members of a family under clause 7 (Concession for change to principal place of residence).

**13 Application of exemption to residence comprised of 2 or more lots (other than strata lots)**

- (1) The principal place of residence exemption does not extend to a parcel of residential land that is comprised of 2 or more lots of land, and that is used and occupied by the owner of the lots (or by one of them) as a principal place of residence, unless—
- (a) the lots are adjoining, and
  - (b) the lots are in the same ownership, and
  - (c) the lots are the site of a single residence (excluding any additional residential occupancy that may be disregarded under clause 4).
- (1A) Lots are in the same ownership if—
- (a) the lots are owned by the same person or, if any of the lots are jointly owned, the lots are all jointly owned by the same persons, or
  - (b) each lot is beneficially owned by the same person or, if any of the lots have more than one beneficial owner, each lot is beneficially owned by the same persons (subject to clause 11).
- (2) For the purposes of this clause—
- (a) separate lots are not to be regarded as adjoining merely because one lot has a single corner point on its boundary that is common to the boundary of another lot, and
    - (a1) separate lots that are divided by a fence, wall or other structure are not to be regarded as adjoining unless access is readily available between the lots, by means of gates, doors, steps, stiles, elevators or openings or by similar means, and
  - (b) separate buildings erected on separate lots are not to be regarded as a single residence if the buildings are separately occupied or capable of being used for separate occupation.



(3) This clause does not apply to land comprised of 2 or more strata lots.

#### **14 Application of exemption to residence comprised of 2 or more lots in a strata plan**

(1) The principal place of residence exemption does not extend to land that is comprised of 2 or more strata lots, and that is used and occupied by the owner of the lots (or by one of them) as a principal place of residence, unless—

(a) the strata lots (excluding any ancillary lot) have adjoining walls or floors, and

(b) the strata lots are in the same ownership, and

(c) the strata lots comprise a single residence (excluding any additional residential occupancy that may be disregarded under clause 4).

(1A) Strata lots are in the same ownership if—

(a) the lots are owned by the same person or, if any of the lots are jointly owned, the lots are all jointly owned by the same persons, or

(b) each lot is beneficially owned by the same person or, if any of the lots have more than one beneficial owner, each lot is beneficially owned by the same persons (subject to clause 11).

(2) For the purposes of this clause, 2 or more strata lots are not to be regarded as comprising a single residence unless there is internal access between all the strata lots (other than any ancillary lot), such as internal connecting doors or internal staircases.

(3) In this clause—

**ancillary lot** means a strata lot that is used for purposes ancillary to another strata lot and which is not used or adapted for habitation (for example, a garage or storage area).

#### **15 Minimum interest to be held by person to claim exemption**

(1) A person is not entitled to a principal place of residence exemption in relation to land unless all the persons who use and occupy the land as a principal place of residence together own at least a 25% interest in the land.

(2) This clause does not apply to a home buyer who is a participant in a shared equity scheme that is approved by the Chief Commissioner under the [Duties Act 1997](#), section 281.

## **Schedule 1**

(Section 81)

**No of Act**

**Title of Act**

59 Vic No 15	<a href="#">Land and Income Tax Assessment Act of 1895</a>
59 Vic No 16	<a href="#">Land Tax Act of 1895</a>
Act No 21, 1897	<a href="#">Land and Income Tax (Amendment) Act 1897</a>
Act No 37, 1898	<a href="#">Land and Income Tax (Declaratory) Act 1898</a>
Act No 36, 1899	<a href="#">Land Tax (Collection) Act 1899</a>
Act No 28, 1900	<a href="#">Land Tax (Assessment Books) Act 1900</a>
Act No 46, 1900	<a href="#">Land Tax (Contribution) Act 1900</a>
Act No 115, 1902	<a href="#">Land Tax (Leases) Act 1902</a>
Act No 17, 1904	<a href="#">Land and Income Tax (Amendment) Act 1904</a>

## Schedule 2 Savings and transitional provisions

(Section 83)

### Part 1 Preliminary

#### 1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

[State Revenue Legislation Further Amendment Act 1995](#)

[State Revenue Legislation Amendment Act 1997](#)

[State Revenue Legislation Further Amendment Act 1997](#)

[Environmental Planning and Assessment Amendment Act 1997](#)

[Strata Schemes \(Leasehold Development\) Amendment Act 1999](#)

[State Revenue Legislation Amendment Act 2000](#)

[State Revenue Legislation Further Amendment Act 2000](#)

[Valuation of Land Amendment Act 2000](#)

[State Revenue Legislation Further Amendment \(No 2\) Act 2001](#) (to the extent that it amends this Act)

[State Revenue Legislation Amendment Act 2002](#)

[State Revenue Legislation Further Amendment Act 2003](#) (to the extent that it amends this Act)

*State Revenue Legislation Amendment Act 2004*

*State Revenue Legislation Further Amendment Act 2004* (to the extent that it amends this Act)

*State Revenue Legislation Amendment (Budget Measures) Act 2005*

*State Revenue Legislation Further Amendment Act 2005*

*Land Tax Management Amendment (Tax Threshold) Act 2006*

*State Revenue and Other Legislation Amendment (Budget Measures) Act 2006*

*State Revenue Legislation Amendment Act 2006*

*State Revenue Legislation Amendment (Tax Concessions) Act 2006*

*Duties Amendment (First Home Plus One) Act 2007* (to the extent that it amends this Act)

*State Revenue Legislation Amendment Act 2008*

*State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*

*State Revenue Legislation Amendment Act 2010*

*State Revenue Legislation Further Amendment Act 2010*

*State Revenue Legislation Amendment Act 2012*

Any Act that amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **1 Mortgages entered into before 31 December 1983**

Section 46 does not apply to a mortgagee in respect of a mortgage entered into before 31 December 1983.

## **Part 2 Provisions consequent on enactment of [Land Tax Management \(Amendment\) Act 1988](#)**

### **2 Land tax certificates**

Section 47 (as amended by the [Land Tax Management \(Amendment\) Act 1988](#)) applies to and in respect of a certificate issued under that section before the commencement of that Act.

### **3 Lessees from councils and public authorities**

The amendment made by the [Land Tax Management \(Amendment\) Act 1988](#) to the definition of **Owner** in section 3 (1) does not apply in respect of a tax year before the tax year that commences on 1 January 1992.

### **4 Refunds of stamp duty**

Section 10A applies to a person even if the conveyance referred to in subsection (2) (a) of that section took effect before the commencement of the [Land Tax Management \(Amendment\) Act 1988](#).

### **5 Application of amendments concerning charitable, educational and religious bodies**

The amendments made by the [Land Tax Management \(Amendment\) Act 1988](#) to section 10 (1) (d) and (e) apply in respect of the tax year that commences on 1 January 1987 and each subsequent tax year.

### **6 Persons required to furnish land tax returns**

Until an order is published under section 12 (1), that section as in force immediately before the commencement of the [Land Tax Management \(Amendment\) Act 1988](#) continues to apply.

### **7 Pending objections**

Part 5 as in force immediately before the commencement of the [Land Tax Management \(Amendment\) Act 1988](#) continues to apply to and in respect of an objection made under that Part before that commencement (including for the purposes of an appeal under that Part).

### **8 Public companies—exemptions for primary production**

Land used for primary production and owned by a public company that was, immediately before the commencement of the [Land Tax Management \(Amendment\) Act 1988](#), entitled for a tax year commencing before 1 January 1989 to be declared by the Governor to be a company to which section 10 (1) (s), as then in force, applied is exempt from taxation leviable or payable in respect of that tax year.

## **Part 3 Provisions consequent on enactment of [Land Tax Management \(Amendment\) Act 1989](#)**

### **9 Pending objections**

(1) In this clause—

**1988 amending Act** means the [Land Tax Management \(Amendment\) Act 1988](#).

**1989 amending Act** means the [Land Tax Management \(Amendment\) Act 1989](#).

**new appeal provisions** means the provisions of Part 5, as amended by the 1989 amending Act.

(2) An objection made under the provisions of Part 5 as in force before the commencement of the new appeal provisions is to be dealt with under the new appeal provisions unless—

(a) in the case of an objection made under the provisions of Part 5 as in force immediately before the commencement of the 1988 amending Act, the objector has (before the commencement of the new appeal provisions) requested the objection to be treated as an appeal or the time for making such a request has expired, and

(b) in the case of an objection made under the provisions of Part 5 as in force immediately before the commencement of the 1989 amending Act, the objector has (before the commencement of the new appeal provisions) required a case to be stated to the Supreme Court or the time for requiring a case to be stated has expired.

## **Part 4 Provisions consequent on enactment of [Land Tax \(Amendment\) Act 1990](#) and [Land Tax Management \(Amendment\) Act 1990](#)**

### **10 Amendments not to affect previous liabilities**

The amendments made by the [Land Tax \(Amendment\) Act 1990](#) and the [Land Tax Management \(Amendment\) Act 1990](#) do not affect any existing liability for land tax, except as provided by clause 11.

### **11 Special provision for retrospective changes to [Land Tax Act 1956](#)**

(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.

## **12 Land tax certificates**

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.

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

An application for a reduction under section 3A or 3C of the *Land Tax Act 1956* is to be regarded as an application for a reduction under section 9B or 9C, as appropriate, of this Act.

## **Part 5 Provisions consequent on enactment of *Land Tax Management (Further Amendment) Act 1990***

### **14 Payment by instalments**

The amendments made by the *Land Tax Management (Further Amendment) Act 1990* to sections 39, 40 and 41 do not apply in respect of a tax year before the tax year that commences on 1 January 1992.

### **15 Increased tax-free threshold for residential land**

The amendments made by the *Land Tax Management (Further Amendment) Act 1990* to section 10 (4) and (5) apply to land tax payable in respect of the year commencing on 1 January 1991 and any succeeding year.

## **Part 6 Provisions consequent on enactment of *Stamp Duties (Miscellaneous Amendments) Act 1990***

### **16 Stamp duty exemptions—effect on land tax**

If a conveyance of land executed after 31 December 1990 and lodged with the Chief Commissioner of Stamp Duties before 1 July 1991 is exempt from duty under the *Stamp Duties Act 1920*, pursuant to Schedule 2D to that Act, the transferee under the conveyance is to be considered to have been the owner of the land on 31 December 1990 for the purposes of this Act.

## **Part 7 Provisions consequent on enactment of [Land Tax Management \(Amendment\) Act 1991](#)**

### **17 Operation of amendments**

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.

## **Part 8 Provisions consequent on enactment of [Land Tax Management \(Amendment\) Act 1992](#)**

### **18 Operation of amendments**

The amendments made by the [Land Tax Management \(Amendment\) Act 1992](#) do not (except as specifically provided) apply in respect of a tax year before the tax year that commences on 1 January 1993 and do not affect any existing liability for land tax.

### **19 Lessees of Crown land**

- (1) For the purposes of the application of section 21C to land owned by the Crown in respect of the tax years commencing on 1 January 1989, 1990, 1991 and 1992, the amendments made by Schedule 1 (13)-(16) of the [Land Tax Management \(Amendment\) Act 1991](#) are taken to have commenced on 31 December 1988.
- (2) Clause 17 has effect subject to subclause (1) of this clause.

### **20 Retirement villages/nursing homes**

The amendments made to section 10R by the [Land Tax Management \(Amendment\) Act 1992](#) operate on and from 31 December 1990.

### **21 Amounts postponed under section 9A**

A reference in section 9A to an amount of land tax postponed under that section includes a reference to an amount of land tax postponed under that section before its substitution by the [Land Tax Management \(Amendment\) Act 1992](#).

### **22 Ascertainment of land value before commencement**

The fact that a land value was ascertained under the provisions of Part 7 as substituted by the [Land Tax Management \(Amendment\) Act 1992](#) after the date of assent to that Act but before the commencement of that Act does not affect the validity of such a land value and it is taken to have been validly ascertained.

## **Part 9 Provisions consequent on enactment of [State Revenue](#)**

## Legislation (Amendment) Act 1994

### 23 Leases from public authorities

The amendments made to section 21C by the *State Revenue Legislation (Amendment) Act 1994* do not create a liability for land tax in respect of a lease exempted from the operation of that section by section 21C (6) (d) before the date of commencement of the amendments.

## Part 10 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 1997

### 24 Discretionary trusts and special trusts

A declaration made in relation to a land tax year by the *Land Tax Management Regulation 1992*, as in force immediately before its repeal by the *State Revenue Legislation Further Amendment Act 1997*, that a trust was not a discretionary trust or a special trust for the purposes of this Act continues to have effect in relation to the 1995, 1996 and 1997 land tax years despite the repeal of that regulation.

## Part 11 Strata Schemes (Leasehold Development) Amendment Act 1999

### 25 Operation of amendments

Section 21D, as inserted by the *Strata Schemes (Leasehold Development) Amendment Act 1999*, does not impose any liability for land tax for a tax year that commenced before the commencement of that amendment and does not affect any liability for land tax for any such tax year.

## Part 12 Provisions consequent on enactment of Valuation of Land Amendment Act 2000

### 26 Definition

In this Part, **the 2000 amending Act** means the *Valuation of Land Amendment Act 2000*.

### 27 Application of section 62K

Section 62K (1A), as inserted by the 2000 amending Act, applies to an application made under section 62K (1) before the commencement of that Act in the same way as it applies to an application made under that subsection after that commencement.

### 28 Application of section 62N

Section 62N (1), as amended by the 2000 amending Act, applies to an objection relating to an allowance determined before the commencement of that Act in the same way as it



applies to an objection relating to an allowance determined after that commencement.

## **Part 13 Provisions consequent on enactment of State Revenue Legislation Further Amendment (No 2) Act 2001**

### **29 Postponement of land tax attributable to unutilised value**

- (1) The former section 9A continues to apply in respect of land tax payable for a tax year commencing on or before 1 January 2001, subject to this clause.
- (2) The new section 9A extends to a tax year commencing on or before 1 January 2001 if—
  - (a) a person postponed the payment of land tax under former section 9A in any assessment made in respect of such a tax year, and
  - (b) the person did not cease to be entitled to the postponement of land tax under former section 9A before that date.
- (3) For the purpose of applying the new section 9A to such a person, the person is taken to have had their liability for land tax in that year, and in the previous year or years in which payment of the land tax was postponed, assessed in accordance with the new section 9A.
- (4) In this clause—

**former section 9A** means section 9A as in force immediately before its substitution by the *State Revenue Legislation Further Amendment (No 2) Act 2001*.

**new section 9A** means section 9A as substituted by the *State Revenue Legislation Further Amendment (No 2) Act 2001*.

### **30 Repeal of certain provisions**

The repeal of sections 10M–10O, and sections 30, 31 and 32, by the *State Revenue Legislation Further Amendment (No 2) Act 2001* does not affect the application of those sections to or in respect of a tax year commencing before the repeal of those sections and does not affect any existing liability for land tax.

### **31 Amendments to section 10R**

The amendments made to section 10R by the *State Revenue Legislation Further Amendment (No 2) Act 2001* apply in respect of a land tax year commencing on or after the commencement of those amendments, despite section 10R (5).

## **Part 14 Provisions consequent on enactment of State Revenue**

## Legislation Amendment Act 2002

### 32 Amendments to principal place of residence exemption

The amendments made to section 10, and the insertion of section 10AA, by the *State Revenue Legislation Amendment Act 2002* apply in respect of a land tax year commencing on or after the commencement of section 10AA and do not affect any existing liability for land tax.

## Part 15 Provisions consequent on enactment of *State Revenue Legislation Further Amendment Act 2003*

### 33 Definition

In this Part—

**2003 amending Act** means the *State Revenue Legislation Further Amendment Act 2003*.

### 34 Amendment to definition of “special trust”

The amendment made to section 3A by the 2003 amending Act is taken to have had effect from 31 December 2002.

### 35 Application of principal place of residence exemption amendments

- (1) The amendments made to this Act by the 2003 amending Act (other than the amendments referred to in clause 34) apply in respect of a land tax year commencing on or after 1 January 2004 and do not affect any existing liability for land tax.
- (2) Subject to subclause (1), a reference in Schedule 1A to the principal place of residence exemption, in relation to land owned and occupied as a principal place of residence before 31 December 2003, is a reference to section 10 (1) (r) of this Act (as in force immediately before its substitution by the 2003 amending Act).
- (3) Subject to subclause (1), a reference in clause 8 of Schedule 1A to a period in which land was actually used and occupied as a principal place of residence by the owner extends to any such period that occurred, or started, before 31 December 2003.

## Part 16 Provisions consequent on repeal of *Premium Property Tax Act 1998*

### 36 Repeal of *Premium Property Tax Act 1998*

- (1) The amendments made to this Act by Schedule 3 to the *State Revenue Legislation Amendment Act 2004*, and the repeal of the *Premium Property Tax Act 1998*, apply in respect of a land tax year commencing on or after 1 January 2005 and do not affect any existing liability for land tax.

- (2) This Act and the *Taxation Administration Act 1996*, as in force immediately before those amendments were made, and the *Premium Property Tax Act 1998*, as in force immediately before its repeal, continue to apply in respect of any such liability.

## **Part 17 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2005**

### **37 Application of amendments—general**

- (1) The amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2005* apply in respect of the assessment of land tax in the land tax year commencing on 1 January 2006 and any subsequent land tax year.
- (2) Except as otherwise provided by this Part, the amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2005* do not apply in respect of the assessment of land tax in the land tax year commencing on 1 January 2005 or any previous land tax year.
- (3) Accordingly, the provisions of this Act, as in force immediately before the date of assent to the *State Revenue Legislation Further Amendment Act 2005*, continue to apply in respect of the assessment of any land tax liability for the land tax year commencing on 1 January 2005 or any previous land tax year.

### **38 Amendments to principal place of residence exemption**

- (1) The amendment made to section 3A of this Act by the *State Revenue Legislation Further Amendment Act 2005* has effect as if it had commenced on 31 December 2003 and accordingly extends to the assessment of any land tax payable for the land tax year commencing on 1 January 2004 or 1 January 2005.
- (2) The amendments made to clause 8 of Schedule 1A to this Act by the *State Revenue Legislation Further Amendment Act 2005* have effect as if those amendments had commenced on 31 December 2004 and accordingly extend to the assessment of any land tax payable for the land tax year commencing on 1 January 2005.
- (3) Anything done or omitted to be done before the date of assent to the *State Revenue Legislation Further Amendment Act 2005*, that would have been validly done or omitted if the amendments made to section 3A and clause 8 of Schedule 1A to this Act had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.

## **Part 18 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2006**

### **39 Application of amendments**

- (1) Section 10S, as in force immediately before the amendments made by the *State*

*Revenue Legislation Amendment Act 2006*, continues to apply in respect of the land tax payable in the year commencing 1 January 1991 or any subsequent year before the year commencing 1 January 2006.

- (2) The amendments made to clauses 9 and 10 of Schedule 1A by the *State Revenue Legislation Amendment Act 2006* apply to the assessment of liability for land tax payable in the year commencing 1 January 2007 or any subsequent year, even if the owner of the land died before the commencement of the amendments.

## **Part 19 Provisions consequent on enactment of *State Revenue and Other Legislation Amendment (Budget Measures) Act 2006***

### **40 Amendments to land valuation methods**

- (1) The amendments made to this Act by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2006* apply in respect of a land tax year commencing on or after 1 January 2007 and do not affect any liability for land tax in respect of a land tax year commencing before that date.
- (2) This Act, as in force immediately before 31 December 2006, continues to apply in respect of any such liability.

## **Part 20 Provisions consequent on enactment of *State Revenue Legislation Amendment (Tax Concessions) Act 2006***

### **41 Amendments relating to trusts**

- (1) The trust amendments apply as if those amendments had commenced on 31 December 2005.
- (2) Liability for land tax in respect of the land tax year commencing on 1 January 2006 and subsequent land tax years is to be assessed or reassessed accordingly.
- (3) Anything done or omitted to be done before the date of assent to the *State Revenue Legislation Amendment (Tax Concessions) Act 2006* that would have been validly done or omitted to be done if the trust amendments had been in force at the time that it was done or omitted to be done is taken to have been validly done or omitted to be done.
- (4) In this clause, the **trust amendments** means the amendments made to section 3A by the *State Revenue Legislation Amendment (Tax Concessions) Act 2006*, and the provisions of Schedule 1AA, as inserted by that Act.

### **42 Restructuring of unit trust for land tax purposes—concession**

- (1) This clause applies in respect of a unit trust (within the meaning of Schedule 1AA) if—
  - (a) an instrument is executed on or after 6 June 2006 and before 1 January 2008 that

effects a variation to a trust deed for a unit trust, and

- (b) before the instrument is executed, unit holders in the unit trust have fixed entitlements under the trust, and
  - (c) the purpose of the variation is to enable the unit trust to satisfy the relevant criteria (within the meaning of section 3A) and, accordingly, to be treated as a fixed trust under that section, and
  - (d) the variation does not directly or indirectly result in a change in the proportion of any income or capital to which a unit holder is entitled under the trust.
- (2) Any land tax payable in respect of the land the subject of the unit trust is to be assessed or reassessed as if the variation to the trust deed took effect on 31 December 2005.
- (3) Unit holders in a unit trust have **fixed entitlements** under the trust if—
- (a) the unit holders are entitled to a fixed proportion of the income or capital distributions of the trust (if any are made) based on the number or class of units owned by them, and
  - (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of a discretion, or by a failure to exercise a discretion, conferred on any person under the trust.
- (4) Anything done or omitted to be done on or after 6 June 2006 and before the date of assent to the [State Revenue Legislation Amendment \(Tax Concessions\) Act 2006](#) that would have been validly done or omitted to be done if this clause had been in force at the time that it was done or omitted to be done is taken to have been validly done or omitted to be done.

#### **43 Determinations made by Valuer-General before commencement of budget measures**

- (1) Anything done by the Valuer-General before the commencement of Schedule 3 to the [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2006](#) that would have been validly done under section 62TBA of this Act (as substituted by that Act) if Schedule 3 to that Act had commenced and it had been done before 15 October 2006, is taken to have been validly done under that section and has effect as if that Schedule had been in force at the time that it was done.
- (2) Anything omitted to be done by the Valuer-General before the commencement of Schedule 3 to the [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2006](#) that would have been validly omitted to be done if Schedule 3 to that Act had commenced at the time that it was omitted is taken to have been validly omitted to be done.

## **Part 21 Provisions consequent on enactment of [Duties Amendment \(First Home Plus One\) Act 2007](#)**

### **44 Application of concession for shared equity arrangements**

The amendments made to this Act by the [Duties Amendment \(First Home Plus One\) Act 2007](#) apply in respect of a land tax year commencing on or after 1 January 2008 and do not affect any liability for land tax in respect of a land tax year commencing before that date.

## **Part 22 Provisions consequent on enactment of [State Revenue Legislation Amendment Act 2008](#)**

### **45 Application of amendments**

The amendments made to this Act by the [State Revenue Legislation Amendment Act 2008](#) apply in respect of a land tax year commencing on or after the date of commencement of the amendments and do not affect any liability for land tax in respect of any land tax year commencing before that date.

## **Part 23 Provisions consequent on enactment of [State Revenue Legislation Further Amendment Act 2009](#)**

### **46 Application of amendments**

The amendments made to this Act by the [State Revenue Legislation Further Amendment Act 2009](#) (the **2009 amending Act**) apply in respect of a land tax year commencing on or after the date of commencement of the amendments and do not affect any liability for land tax in respect of any land tax year commencing before that date, except as otherwise provided by this Part.

### **47 Lord Howe Island leases**

The amendment made to section 21C by the 2009 amending Act has effect as if it had commenced on the commencement of section 21C.

## **Part 24 Provisions consequent on enactment of [State Revenue Legislation Amendment Act 2010](#)**

### **48 Definition**

In this Part—

**amending Act** means the [State Revenue Legislation Amendment Act 2010](#).

### **49 Application of amendments**

The amendments made to this Act by the amending Act apply in respect of a land tax year

commencing on or after the date of commencement of the amendments and do not affect any liability for land tax in respect of any land tax year commencing before that date, except as otherwise provided by this Part.

#### **50 Repeal of section 65A**

- (1) The repeal of section 65A by the amending Act is taken to have had effect on and from the relevant date.
- (2) The repeal revokes the power that was conferred on the Chief Commissioner by that section, including in relation to a tax year occurring or commencing before the relevant date.
- (3) The amending Act does not affect the validity of any assessment, reassessment or compromise assessment of land tax made on the basis of section 65A before the relevant date.
- (4) The amending Act does not affect any objection lodged or other proceedings commenced before the relevant date that have not been finally determined and section 65A continues to apply for those purposes only.
- (5) In this clause, the **relevant date** means the date of introduction of the Bill for the [State Revenue Legislation Amendment Act 2010](#) into the Legislative Assembly.

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

Clause 6 of Schedule 1A, as in force immediately before its amendment by the amending Act, continues to apply in respect of a claim for the principal place of residence exemption that is made by a person in respect of the 2011 tax year or a subsequent tax year if clause 6 of Schedule 1A applied in respect of the assessment of the person's ownership of the land in the 2010 tax year or a previous tax year.

### **Part 25 Provisions consequent on enactment of [State Revenue Legislation Further Amendment Act 2010](#)**

#### **52 Application of amendments**

The amendments made to this Act by the [State Revenue Legislation Further Amendment Act 2010](#) apply only—

- (a) in respect of a death occurring on or after 1 January 2010, and
- (b) to the assessment of land tax liability in respect of the 2011 land tax year and subsequent land tax years.

### **Part 26 Provisions consequent on enactment of [State Revenue](#)**

## Legislation Amendment Act 2012

### 53 Amendment relating to special trusts

The amendment made to section 3A by the *State Revenue Legislation Amendment Act 2012* is taken to apply to the assessment of land tax liability in respect of the 2000 land tax year and subsequent land tax years.

### 54 Amendments relating to concessional trusts

The amendments made to section 3B by the *State Revenue Legislation Amendment Act 2012* are taken to apply to the assessment of land tax liability in respect of the 2011 land tax year and subsequent land tax years.

## Part 27 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2014

### 55 General application of amendments

The amendments made to this Act by the *State Revenue Legislation Amendment Act 2014* apply to the assessment of land tax liability in respect of the 2014 land tax year and subsequent land tax years.

### 56 Amendments relating to child care services

Section 10 (1) (u) and (v), as inserted by the *State Revenue Legislation Amendment Act 2014*, extend to the assessment of land tax liability in respect of the 2013 land tax year.

### 57 Fixed trusts

A unit trust that satisfies the relevant criteria referred to in section 3A, as amended by the *State Revenue Legislation Amendment Act 2014*, by the end of 30 June 2013 is taken to be a fixed trust under section 3A (3) in relation to the 2013 land tax year.

## Part 28 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2014

### 58 General application of amendments

An amendment made to this Act by the *State Revenue Legislation Further Amendment Act 2014* applies to an assessment of land tax liability in respect of a land tax year that commences after the commencement of the amendment.

## Part 29 Provisions consequent on enactment of State Revenue



## Legislation Amendment Act 2016

### 59 General application of amendments

The amendments made to this Act by the *State Revenue Legislation Amendment Act 2016* apply to the assessment of land tax liability in respect of the 2017 land tax year and subsequent land tax years.

## Part 30 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2017

### 60 Amendment applies to new leases only

- (1) Section 21CA, as inserted by the *State Revenue Legislation Amendment Act 2017*, applies only to leases entered into or renewed on or after 1 January 2018.
- (2) Accordingly, section 21CB, as inserted by that Act, does not apply to any land tax amount that is payable for the land tax year commencing on 1 January 2018 or a previous land tax year.

**Note—**

Land tax liability arises at midnight on 31 December.

## Part 31 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2017

### 61 Amendments relating to shared equity schemes

The amendments made to Schedule 1A by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017* apply to the assessment of land tax liability in respect of the 2018 land tax year and subsequent land tax years.

### 62 Amendments to Land Tax Act 1956

- (1) The amendments made to the *Land Tax Act 1956* by Schedule 2.2 [2] and [4] to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017* apply to the assessment of land tax liability in respect of the 2018 land tax year and subsequent tax years.
- (2) (Repealed)

### 62A Refund of surcharge land tax for 2017 land tax year

- (1) The Chief Commissioner must assess or reassess the surcharge land tax chargeable on residential land on the basis that no surcharge land tax is chargeable on the residential land for the land tax year starting on 1 January 2017 if—
  - (a) a liability for surcharge land tax arose at midnight on 31 December 2016, and

- (b) a relevant determination is made by the Chief Commissioner before 1 January 2018 and is approved by the Treasurer for the purposes of this clause, and
  - (c) the Chief Commissioner is satisfied that no surcharge land tax would have been chargeable on the residential land had the relevant determination been made before the liability for surcharge land tax arose.
- (2) A **relevant determination** is a determination made under section 104I (2) of the *Duties Act 1997* (as inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*).
- (3) In the case of a reassessment, the Chief Commissioner must refund any surcharge land tax paid on the residential land if an application for the refund of the land tax is made within 5 years after the initial assessment.
- (4) In this clause, **residential land** has the same meaning as in Chapter 2A of the *Duties Act 1997*.
- (5) Subclauses (1)–(4) re-enact clause 3 of the *Land Tax Management (Transitional) Regulation 2018* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## **Part 32 Provision consequent on enactment of State Revenue Legislation Amendment (Surcharge) Act 2017**

### **63 Surcharge land tax—new home development by Australian-based developers**

Section 5C of the *Land Tax Act 1956* applies to the assessment of land tax liability in respect of the 2017 land tax year and subsequent tax years.

## **Part 33 Provisions consequent on enactment of State Revenue and Other Legislation Amendment Act 2019**

### **64 Definition**

In this Part—

**amending Act** means the *State Revenue and Other Legislation Amendment Act 2019*.

### **65 Surcharge land tax—retirement visa holders**

The amendments made to the *Land Tax Act 1956* by Schedule 2.2 to the amending Act apply to the assessment of land tax liability in respect of the 2020 land tax year and subsequent land tax years.

## **Part 34 Provisions consequent on enactment of State Revenue**

## Legislation Further Amendment Act 2020

### 66 Amendments relating to discretionary trusts

- (1) Section 5D of the *Land Tax Act 1956* applies to the assessment of land tax liability in respect of the 2017 land tax year and subsequent land tax years.
- (2) If the trustee of a discretionary trust is liable in that capacity as a foreign person for surcharge land tax in respect of the 2017, 2018, 2019 or 2020 land tax year—
  - (a) the trustee is exempt from that land tax if the terms of the trust have been amended, before payment of the land tax is due and before midnight on 31 December 2020, so that the trust prevents a foreign person from being a beneficiary, or
  - (b) if that land tax has been paid, the trustee is entitled to a refund of that land tax if the terms of the trust have been amended, before midnight on 31 December 2020, so that the trust prevents a foreign person from being a beneficiary.
- (3) A trust that satisfies the no foreign beneficiary requirement under section 5D of the *Land Tax Act 1956* immediately before the commencement of that section is considered for the purposes of that section to prevent a foreign person from being a beneficiary of the trust (without having to satisfy the no amendment requirement under that section).
- (4) Despite section 5D of the *Land Tax Act 1956*, the trustee of an Australian testamentary trust is not in that capacity a foreign person for the purposes of the application of section 5A of that Act to residential land owned by a foreign person if—
  - (a) liability for land tax is required (under clause 9 of Schedule 1A to this Act) to be assessed as if the deceased had not died and had continued to use and occupy the land as his or her principal place of residence, or
  - (b) any of the following apply (even if the trust does not prevent a foreign person from being a beneficiary of the trust)—
    - (i) for a trust arising from a will or codicil—the will or codicil was executed on or before 31 December 2020,
    - (ii) for a trust arising from the administration of an intestate estate—the deceased died before, or within 2 years after, the commencement of section 5D of the *Land Tax Act 1956*,
    - (iii) for a trust resulting from an order of a court varying the application of the provisions of a will or codicil or of the rules governing the distribution of an intestate estate—the order was made on or before 31 December 2020.
- (5) The Chief Commissioner may in a particular case extend the date by which payment

of surcharge land tax by a trustee is due so that the trustee qualifies for exemption from that surcharge land tax under this clause if the terms of the trust have been amended before midnight on 31 December 2020 (but after the date by which payment would otherwise be due) so that the trust prevents a foreign person from being a beneficiary.

(6) In this clause—

***Australian testamentary trust*** means a discretionary trust arising from a will or codicil or the administration of an intestate estate (or as a result of an order of a court varying the application of the provisions of a will or codicil or of the rules governing the distribution of an intestate estate) where the deceased was not a foreign person immediately before his or her death.

(7) Expressions in this clause have the same meanings as in section 5D of the [Land Tax Act 1956](#).

## **Part 35 Provision consequent on enactment of Revenue Legislation Amendment Act 2023**

### **67 Extending period during which unoccupied land may be treated as principal place of residence**

Schedule 1A, clause 6(7A) is taken to permit the Chief Commissioner to extend a period ending before the commencement of the subclause if the period ended on or after 31 December 2019.

## **Part 36 Provisions consequent on enactment of Treasury and Revenue Legislation Amendment Act 2023**

### **68 Repeal of Part 7, Division 4A**

The repeal of Part 7, Division 4A does not affect an amount of a tax threshold or a premium rate threshold determined under the division except as otherwise provided in this part.

### **69 Validation of tax threshold and premium rate threshold**

- (1) An amount set out in section 62P for a land tax year is taken to be the tax threshold for the land tax year.
- (2) An amount set out in section 62S for a land tax year is taken to be the premium rate threshold for the land tax year.

### **70 Principal place of residence exemption**

- (1) Schedule 1A, clause 15 does not prevent a person from being entitled to a principal place of residence exemption in relation to land if the person was previously entitled

to the exemption in relation to the land.

(2) This clause ceases to apply at the end of 31 December 2025.