

1992

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

RATES AND LAND TAX (AMENDMENT) BILL (NO.3) 1992

EXPLANATORY MEMORANDUM

Circulated by the Authority of the Chief Minister and Treasurer

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Rates and Land Tax (Amendment) Bill (No.3) 1992

Outline of Amendment

The Rates and Land Tax Act 1926 (the Act) provides for the imposition of municipal rates and land tax in the Australian Capital Territory.

This Bill amends the Act to clarify the circumstances under which land tax may be sought and, in particular, exemption for absences from a principal place of residence, thus providing greater certainty in the administration of these provisions. It also extends the land tax base to include that part of two or more residential flats which are not occupied by the owner as his or her principal place of residence.

Other amendments in the Bill provide for:

- . a new definition of owner;
- . redetermination of land values for up to three years to rectify errors;
- . land tax to be paid in quarterly instalments;
- . the application of a second rate of land tax for payments not made by the due date; and
- . interest to be paid on overpaid rates and land tax, in certain circumstances.

Financial Implications

Additional revenue from expansion of the land tax base to include investment flats is expected to be \$0.2 million in 1993-94 and each year thereafter.

Details of the proposed Bill are attached.

Details of The Rates and Land Tax (Amendment) Bill (No.3) 1992

Short Title

Clause 1 - provides for the short title for this Act to be the Rates and Land Tax (Amendment) Act (No.3) 1992.

Principal Act

Clause 2 - refers to the Principal Act being amended, being the Rates and Land Tax Act 1926.

Interpretation

Clause 3 - amends section 4 of the Principal Act by omitting from subsection (1) the current definition of owner and substituting a definition to make it more consistent with the definition contained in the Rates and Land Rent (Relief) Act 1970 and limits obligations and rights under the Act to legal owners. The definition however includes mortgagees in possession recognising their right to dispose of the land in settlement of debts due to them, and to allow recovery of overdue rates and land tax from such persons.

Revaluation following clerical error or changed circumstances

Clause 4 - amends section 10 of the Principal Act to provide for the Commissioner for ACT Revenue to go back three valuation periods and determine or redetermine unimproved land values where a clerical error or a change in circumstances requires the setting of new values.

Application of determination or redetermination to rates and land tax

Clause 5 - amends section 11 of the Principal Act to provide for the new values determined or redetermined under clause 4 to be used by the Commissioner to reassess rates and land tax charges.

Substitution

Clause 6 - repeals section 22A of the Principal Act which provides for the imposition of land tax and substitutes a new section 22A which makes provision for the imposition of two rates of land tax.

"Imposition"

The existing rate of 1% is imposed by paragraph (a) where land tax is paid in full by the due date.

A new rate, to be determined by the Minister by disallowable instrument notified in the Gazette, is to be imposed where the taxpayer does not pay the tax in full by the due date, but elects to pay by instalments.

Exempt Land

Clause 7 - amends section 22B of the Principal Act by:

- (a) inserting after paragraph (1)(a) paragraph (aa) which allows an exemption from land tax where a parcel of residential land is occupied by a person who has a life or term interest in that land under the terms of a will of a deceased person as his or her principal place of residence;
- (b) omitting subsection (1A) and substituting a new subsection (1A) which provides that for the purpose of determining if a parcel of land is the principal place of residence of an owner he or she may be absent
 - (1) for up to three tax assessment periods (up to four years);
 - (i) where the Commissioner is satisfied that an owner or his or her spouse, as a consequence of his or her current employment with an ACT employer, will

be employed away from the ACT, but will return to reside in the ACT; and

(ii) that an owner who has obtained an employment exemption from land tax previously, has resided in the ACT continuously for two years prior to any further absence;

(2) for one tax assessment period (up to 2 years) where the Commissioner is satisfied that, on compassionate grounds the owner has compelling reasons to be absent from his or her principal place of residence; or

(3) for, in any other case, twelve months;

and such an absence does not of itself mean that the parcel of land will lose its exemption as the principal place of residence of the owner.

(c) sub-clause 7(c) omits subsection 22B(3) of the Principal Act and substitutes a new subsection 22B(3) which provides definitions for "owner", "tax assessment period", and "spouse".

Owner for the purposes of determining if a parcel of land is exempt from land tax, does not include:

(1) a body corporate or trustee,

(2) a mortgagee in possession, and

(3) an owner occupying a parcel of land as his or her principal place of residence who holds less than a 20% interest, or holds less than an equal proportional interest of less than 20% in that parcel of land.

The definition of tax assessment period provides for a flexible period of absence for up to two years, depending on when the absence commences.

The definition of spouse provides for a defacto spouse of the opposite sex.

Application for exemption of residential land

Clause 8 amends section 22BA of the Principal Act to provide for the Commissioner for ACT Revenue to consider an application for exemption from land tax from an owner of a residential parcel of land where a person, having a life or term interest in that parcel under the terms of a will of a deceased person, occupies it as his or her principal place of residence.

Insertion

Clause 9 inserts a new section 22DA after section 22D to provide for the application of land tax on residential flats.

"Residential flats"

New subsection 22DA(1) makes a parcel of land on which there is two or more residential flats liable to land tax except for that portion of the land occupied by an owner as his or her principal place of residence.

New subsection 22DA(2) allows the Commissioner for ACT Revenue to determine the proportion of the unimproved value of the parcel of land that will be used for assessing the land tax payable on the non-owner occupied portion, having regard to the floor area of the building occupied by the owner as his or her principal place of residence.

Payment of land tax

Clause 10 amends section 22E of the Principal Act by omitting all subsections after subsection (3) and substituting subsections (4) to (9) (inclusive), which:

- . provide for the payment of land tax in full (subsections (4), (5)(a) and (b)) or by instalments (subsections (5)(c) and (d));
- . specifies the method for dealing with fractions of a cent in an account (subsection (6)(a) and (b)); provides for the number of instalments (subsection (7)(a)); makes each instalment a whole dollar amount (subsection (7)(b)); makes the first instalment include the sum of the remainder of each instalment (subsection (7)(c));
- . provides for the calculation of land tax liability for part only of a year (subsection (8)); and where an amount is overpaid under subsection (8) the owner to be entitled to have the excess amount refunded (subsection 9)).

Objections

Clause 11 amends section 22GE of the Principal Act to provide for:

- . the lodging of an objection to the Commissioner for ACT Revenue by an owner of residential flats who is dissatisfied with the proportion of the unimproved value of the parcel of land that has been determined for land tax purposes under section 22DA of the Principal Act as amended by this Act; and
- . the Commissioner for ACT Revenue to redetermine the proportion of the unimproved value of the parcel of land determined for land tax purposes, where he or she is satisfied it was incorrectly determined.

(Where the Commissioner dismisses the owner's objection to the proportional unimproved value of the parcel of land determined for land tax purposes under section 22DA of the Principal Act, as amended by this Act, the owner has the right to have the matter reviewed by the Administrative Appeals Tribunal under section 22GF of the Principal Act).

Insertion

Clause 12 inserts after section 28A of the Principal Act a new subsection, 28B, which provides for the paying of interest on overpaid amounts, in certain circumstances.

"Interest on refund"

Subsection 28B provides that the Commissioner for ACT Revenue may, where he or she considers it just and equitable to do so, pay interest at a rate to be determined by the Minister, on an amount overpaid on a rates and land tax account.

Application and Transitional

Clause 13 specifies when the various changes to the Principal Act, as amended will apply.

Subclause 13(1) makes provision for:

- (a) an exemption relating to land occupied by a person having a life or term interest in a parcel of land under the terms of a will, paragraph 22B(1)(aa); and
- (b) an exemption relating to an absence because of employment, paragraph 22B(1A)(a)

to apply from the year that commenced on 1 July 1991.

Subclause 13(2) provides that for the purpose of seeking an exemption from land tax on an owners principal place of residence in relation to an absence on compassionate grounds, paragraph 22B((1A)(b) - the amended provisions will commence on 1 July 1992.

Subclause 13(3) provides that notwithstanding the application of subclause 13(1) and (2) where a parcel of land was exempt under the Principal Act by virtue of paragraph 22B(1A)(a) or (b) - provisions relating to employment and compassionate absences - that exemption will be, in effect, continued.

Subclause 13(4) provides that paragraph 22A(2)(b) - the application of a second rate of land tax where payment is not made in full by the due date - and paragraph 22E(4) to (9) inclusive - provisions for payment of land tax in full or by instalments, will commence on and apply from 1 July 1993.