



Australian Capital Territory

# Land Tax Act 2004

**A2004-4**

**Republication No 2**

**Effective: 2 June 2005 – 28 June 2005**

Republication date: 2 June 2005

Last amendment made by A2005-20

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Land Tax Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 June 2005. It also includes any amendment, repeal or expiry affecting the republished law to 2 June 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Land Tax Act 2004

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02/06/05

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Australian Capital Territory

# Land Tax Act 2004

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An Act about land tax

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Land Tax Act 2004*.

*Note* This Act is a **tax law** under the Taxation Administration Act. As a tax law, this Act is subject to provisions of the Taxation Administration Act about the administration and enforcement of tax laws generally.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*unit subdivision*—see the *Rates Act 2004*, dictionary.’ means that the term ‘unit subdivision’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Imposition and payment of land tax

### 6 Pt 2 subject to pt 4

This part is subject to part 4 (Unit subdivisions).

### 7 Definitions for pt 2

In this part:

*rent* means valuable consideration for which a tenant is liable under a tenancy agreement in relation to the tenancy or a period of the tenancy.

*tenancy agreement*—

- (a) means an agreement under which a person grants to someone else for value a right of occupation of a parcel of land for use as a residence—
  - (i) whether the right of occupation is exclusive or not; and
  - (ii) whether the agreement is express or implied; and
  - (iii) whether the agreement is in writing, is oral, or is partly in writing and partly oral; but
- (b) does not include an agreement giving a right of occupation only as a boarder or lodger.

*tenant* means a person with a right of occupation under a tenancy agreement.

*trustee* does not include—

- (a) in relation to a dead person—an executor of the will, or an administrator of the estate, of the dead person; or

- (b) a guardian or manager of the property of a person with a legal disability.

## 8 When is something *rented* for pt 2?

- (1) For this part, a parcel of land or dwelling is not taken to be *rented* only because a tenant is liable to pay for rates, land tax, repairs, maintenance or insurance in relation to the parcel or dwelling.

*Note* For provision about multiple dwellings on a parcel of land, see s 15.

- (2) For this part, a parcel of land or dwelling is taken to be *rented* if it is rented on the 1st day of a quarter.
- (3) For this part, a parcel of land or dwelling is taken to be *rented* on the 1st day of a quarter if—
  - (a) it is leased for residential purposes on that day; and
  - (b) it was rented at any time in the previous quarter.
- (4) However, the parcel of land or dwelling is taken not to be *rented* on the 1st day of a quarter if—
  - (a) the owner gives written notice to the commissioner before the beginning of the quarter that the parcel or dwelling will not be rented at any time in the quarter; or
  - (b) the owner gives written notice to the commissioner during the quarter that the parcel or dwelling has not been, and will not be, rented at any time in the quarter; or
  - (c) the owner gives written notice to the commissioner after the quarter that the parcel was not rented at any time in the quarter; or
  - (d) the owner gives written notice to the commissioner that the parcel or dwelling was not rented during a continuous period of at least 91 days that—
    - (i) begins in a quarter after the 1st day of the quarter; and

(ii) ends in the following quarter.

- (5) Also, if the owner of a parcel of land becomes the owner on the 1st day of a quarter or during the previous quarter, the parcel is taken to be not rented on the 1st day of the quarter unless—
- (a) the owner advises under section 14 that the parcel is rented; or
  - (b) the commissioner is otherwise satisfied that the parcel is rented.

## 9 Imposition of land tax

- (1) Land tax at the appropriate rate is imposed for a quarter on each parcel of rateable land that is—
- (a) rented residential land; or
  - (b) residential land owned by a corporation or trustee; or
  - (c) commercial land.
- (2) The *appropriate rate* of land tax for a parcel of land is the amount worked out by the commissioner for the parcel as follows:
- determined rate × average unimproved value
- (3) However, land tax is not imposed on a parcel of land that is exempt under section 10 or section 11.
- (4) In this section:

*average unimproved value* means the average unimproved value of the parcel of land under the *Rates Act 2004*.

*commercial land*—

- (a) means rateable land that is not residential land or rural land; and
- (b) includes part of a parcel of land used for commercial purposes.

***determined rate*** means the rate determined under the Taxation Administration Act, section 139.

*Note* The power to determine a rate under the Taxation Administration Act includes the power to determine a different rate for different matters or different classes of matters (see Legislation Act, s 48).

## 10 Land exempted from s 9 generally

(1) The following parcels of land are exempt from land tax imposed under section 9:

(a) a parcel of residential land owned by an individual if the parcel is exempted under section 13 (Decision on compassionate application) in relation to the parcel;

*Note* An exemption under s 13 is for 1 year or less.

(b) a parcel of rural land;

(c) a parcel of land owned by the commissioner for housing under the *Housing Assistance Act 1987*;

(d) a parcel of land leased for a retirement village;

(e) a parcel of land leased for a nursing home;

(f) a parcel of land leased for a nursing home and a retirement village;

(g) a parcel of land leased by a religious institution or order to provide residential accommodation to a member of the institution or order and allow the member to perform his or her duties as a member of the institution or order;

(h) a parcel of land, other than a parcel of residential land leased to a corporation or trustee, being used for a purpose prescribed under the regulations.

(2) In this section:

**nursing home** means premises that—

- (a) are approved, or taken to be approved, as a nursing home under the *National Health Act 1953* (Cwlth); and
- (b) are built on land under a lease that allows the use of the land—
  - (i) for residential accommodation and nursing care for patients who, because of infirmity or illness, disease, incapacity or disability have a continuing need for nursing care; and
  - (ii) if the land is also used, or to be used, as a retirement village—for residential retirement accommodation.

**retirement village** means a complex of buildings (whether or not including hostel units)—

- (a) that is intended predominantly for retired people who are at least 55 years old, or couples, at least 1 of whom is at least 55 years old; and
- (b) each of which is, or is to be, occupied or used under a sublease, licence or other arrangement (other than a lease); and
- (c) each of which is intended, and able, to be occupied as a home; and
- (d) that is built on land under a lease that allows the use of the land—
  - (i) for residential retirement accommodation; and
  - (ii) if the land is also used, or to be used, for a nursing home—for residential accommodation and nursing care for patients who, because of infirmity or illness, disease, incapacity or disability have a continuing need for nursing care; and

- (e) from which no business activity is conducted by the lessee, other than a business connected with the conduct of—
  - (i) a retirement village; or
  - (ii) if a nursing home is also conducted under the same lease—the nursing home.

*Note* Section 15 (2) disappplies this section in certain circumstances.

## 11 Land exempted from land tax

- (1) The following parcels of land are exempted from land tax:
  - (a) a parcel of land held under a development lease by a corporation;
  - (b) a parcel of residential land owned by a not-for-profit housing corporation.
- (2) A parcel of land owned by a corporation carrying on business as a builder or land developer is exempt from land tax in relation to the parcel for 2 years beginning on the 1st day of the 1st quarter after the corporation becomes the owner of the parcel if—
  - (a) the parcel is used by the corporation only to construct new residential premises; and
  - (b) the new residential premises are to be sold by the corporation when finished.

- (3) In this section:

***development lease***, of land, means a lease for the development of the land by the lessee, or at the lessee's expense, by clearing, filling, grading, draining, levelling or excavating the land to make it suitable for subdivision into parcels of land to be leased.

***new residential premises*** includes premises intended and able to be occupied as a home that—

- (a) have been created through substantial renovations of a building; or
- (b) have been built, or contain a building that has been built, to replace demolished premises on the same land.

***not-for-profit housing corporation*** means a corporation registered under the Corporations Act or the *Cooperatives Act 2002* with a constitution that—

- (a) states that the main objective of the corporation is the provision of housing; and
- (b) prohibits the corporation from making a distribution (whether in money, property or another way) to its members.

***substantial renovations***, of a building, are renovations in which all, or substantially all, of the building is removed or replaced, whether or not the renovations involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.

*Note* Section 15 (2) disapplies this section in certain circumstances.

## 12 Application for compassionate case exemption

- (1) This section applies if, on the 1<sup>st</sup> day of a quarter, a parcel of residential land is owned by an individual (the ***owner***) and rented by a tenant.
- (2) The owner may apply in writing to the commissioner for a declaration that the parcel of land be treated as exempt from land tax on compelling compassionate grounds.
- (3) The application must set out the grounds on which it is made.



**13 Decision on compassionate application**

- (1) On receiving an application under section 12 by the owner of a parcel of land, the commissioner must—
  - (a) if satisfied that the owner is temporarily absent because of compelling compassionate reasons and the parcel is not a parcel to which subsection (2) relates—exempt the parcel from land tax; or
  - (b) in any other case—refuse to exempt the parcel from land tax.
- (2) The commissioner must not exempt a parcel of land under this section if—
  - (a) a person carries on business as the proprietor of a boarding house on the parcel; or
  - (b) the parcel is leased to a corporation or trustee.
- (3) An exemption under subsection (1) in relation to a parcel of land must state that the parcel is exempt from land tax for a stated period of 1 year or less.
- (4) A notice of refusal under subsection (1) (b) must give reasons why the commissioner is not satisfied that the parcel should be exempt from land tax under this section.
- (5) The commissioner may, by notice given to the owner of the parcel of land, revoke an exemption under this section if satisfied that the parcel should no longer be exempted.

**14 Commissioner to be told if residential land rented**

- (1) A person who becomes the owner of a parcel of land that is leased for residential purposes, and becomes or continues to be rented by a tenant on the change of ownership, must tell the commissioner in writing within 30 days after the day the person becomes the owner—
  - (a) that the parcel has begun or continued to be rented; and

- (b) the date when the rental began.
- (2) If a parcel of land that is leased for residential purposes becomes rented by a tenant, the owner of the parcel must tell the commissioner in writing about the rental (including the date the rental began) within 30 days after the day the rental begins.
- (3) This section does not apply if the owner of the parcel of land is a corporation.

## 15 Multiple dwellings

- (1) This section applies if—
  - (a) a parcel of residential land owned by someone other than a corporation or trustee contains multiple dwellings; and
  - (b) at least 1 of the dwellings is rented by a tenant.
- (2) Section 10 (Land exempted from s 9 generally) and section 11 (Land exempted from land tax) do not apply to the parcel of land.
- (3) In working out the land tax payable for the parcel of land under section 9 (Imposition of land tax), the average unimproved value of the parcel of land is the amount worked out by the commissioner in accordance with the following formula:

$$AUV \times \frac{FA}{TFA}$$

- (4) In this section:
  - AUV* means the average unimproved value of the parcel of land under the *Rates Act 2004*.
  - dwelling* does not include—
    - (a) a garage, carport, garden shed, veranda, pergola or patio, or any other structure not used for living in; or
    - (b) a unit.

*FA* means the floor area of the rented dwelling.

*TFA* means the total floor area of all dwellings on the parcel of land.

## **16 Land partly owned by corporation or trustee**

- (1) This section applies to a parcel of residential land that is not rented and is owned by—
  - (a) 1 or more people who are corporations or trustees; and
  - (b) 1 or more people who are not corporations or trustees.
- (2) In working out the land tax payable for the parcel of land under section 9 (Imposition of land tax), the average unimproved value of the land is the amount worked out by the commissioner in accordance with the following formula:

$$AUV \times \frac{C \& TI}{AI}$$

- (3) In subsection (2):

*AI* means the value of all interests in the parcel of land.

*AUV* means the average unimproved value of the parcel of land under the *Rates Act 2004*.

*C&TI* means the value of all interests in the parcel of land held by corporations and trustees.

- (4) Any land tax payable for the parcel of land is payable by the owners of the land who are corporations or trustees.

**17 Payment of land tax**

- (1) Land tax in relation to a parcel of land is payable to the commissioner by the owner of the parcel.
- (2) A person who is the owner of the parcel of land is liable to pay to the commissioner any unpaid land tax payable in relation to the parcel, whether the amount became payable before or after the person became the owner.
- (3) The assessment notice for the land tax payable for a quarter for a parcel of land must state a date for payment of the land tax (the *payment date*).
- (4) The payment date must not be earlier than 4 weeks after the date of the notice.
- (5) A person may pay the land tax in relation to which an assessment notice has been given—
  - (a) if the amount payable is for a quarter and any arrears of land tax in relation to previous quarters have been paid in full—by paying, on or before the date for the payment of the land tax, the amount of the land tax; or
  - (b) if the amount payable is for part of a quarter—by paying the amount of the land tax on or before the payment date for the land tax; or
  - (c) by paying the amounts on the days that the person wishes, but so that the amount owing on the date for payment is paid no later than the date for payment.

**18 Land tax for part of quarter**

- (1) This section applies to a parcel of land if—
- (a) the parcel starts or stops being rateable in the quarter; and
  - (b) land tax is payable for the parcel at any time during the quarter.
- (2) In working out the land tax payable for the parcel of land under section 9 (Imposition of land tax), the amount of land tax payable for the parcel for the quarter is the amount worked out by the commissioner in accordance with the following formula:

$$\text{land tax otherwise payable for quarter} \times \frac{\text{taxable days}}{\text{quarter day}}$$

- (3) In subsection (2):

*taxable days* means the number of days in the quarter that the parcel of land was a rateable parcel.

*quarter days* means the number of days in the quarter.

## Part 3 Enforcement

### 19 Interest payable on overdue land tax

- (1) Interest on an amount of unpaid overdue land tax is worked out—
  - (a) for each calendar month that the amount remains unpaid; and
  - (b) on the 1st day of that month; and
  - (c) at the interest rate applying to that day; and
  - (d) on the total amount of overdue land tax that is unpaid on a day when the interest is worked out.

*Note* The Minister may determine an interest rate for this section under the Taxation Administration Act, section 139.

- (2) For subsection (1) (a), if an amount remains unpaid for part of a calendar month, interest is payable for the whole month.

#### **Example**

Fred's land tax is due on 15 August. He doesn't pay it until 5 October. Fred has to pay interest worked out for the overdue period from 16 August to 5 October. Because of the operation of s (2), Fred has to pay interest for the period from 16 August to 15 October. Interest for the month from 16 August to 15 September is at the rate applying on 16 August, which is the 1st day of the 1st month that the amount remains unpaid (see s (1)). Interest for the month from 16 September to 15 October is at the rate applying on 16 September, which is the 1st day of the 2nd month that the amount remains unpaid (see s (1)).

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The Taxation Administration Act, section 25 (Interest in relation to tax defaults) does not apply to unpaid overdue land tax.

**20 Charge of land tax on rateable land**

- (1) Land tax payable in relation to a parcel of rateable land is a charge on the interest held by the owner of the parcel.
- (2) The charge takes priority over a sale, conveyance, transfer, mortgage, charge, lien or encumbrance in relation to the parcel of land.
- (3) The charge does not have effect against an honest purchaser of the parcel of land for value if—
  - (a) the purchaser had obtained a certificate under section 41 (Certificate of land tax and other charges) in relation to the parcel before the purchase; and
  - (b) at the time of purchase, the purchaser did not have notice of liability under the charge.

**21 Notice of land tax in arrears**

- (1) If land tax payable for a parcel of land has been in arrears for at least 1 year, the commissioner may give the owner of the parcel written notice that the land tax is in arrears.
- (2) At any time after giving notice, the commissioner may declare, in writing, that the land tax for the parcel of land is in arrears.
- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**22 Unoccupied land—letting for unpaid land tax**

- (1) This section applies if—
  - (a) a declaration is made under section 21 in relation to an unoccupied parcel of land; and
  - (b) the land tax payable for the parcel is not paid within 30 days after the day the declaration is notified.

- (2) The commissioner may—
  - (a) take possession of the parcel of land; and
  - (b) hold the parcel against anyone; and
  - (c) lease the parcel for not longer than 7 years.
- (3) If the commissioner takes possession of the parcel of land, the commissioner must keep accounts of—
  - (a) rent and other amounts received by the commissioner in relation to the parcel; and
  - (b) the expenses of the lease; and
  - (c) the land tax and rates payable for the land.
- (4) If rent and other amounts are received by the commissioner under this section—
  - (a) the rent and other amounts must be applied against—
    - (i) the expenses of the lease necessarily incurred by the commissioner; and
    - (ii) the land tax payable for the land; and
    - (iii) the rates payable for the land; and
    - (iv) any other expenses incurred by the commissioner in relation to the parcel; and
  - (b) any remaining rent and other amounts received belongs to anyone who, at the time it is received, would have been entitled to receive it if the parcel had not been in the commissioner's possession.
- (5) In this section:

*expenses*, of a lease, includes expenses incidental to the lease and the collection of rent under the lease.



**23 Entitlement to possession of land held by commissioner**

- (1) This section does not apply to a parcel of land sold under section 24.
- (2) A person who, apart from section 22, would be entitled to a parcel of land may, within 16 years after the day the commissioner takes possession of the parcel—
  - (a) inspect the accounts kept under section 22; and
  - (b) ask the commissioner to put the person in possession of the parcel.
- (3) On request under subsection (2), the commissioner must put the person in possession of the parcel of land—
  - (a) if land tax, rates or both are payable for the parcel—on payment by the person of the amount payable; and
  - (b) if the parcel is subject to a lease made by the commissioner under section 22—subject to the lease.
- (4) If no-one is put in possession of the parcel of land under this section within 16 years after the day the commissioner takes possession of the parcel—
  - (a) the parcel vests absolutely in the Commonwealth; and
  - (b) rent and any other amounts received by the commissioner in relation to the land vest in the Territory.

**24 Sale of land for nonpayment of land tax**

- (1) This section applies if—
  - (a) a parcel of land is held by the owner under a lease from the Commonwealth for a term of years; and
  - (b) the commissioner has complied with section 21; and

(c) land tax payable for the parcel is in arrears for at least 1 year after the day of notification of a declaration under section 21 in relation to the parcel.

(2) The commissioner may apply to a court of competent jurisdiction for an order for the sale of all or part of the parcel of land.

**Example**

The commissioner has given notice and made a declaration under section 21 in relation to a parcel of land held under lease from the Commonwealth. If the parcel is unoccupied, the commissioner may take action under section 22 to lease the parcel or, if the land tax is in arrears for at least 1 year after the day of notification of the declaration, make an application under this section for an order for sale. The option to lease would not be available if the property were occupied.

*Note 1* A single application form may be approved for this section and the *Rates Act 2004*, s 26 (see *Legislation Act*, s 255 (7)).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

(3) If the court is satisfied that this section applies to the parcel of land, the court must—

(a) order the sale by public auction of the parcel, or as much of the parcel as will be sufficient to pay the total of the following—

(i) the total amount of land tax in arrears at the time of hearing of the application;

(ii) the total amount of any rates in arrears at the time of hearing of the application;

(iii) costs and expenses in relation to the declaration, application and sale; and

(b) order that the proceeds be paid into court; and

(c) order that the title to the parcel be transferred to the purchaser free from mortgages and other encumbrances.

- (4) The commissioner is entitled to be paid the total mentioned in subsection (3) (a) out of the proceeds of sale without a court order.
- (5) On application by an interested person, the court may order payment out of court of any remaining proceeds.
- (6) However, if a person who was the owner or mortgagee of the parcel of land before the sale hands over to the court the certificate or other title to the parcel sold, the person is entitled to be paid out of court, without any court order—
  - (a) if the person was the owner—any remaining proceeds; and
  - (b) if the person was the mortgagee—the amount owing to the mortgagee under the mortgage or, if that amount is more than the amount of any remaining proceeds, the remaining proceeds.
- (7) Any sale of a parcel of land or part of a parcel under this section must be abandoned if the owner of the parcel pays, in relation to the parcel or the part of the parcel—
  - (i) the total land tax in arrears; and
  - (ii) the total of any rates in arrears; and
  - (iii) the costs and expenses incurred in relation to the declaration, application and sale up to the time of payment.

## **25 Application may relate to more than 1 parcel**

- (1) The commissioner may make a single application under section 24 in relation to more than 1 parcel of land even if—
  - (a) the parcels belong to different owners; or
  - (b) the notices under section 21 (Notice of land tax in arrears) for the parcels were given at different times.

- (2) If the commissioner makes an application in relation to more than 1 parcel, the court may make the orders about apportionment of land tax and rates, and any other amounts payable, that the court considers just.

*Note* The application may include an application under the *Rates Act 2004*, s 27 in relation to the parcel (see Legislation Act, s 49).

## **Part 4**                      **Unit subdivisions**

*Note*      Section 9 imposes land tax on unit subdivisions.

### **Division 4.1**                      **Application of Act to unit subdivisions**

#### **26**                      **Unit subdivisions**

- (1) For this Act, if a parcel of land is a unit subdivision, the land making up the parcel is taken to continue to be a single parcel of land.
- (2) However, in the application of this Act to a unit subdivision—
  - (a) a reference to a parcel of land in relation to the assessment or payment of land tax is a reference to a unit; and
  - (b) a reference to the owner is—
    - (i) in relation to the assessment or payment of land tax—a reference to the unit owner; and
    - (ii) in relation to any other notice—a reference to the owners corporation.

#### **27**                      **Unit subdivisions—land tax**

- (1) This section applies to a parcel of land that is a unit subdivision.
- (2) If land tax imposed for the parcel of land for the quarter when the units plan is registered is not paid before registration of the units plan, it is payable by the person who was the owner of the parcel on the day before the day when the units plan was registered.

- (3) On and after the 1st day of the next quarter after the day when the units plan is registered or, if it is registered on the 1st day of a quarter, on and after that day—
- (a) any land tax imposed for the parcel of land is payable by the unit owners whose units are subject to land tax; and
  - (b) the amount payable by each unit owner whose unit is subject to land tax is the amount worked out under subsection (5); and
  - (c) no land tax for the parcel is payable by the owners corporation.
- (4) Section 9 (Imposition of land tax) applies to impose land tax on a unit that is part of the unit subdivision as if a reference to a parcel of land were a reference to the unit.
- (5) In working out the land tax payable for the unit under section 9, the average unimproved value of the unit is the amount worked out in accordance with the following formula:

$$\frac{UE}{TUE} \times AUV$$

- (6) In this section:

*AUV* means the average unimproved value of the parcel of land under the *Rates Act 2004*.

*TUE* means the unit entitlement of all the units in the units plan.

*UE* means the unit entitlement of the unit.

*unit entitlement*—see the Unit Titles Act, section 8.

*units plan* means a units plan under the Unit Titles Act 2001, section 7.

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## **Division 4.2                      Certain proposed unit subdivisions**

### **28                      Meaning of *qualifying parcel of land* for div 4.2**

In this division:

*qualifying parcel of land* means a parcel of land to which this division applies because of section 29.

### **29                      When div 4.2 applies to parcel of land**

- (1) If the commissioner makes a determination under the *Rates Act 2004*, section 32 (2) for a parcel of land—
  - (a) this division applies to the parcel; and
  - (b) this division is taken to have begun to apply to the parcel on the 1st day when, under the current lease of the land, the parcel became an eligible parcel of land.

- (2) In this section:

*eligible parcel of land* means a parcel of rateable land for which the lease of the parcel allows development of the parcel for residential and commercial purposes.

### **30                      Imposition of land tax—qualifying parcels of land**

- (1) Section 9 (Imposition of land tax) applies to impose land tax on a qualifying parcel of land as if a reference to the parcel were a reference to the percentage of the intended development of the parcel determined under the *Rates Act 2004*, section 32 to be used for commercial purposes.
- (2) In working out the land tax payable for the parcel of land under section 9, the average unimproved value of the parcel is the amount worked out by the commissioner in accordance with the following formula:

$$CP \times AUV$$

- (3) In subsection (2):

*AUV* means the average unimproved value of the parcel of land under the *Rates Act 2004*.

*CP* means the percentage of the intended development of the parcel determined under the *Rates Act 2004*, section 32 to be used for commercial purposes.

### **31 End of application of div 4.2**

This division stops applying to a parcel of land on the happening of any of the following days:

- (a) if the parcel is subdivided under the Unit Titles Act—the day after the end of the quarter when the subdivision happens;
- (b) if the owner of the land does not apply under the Unit Titles Act, part 3 within 30 days beginning on the day when a certificate of occupancy under the *Building Act 2004* is issued for the development, or within any longer period that the commissioner allows, for the subdivision of the land under the Unit Titles Act—the 1st day after the end of the 30 day period or the longer period;
- (c) if the land is not subdivided under the Unit Titles Act within 1 year beginning on the day the application (or, if there is more than 1 application, the 1st application) mentioned in paragraph (b) was made, or within any longer period that the commissioner allows—the 1st day after the end of the 1 year period or the longer period;
- (d) if there is a variation of the lease, so that the development of the land partly for residential and partly for commercial purposes is no longer allowed—the day the change happens;



- (e) if development of the land for subdivision under the Unit Titles Act is abandoned—the day it is abandoned;
- (f) if the application made under the *Rates Act 2004*, section 31 for the parcel of land is withdrawn by written notice to the commissioner—the day the notice is given;
- (g) if the commissioner gives notice to the applicant that the application is to be treated as withdrawn—the day the notice is given.

### **32 Reassessment—completion of development**

- (1) This section applies if—
  - (a) the commissioner has prepared an assessment of land tax payable for a qualifying parcel of land for a period; and
  - (b) before the end of the period the land stops being a qualifying parcel because it is subdivided under the Unit Titles Act; and
  - (c) the commissioner is satisfied that the percentages of the intended development that are to be used for residential and commercial purposes are different from the percentages determined under the *Rates Act 2004*, section 32 (2); and
  - (d) the commissioner redetermines the percentages under the *Rates Act 2004*, section 32 (5).
- (2) The commissioner must reassess the amount of land tax payable for the parcel of land for the period when the land was a qualifying parcel.

### **33 Reassessment—noncompletion of development**

- (1) This section applies if—
  - (a) the commissioner has made an assessment of land tax (the *previous land tax assessment*) for a qualifying parcel of land for a period; and
  - (b) before the end of the period—
    - (i) the parcel stops being a qualifying parcel because of the happening of a circumstance mentioned in section 31 (b), (c), (f) or (g); or
    - (ii) the commissioner is satisfied that the parcel has stopped being a qualifying parcel because of a circumstance mentioned in section 31 (d) or (e).
- (2) The commissioner must reassess the amount of land tax payable for the parcel of land for the period when the parcel was a qualifying parcel for—
  - (a) the period when the previous land tax assessment was made; or
  - (b) if there has been more than 1 assessment—the period equal to both or all of the periods for which assessments were made.
- (3) The reassessment must be on the basis that the parcel is not, and was never, a qualifying parcel.

## Part 5 Exemptions, remissions and certain interest payments

### 34 Exemption from land tax

- (1) The Minister may, in writing, exempt the owner of a parcel of land from payment of land tax owing for any period in relation to the parcel, or from payment of a stated part of the land tax.

- (2) An exemption is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (3) The Minister may make guidelines for the exercise of a function under this section.

- (4) Guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 35 Remission of land tax

- (1) The Minister may remit the land tax, or part of the land tax, payable for a parcel of land if the Minister is satisfied that it is fair and reasonable in the circumstances.

- (2) The Minister may make guidelines for the exercise of a function under this section.

- (3) Guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**36 Remission of interest**

- (1) The commissioner may remit all or part of an amount of interest payable by a person in relation to land tax if the commissioner is satisfied that it is fair and reasonable having regard to—
  - (a) any circumstances that contributed to the delay in payment of the land tax; or
  - (b) any other relevant matter.
- (2) The Minister may make guidelines for the exercise of a function under this section.
- (3) Guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**37 Interest on refund**

- (1) This section applies if the commissioner is satisfied that—
  - (a) an assessment of land tax payable for a parcel of land has been wrongly made because of an administrative error by the commissioner; and
  - (b) because of the error, a person has overpaid land tax for the parcel.
- (2) The commissioner may pay interest to the owner of the parcel—
  - (a) at the market rate component determined under the Taxation Administration Act, section 26; and
  - (b) worked out from the date when the overpayment was made or a later date the commissioner considers appropriate.

## Part 6 Miscellaneous

### 38 Objections

The following decisions of the commissioner are prescribed for the Taxation Administration Act, section 100 (Objection):

- (a) a decision under section 13 (1) (b) to refuse to exempt a parcel of land from land tax on compassionate grounds;
- (b) a decision under section 13 (5) revoking an exemption given on compassionate grounds;
- (c) a decision under section 37 to refuse to pay interest on an overpayment or to pay interest other than from the date when the overpayment was made.

*Note* Assessments are made under the Taxation Administration Act and objections may be made under that Act, s 100 (1) (a). For example, if a person is given an assessment for land tax and the person is dissatisfied with the assessment because land tax was not payable in relation to the parcel of land, the person may object under that paragraph.

### 39 Review by AAT

- (1) This section applies to a determination by the commissioner of an objection to a decision mentioned in section 38.
- (2) The determination is prescribed for the Taxation Administration Act, section 107.

*Note* Applications for review by the AAT may also be made in relation to determination by the commissioner of a decision on an objection to an assessment.

**40 Working out amounts with fractions for Act**

- (1) If an amount worked out under this Act contains a fraction of a cent, the amount must be rounded to the nearest cent, with  $\frac{1}{2}$  a cent being disregarded.
- (2) However, in working out the average unimproved value under section 15 (3) (Multiple dwellings), section 16 (2) (Land partly owned by corporation or trustee) or section 27 (5) (Unit subdivisions—land tax), any fraction of a dollar in the amount worked out must be disregarded.
- (3) The Taxation Administration Act, section 123 (Adjustments of amounts) does not apply in working out an amount under this Act.

**41 Certificate of land tax and other charges**

- (1) A person may apply to the commissioner for a certificate of—
  - (a) the land tax assessed to be payable under this Act for a parcel of land for the current financial year; and
  - (b) the land tax and other amounts immediately payable to the commissioner under this Act in relation to the parcel.

*Note 1* A fee may be determined under s 43 for this provision.

*Note 2* If a form is approved under the Taxation Administration Act, s 139C for an application, the form must be used.

*Note 3* A single application form may be approved for this section and the *Rates Act 2004*, s 76 (see Legislation Act, s 255 (7)).

- (2) The commissioner must give the applicant the certificate.
- (3) The certificate is conclusive proof for an honest buyer for value of the parcel of land of the matters certified.

*Note* The certificate may include a certificate of amounts payable under the *Rates Act 2004* in relation to the parcel (see Legislation Act, s 49).

- (4) For this section, land tax and other amounts are taken to be payable immediately even if any necessary time after service of a notice has not ended.

## **42 Statement of amounts payable and payments made**

- (1) A person may apply to the commissioner for a statement of—
- (a) the amounts that became payable to the commissioner under this Act in relation to a parcel of land in a stated financial year; and
  - (b) the payments received by the commissioner in the financial year for amounts that became payable under this Act in relation to the parcel.

*Note 1* A fee may be determined under s 43 for this provision.

*Note 2* If a form is approved under the Taxation Administration Act, s 139C for an application, the form must be used.

*Note 3* A single application form may be approved for this section and the *Rates Act 2004*, s 77 (see Legislation Act, s 255 (7)).

- (2) The commissioner must give the applicant the statement.

*Note* The statement may include a statement of rates payable and received under the *Rates Act 2004* in relation to the parcel of land (see Legislation Act, s 49).

## **43 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**44            Regulation-making power**

The Executive may make regulations for this Act.

*Note*        Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.



## Part 7 Transitional

### 45 Meaning of *repealed Act* for pt 7

In this part:

*repealed Act* means the *Rates and Land Tax Act 1926* (repealed).

### 46 Special provision for period to 30 June 1987

- (1) This section applies if land tax is payable by a person for the period of 6 months beginning on 1 January 1987.
- (2) The repealed Act applies in relation to the land tax payable.

*Note* The repealed Act, s 22D makes special provision for land tax payable for the 6-month period.

### 47 Meaning of *assessment*

For this Act:

*assessment*, of land tax, includes an assessment of land tax made under the repealed Act.

### 48 Land tax payable under repealed Act

- (1) This section applies if—
  - (a) land tax (including penalty tax and interest) was payable under the repealed Act; and
  - (b) the land tax had not been paid before 1 July 2004.
- (2) The land tax is taken to be payable under this Act.

**49 Land to which repealed Act, pt 4A applied**

- (1) This section applies to a parcel of land if, immediately before 1 July 2004, the repealed Act, part 4A (Certain parcels of land intended to be subdivided under Unit Titles Act) applied to the parcel.
- (2) The parcel of land is taken to be a qualifying parcel of land for division 4.2 (Certain proposed unit subdivisions).

**50 Right to object if no objection lodged**

- (1) This section applies if—
  - (a) a decision for which an objection could be lodged was made under the repealed Act; and
  - (b) the decision related to land tax; and
  - (c) immediately before 1 July 2004—
    - (i) the time for lodging an objection in relation to the decision had not ended; and
    - (ii) no objection had been lodged.
- (2) The right to lodge an objection in relation to the decision is taken to be a right to lodge an objection against the decision under this Act.

*Note* Objections against decisions under this Act are heard under the Taxation Administration Act.
- (3) The right to lodge an objection under this Act ends when the right to object under the repealed Act would have ended under that Act if it had not been repealed.

**51 Objections lodged under repealed Act**

- (1) This section applies if—
  - (a) a decision for which an objection could be lodged was made under the repealed Act; and
  - (b) the decision related to land tax; and
  - (c) a person lodged an objection to the decision; and
  - (d) the objection had not been decided before 1 July 2004.
- (2) The objection may be decided as if it were an objection lodged against a decision under this Act.

*Note* Objections to decisions under this Act are heard under the Taxation Administration Act.

**52 Applications for review if no application lodged**

- (1) This section applies if—
    - (a) a decision was made under the repealed Act from which an application for review by the administrative appeals tribunal could be made; and
- Note* The repealed Act, s 31 listed the decisions from which application for review could be made.
- (b) the decision related to land tax; and
  - (c) immediately before 1 July 2004—
    - (i) the time for applying for a review of the decision had not ended; and
    - (ii) no application for review had been made.
- (2) The decision—
    - (a) is taken to be a decision under this Act; and

(b) is taken to be prescribed under section 39 (Review by AAT).

*Note* The review of determinations on objections to assessments is dealt with by the Taxation Administration Act, s 107.

- (3) The right to apply for a review of the decision ends when the right to apply for a review would have ended if the repealed Act had not been repealed.

### **53 Application for review if application lodged**

- (1) This section applies if—
- (a) a decision was made under the repealed Act from which an application for review by the administrative appeals tribunal could be made; and
  - (b) the decision related to land tax; and
  - (c) a person applied for a review of the decision; and
  - (d) the review had not been decided before 1 July 2004.
- (2) The application for review may be decided as if—
- (a) it were an application for review of a decision under this Act; and
  - (b) the decision were a decision prescribed under section 39 (Review by AAT).

### **54 Notice of land tax in arrears**

A declaration under the repealed Act, section 17 (2) (Notice of rates in arrears) in relation to land tax for a parcel of land is taken to be a declaration under this Act, section 21 for the parcel.

### **55 Statements under s 42**

A reference in section 42 to an amount payable under this Act includes a reference to an amount of land tax payable under the repealed Act.

**56 Modification of pt 7's operation**

The regulations may modify the operation of this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

**57 Expiry of pt 7**

This part expires on 1 July 2005.

*Note* Transitional provisions are usually of transitional effect. They are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- AAT
- calendar month
- commissioner for revenue
- corporation
- financial year
- function
- interest
- person
- quarter
- under.

***assessment notice***, in relation to land tax, means a notice of assessment under the Taxation Administration Act, section 14 in relation to the land tax.

***commissioner*** means the commissioner for revenue.

***land tax*** includes—

- (a) penalty tax; and
- (b) the total of—
  - (i) the costs and expenses reasonably incurred by the Territory in attempting to recover the land tax; and
  - (ii) interest payable in relation to the land tax.

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***lease*** means a lease from the Commonwealth or the Territory, and includes an agreement with the Commonwealth or the Territory—

- (a) for a lease of a parcel of land; or
- (b) for the tenancy or occupation of a parcel of land.

***owner***, of a parcel of land means—

- (a) the registered proprietor of an interest in the parcel (other than an interest in a lease granted by a person other than the Territory or the Commonwealth); or
- (b) a mortgagee in possession of the parcel; or
- (c) a person holding the parcel under a sublease from the Territory, if the Territory holds the parcel under a lease from the Commonwealth.

***owners corporation***—see the Unit Titles Act, dictionary.

***parcel*** includes a part of a parcel of land that is separately held by an occupier, tenant, lessee or owner.

***primary production*** means—

- (a) production resulting directly from—
  - (i) cultivation of land; or
  - (ii) keeping animals for their sale, bodily produce or natural increase; or
  - (iii) fishing operations; or
  - (iv) forest operations; and
- (b) the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

***qualifying parcel of land***, for division 4.2 (Certain proposed unit subdivisions)—see section 28.

**rateable land**—see the *Rates Act 2004*, section 8.

**rates**—see the *Rates Act 2004*, dictionary.

**rent**, for part 2 (Imposition and payment of land tax)—see section 7.

**rented**, for part 2 (Imposition and payment of land tax)—see section 8.

**residential land** means rateable land—

- (a) leased for residential purposes only; or
- (b) leased for residential purposes and other purposes but used for residential purposes only.

**rural land** means rateable land—

- (a) leased for the purpose of primary production only; or
- (b) leased for the purpose of primary production and other purposes but used mainly for primary production.

**Taxation Administration Act** means the *Taxation Administration Act 1999*.

**tenancy agreement**, for part 2 (Imposition and payment of land tax)—see section 7.

**tenant**, for part 2 (Imposition and payment of land tax)—see section 7.

**trustee**, for part 2 (Imposition and payment of land tax)—see section 7.

**unit** means a unit under the Unit Titles Act, section 9.

**unit owner**—see the Unit Titles Act, dictionary.

**unit subdivision**—see the *Rates Act 2004*, dictionary.

**Unit Titles Act** means the *Unit Titles Act 2001*.



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Land Tax Act 2004 A2004-4**

notified LR 18 February 2004

s 1, s 2 commenced 18 February 2004 (LA s 75 (1))

remainder commenced 1 July 2004 (s 2)

as amended by

#### **Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.32**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.32 commenced 2 June 2005 (s 2 (1))

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Unit subdivisions—land tax**

s 27 am A2005-20 amdt 3.185

#### **Transitional**

pt 7 hdg exp 1 July 2005 (s 57)

#### **Meaning of *repealed Act* for pt 7**

s 45 exp 1 July 2005 (s 57)

#### **Special provision for period to 30 June 1987**

s 46 exp 1 July 2005 (s 57)

#### **Meaning of *assessment***

s 47 exp 1 July 2005 (s 57)

#### **Land tax payable under repealed Act**

s 48 exp 1 July 2005 (s 57)

#### **Land to which repealed Act, pt 4A applied**

s 49 exp 1 July 2005 (s 57)

#### **Right to object if no objection lodged**

s 50 exp 1 July 2005 (s 57)

#### **Objections lodged under repealed Act**

s 51 exp 1 July 2005 (s 57)

#### **Applications for review if no application lodged**

s 52 exp 1 July 2005 (s 57)

**Application for review if application lodged**s 53 exp 1 July 2005 (s 57)**Notice of land tax in arrears**s 54 exp 1 July 2005 (s 57)**Statements under s 42**s 55 exp 1 July 2005 (s 57)**Modification of pt 7's operation**s 56 exp 1 July 2005 (s 57)**Expiry of pt 7**s 57 exp 1 July 2005 (s 57)**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 1 July 2004	1 July 2004– 1 June 2005	not amended	new Act

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