



Australian Capital Territory

# Revenue Legislation Amendment Act 2019 (No 2)

A2019-46

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Australian Capital Territory

# Revenue Legislation Amendment Act 2019 (No 2)

A2019-46

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An Act to amend legislation about revenue collection, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Revenue Legislation Amendment Act 2019 (No 2)*.

### 2 Commencement

- (1) This Act (other than parts 2 and 6) commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Part 2 (Duties Act 1999) and part 6 (Rates Act 2004) commence on a day fixed by the Minister by written notice.

*Note 1* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 2* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

### 3 Legislation amended

This Act amends the legislation mentioned in parts 2 to 7.

### 4 Legislation repealed

The *Duties (Amount Deferred) Determination 2007 (No 1)* (DI2007-248) is repealed.

## Part 2 Duties Act 1999

### 5 Part 2.6A heading

*substitute*

## Part 2.6A Deferred payment of duty

### 6 New division 2.6A.1 heading

*insert*

## Division 2.6A.1 First home owner grant scheme and home buyer concession scheme

### 7 Definitions—pt 2.6A Section 75AA

*omit*

### 8 New sections 75 and 75A

*insert*

### 75 Definitions—div 2.6A.1

In this division:

*deferral arrangement*—see section 75AC (2).

*eligible person* means a person who—

- (a) is an eligible home buyer under the home buyer concession scheme; or
- (b) is eligible for a first home owner grant under the *First Home Owner Grant Act 2000*; or

- (c) would be eligible for a first home owner grant under the *First Home Owner Grant Act 2000* apart from the person's home not being a new home under that [Act](#), section 12B.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

*eligible property*—see section 75A (1).

*home buyer concession scheme* means a home buyer concession scheme determined under the [Taxation Administration Act](#), section 139 (Determination of amounts payable under tax laws).

## **75A Meaning of *eligible property*—div 2.6A.1**

- (1) In this division:

*eligible property* means—

- (a) for a home buyer concession scheme—property determined under the scheme as eligible property for the scheme; or
- (b) in any other case—a residential lease with a value not more than—
- (i) \$750 000; or
  - (ii) if another amount is determined by the Minister—the amount determined.
- (2) A determination under subsection (1) (b) (ii) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## **9 Conditions of deferral arrangement Section 75AD (1) (c) (i)**

*substitute*

- (i) \$1 000; or



**10 Section 75AD (4)**

*omit*

under this part

*substitute*

under this division

**11 New division 2.6A.2**

*insert*

**Division 2.6A.2 Other duty deferral schemes****75AF Definitions—div 2.6A.2**

In this division:

*deferral arrangement*—see section 75AI (2).

*duty deferral scheme*—see section 75AG (1).

*eligible person*, for a duty deferral scheme—see section 75AG (2) (a).

*eligible transaction*, for a duty deferral scheme—see section 75AG (2) (b).

**75AG Duty deferral schemes—determination**

- (1) The Minister may determine a scheme for deferring duty (a *duty deferral scheme*).
- (2) A duty deferral scheme must identify the following:
  - (a) who is eligible to participate in the scheme (an *eligible person*);
  - (b) the dutiable transactions on which duty may be deferred under the scheme (an *eligible transaction*).

- (3) A duty deferral scheme may provide for—
- (a) how applications for duty deferral are to be made under the scheme; and
  - (b) conditions to which a deferral arrangement may be subject, including conditions to fix—
    - (i) the rate of interest charged on the amount payable under the arrangement; and
    - (ii) an amount for section 75AJ (1) (a) (ii).
- (4) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

#### **75AH Duty deferral schemes—application to defer payment of duty**

- (1) An eligible person for a duty deferral scheme may apply to the commissioner to defer payment of duty payable by the person on an eligible transaction for the scheme.
- (2) The application must be made—
- (a) in accordance with any requirements under the duty deferral scheme; and
  - (b) at the same time as the instrument effecting the dutiable transaction is lodged with the registrar-general under the [Land Titles Act 1925](#), section 47C (Registration of instruments effecting dutiable transaction).
- (3) The eligible person must provide the commissioner with any information the commissioner reasonably requires to decide the application.

**75AI Duty deferral schemes—approval to defer payment of duty**

- (1) The commissioner must approve an application under section 75AH if—
  - (a) the applicant is an eligible person for a duty deferral scheme; and
  - (b) duty is, or would be, payable on the eligible transaction for the scheme.
- (2) However, an approval under subsection (1) is subject to the applicant entering into an arrangement under the [Taxation Administration Act](#), section 52 (Arrangements for payment of tax) about payment of the amount of the deferred duty and interest (a *deferral arrangement*).

**75AJ Duty deferral schemes—conditions of deferral arrangement**

- (1) The conditions of a deferral arrangement include the following:
  - (a) that the amount of duty deferred must be at least—
    - (i) \$1 000; or
    - (ii) if a greater amount is required under the duty deferral scheme—the amount required;
  - (b) any other condition required under the duty deferral scheme.
- (2) This section does not limit the [Taxation Administration Act](#), section 52 (Arrangements for payment of tax), but any arrangement under that section about deferred payment of duty under this division must not be inconsistent with conditions under subsection (1).

**75AK Duty deferral schemes—unpaid duty and interest a debt and charge on property**

- (1) The amount payable under a deferral arrangement is a debt owing to the Territory.
- (2) The liability of a person under a deferral arrangement is a first charge on the person's interest in the property to which the deferred payment of duty relates.

**12 Certificate of duty and other charges  
Section 244 (1) (a)**

*omit*

(Deferred payments—home buyers)

*substitute*

(Deferred payment of duty)

**13 Dictionary, definition of *deferral arrangement***

*substitute*

*deferral arrangement*—

- (a) for division 2.6A.1 (First home owner grant scheme and home buyer concession scheme)—see section 75AC (2); or
- (b) for division 2.6A.2 (Other duty deferral schemes)—see section 75AI (2).

**14 Dictionary, new definition of *duty deferral scheme***

*insert*

*duty deferral scheme*, for division 2.6A.2 (Other duty deferral schemes)—see section 75AG (1).

**15 Dictionary, definitions of *eligible person* and *eligible property***

*substitute*

*eligible person*—

- (a) for division 2.6A.1 (First home owner grant scheme and home buyer concession scheme)—see section 75; or
- (b) for a duty deferral scheme, for division 2.6A.2 (Other duty deferral schemes)—see section 75AG (2) (a).

*eligible property*, for division 2.6A.1 (First home owner grant scheme and home buyer concession scheme)—see section 75A.

**16 Dictionary, new definition of *eligible transaction***

*insert*

*eligible transaction*, for a duty deferral scheme, for division 2.6A.2 (Other duty deferral schemes)—see section 75AG (2) (b).

**17 Dictionary, definition of *home buyer concession scheme***

*substitute*

*home buyer concession scheme*, for division 2.6A.1 (First home owner grant scheme and home buyer concession scheme)—see section 75.

## Part 3 Land Rent Act 2008

### 18 Land rent—charge on the land New section 24 (2A) to (2D)

*insert*

- (2A) The commissioner may notify a mortgagee of the land rent lease or credit provider of the lessee, about the land rent payable (the *land rent debt*) by the lessee (the *debtor*), the charge and the effect of subsection (2).
- (2B) However, the commissioner may notify a mortgagee or credit provider only if—
- (a) the commissioner has registered the charge on the parcel under the *Land Titles Act 1925*; and
  - (b) the land rent debt is in arrears; and
  - (c) the land rent debt is more than—
    - (i) \$2 000; or
    - (ii) another amount determined by the Minister; and
  - (d) the commissioner has—
    - (i) taken reasonable steps to make arrangements for the debtor to pay the land rent debt; and
    - (ii) notified the debtor, in writing, that the mortgagee or credit provider will be notified under subsection (2A) not earlier than 28 days after the date of the notice to the debtor.
- (2C) A determination under subsection (2B) (c) (ii) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2D) If the commissioner notifies a mortgagee or credit provider under subsection (2A), the commissioner must give a copy of the notice to the debtor.

## 19 New section 24A

*insert*

### 24A Recovery of land rent from mortgagee

- (1) This section applies if—
  - (a) a mortgagee of a land rent lease has been notified about a land rent debt under section 24 (2A); and
  - (b) the land rent debt has been in arrears for at least 1 year.
- (2) The commissioner must, in writing, notify the debtor that—
  - (a) the land rent debt is in arrears; and
  - (b) if the land rent debt is not paid within 90 days after the date of the notice, the land rent debt will be recovered from the mortgagee of the land rent lease.
- (3) If the land rent debt is not paid within the 90-day period, the commissioner may, by written notice, require the mortgagee of the land rent lease to pay the land rent debt for the debtor (a ***payment notice***).
- (4) However, before recovering the land rent debt from the mortgagee, the commissioner must be satisfied that the recovery is reasonable in the circumstances including, from the information available, whether the recovery is likely to cause substantial hardship to the debtor or other people.

#### **Example**

partner or dependent children occupying the parcel as their principal place of residence

- (5) If the commissioner gives the mortgagee of the land rent lease a payment notice, the commissioner must give a copy of the payment notice to the debtor.
- (6) The land rent debt must be paid to the commissioner on the later of the following:
- (a) receipt of the payment notice;
  - (b) the date stated in the payment notice.
- (7) If the mortgagee pays the land rent debt for the debtor—
- (a) the mortgagee may recover the land rent debt from the debtor as a debt; and
  - (b) the land rent debt is taken to be secured by the mortgage in addition to any other amount secured by it.
- (8) In this section:
- debtor*—see section 24 (2A).
- land rent debt*—see section 24 (2A).

## **20**      **Objections** **New section 33 (c)**

*insert*

- (c) a decision under section 23 (5) to refuse to remit interest paid or payable by a lessee.

## **21**      **Review of decisions by ACAT** **Section 34 (1)**

*substitute*

- (1) This section applies to a determination by the commissioner of an objection to a decision mentioned in section 33, other than a decision mentioned in section 33 (c).



## Part 4 Land Tax Act 2004

### 22 Section 7

*substitute*

#### 7 Definitions—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 gives 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 guardian or manager of the property of a person with a legal disability.

**23 Land exempted from s 9 generally  
Section 10 (1) (a) (iii)**

*omit*

(Moving into principal place of residence)

*substitute*

(Moving into principal place of residence—new owner)

**24 New section 10 (1) (a) (iiia)**

*insert*

(iiia) section 11CA (Moving into principal place of residence—ending rental);

**25 Section 11C**

*substitute*

**11C Moving into principal place of residence—new owner**

- (1) This section applies if a person becomes the owner (the *new owner*) of a parcel of land, to be occupied by the new owner as their principal place of residence.
- (2) The parcel of land is exempt from land tax for the 1st quarter after the date the new owner becomes the owner of the parcel.

*Note* Under s 14 the commissioner must be told within 30 days if there is a change in circumstances that would cause land tax to become payable for the parcel.

- (3) Subsection (2) does not apply if, within 3 months after the date the new owner becomes the owner of the parcel—
  - (a) the new owner does not occupy the parcel as their principal place of residence; or

- (b) the parcel is rented by a tenant, other than the seller of the parcel under an agreement with the new owner for a period of not longer than 3 months.

### **11CA Moving into principal place of residence—ending rental**

- (1) This section applies if a parcel of land stops being rented so it can be occupied by the owner of the parcel as their principal place of residence.
- (2) The parcel of land is exempt from land tax for the 1st quarter after the date the parcel stopped being rented.

*Note* Under s 14 the commissioner must be told within 30 days if there is a change in circumstances that would cause land tax to become payable for the parcel.

- (3) Subsection (2) does not apply if, within 3 months after the date the parcel stopped being rented—
  - (a) the owner does not occupy the parcel as their principal place of residence; or
  - (b) the parcel is rented by a tenant.

## **26 Exemption if land becomes unfit for occupation**

### **Section 111 (2)**

*substitute*

- (2) The parcel of land is exempt from land tax after the date the parcel became unfit for occupation as a place of residence, until—
  - (a) the end of the quarter following the quarter in which a certificate of occupancy is issued for the parcel; or
  - (b) the commissioner is satisfied that the parcel is fit for occupation as a place of residence.

- (2A) Subsection (2) does not apply if the parcel of land is rented by a tenant.

*Note 1* Under s 14 the commissioner must be told within 30 days if there is a change in circumstances that would cause land tax to become payable for the parcel.

*Note 2* Under s 38 and the [Taxation Administration Act](#), s 108, the commissioner must give the person a reviewable decision notice in relation to a decision to refuse to exempt a parcel of land because the commissioner is not satisfied the land is, or has become, unfit for occupation as a place of residence.

## **27 Decision on compassionate application Section 13 (3)**

*omit*

1 year

*substitute*

2 years

## **28 Commissioner to be told of change in circumstances Section 14 (1)**

*substitute*

- (1) This section applies in relation to a parcel of land that is leased for residential purposes if—
- (a) land tax or a foreign ownership surcharge is not imposed on the parcel; or
  - (b) the parcel is exempt from land tax or a foreign ownership surcharge.

**29 Section 14 (2) (a)**

*omit*

the person's

**30 Multiple dwellings  
Section 15 (5), definition of *dwelling***

*substitute*

*dwelling*—

- (a) means a room, or suite of rooms, used or capable of being used as a separate residence; but
- (b) does not include—
  - (i) a unit; or
  - (ii) a garage, carport, garden shed, veranda, pergola, patio, or any other structure not used for living in.

**31 Unit subdivisions—land tax  
Section 27 (7), definition of *dwelling***

*substitute*

*dwelling*—

- (a) means a room, or suite of rooms, used or capable of being used as a separate residence; but
- (b) does not include a garage, carport, garden shed, veranda, pergola, patio, or any other structure not used for living in.

**32** **New part 8***insert***Part 8** **Transitional—Land Tax  
Amendment Act 2018**

*Note* The *Land Tax Amendment Act 2018* (which commenced on 1 July 2018) extended land tax to all residential dwellings that are not an owner's principal place of residence. Previously, land tax was imposed only if the additional dwelling was rented. The *Land Tax Amendment Act 2018* also introduced a foreign ownership surcharge payable if the parcel of land is owned by a foreign person.

**58** **Commissioner to be told if vacant parcel became subject  
to land tax or foreign ownership surcharge on 1 July 2018**

- (1) This section applies to the following parcels of land:
  - (a) a parcel of land if—
    - (i) immediately before 1 July 2018, land tax was not imposed on the parcel of land because the parcel was not rented residential land; and
    - (ii) on 1 July 2018, land tax was imposed on the parcel;
  - (b) a parcel of land if—
    - (i) immediately before 1 July 2018, the parcel of land was owned by a foreign person; and
    - (ii) on 1 July 2018, a foreign ownership surcharge was imposed on the parcel.

- (2) The person who was the owner of the parcel on 1 July 2018 must tell the commissioner about the liability not later than 31 March 2020.

*Note 1* It is an offence to fail to notify the commissioner under this section (see [Taxation Administration Act](#), s 67 (2)).

*Note 2* It is also an offence to knowingly avoid paying, or disclosing a liability to pay, part or all of an amount of tax (see [Taxation Administration Act](#), s 65 (1)).

## **59 Interest and penalty tax payable if no disclosure under s 58**

- (1) This section applies if—
- (a) a person fails to comply with section 58 in relation to a parcel of land; and
  - (b) land tax or a foreign ownership surcharge is payable by the person.
- (2) The person is liable to pay interest on the amount of land tax, or foreign ownership surcharge, from the end of 30 days after the 1st day of the 1st quarter for which the tax is imposed.
- (3) Interest on the amount of land tax or foreign ownership surcharge is worked out—
- (a) for each month that the amount is payable; 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 land tax or foreign ownership surcharge that is payable 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](#), s 139.

- (4) The [Taxation Administration Act](#), division 5.2 (Penalty tax) applies to the person as if—
- (a) the person's failure to comply with section 58 were a tax default; and
  - (b) a reference to interest under the [Taxation Administration Act](#), division 5.1 were a reference to interest under this section; and
  - (c) a reference to the amount of tax unpaid were a reference to the amount of land tax or foreign ownership surcharge payable.

**60 Expiry—pt 8**

This part expires on 30 June 2021.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**33 Dictionary, definition of *residential tenancy agreement***

*omit*

**34 Dictionary, new definition of *tenancy agreement***

*insert*

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



## Part 5 Payroll Tax Act 2011

### 35 Exclusion of people from groups Section 79 (1)

*omit*

commissioner may determine

*substitute*

commissioner may, by written notice given to the person, determine

### 36 Section 79 (5)

*omit*

commissioner may revoke

*substitute*

commissioner may, by written notice given to the person, revoke

### 37 Section 79 (6) and (7)

*substitute*

- (6) A determination (including a revocation of a determination) may provide that it commences on a date earlier than the date of the determination.

*Note* The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

- (7) A determination in a notifiable instrument in force immediately before the commencement of this subsection—
- (a) is taken to have been determined by written notice given to the person in accordance with subsection (1); and
  - (b) may be revoked by written notice given to the person.

- (8) Subsection (7) and this subsection expire 2 years after the day they commence.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

## Part 6 Rates Act 2004

### 38 Determination for deferral of rates on application Section 46 (2) (f) (ii) and (iii)

*omit*

### 39 Additional grounds for revocation of deferral determination Section 52 (1) (g)

*substitute*

- (g) if the determination relates to the person or people mentioned in section 46 (2) (f)—the owner's or owners' equity in the parcel is less than the determined percentage.

### 40 Section 52 (3), definitions of *determined value* and *income threshold amount*

*omit*

## Part 7 Taxation Administration Act 1999

### 41 Collection of tax from third parties Section 54 (6)

*substitute*

- (6) A notice under this section must require the debtor to pay to the commissioner—
- (a) if, under subsection (4), the commissioner specifies an amount to be paid out of each instalment—the amount specified from each instalment until the unpaid tax is paid; or
  - (b) an amount, stated by the commissioner, not exceeding—
    - (i) if the money due, held or authorised to be paid to the taxpayer by the debtor is more than the amount of unpaid tax—the amount of unpaid tax; or
    - (ii) the money due, held or authorised to be paid to the taxpayer by the debtor.

### 42 Tax payable is charge on land Section 56H (2)

*omit*

(other than as provided under subsection (8))

### 43 Section 56H (8)

*omit*

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 24 October 2019.

**2 Notification**

Notified under the [Legislation Act](#) on 9 December 2019.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Revenue Legislation Amendment Bill 2019 (No 2), which was passed by the Legislative Assembly on 28 November 2019.

Clerk of the Legislative Assembly

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