

2003

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

REVENUE LEGISLATION AMENDMENT BILL 2003 (No 3)

EXPLANATORY STATEMENT

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Revenue Legislation Amendment Bill 2003 (No 3)

Summary

The *Revenue Legislation Amendment Bill 2003 (No 3)* (the Bill) amends the *Rates and Land Tax Act 1926* (Rates and Land Tax Act) and the *Taxation Administration Act 1999* (Taxation Administration Act).

Overview

Rates and Land Tax Act

The Rates and Land Tax Act was originally Commonwealth legislation. In 1987, the Commonwealth introduced land tax in the ACT by amending its *Rates Ordinance 1926*, which became the *Rates and Land Tax Ordinance 1926* (the Ordinance). With the introduction of self government on 11 May 1989, this Ordinance became the ACT's *Rates and Land Tax Act 1926*.

Limited available material indicates the policy intent to impose land tax on unit plans was in accordance with the existing practice for rates. This practice was introduced and worked satisfactorily as long as:

- all units in the units plan were liable to land tax, as was the case prior to 1991. On 1 August 1991 residential land became liable to land tax if it was not the owner's principle place of residence; and
- the charge was assessed at a flat percentage, which was the case prior to 1 July 1993 when progressive rates of land tax were introduced.

Legal advice has indicated that the provisions imposing land tax on units may be interpreted differently to current practice. If land tax was imposed strictly in accordance with the wording of the current provisions, the taxpayer may be disadvantaged.

To remove any doubt about interpretation, this Bill clarifies the provisions to assess land tax on units in accordance with the initial intention. Therefore, this Bill contains amendments to provide a clear, equitable and administratively efficient solution to ensure the current practice and the legislation are in agreement. Although this amendment is retrospective to 1 August 1991, it will not impose any additional tax burden on the taxpayer or the community.

Taxation Administration Act

This Bill also amends the Taxation Administration Act. To protect information provided by a taxpayer and to ensure their privacy and confidentiality, the *Taxation (Administration) Act 1987* (the 1987 Taxation (Administration) Act) section 97 (Secrecy) said that a tax officer shall not:

- directly or indirectly disclose to a second person any confidential information with respect to the affairs of a third person (s 97 (1) (b)); and
- be required to produce a confidential document in court; or to disclose any confidential information to a court; unless, in the opinion of the court, the production of the

document or the disclosure of the information is necessary for the purposes of giving effect to a tax law (s 97 (2)).

When the 1987 Taxation (Administration) Act was repealed, the *Taxation Administration (Consequential and Transitional Provisions) Act 1999* did not preserve the secrecy provisions of the 1987 Taxation (Administration) Act. The replacement Act, the Taxation Administration Act also included secrecy provisions but the Government Solicitors Office has advised that these secrecy provisions do not provide protection for information obtained under the 1987 Taxation (Administration) Act.

The impact of this amendment is to protect taxpayer information by precluding disclosure, including Freedom of Information (FOI) disclosure, where requests are made after the commencement of this amendment. For example, the *Freedom of Information Act 1989* applies to exempt a document from disclosure if there is in force an enactment applying to information and prohibiting persons referred to in the enactment from disclosing information.

The ACT Administrative Appeals Tribunal decision "*E*" and *Chief Executive under the Children & Young People Act 1999* [2000] ACTAAT 38 (31 October 2000) suggests that if an Act containing secrecy provisions has been repealed, then an FOI application may allow the disclosure of the information obtained under that Act because the repeal of that Act means it is no longer in force. In addition, where there is no transitional provision to protect the secrecy of the information, then the previously protected information can be disclosed. The decision also suggests that the *Legislation Act 2001* section 84 (Saving of operation of repealed and amended laws) will not provide the desired effect that information received under a secrecy provision remains secret after that secrecy provision has been repealed.

This Bill provides the necessary transitional provisions to ensure that, although the 1987 Taxation (Administration) Act has been repealed, taxpayer information received under that Act will be given the protection of the secrecy provisions under the Taxation (Administration) Act.

Financial Implications

There is no revenue or budgetary impact as a result of this legislation.

Details of the Bill are attached.



Details of the Revenue Legislation Amendment Bill 2003 (No 3)

Part 1 Preliminary

Clause 1 Name of Act

This Act is the *Revenue Legislation Amendment Act 2003 (No 3)*.

Clause 2 Commencement

This Act commences on the day after its notification day.

Part 2 Rates and Land Tax Act 1926

Clause 3 Legislation amended

Part 2 amends the *Rates and Land Tax Act 1926*.

Clause 4 Section 24A Unit Subdivisions

As there have been numerous changes to this section since 1991, the whole section has been substituted to ensure the new provisions are effective from that date. A generic statement which describes when land is a “parcel” or a “unit”, and when the owner is the “owners corporation” or the “unit owner”, replaces section 24A (6) which dealt with the same matters in a much more complex way. The proposed sections 24A (5) and (7) clarify how rates and land tax respectively are imposed on unit subdivisions. While the rates provisions at sections 24A (5) and (6) have been reworded, their effect remains unchanged. The land tax provisions at sections 24A (7) and (8) mirror the method of working out rates. The only difference between these imposts is that rates are imposed on all units, but land tax is only imposed on commercial units, rented residential units and those owned by a corporation or trustee.

Clause 5 New section 25 Application of amendments of s 24A

Section 25 (1) – This ensures the amended section 24A applies on and from 1 August 1991 where the land has been subdivided by the registration of a units plan whether before, on or after that date.

Section 25 (2) (a) – The Rates and Land Tax Act section 24A as at 1 August 1991 was different from its current form. This paragraph ensures that the new section 24A also applies to land tax when it was an annual charge.

Section 25 (2) (b) – Before 5 October 2001, section 24A of the Rates and Land Tax Act picked up definitions from the *Unit Titles Act 1970*. From 5 October 2001, section 24A used definitions from the *Unit Titles Act 2001* and these were slightly different. This section is necessary to include all forms of these definitions from 1 August 1991.

Section 25 (3) states that this section expires 1 year after commencement.

Part 3 Taxation Administration Act 1999

Clause 6 Legislation amended

This part amends the *Taxation Administration Act 1999*.

Clause 7 Meaning of tax laws

New section 4 (ha)

The *Taxation (Administration) Act 1987* is inserted as a tax law under the *Taxation Administration Act 1999*.

Clause 8 Section 4

The subsections are renumbered when next republished in accordance with the *Legislation Act 2001*.

Clause 9 New section 143A – Application of secrecy provisions to former Act

This clause provides that Division 9.4 applies in relation to a confidential document or confidential information acquired under, or as a result of exercising functions under or in relation to the *Taxation (Administration) Act 1987*. This ensures the protection and secrecy of taxpayer information collected under this repealed Act.

Clause 10 Expiry of pt 12

Section 144 (2)

The substitution of “141 to 143A” includes new section 143A in section 144 (2) for the purposes of applying the *Legislation Act 2001* section 88.

Clause 11 Section 144 (2), note

This substitution amends a reference error in the note.