
LAND AND INCOME TAXATION ACT 1978

ANALYSIS

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| <ol style="list-style-type: none">1. Short title.2. Commencement.3. Principal Act.4. Interpretation.5. Insertion in Principal Act of new section 2A.
2A. Rural land.6. Land tax.7. Repeal of section 10A of Principal Act.8. Notice of change of ownership.9. Insertion in Principal Act of new section 13B.
13B. Notice of other changes.10. Insertion in Principal Act of new sections 21A, 21B, and 21C. | <ol style="list-style-type: none">21A. Rebate in respect of separate dwelling-house and stratum flat.21B. Rebates in respect of residential units in buildings owned jointly or by home-unit companies.21C. Onus of establishing entitlement to rebate under section 21A or 21B.11. Appointment of courts.12. Additional tax if default made.13. Offences.14. Insertion in Principal Act of new section 198A.
198A. Owner of land to furnish information. |
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LAND AND INCOME TAXATION

No. 72 of 1978

AN ACT to amend the Land and Income Taxation Act 1910.
[20 December 1978]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Land and Income Taxation Act* Short title. 1978.

2—(1) Except as provided in subsections (2) and (3), this Act Commencement. shall commence on the date of its assent.

(2) Sections 4, 7, and 10 shall be deemed to have commenced on 1st July 1978.

(3) Sections 5 and 6 (2) shall commence on 1st July 1980.

Principal Act. **3**—In this Act the *Land and Income Taxation Act 1910* is referred to as the Principal Act.

Interpretation. **4**—Section 2 (1) of the Principal Act is amended—

(a) by inserting, after the definition of “business”, the following definition:—

“child” includes a step-child;

(b) by inserting, after the definition of “exempt income”, the following definition:—

“flat” means a room or suite of rooms designed or adapted for occupation as a separate dwelling;

(c) by omitting the definition of “home-owner’s rebate”;

(d) by inserting, after the definition of “paid”, the following definition:—

“parent” includes a step-parent;

Insertion in
Principal Act
of new section
2A.

5—After section 2 of the Principal Act, the following section is inserted in Part I:—

Rural land.

2A—(1) In this Act and any Act fixing the scale or scales of land tax for any financial year, a reference to rural land is, subject to this section, a reference to—

- (a) land of or exceeding an area of 10 hectares where the land is used principally for the purpose of primary production;
- or
- (b) land of less than 10 hectares where the land is used principally for the purpose of primary production and provides either the owner or occupier of the land with his only or principal means of livelihood.

(2) For the purpose of subsection (1), the onus of establishing that land is used principally for the purpose of primary production or that it provides the owner or occupier of the land with his only or principal means of livelihood is on the owner of the land, and if that owner fails to produce to the Commissioner such evidence as will satisfy him that the land is so used or, as the case may be, that the land provides the owner or occupier with his only or principal means of livelihood, the Commissioner may treat the land as not being rural land within the meaning of that subsection.

(3) Where a person owns 2 or more parcels of land which are used for the purpose of primary production and he satisfies the Commissioner that those parcels are used together as a single unit, those parcels shall, for the purpose of subsection (1), be treated as if they were one parcel, and that subsection shall be construed accordingly.

(4) In this section, a reference to primary production is a reference to a substantial agricultural, horticultural, viticultural, forestry, orcharding, pastoral or dairy farming, horse breeding, poultry farming or apicultural undertaking, or any 2 or more of those undertakings.

(5) For the purpose of subsection (4), a forestry undertaking is an undertaking involving the work of planting trees, or tending trees planted, within a tract of land with a view to selling the trees, or the timber obtained from the trees, after they have been felled.

6—(1) Section 10 (1) (p) of the Principal Act is amended by Land tax. omitting the words “one hundred dollars, and” and substituting the matter “\$100, any”.

(2) Section 10 of the Principal Act is further amended by omitting subsections (2) and (3).

7—Section 10A of the Principal Act is repealed.

Repeal of section 10A of Principal Act.

8—Section 13A of the Principal Act is amended by inserting after subsection (4) the following subsection:—

Notice of change of ownership.

(5) A person who fails to comply with subsection (1) or (2), or an owner who fails to comply with subsection (4), is guilty of an offence and is liable on conviction to a penalty of \$100.

9—After section 13A of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 13B

13B—(1) Where any event (other than a change of ownership to which section 13A relates) occurs by reason of which land ceases to be land of a class or description referred to in paragraphs (a) to (q) of section 10 (1) or ceases to be rural land, the owner of the land shall give notice of that event in writing to the Commissioner within 30 days after its occurrence.

Notice of other changes.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on conviction to a penalty of \$100.

Insertion in
Principal Act
of new sections
21A, 21B, and
21C.

10—After section 21 of the Principal Act, the following sections are inserted in Part III:—

Rebate in
respect of
separate
dwelling-house
and stratum
flat.

21A—(1) In this section—

“dwelling-house” means a building constructed on land in respect of which a separate valuation made in accordance with the *Land Valuation Act 1971* is in force, being a building designed or adapted for occupation as a separate dwelling whether the building is a detached building or is attached to another building;

“stratum flat” means a flat in respect of which a separate valuation made in accordance with the *Land Valuation Act 1971* is in force, whether the flat is or includes a detached building or forms part of a building.

(2) Where, at the commencement of a financial year, a dwelling-house or stratum flat is occupied in accordance with subsection (3), the owner of the land on which the dwelling-house is situated or, as the case may be, of the flat is, subject to this section but notwithstanding any other provision of this Act, entitled to a rebate of an amount (if any), determined under the Act fixing the scale or scales of land tax for that year, in respect of the land tax assessed on that land or flat for that financial year.

(3) For the purpose of subsection (2), a dwelling-house situated on land that is referred to in that subsection, or a stratum flat that is so referred to, is occupied in accordance with this subsection only if it is occupied—

- (a) by the owner, or, in the case of land or a stratum flat owned jointly or in common, by one or more of the owners, as his or their only or principal place of residence;
- (b) by the spouse or former spouse, or a parent or child, of the owner, or, in the case of land or a stratum flat owned jointly or in common, of one of the owners, as the only or principal place of residence of that spouse, former spouse, parent, or child; or
- (c) where the owner is the executor, administrator, or trustee of an estate comprising or including the land or flat—by a beneficiary or beneficiaries of the estate as his or their only or principal place of residence.

(4) Notwithstanding the provisions of this section, if the owner of land or a stratum flat referred to in subsection (2) is—

(a) a company; or

(b) a company jointly or in common with another person or other persons,

not being a trustee company acting in its representative capacity, there is no entitlement to a rebate under this section in respect of that land or flat.

(5) Where, by virtue of subsection (3) (a) or (b), the owner of land or a stratum flat or, in the case of land or a stratum flat owned jointly or in common, any of the owners of that land or that flat would, but for this subsection, be entitled to a rebate of land tax in respect of 2 or more parcels of land or stratum flats, there is, notwithstanding any other provision of this section, an entitlement to a rebate in respect of only one of the parcels or flats, but the owner or owners may make an election in writing to the Commissioner as to which of the parcels or flats the rebate is to apply to, and the Commissioner shall give effect to any such election.

(6) The fact that a building or room or suite of rooms is used for purposes other than residential purposes does not of itself prevent the building from being a dwelling-house, or the room or suite from being a stratum flat, provided that it is occupied as a person's only or principal place of residence as referred to in subsection (3).

21B—(1) In this section—

“home-unit company” means a company in which all the issued shares are owned by persons each of whom has, by virtue of his shares in the company, an exclusive right to occupy a flat situated on land owned by the company;

“residential unit” means a flat that is occupied as his only or principal place of residence by a person entitled to do so by virtue of—

(a) being an owner, either jointly or in common with one or more other persons, of the parcel of land on which the building is situated who has entered into an arrangement with the other owners of that land whereby he has the exclusive right to occupy that flat (whether or not jointly or in common with one or more of the other owners); or

Rebates in respect of residential units in buildings owned jointly or by home-unit company.

(b) being the holder, whether alone or jointly or in common with one or more other persons, of shares in a home-unit company that owns the parcel of land on which the building is situated.

(2) Where, at the commencement of a financial year—

(a) a building containing 2 or more residential units is situated on land that is owned jointly or in common by 2 or more persons and the ownership of an interest in that land confers on the owner of the interest an exclusive right to occupy a residential unit located in the building; or

(b) a building containing 2 or more residential units is situated on land owned by a home-unit company,

the owners of that land are or, as the case may be, the home-unit company is, subject to this section but notwithstanding any other provision of this Act, entitled in relation to each residential unit in the building occupied in accordance with subsection (3) to a rebate of an amount (if any), determined under the Act fixing the scale or scales of land tax for that year, in respect of the land tax assessed on that land for that financial year.

(3) For the purpose of subsection (2), a residential unit is occupied in accordance with this subsection only if—

(a) in the case of a residential unit referred to in paragraph (a) of that subsection, it is occupied—

(i) by one or more of the owners of the land referred to in that paragraph as his or their only or principal place of residence;

(ii) by the spouse or former spouse, or a parent or child, of any such owner as the only or principal place of residence of that spouse, former spouse, parent, or child; or

- (iii) where any such owner is the executor, administrator, or trustee of an estate comprising or including the interest by virtue of which an exclusive right to occupy the unit is conferred—by a beneficiary or beneficiaries of the estate as his or their only or principal place of residence; or
- (b) in the case of a residential unit referred to in paragraph (b) of that subsection, it is occupied—
- (i) by one or more of the shareholders referred to in that paragraph as his or their only or principal place of residence;
 - (ii) by the spouse or former spouse, or a parent or child, of any such shareholder as the only or principal place of residence of that spouse, former spouse, parent, or child; or
 - (iii) where any such shareholder is the executor, administrator, or trustee of an estate comprising or including the shares by virtue of which an exclusive right to occupy the unit is conferred—by a beneficiary or beneficiaries of the estate as his or their only or principal place of residence.

(4) Notwithstanding the provisions of this section, if an owner or shareholder entitled to occupy a residential unit is—

(a) a company; or

(b) a company jointly with another person or other persons,

not being a trustee company acting in its representative capacity, there is no entitlement to a rebate under this section in respect of that residential unit.

(5) The fact that a room or suite of rooms is used for a purpose other than residential purposes does not prevent it from being a residential unit provided that it is occupied as a person's only or principal place of residence as referred to in subsection (3).

21c—For the purposes of sections 21A and 21B, the onus of establishing an entitlement to a rebate under either of those sections is on the person claiming to be so entitled.

Onus of establishing entitlement to rebate under section 21A or 21B.

Appointment of courts.

11—Section 133 (3) (b) of the Principal Act is amended by omitting the words “with the tenure of office under such” and substituting the words “of office under that”.

Additional tax if default made.

12—Section 176 of the Principal Act is amended by omitting the words “ten per cent per annum, upon the amount of land tax or income tax unpaid, to be computed from the expiration of the time so specified, or, where further time has been allowed, from the expiration of the time so allowed” and substituting the matter “10 per cent of the amount of tax unpaid”.

Offences.

13—Section 195 (1) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:—

- (c) makes or delivers a return, or gives information or an answer, to the Commissioner or any such officer, whether orally or in writing, that he knows or ought reasonably to know is false or misleading as to a material particular; or

Insertion in Principal Act of new section 198A.

14—After section 198 of the Principal Act, the following section is inserted:—

Owner of land to furnish information.

198A—(1) Where—

- (a) a person has, in respect of any financial year, received the benefit of a rebate of land tax in accordance with a provision of this Act;
- (b) during the financial year, any event or circumstance occurs or arises which would, if it had occurred or arisen before the commencement of the financial year, have disqualified him from being entitled to the rebate; and
- (c) he knows or ought reasonably to know that the event or circumstance has occurred or arisen,

that person shall ensure that, before the commencement of the following financial year, the Commissioner is furnished with a notice in writing informing him of that event or circumstance.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on conviction to a penalty of \$100.