



**LAND AND INCOME TAXATION
AMENDMENT ACT 1996**

No. 67 of 1996

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**LAND AND INCOME TAXATION
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No. 67 of 1996

An Act to amend the *Land and Income Taxation Act 1910*

[Royal Assent 16 December 1996]

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:

Short title

1. This Act may be cited as the *Land and Income Taxation Amendment Act 1996*.

Commencement

2. (1) This Act, except sections 4, 5, 6, 7, 8, 10, 11 and 14, is taken to have commenced on 1 November 1996.

(2) Section 8(2) is taken to have commenced on 1 July 1996.

(3) Sections 4, 5, 6, 7, 8(1), 10, 11 and 14 commence on 1 July 1997.

Principal Act

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

Section 9A amended (Interpretation of Part III)

4. Section 9A(1) of the Principal Act is amended as follows:

- (a) by inserting after the definition of "principal residence land" the following definition:

"related companies" means companies that are related as provided by section 21F;

- (b) by inserting after the definition of "retirement village land" the following definitions:

"unit", in a unit trust scheme, means a right or interest, whether described as a unit or a sub-unit or otherwise, of a beneficiary under the scheme;

"unit trust scheme" means any arrangements made for the purpose, or having the effect, of providing for persons having funds

* 1 Geo. V No. 47. For this Act, as amended to 1959, see Reprint of Statutes (1826-1959), Vol. 3, p. 225. Subsequently amended by No. 39 of 1960, No. 41 of 1961, No. 55 of 1965, No. 80 of 1971, No. 75 of 1973, No. 74 of 1976, No. 85 of 1977, No. 72 of 1978, No. 55 of 1979, Nos. 9 and 78 of 1982, No. 60 of 1983, Nos. 29 and 55 of 1984, No. 108 of 1987, No. 54 of 1989, No. 5 of 1990, No. 46 of 1991, No. 39 of 1992, No. 73 of 1993, Nos. 67 and 68 of 1994, Nos. 20, 30, 77, 82 and 98 of 1995 and Nos. 21 and 59 of 1996.

available for investment, facilities for the participation of those persons as beneficiaries under a trust, in any profit, income or distribution of assets arising from the acquisition, holding, management or disposal of any property under the trust;

Section 9A further amended (Interpretation of Part III)

5. Section 9A(1) of the Principal Act is further amended as follows:

- (a) by inserting before the definition of "related companies", as inserted by section 4(a), the following definition:

"registered trustee company"
means –

- (a) a trustee company as defined in the *Trustee Companies Act 1953*; or
- (b) the Public Trustee as defined in the *Public Trustee Act 1930*;
- (b) by omitting the definition of "related person" and substituting the following definition:

"related person", in relation to an owner, means –

- (a) the spouse or former spouse of the owner; or

- (b) a beneficiary of the estate of the owner; or
 - (c) a beneficiary of a trust appointed by a court; or
 - (d) a shareholder of a home-unit company or a spouse or former spouse of the shareholder; or
 - (e) a person with an exclusive right to occupy a flat owned by a retirement village or a spouse or former spouse of that person;
- (c) by omitting the definition of "used for domestic purposes" and substituting the following definition:

"used for domestic purposes" means used and occupied for domestic purposes by –

- (a) a person who owns or persons who together own 50% or more of the land to which the term relates; or
- (b) a related person of such a person.

Section 10 amended (Land tax)

6. Section 10(1) of the Principal Act is amended as follows:

- (a) by omitting "owned by" from paragraph (o) and substituting "of which";

- (b) by inserting in paragraph (o) "owns 50% or more" after "1991";
- (c) by inserting in paragraph (p) "50% or more of which is" after "land" (first and third occurring).

Section 12 amended (Liability of owners for land tax)

7. Section 12(1) of the Principal Act is amended as follows:

- (a) by omitting "Subject to subsection (2), land" and substituting "Land";
- (b) by omitting from paragraph (b) "parcel." and substituting "parcel;";
- (c) by inserting after paragraph (b) the following paragraph:
 - (c) if a company owns, or related companies own, more than one parcel of land, land tax is to be levied on the aggregate value of those parcels of land as if they were a single parcel owned by a single company.
- (d) by inserting after subsection (1) the following subsection:
 - (2) For the purposes of subsection (1)(c), if a company co-owns land with a natural person, a trustee or another company, the company is the owner of the land if it holds more than 50% of the land.

Section 12 further amended (Liability of owners for land tax)

8. (1) Section 12 of the Principal Act is further amended as follows:

- (a) by omitting from paragraph (b) of subsection (1) "(not being a trustee of different estates for the benefit of different *cestuis que trustent*)";
- (b) by inserting after subsection (2), as inserted by section 7(d), the following subsection:

(3) The Commissioner, on application by a trustee, may exempt the following trustees from the operation of this section:

- (a) a registered trustee company;
- (b) an executor or administrator, or a guardian, committee, receiver or liquidator;
- (c) any other trustee appointed by the Supreme Court or the Family Court.

(2) Section 12 of the Principal Act is further amended by inserting after subsection (3), as inserted by subsection (1)(b), the following subsections:

(4) The Commissioner, on application by a trustee, may exempt any land from land tax for a financial year, if –

- (a) the land is held by the trustee; and
- (b) a dwelling, flat or other structure on the land is used and occupied for domestic purposes, as at 1 July in that financial year, by a beneficiary of the trust; and

- (c) the Commissioner is satisfied that the beneficiary does not already own any principal residence land.

(5) The Commissioner, on application by a company, may exempt any land from land tax for a financial year, if –

- (a) the land is owned by the company; and
- (b) a dwelling, flat or other structure on the land is used and occupied for domestic purposes as at 1 July in that financial year, by a person or persons who own 50% or more of the shares in the company; and
- (c) the Commissioner is satisfied that that person or those persons do not already own any principal residence land.

(6) Land which is exempt under subsection (4) or (5) is taken to be principal residence land for the purposes of section 21A.

Section 13 amended (Date at which ownership determined for purposes of tax)

9. Section 13 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) "Commissioner under section thirteen A" and substituting "the Recorder under section 13A and the Recorder advises the Commissioner that the notice has been received";
- (b) by omitting from subsection (3) "a notice of change of ownership under section thirteen A"

and substituting "advice from the Recorder under subsection (2)(a)".

Section 13C amended (Land tax rebate)

10. Section 13C(1)(b) of the Principal Act is amended by omitting "relative" and substituting "related person".

Section 16 amended (Charging of agents and trustees)

11. Section 16 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

(1) A trustee of any land subject to land tax under this Act is to be assessed in respect of that land.

- (b) by omitting from subsection (2) "agent and" and "agent or";
- (c) by inserting after subsection (2) the following subsection:

(2A) If the owner of any land subject to land tax under this Act is permanently or temporarily absent from this State and is represented by an agent, that agent is liable for any land tax assessed in respect of the land and the Commissioner may take action against the agent to recover any unpaid land tax in respect of that land.

Section 17 amended (Power of Commissioner to require information)

12. Section 17 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) A person must not, in giving any information under this section –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) a natural person, a fine not exceeding 20 penalty units.

Section 21F inserted

13. After section 21E of the Principal Act, the following section is inserted in Part III:

Related companies

21F. (1) For the purposes of this section, 2 companies are related to each other –

- (a) if the same person has, or the same persons have together, a controlling interest in both companies; or

- (b) if one of those companies is related to a company to which the other is related; or
- (c) if the companies are related bodies corporate for the purposes of the Corporations Law.

(2) For the purposes of this section, 2 companies are also related to each other if –

- (a) more than one-half of the issued share capital of one of those companies is held by the other company or its shareholders or by both the other company and its shareholders together; and
- (b) the proportion of the issued share capital of that other company held by shareholders of the first company is more than the difference between one-half and the proportion of the issued share capital of the first company held by the other company.

(3) For the purposes of subsection (1) –

- (a) companies may be related to each other notwithstanding that they do not own land in Tasmania; and
- (b) a reference in that subsection to the issued share capital of a company does not include a reference to any part of that issued share capital that confers no right to participate beyond a specified amount in a distribution of either profits or capital; and
- (c) a person has, or several persons have together, a controlling interest in a company if –

- (i) that person or those persons acting together can control the composition of the board of directors of the company; or
 - (ii) that person is, or those persons acting together are, in a position to cast or control the casting of, more than half of the maximum number of votes that might be cast at a general meeting of the company; or
 - (iii) that person holds, or those persons acting together hold, more than one-half of the issued share capital of the company; and
- (d) subject to paragraphs (e) and (f), any shares held or power exercisable by any person as a trustee or nominee for any other person are to be treated as also held or exercisable by that other person; and
- (e) any shares held or power exercisable by a person by virtue of the provisions of any debentures of another company, or of a trust deed for securing any issue of any such debentures, are to be disregarded; and
- (f) any shares held or power exercisable by, or by a nominee for, any person otherwise than as mentioned in paragraph (e), are to be taken as not held or exercisable by that person if –

- (i) the ordinary business of that person includes the lending of money; and
 - (ii) the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, unless the transaction is entered into with a person associated with that person within the meaning of the Corporations Law; and
- (g) the composition of a company's board of directors is taken to be controlled by a person if that person, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person, may appoint or remove all or a majority of the directors.

(4) If 2 or more companies related to each other are liable for land tax, they may nominate one of their number to be the one from whom the Commissioner may seek payment of land tax.

(5) A nomination is valid even though one or more of the related companies did not join in making the nomination.

(6) The Commissioner is to nominate one of the companies referred to in subsection (4) to be the company from whom the Commissioner may seek payment of the land tax payable by those companies if –

- (a) a nomination is not made under subsection (4); or
- (b) a nomination is made but the company fails to pay the land tax when required to do so under section 170.

(7) If 2 or more companies related to each other are liable for land tax, nothing in this section affects any right of contribution or indemnity between the companies.

(8) This Division applies to a unit trust scheme as if –

- (a) the unit trust scheme were a corporation; and
- (b) a unit in a unit trust scheme were a share in the corporation; and
- (c) the acquisition of units in a unit trust scheme were the acquisition of shares in the corporation; and
- (d) a reference to the memorandum and articles of association of a corporation were a reference to the constituent documents of a unit trust scheme; and
- (e) a reference to a winding-up of a corporation were a reference to a termination of a unit trust scheme.

(9) If 2 or more companies related to each other are liable for land tax, those companies are jointly and severally liable for the full payment of that land tax.

*[Second reading presentation speech made in:-
House of Assembly on 14 November 1996
Legislative Council on 20 November 1996]*