

South Australia

# Land Tax Act 1936

An Act to make provision for taxes on land; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Land Tax Act 1936*.

### **2—Interpretation**

(1) In this Act, unless the contrary intention appears—

**administration trust** means a trust under which the assets of a deceased person are held by a personal representative, but only during the period ending on the earlier of—

- (a) the completion of administration of the deceased estate; or
- (b) the third anniversary of the death of the deceased person or the further period (if any) approved by the Commissioner under subsection (1a);

**assessment** or **reassessment** means an assessment or reassessment by the Commissioner under Part 3 of the *Taxation Administration Act 1996*;

**association** includes—

- (a) a group consisting of 2 or more persons (whether or not incorporated); and
- (b) any person, or group of persons, holding land on trust (whether or not incorporated);

**beneficiary** of a discretionary trust means a person, or a member of a class of persons, in whom, by the terms of the trust, the whole or any part of the trust property may be vested—

- (a) in the event of the exercise of a power or discretion in favour of the person (whether or not that power is presently exercisable); or
- (b) in the event that a discretion conferred under the trust is not exercised;

**business of primary production** means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms and including the intensive agistment of declared livestock;

**child maintenance land** means land held on trust that was transferred to the trustee for the benefit of a beneficiary as the result of a family breakdown within the meaning of section 102AGA of the *Income Tax Assessment Act 1936* of the Commonwealth;

**the Commissioner** means the person appointed or acting as the Commissioner of State Taxation, and includes a person appointed or acting as a Deputy Commissioner of State Taxation (see Part 9 of the *Taxation Administration Act 1996*);

**Commonwealth Superannuation Act** means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

**company** includes any corporate body;

**concessional trust** means—

- (a) a trust of which each beneficiary is—
  - (i) a person in respect of whom a guardianship order or an administration order is in force under the *Guardianship and Administration Act 1993*; or
  - (ii) a person with a disability within the meaning of the *Disability Services Act 1993*; or
- (b) a trust created under an order of a court or tribunal, or otherwise created under an Act, for the benefit of a person under disability; or
- (c) a special disability trust (within the meaning of section 5);
- (d) a trust of a kind prescribed by the regulations;

**controlling interest**—see section 13H;

**corporation** has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth;

**declared livestock** means—

- (a) cattle, sheep, pigs or poultry; or
- (b) any other kind of animal prescribed by the regulations for the purposes of this definition;

**defined rural area** means an area declared by the Governor by proclamation to be a defined rural area;

**defined shack-site area** means an area declared by the Governor by proclamation to be a defined shack-site area;

**determination of site value** in relation to land means a determination or assessment of site value in force under the *Valuation of Land Act 1971*;

**discretionary trust** means a trust under which the vesting of the whole or any part of the trust property—

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries or the quantum of interest to be taken, or both; or
- (b) will occur in the event that a discretion conferred under the trust is not exercised,

but does not include an excluded trust;

**document** means book, account, paper (including a security or any instrument) or any record of information, whether in writing or accessible only through the use of a computer or other device;

**excluded trust** means each of the following:

- (a) a charitable trust;
- (b) a concessional trust;
- (c) a trust the sole beneficiary or beneficiaries of which is or are an association referred to in section 4(1);

- (d) a trust, for any tax year in relation to which it is a superannuation trust;
- (e) a trust established by a superannuation trust solely for the purposes of an arrangement of a kind authorised under section 67A of the Commonwealth Superannuation Act;
- (f) a trust that holds child maintenance land;
- (g) an administration trust;

**fixed trust** means a trust that is not an excluded trust, a discretionary trust or a trust to which a unit trust scheme relates;

**land used for primary production** means land of not less than 0.8 hectare in area as to which the Commissioner is satisfied that the land is used wholly or mainly for the business of primary production;

**land tax** means any tax imposed by this Act;

**listed trust** has the same meaning as in the *Stamp Duties Act 1923*;

**notice** means any notice, written or printed, or partly written or partly printed;

**owner**—

- (a) in relation to land alienated from the Crown by grant in fee simple means any person (other than a mortgagee of the land)—
  - (i) who holds; or
  - (ii) who is entitled to; or
  - (iii) who is entitled to purchase or acquire,

a legal or equitable estate of fee simple in the land or any other estate or interest (other than an estate or interest of leasehold) in the land conferring a right to possession of the land; and

- (b) in relation to land of the Crown subject to any agreement for sale, or right of purchase, means the person entitled to the benefit of that agreement or right of purchase; and
- (c) in relation to land held under perpetual lease, means the holder of that lease; and
- (d) in relation to land held under a shack site lease, means the holder of that lease; and
- (e) in relation to land in a defined shack-site area, means the occupier of the land; and
- (f) in any case, includes a person who is deemed by this Act to be an owner;

**public unit trust scheme** means a listed trust or a widely held trust;

**related corporations**—see section 13G;

**residential land exemption** means an exemption under section 5(10)(a), (ab), (ac), (ad), (b), (ba) or (bb);

**retirement village** means retirement village as defined in the *Retirement Villages Act 1987*;

**shack site lease** means a lease for the occupation of land for holiday, recreational or residential purposes where—

- (a) the land is situated on or adjacent to the banks of the River Murray, a tributary of the River Murray, or a lake or lagoon connected with the River Murray or a tributary of the River Murray; and
- (b) the lease was, as at midnight on 30 June, 1989, registered over the relevant land; and
- (c) the term of the lease is at least 40 years;

**site value** in relation to land has the meaning assigned by the *Valuation of Land Act 1971*;

**superannuation trust** means, in relation to a financial year, a trust established before the start of the financial year that, in relation to the year of income ending in that financial year, is—

- (a) a complying superannuation fund (within the meaning of section 42 or 42A of the Commonwealth Superannuation Act); or
- (b) a complying approved deposit fund (within the meaning of section 43 of the Commonwealth Superannuation Act); or
- (c) a pooled superannuation trust (within the meaning of section 44 of the Commonwealth Superannuation Act);

**tax** in respect of land means land tax in respect of the land, and includes—

- (a) penalty tax payable under Part 5 of the *Taxation Administration Act 1996* in respect of failure by the taxpayer to pay, in accordance with this Act, the whole or part of the land tax; and
- (b) interest payable under Part 5 of the *Taxation Administration Act 1996* in respect of a failure referred to in paragraph (a), or a failure to pay penalty tax referred to in that paragraph;

**taxable value**—see section 7;

**taxpayer** includes every person who is liable to pay tax;

**trade** includes profession, trade, business, and avocation;

**trust**—

- (a) includes an administration or testamentary trust under which property of a deceased person is held by a personal representative or trustee (but only once the personal representative or trustee is actually holding the property); and
- (b) does not include an implied, constructive or resulting trust, except where expressly provided by this Act;

**trustee** includes trustee, executor, administrator, guardian, liquidator and any person having or taking upon themselves the possession, administration, or control of land, income, or other property of any description affected by any trust, or having the possession, control, or management of land of a person under any legal or other disability;

**unit** in a unit trust scheme, means—

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme; or
- (b) a right to any such right or interest,

that entitles the beneficiary to participate proportionately with other unitholders in a distribution of the property of the trust on its vesting;

**unit trust scheme** means an arrangement made for the purpose, or having the effect, of providing facilities for participation by a person, as a beneficiary under a trust, in any profit or income arising from the acquisition, holding, management or disposal of property under the trust, but does not include an excluded trust;

**widely held trust** has the same meaning as that term would have in the *Stamp Duties Act 1923* if a reference in section 97(1) of that Act to "300 unitholders" were a reference to "50 unitholders".

- (1a) For the purposes of paragraph (b) of the definition of **administration trust** in subsection (1), the Commissioner may approve a further period in any particular case.
- (1b) A proclamation made for the purposes of the definition of **defined rural area** or **defined shack-site area** in subsection (1)—
  - (a) may be varied or revoked by subsequent proclamation by the Governor; and
  - (b) is effective from a day (which may be antecedent or subsequent to the day on which it is made) determined by the Governor.
- (1c) For the purposes of this Act, the various **capacities** in which a person may be the owner of land are as follows:
  - (a) as legal owner;
  - (b) as equitable owner;
  - (c) as prospective owner (ie a person who has entered into a contract to purchase or acquire an estate or interest in the land);
  - (d) as lessee under a perpetual lease or a shack-site lease;
  - (e) if the land is in a defined shack-site area—as occupier.
- (1d) For the purposes of this Act, a trustee's right of indemnity from the trust property is taken not to be a beneficial interest in the land subject to the trust.
- (2) If—
  - (a) the whole of the land owned by a company consists of a group of dwellings and land appurtenant to those dwellings; and
  - (b) all the issued shares of the company are owned by shareholders who acquire exclusive rights to occupy land of the company by virtue of their shareholdings in the company; and
  - (c) each dwelling owned by the company is occupied (or able to be occupied) by a shareholder in the company or a person deriving rights of occupancy from a shareholder in the company; and
  - (d) the scheme of company ownership and shareholder occupation of the dwellings was established before 22 February 1968,

then each dwelling will be taken to be a separate parcel of land and, despite the definition of *owner* in subsection (1), the shareholder who is entitled to occupy the dwelling (and not the company) will be taken to be the legal owner of the land on which the dwelling is situated.

- (3) If—
- (a) land is held under a tenancy in common; and
  - (b) the land is divided into separate portions and the owner of each undivided share in the land is entitled under a lease registered over the title to the land to occupy a particular portion of the land,

then the land will not be treated as a single parcel of land in multiple ownership but rather each owner of an undivided share in the land will be regarded as the owner of the portion of the land that the owner is entitled to occupy under the lease.

### 3—Taxation Administration Act

This Act should be read together with the *Taxation Administration Act 1996* which makes provision for the administration and enforcement of this Act and other taxation laws.

## Part 2—Imposition of land tax

### Division 1—Imposition of land tax

#### 4—Imposition of land tax

- (1) Taxes are imposed on all land in the State, with the following exceptions:
- (a) land of the Crown that is not subject to—
    - (i) a perpetual lease; or
    - (ii) an agreement for sale or right of purchase;
  - (b) park land, public roads, public cemeteries, and other public reserves;
  - (ba) land that is subject to a heritage agreement under the *Native Vegetation Act 1991* that is noted against the relevant instrument of title, or against the land, in accordance with section 23B(3) of that Act;
  - (c) land used solely for religious purposes, or used solely for the purposes of a hospital subsidised by the Government of the State, or used by any library or other institution administered by the Libraries Board of South Australia;
  - (d) land that is—
    - (i) owned by an association whose objects are or include the supplying to necessitous or helpless persons of living accommodation, food, clothing, medical treatment, nursing, pre-maternity or maternity care, or other help, either without cost to such persons or in return for payments or services the amount or value of which is in the Commissioner's opinion substantially less than the value of the accommodation, food, clothing, treatment, nursing, care or help supplied; and

- (ii) solely or mainly used for all or any such purposes;
- (e) land that is—
  - (i) owned by an association which receives an annual grant or subsidy from money voted by Parliament; and
  - (ii) in the Commissioner's opinion, solely or mainly used for the purposes for which the grant or subsidy is made;
- (f) land that is let to or occupied by an association of the kind mentioned in paragraph (d) or (e), and that is used solely or mainly for purposes mentioned in those paragraphs, and for which the association pays either no rent or other sum or a rent or other sum that in the Commissioner's opinion is a nominal one;
- (g) land that—
  - (i) is owned by an association whose object is, or whose objects include, the conservation of native fauna and flora; and
  - (ii) is in the opinion of the Commissioner used, without profit to the association or any other person, solely or mainly as a reserve for the purpose of conserving native fauna or flora;
- (h) land that is owned or occupied without payment by any person or association carrying on an educational institution otherwise than for pecuniary profit, and that is occupied and used solely or mainly for the purposes of such an institution (but this exemption does not extend to land or buildings held as an investment and not being the site or grounds of the institution);
- (i) land that is owned by—
  - (i) a municipal or district council; or
  - (ii) a controlling authority established under Part 19 of the *Local Government Act 1934*; or
  - (iii) the Renmark Irrigation Trust;
- (j) land that is owned by an association that is established for a charitable, educational, benevolent, religious or philanthropic purpose (whether or not the purpose is charitable within the meaning of any rule of law) and is declared by the Commissioner to be exempt from land tax on the ground—
  - (i) that the land is or is intended to be used wholly or mainly for that purpose; or
  - (ii) that the whole of the net income (if any) from the land is or will be used in furtherance of that purpose;
- (k) land that is owned by—
  - (i) an association that is established for the purpose of, or that holds the land wholly or mainly for the purpose of, playing cricket, football, tennis, golf or bowling or other athletic sports or exercises (other than vacant land or land used for residential purposes); or

- (ii) an association that is established for the purpose of, or that holds the land wholly or mainly for the purpose of, horse racing, trotting, dog racing, motor racing or other similar contests (other than vacant land or land used for residential purposes); or
  - (iii) an association of former members of the armed forces or of dependants of former members of the armed forces that holds the land for the social or recreational purposes of its members; or
  - (iv) an association of employers or employees, registered under a law of the Commonwealth or of the State relating to industrial conciliation and arbitration that occupies the land for the purposes of the association; or
  - (v) an association that holds the land wholly or mainly for the recreation of the local community; or
  - (vi) an association that holds the land for the purpose of agricultural shows, and exhibitions of a similar nature; or
  - (vii) an association that holds the land for the purpose of preserving buildings or objects of historical value on the land; or
  - (viii) a prescribed association or an association of a prescribed kind, and is declared by the Commissioner to be exempt from land tax on the ground that the whole of the net income (if any) from the land is used in furtherance of the objects of the association and not for securing a pecuniary profit for the association or any of its members;
- (l) land used for primary production other than such land that is situated within a defined rural area;
  - (m) land that is owned by a prescribed body and used for the benefit of the Aboriginal people;
  - (n) land that is wholly exempt from land tax under section 5.
- (2) The taxes are imposed and payable in respect of every financial year and liability to the taxes arises at the commencement of every financial year.
  - (3) The taxes so imposed for a particular financial year will, subject to this Act, be calculated as at midnight on 30 June immediately preceding that financial year on the basis of circumstances then existing.
  - (4) Land of the Crown, subject to any agreement for sale or right of purchase, is liable to taxation, whether that agreement or right is absolute or conditional, and whether it is capable of completion or exercise immediately or at any future time.
  - (5) Nothing in this Act interferes with any exemption, by special legislation, of land from taxation.

## **Division 2—Exemptions and waiver**

### **5—Exemption or partial exemption of certain land from land tax**

- (1) Land is wholly exempt from land tax under this section if—
  - (a) proper grounds for the exemption exist; and

- (b) such an exemption has been granted, and remains in force, under this section.
- (2) Land is partially exempt from land tax under this section if—
- (a) proper grounds for the partial exemption exist; and
  - (b) a partial exemption has been granted, and remains in force, under this section.
- (3) An owner of land may apply, in a form approved by the Commissioner, for an exemption or partial exemption from land tax.
- (4) A person must not make any false or misleading statement or representation in an application made, or purporting to be made, under subsection (3).  
Maximum penalty: \$10 000.
- (5) The Commissioner may, if satisfied that proper grounds exist for doing so, wholly or partially exempt land from land tax (whether or not an application for exemption has been made).
- (6) The Commissioner must, on exempting land wholly or partially from land tax under this section, give notice to an owner of the land—
- (a) stating the day (which may be antecedent or subsequent to the date on which the exemption is granted) as from which the exemption is to be effective; and
  - (b) stating the extent of the exemption; and
  - (c) setting out the grounds on which the exemption is granted.
- (7) If the factual basis of an exemption as stated in a notice under subsection (6) is wrong or inaccurate, the owner to whom the notice is given must, within 21 days after receipt of the notice, notify the Commissioner of the error or inaccuracy.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (8) If—
- (a) land is exempted wholly or partially from land tax under this section; and
  - (b) circumstances change so that—
    - (i) proper grounds for an exemption cease to exist; or
    - (ii) proper grounds for an exemption continue to exist but a lesser exemption than the one actually given,
- the owner must forthwith inform the Commissioner in writing of that fact and, whether or not the Commissioner is so informed, the land will cease to be exempt from land tax, or the extent of the exemption will be reduced (as the case requires).
- (9) An owner of land who fails to comply with an obligation under subsection (8) is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (10) Proper grounds for exempting land from land tax under this section exist as follows:
- (a) land may be wholly exempted from land tax if—

- (i) the land is owned by a natural person and constitutes his or her principal place of residence (whether or not he or she is the sole owner of the land); and
  - (ii) the buildings on the land have a predominantly residential character; and
  - (iii) no part of the land is used for a business or commercial purpose (other than the business of primary production) or the part of the land so used is less than 25% of the total floor area of all buildings on the land;
- (ab) land may be wholly exempted from land tax if—
- (i) the land is owned by a natural person (whether or not he or she is the sole owner of the land); and
  - (ii) any buildings on the land of a predominantly residential character are uninhabitable; and
  - (iii) the Commissioner is satisfied—
    - (A) that the person has ceased to occupy any building on the land of a predominantly residential character because it has been destroyed or rendered uninhabitable by an occurrence for which the person is not responsible (whether directly or indirectly) or which resulted from an accident; and
    - (B) that any such building constituted the person's principal place of residence immediately before the date on which the building was destroyed or rendered uninhabitable; and
    - (C) that the person intends to repair or rebuild the building within a period of 3 years from the date on which the building was destroyed or rendered uninhabitable; and
    - (D) that the buildings on the land will, after the completion of building work, have a predominantly residential character; and
    - (E) that the person intends to occupy the land as his or her principal place of residence after the completion of the building work; and
  - (iv) the person is not receiving an exemption from land tax under another provision of this subsection in relation to other land that constitutes the person's principal place of residence;
- (ac) subject to this section, land may be wholly exempted from land tax if—
- (i) the land is owned by a natural person (whether or not he or she is the sole owner of the land) who has ceased to occupy the land; and
  - (ii) the buildings on the land immediately before the person ceased to occupy the land had a predominantly residential character; and

- (iii) no part of the land is used for a business or commercial purpose (other than the business of primary production) or the part of the land so used is less than 25% of the total floor area of all buildings on the land; and
  - (iv) the Commissioner is satisfied—
    - (A) that the person has ceased to occupy the land as his or her principal place of residence because a building on the land is being renovated or rebuilt; and
    - (B) that the buildings on the land will, after the completion of the renovation or rebuilding, have a predominantly residential character; and
    - (C) that the person intends to resume occupation of the land as his or her principal place of residence when the renovation or rebuilding work is complete (or is completed to a suitable stage); and
  - (v) the person is not receiving an exemption from land tax under another provision of this subsection in relation to other land that constitutes the person's principal place of residence;
- (ad) subject to this section, land may be wholly exempted from land tax if—
- (i) the land is owned by a natural person (whether or not he or she is the sole owner of the land); and
  - (ii) no part of the land is used for a business or commercial purpose (other than the business of primary production) or the part of the land so used is less than 25% of the total floor area of all buildings on the land; and
  - (iii) the Commissioner is satisfied—
    - (A) that the person is, or will be, renovating or constructing a building or buildings on the land; and
    - (B) that the buildings on the land will, after the completion of the renovation or construction work, have a predominantly residential character; and
    - (C) that the person intends to occupy the land as his or her principal place of residence when the renovation or construction work is completed (or is completed to a suitable stage); and
  - (iv) the person is not receiving an exemption from land tax under another provision of this subsection in relation to other land that constitutes the person's principal place of residence;
- (b) land may be partially exempted from land tax by reducing its taxable value in accordance with the scale prescribed in subsection (12) if—
- (i) the land is owned by a natural person and constitutes his or her principal place of residence (whether or not he or she is the sole owner of the land); and

- (ii) the buildings on the land have a predominantly residential character; and
  - (iii) a part of the land of 25% or more but not more than 75% of the total floor area of all buildings on the land is used for a business or commercial purpose;
- (ba) land may be wholly exempted from land tax if—
  - (i) the land is owned by a natural person and constitutes his or her principal place of residence (whether or not he or she is the sole owner of the land); and
  - (ii) the buildings on the land are used for the purposes of a hotel, motel, set of serviced holiday apartments or other similar accommodation; and
  - (iii) more than 75% of the total floor area of all buildings on the land is used for the person's principal place of residence;
- (bb) land may be partially exempted from land tax by reducing its taxable value in accordance with the scale prescribed in subsection (12) if—
  - (i) the land is owned by a natural person and constitutes his or her principal place of residence (whether or not he or she is the sole owner of the land); and
  - (ii) the buildings on the land are used for the purposes of a hotel, motel, set of serviced holiday apartments or other similar accommodation; and
  - (iii) 25% or more of the total floor area of all buildings on the land is used for the person's principal place of residence,

(and for the purposes of the scale prescribed in subsection (12), the area used for the hotel, motel, set of serviced holiday apartments or other similar accommodation will be taken to be the area used for business or commercial purposes);
- (c) land may be wholly exempted from land tax if the land is a supported residential facility within the meaning of the *Supported Residential Facilities Act 1992* and is licensed as such under that Act;
- (ca) land may be wholly exempted from land tax if the whole of the land is used for the provision of residential care by an approved provider;
- (cb) land may be partially exempted from land tax if part of the land is used for the provision of residential care by an approved provider by reducing its taxable value by an amount equal to the value of that part of the land after applying any principle determined by the Commissioner for the purposes of this paragraph;
- (d) land may be wholly exempted from land tax if the land constitutes a caravan park;
- (e) land within a retirement village may be exempted from land tax if—
  - (i) the land constitutes a residential unit—

- (A) occupied, under a residence contract, by a natural person as his or her principal place of residence; or
    - (B) available for occupation, under a residence contract, by a natural person as his or her principal place of residence and likely to be so occupied at some time during the ensuing 12 months; or
  - (ii) the land is appurtenant to such a residential unit; or
  - (iii) the land is a facility provided under the retirement village scheme for the exclusive use of residents (and their guests);
- (f) land within a retired persons' relocatable home park may be exempted from land tax if—
- (i) the land constitutes the site for a relocatable home and—
    - (A) there is a relocatable home on the site owned by a natural person and occupied by the natural person as his or her principal place of residence; or
    - (B) it is likely that within the ensuing 12 months there will be a relocatable home on the site owned by a natural person and occupied by the natural person as his or her principal place of residence; or
  - (ii) the land is appurtenant to such a site; or
  - (iii) the land is a facility provided by the owner of the land for the exclusive use of residents (and their guests);
- (g) land used for primary production that is situated within a defined rural area may be wholly exempted from land tax if—
- (i) the sole owner is a natural person who is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; or
  - (ii) the land is owned jointly or in common by 2 or more natural persons at least 1 of whom is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business and any other owner who is not so engaged is a relative of an owner so engaged; or
  - (iii) the land is owned solely, jointly or in common by a retired person and the following conditions are satisfied:
    - (A) the retired person was, prior to his or her retirement, engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; and
    - (B) the co-owner or co-owners of the land (if any) are relatives of the retired person; and
    - (C) a close relative of the retired person is currently engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; or

- (iv) the land is owned solely or by tenancy in common by the executor of the will, or the administrator of the estate, of a deceased person and the following conditions are satisfied:
    - (A) the deceased person was, prior to his or her death, engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; and
    - (B) the co-owner or co-owners of the land (if any) are relatives of the deceased person; and
    - (C) a close relative of the deceased person is currently engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; or
  - (v) the land is owned by a company, or by 2 or more companies, or by a company or companies and 1 or more natural persons, and the main business of each owner is a relevant business; or
  - (vi) the land is owned by a company and 1 of the following conditions is satisfied:
    - (A) a natural person owns a majority of the issued shares of the company and is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business;
    - (B) 2 or more natural persons own in aggregate a majority of the issued shares of the company and each of them is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business;
    - (C) 2 or more natural persons who are relatives own in aggregate a majority of the issued shares of the company and at least 1 of them is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business;
  - (h) land may be wholly exempted from land tax if—
    - (i) the land is owned by the trustee of a special disability trust; and
    - (ii) the Commissioner is satisfied that the land constitutes the principal place of residence of the principal beneficiary of the special disability trust.
- (10a) Land is not exempt from land tax during a financial year under subsection (10)(ac) or (ad) unless—
- (a) the Commissioner is satisfied that—
    - (i) the owner who applied for the exemption occupies the property as his or her principal place of residence for a period of at least 12 months after completion (or completion to a suitable stage) of the renovation, rebuilding or construction work to which the application related; or

- (ii) the owner who applied for the exemption intended to so occupy the property when applying for the exemption but there were good reasons why the owner was unable to do so; and
  - (b) the Commissioner is satisfied that no rent or other consideration is paid or payable for occupation by some other person, during the financial year or, in a case where paragraph (a)(i) applies, during the period referred to in paragraph (a)(i).
- (10b) Land may not be exempted from land tax under subsection (10)(ac) or (ad) for a period that exceeds 2 years unless there are, in the Commissioner's opinion, good reasons to exempt the land for a longer period.
- (10c) The Commissioner may, on application under this subsection, grant a waiver or refund of land tax paid or payable by or on behalf of an owner of land for a financial year if—
- (a) proper grounds for exempting the land from land tax under subsection (10)(ac) or (ad) existed for that financial year; and
  - (b) the application is made not more than 5 years after the assessment of the liability to the tax to which the application relates.
- (11) The regulations may, however, prescribe additional criteria that must be satisfied if land is to be eligible to be exempted wholly or partially from land tax under subsection (10).
- (11a) For the avoidance of doubt, land may not be exempted from land tax under subsection (10)(ab) for a period that exceeds 3 years.
- (12) The scale for partial exemption from land tax under subsection (10)(b) or (bb) is as follows:

| <b>Area used for business or commercial purpose expressed as a percentage of the total floor area of all buildings on the land</b> | <b>Percentage reduction in taxable value of land</b> |
|--|--|
| More than 75%  | Nil  |
| 75%  | 25%  |
| 70% or more but less than 75%  | 30%  |
| 65% or more but less than 70%  | 35%  |
| 60% or more but less than 65%  | 40%  |
| 55% or more but less than 60%  | 45%  |
| 50% or more but less than 55%  | 50%  |
| 45% or more but less than 50%  | 55%  |
| 40% or more but less than 45%  | 60%  |
| 35% or more but less than 40%  | 65%  |
| 30% or more but less than 35%  | 70%  |
| 25% or more but less than 30%  | 75%  |
| (less than 25%)  | (100%)   |

- (12a) The Commissioner may, on application under this subsection, grant—
- (a) a waiver or refund of land tax paid or payable by or on behalf of a trustee of a special disability trust on land for a particular financial year; or
  - (b) a refund of an amount paid by or on behalf of a trustee of a special disability trust as a transferee of land to the transferor of land as an adjustment of land tax paid or payable on the land for the financial year in which settlement takes place,

if the following criteria are satisfied:

- (c) the land was acquired by the trustee during the course of the financial year;
- (d) the Commissioner is satisfied that the land constitutes or will constitute the principal place of residence of the principal beneficiary of the special disability trust during the course of the financial year;
- (e) the application is made not more than 5 years after the assessment of the liability to the tax to which the application relates.

- (13) In this section—

**approved provider** has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

**close personal relationship** means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

**Note—**

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

**close relative**—a person is a close relative of another if—

- (a) they are spouses or domestic partners; or
- (b) one is a parent or child of the other; or
- (c) one is a brother or sister of the other;

**domestic partner**—a person is the domestic partner of a person if he or she lives with the person in a close personal relationship;

**principal beneficiary**—

- (a) has the meaning given in section 1209M(1) of the Social Security Act, in the case of a special disability trust within the meaning of section 1209L of that Act; or
- (b) has the meaning given in section 52ZZZWA(1) of the Veterans' Entitlements Act, in the case of a special disability trust within the meaning of section 52ZZZW of that Act;

**relative**—a person is a relative of another if—

- (a) they are spouses or domestic partners; or
- (b) one is an ascendant or descendant of the other, or of the other's spouse or domestic partner; or
- (c) one is a brother or sister of the other or a brother or sister of the other's spouse or domestic partner; or
- (d) one is an ascendant or descendant of a brother or sister of the other or of the other's spouse or domestic partner;

**relevant business**—a business is a relevant business in relation to land used for primary production that is situated within a defined rural area if—

- (a) the business is a business of primary production of the type for which the land is used or a business of processing or marketing primary produce; and
- (b) the land or produce of the land is used to a significant extent for the purposes of that business;

**relocatable home** means a residence that is capable of being moved (in 1 or more sections) from site to site but does not include a caravan, motor home or other moveable structure that can be registered under the *Motor Vehicles Act 1959*;

**residential care** has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

**retired persons' relocatable home park** means land comprising home sites—

- (a) that are used (or to be used) for the purpose of establishing 2 or more relocatable homes; and
- (b) over which rights of occupation for that purpose are granted, by lease or licence, predominantly to persons who are over the age of 55 years and have retired from full-time employment;

**Social Security Act** means the *Social Security Act 1991* of the Commonwealth;

**special disability trust** means—

- (a) a special disability trust within the meaning of section 1209L of the Social Security Act; or
- (b) a special disability trust within the meaning of section 52ZZZW of the Veterans' Entitlements Act;

**spouse**—a person is the spouse of another if they are legally married;

**Veterans' Entitlements Act** means the *Veterans' Entitlements Act 1986* of the Commonwealth.

## **5AA—Minor interest may be disregarded for purposes of residential land exemption**

- (1) In this section—

**prescribed interest**—see subsections (2) and (3);

**prescribed land** means land that—

- (a) is owned by a natural person (the **resident**) whose interest in the land is not greater than 50% and is also owned by 1 or more other persons; and

- (b) would, if it were owned solely by the resident, fall within 1 of the grounds for exempting the land from land tax specified in section 5(10)(a) to (bb) (inclusive);

*transaction* includes any form of conveyance, transfer, contract, agreement or arrangement (whether or not in writing).

- (2) If the resident's interest in prescribed land is 5% or less, subsection (6) will apply in relation to the interest (a *prescribed interest*) unless the Commissioner, on the application of a person who, as an owner of the prescribed land, has an interest exceeding 5% in the land, is satisfied that there is no doubt that the resident's interest was created solely for a purpose, or entirely for purposes, unrelated to reducing the amount of land tax payable in respect of the land, or any other piece of land.
- (3) If the resident's interest in prescribed land exceeds 5% but is less than 50%, subsection (6) will apply in relation to the interest (a *prescribed interest*) if the Commissioner forms the opinion that the purpose, or 1 of the purposes, for the creation of the resident's interest was to reduce the amount of land tax payable in respect of the land, or any other piece of land.
- (4) If the Commissioner forms the opinion for the purposes of subsection (3) that the purpose, or 1 of the purposes, for the creation of the resident's interest was to reduce the amount of land tax payable in respect of land—
  - (a) subsection (6) will be taken to have applied in relation to the interest from the date on which the interest was created; and
  - (b) if—
    - (i) the land was wholly or partially exempted from land tax for a particular financial year; and
    - (ii) the Commissioner is satisfied, on the basis of having formed the opinion, that there were not, in respect of that financial year, proper grounds for exempting the land from land tax,the Commissioner may withdraw the exemption in respect of that financial year.
- (5) For the purposes of subsections (2) and (3), the Commissioner may have regard to—
  - (a) the nature of any relationships between the owners of the land, or between the owners of 2 or more pieces of land and, if relevant, the relationship between a trustee and a beneficiary or beneficiaries or between 2 or more trustees or 2 or more beneficiaries; and
  - (b) the lack of consideration, or the amount, value or source of the consideration, provided in association with the creation of the interest; and
  - (c) the form and substance of any transaction associated with the creation or operation of the interest, including the legal and economic obligations of the parties and the economic and commercial substance of any such transaction; and
  - (d) the way in which any transaction associated with the creation or operation of the interest was entered into or carried out; and
  - (e) any other matter the Commissioner considers relevant.

- (6) If this subsection applies in relation to a prescribed interest under this section, the resident holding the prescribed interest is taken not to be—
- (a) an owner of land for the purposes of section 5(10)(a) to (bb) (inclusive) to the extent of the prescribed interest; or
  - (b) in a case in which subsection (9)(a)(ii) applies in relation to a beneficiary, a beneficiary under a relevant trust for the purposes of this Act.
- (7) If the Commissioner decides to reject an application of an owner of land under subsection (2), the Commissioner must give notice of the decision to the owner—
- (a) stating the decision; and
  - (b) stating the grounds on which the decision is based.
- (8) If the Commissioner forms an opinion under subsection (3) so as to give rise to the application of subsection (6), the Commissioner must give notice of the operation of subsection (6) to each owner of the land—
- (a) stating the fact that the opinion has been formed, and setting out its effect under this section; and
  - (b) stating the grounds on which the opinion is based.
- (9) For the purposes of this section—
- (a) a reference to an interest in land is a reference—
    - (i) to an estate, interest or other circumstance that makes a person an owner of land under this Act (but does not include an interest consisting only of a right of occupation); or
    - (ii) to an interest that a person has in land that arises by virtue of a trust, either as trustee or beneficiary, other than—
      - (A) a trust arising because of a contract to purchase or acquire an estate or interest in the land; or
      - (B) an interest arising in any other circumstances prescribed by the regulations; and
  - (b) an interest may be or become subject to the operation of this section no matter when it was created, including in a case where the interest was created before the commencement of this section.

### 5A—Waiver or refund of land tax for residential land in certain cases

- (1) The Commissioner may, on application under this section, grant—
- (a) a waiver or refund of land tax paid or payable by the applicant on land for a particular financial year; or
  - (b) a refund of an amount paid by the applicant as a purchaser of land to the vendor of the land as an adjustment of land tax paid or payable on the land for the financial year in which settlement takes place (an **amount representing land tax**),
- if—
- (c) the following criteria are satisfied:

- (i) the land became the applicant's principal place of residence during the course of the financial year;
  - (ii) proper grounds for exempting the land from land tax under section 5 came into existence when the land became the applicant's principal place of residence;
  - (iii) the applicant must have divested himself or herself, before the end of the financial year, of any other land in respect of which the applicant has had the benefit of a relevant concession for the financial year;
  - (iv) unless the Commissioner allows otherwise in a particular case, no rent or other consideration has been paid or is payable for occupation, during the financial year, of the land or any other land in respect of which the applicant has had the benefit of a relevant concession for the financial year, while the applicant owned both the land and other such land;
  - (v) the criteria for the time being determined by regulation; or
- (d) in the case of a waiver or refund under paragraph (a), the following criteria are satisfied:
  - (i) the land ceased to be the applicant's principal place of residence during the course of the previous financial year;
  - (ii) proper grounds for exempting the land from land tax under section 5 existed immediately before the land ceased to be the applicant's principal place of residence;
  - (iii) the applicant must have divested himself or herself of the land before the end of the financial year;
  - (iv) unless the Commissioner allows otherwise in a particular case, no rent or other consideration has been paid or is payable for occupation, during the financial year or the previous financial year, of the land or any other land in respect of which the applicant has had the benefit of a relevant concession for the financial year or the previous financial year, while the applicant owned both the land and other such land;
  - (v) the criteria for the time being determined by regulation.
- (2) For the purposes of subsection (1), an applicant has had the benefit of a relevant concession in respect of land for a financial year if the applicant has, for the financial year—
  - (a) had the benefit of an exemption from land tax under section 5 in respect of the land as the applicant's principal place of residence; or
  - (b) had the benefit of a waiver or refund of land tax, or an amount representing land tax, under this section in respect of the land.
- (3) The amount of the waiver or refund is to be determined as follows:
  - (a) in the case of a waiver or refund of land tax—the amount of the waiver or refund is the amount by which the assessment of the taxpayer would have been reduced if the land had been exempt from land tax under section 5;

- (b) in the case of a refund of an amount representing land tax paid by a purchaser of the land, the amount of the refund is—
- (i) the actual amount paid to the vendor by the purchaser as an adjustment of land tax; or
  - (ii) a proportion of the land tax that would be payable on the land for the financial year concerned if the taxpayer owned only that land, being the proportion that the number of days from the date of settlement to the end of that financial year bears to 365,
- whichever is the lesser.
- (4) An application for a waiver or refund of land tax or an amount representing land tax under this section—
- (a) will be taken to be an application for a refund of land tax for the purposes of the *Taxation Administration Act 1996*; and
  - (b) must be accompanied by evidence supporting the application as required by the Commissioner; and
  - (c) in the case of an application for a refund—must be made not more than 5 years after the assessment of the liability to the tax.
- (5) A person must not make a false or misleading statement or representation in an application made, or purporting to be made, under this section.  
Maximum penalty: \$10 000.
- (6) If the Commissioner—
- (a) has made a determination that land tax, or an amount representing land tax, in respect of land for a financial year be waived or refunded under this section; and
  - (b) subsequently determines that proper grounds for the determination did not exist,
- the Commissioner may revoke the earlier determination and, in that event, the amount waived or refunded becomes payable as land tax in respect of the land for the financial year by the person who had the benefit of the waiver or refund.
- (6a) A person is not eligible for a waiver or refund of land tax under this section if the relevant land becomes the person's principal place of residence for a financial year that immediately follows a period of 3 financial years for which the person has had the benefit of an exemption from land tax under section 5(10)(ab) in respect of the same land.
- (7) This section applies in relation to land tax for a financial year commencing on or after 1 July 2001.

## **6—Minimum tax**

Where the total amount of land tax payable by any taxpayer in respect of any year would, apart from this section, be less than \$20, no land tax is payable.

## **Division 3—Taxable value of land**

### **7—Taxable value of land**

- (1) Subject to this Act, the site value of land is its taxable value.
- (2) Land tax in respect of a particular financial year is calculated on the basis of determinations of site value in force under the *Valuation of Land Act 1971* as at midnight on 30 June immediately preceding the commencement of that financial year (whether the determination is actually made before, on or after that date).
- (3) Where a determination of site value as in force at the date referred to in subsection (2) is corrected or amended under the *Valuation of Land Act 1971* (whether in pursuance of an objection, review or appeal or otherwise), the determination of site value, as corrected or amended, must be used for the calculation of land tax.

## **Part 3—Assessment of land tax**

### **Division 1—General**

#### **8A—Calculation of land tax**

- (1) Subject to subsection (1a), land tax for land with a taxable value falling within a threshold set by this section is calculated in accordance with the table in Schedule 1 Part 2 clause 2 for the 2020/2021 and 2021/2022 financial years and in accordance with the table in Schedule 1 Part 2 clause 3 for the 2022/2023 financial year and for each subsequent financial year.
- (1a) If land with a taxable value exceeding \$25 000 is owned by a person as trustee of a trust, land tax for the land is calculated in accordance with the table in Schedule 1 Part 3 clause 4 for the 2020/2021 and 2021/2022 financial years and in accordance with the table in Schedule 1 Part 3 clause 5 for the 2022/2023 financial year and for each subsequent financial year.
- (1b) Subsection (1a) does not apply to—
  - (a) land subject to a fixed trust if a written notice of the beneficial interests in the land is in force under section 12; or
  - (b) land subject to a unit trust scheme if a written notice of the unitholdings in the scheme is in force under section 13; or
  - (c) land subject to a discretionary trust if—
    - (i) the land is pre-existing trust land (within the meaning of section 13A); and
    - (ii) a written notice of a designated beneficiary of the trust is in force under section 13A; or
  - (d) land subject to an excluded trust; or
  - (e) land subject to a public unit trust scheme.

**Note—**

Other provisions of this Part provide for assessment of land tax in the above cases in accordance with subsection (1) at the rates set out in Schedule 1 Part 2.

- (1c) Subsection (1a) does not apply to land that is owned by a corporation if the corporation is grouped with 1 or more related corporations under Division 6 and land tax is assessed in accordance with section 13J.
- (2) For the 2020/2021 financial year, the thresholds will be as follows:

| <b>Threshold</b> | <b>Amount</b>   |
|------------------|---|
| Threshold A      | \$450 000   |
| Threshold B      | \$550 000 (the <i>unadjusted 2010/2011 amount</i> ) adjusted in accordance with subsection (2a) |
| Threshold C      | \$800 000 (the <i>unadjusted 2010/2011 amount</i> ) adjusted in accordance with subsection (2a) |
| Threshold D      | \$1 350 000   |

- (2a) An amount described as an "unadjusted 2010/2011 amount" in the table in subsection (2) is to be adjusted according to the following formula (to take into account increases in the site value of land occurring since the thresholds were last set in relation to the 2010/2011 financial year):

$$Threshold_{2020} = Threshold_1 \times Index\ value_{2020}$$

where—

*Threshold*<sub>2020</sub> represents the adjusted threshold for the 2020/2021 financial year

*Threshold*<sub>1</sub> represents the unadjusted 2010/2011 amount

*Index value*<sub>2020</sub> =  $Index\ value_{2019} \times (1 + \text{average percentage change in site values for the 2020/2021 financial year})$

where *Index value*<sub>2019</sub> is the Index value for the 2019/2020 financial year determined in accordance with this section as in force immediately before the commencement of this subsection, *Index value*<sub>2020</sub> is the Index value for the 2020/2021 financial year and the average percentage change in site values for that financial year is determined under subsection (4).

- (3) Subject to this section, for each financial year after the 2020/2021 financial year (*year x*), thresholds A, B and C will be adjusted to take into account increases in the site value of land according to the following formula:

$$Threshold_{year\ x} = Threshold_1 \times Index\ value_{year\ x}$$

where—

*Threshold*<sub>year x</sub> represents each of the thresholds for the relevant financial year (*year x*)

*Threshold*<sub>1</sub> represents each of the relevant thresholds set out in subsection (2) for the 2020/2021 financial year

**Index value**<sub>year x</sub> = Index value<sub>year x-1</sub> x (1 + Avg percentage change in site values<sub>year x</sub>)

where **Index value**<sub>year x</sub> is the Index value for the relevant financial year (**year x**) and the average percentage change in site values for that financial year is determined under subsection (4), and with the Index value for the 2020/2021 financial year being 1.

- (3a) Subject to this section, for each financial year after the 2020/2021 financial year, threshold D will be adjusted in accordance with the following table:

| <b>Financial year</b>                        | <b>Threshold D amount</b>                               |
|--|---|
| 2021/2022                                    | \$1 350 000   |
| 2022/2023                                    | \$2 000 000   |
| 2023/2024 and each subsequent financial year | \$2 000 000 adjusted in accordance with subsection (3b) |

- (3b) Subject to this section, for the 2023/2024 financial year and each subsequent financial year (**year x**), threshold D will be adjusted to take into account increases in the site value of land according to the following formula:

Threshold D<sub>year x</sub> = \$2000000 × Index Value<sub>year x</sub>

where—

**Threshold D**<sub>year x</sub> represents threshold D for the relevant financial year (**year x**)

**Index value**<sub>year x</sub> = Index value<sub>year x-1</sub> x (1 + Avg percentage change in site values<sub>year x</sub>)

where **Index value**<sub>year x</sub> is the Index value for the relevant financial year (**year x**) and the average percentage change in site values for that financial year is determined under subsection (4), and with the Index value for the 2022/2023 financial year being 1.

- (4) For the purposes of subsections (2a), (3) and (3b), the average percentage change in site values for a particular financial year will be determined by the Valuer-General after the application of the following principles:
- in determining the average percentage change in site values for the financial year, the Valuer-General will take into account changes in the site value of land according to valuations applying under the *Valuation of Land Act 1971* with respect to a period of 12 months expiring on a date to be determined by the Valuer-General, being a date that falls on or before 30 June in the financial year immediately preceding the relevant financial year;
  - the average percentage change in site values must take into account changes in the site value of residential land and changes in the site value of other land (as identified by the Valuer-General), with the averaging being undertaken in accordance with a method determined to be appropriate by the Valuer-General after taking into account the provisions of this Act and the *Valuation of Land Act 1971*;
  - for the purposes of paragraphs (a) and (b)—

- (i) vacant land zoned for residential purposes will be treated as residential land and vacant land zoned for any other purpose (other than primary production) will be treated as other land; and
  - (ii) land used for primary production must be excluded.
- (4a) If, after applying subsection (4) to determine the Index value for the 2020/2021 financial year under subsection (2a), the result would be an Index value for that year that would be less than or equal to the Index value that applied for the 2019/2020 financial year or a preceding financial year, the adjusted thresholds for the 2020/2021 financial year will be taken to be the thresholds that applied for the 2019/2020 financial year.
- (5) If, after applying subsection (4) to determine the Index value for a particular financial year (*year x*) under subsection (3) or (3b), the result would be an Index value for year *x* that would be less than or equal to an Index value that has applied for—
  - (a) if the index value is determined under subsection (3)—the 2020/2021 financial year or a subsequent financial year occurring before year *x*; or
  - (b) if the index value is determined under subsection (3b)—the 2022/2023 financial year or a subsequent financial year occurring before year *x*,the thresholds for year *x* will remain unchanged (so as to be equal to the year *x*-1 amounts).
- (6) On or before 30 June in each year (commencing in 2011), the Valuer-General must publish by notice in the Gazette—
  - (a) the average percentage change in site values for the ensuing financial year (*year x*); and
  - (b) the Index value for the ensuing financial year (*year x*).
- (7) The Commissioner must, on or after the publication of a notice under subsection (6) with respect to a financial year (the ensuing financial year under subsection (6)), by notice in the Gazette, publish the thresholds that will apply with respect to that financial year (being a notice that may be published before, on or after 1 July in that financial year).
- (8) For the purposes of subsection (7), the thresholds will be rounded to the nearest \$1 000 (with an amount of \$500 rounded up).
- (9) A notice under subsection (7) will have effect according to its terms (and be conclusive in all respects for the purposes of this section).

### **8B—Aggregation of land**

- (1) Except as otherwise provided by this Act, land tax is calculated on the basis of the aggregate taxable value of all land owned by the taxpayer.
- (2) If a taxpayer is liable to pay land tax in respect of land included in more than 1 land tax assessment, the land tax is (subject to any additional levy that affects portion only of that land) apportioned to and chargeable on the land included in the various assessments in the proportions that the taxable value of the land included in each separate assessment bears to the aggregate taxable value of all the land.

## **9—Land tax where more than 1 owner of land**

- (1) This section applies where 2 or more persons are the owners of the same land (whether in the same or in different capacities).
- (2) If 2 or more persons are owners of the same land but not all in the same capacity, the Commissioner may treat all who are owners of the land in a particular capacity (to be determined by the Commissioner) as—
  - (a) the sole owner or owners of the land; and
  - (b) the sole taxpayer or taxpayers for the land.
- (3) If the Commissioner treats a person or persons as the sole owner or owners of land under subsection (2), the provisions of this Act under which the value of land is aggregated, for the purpose of the assessment of tax, with the value of other land will apply as if that person or those persons were the sole owner or owners of the land.
- (4) Subject to subsection (5), the owners of the land are to be jointly assessed for land tax on the land as if it were owned by a single person, without regard to—
  - (a) the separate interest of each owner; or
  - (b) any other land owned by any owner (either alone or with someone else).
- (5) Subsection (4) does not affect the operation of any provisions of this Act under which the value of land is aggregated, for the purpose of the assessment of tax, with the value of other land.
- (6) In addition, each owner of the land is to be separately assessed for land tax on—
  - (a) the owner's individual interest in the land (as if the owner were the owner of a part of the land in proportion to that interest); and
  - (b) any other land owned by the owner alone; and
  - (c) the owner's individual interest in any other land.
- (7) Subsection (6) does not apply to land subject to an excluded trust.
- (8) Subject to subsection (9), there is to be deducted from the land tax assessed for an owner under subsection (6) an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:

$$A \times B$$

Where—

*A* is the proportion of the owner's individual interest in the land to the total interests in that land

*B* is the total amount of land tax assessed on the land under subsection (4).

**Note—**

The deduction is applied to the total land tax assessed for the owner and not just to the land tax assessed for this land.

- (9) If a deduction under subsection (8) would result in a negative amount—
  - (a) zero is to be substituted for that amount; and
  - (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.

- (10) If an owner of land is a trustee of a trust to which the land is subject, no regard is to be had to the existence of the trust in relation to the joint assessment of the owners of the land as referred to in subsection (4), but regard is to be had to the existence of the trust in relation to the separate assessment of the owners as referred to in subsection (6).
- (11) This section applies subject to the operation of section 5AA.

## **Division 2—Land divided by community or strata plan**

### **10—Assessment of tax against land divided by community or strata plan**

- (1) If land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—
- (a) in the case of the division of land by a primary plan—land tax will be assessed against the primary lots that are not divided by a secondary plan and against a development lot or lots (if any); and
  - (b) in the case of the division of land by a secondary plan—land tax will be assessed against the secondary lots that are not divided by a tertiary plan and against the development lot or lots (if any); and
  - (c) in the case of the division of land by a tertiary plan—land tax will be assessed against the tertiary lots and a development lot or lots (if any).
- (2) If land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—
- (a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of 1 or more of the primary lots, land tax will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot; and
  - (b) in the case of the division of land by a secondary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of 1 or more of the secondary lots, land tax will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary scheme referred to in paragraph (a) (if any)) that attaches to each secondary lot will be regarded for the purposes of valuation as part of the lot; and
  - (c) in the case of the division of land by a tertiary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of 1 or more of the tertiary lots, land tax will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary and secondary schemes referred to in paragraphs (a) and (b) (if any)) that attaches to each tertiary lot will be regarded for the purposes of valuation as part of the lot.

- (3) If land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996* and the use of the common property or any part of it is not, in the opinion of the Valuer-General, reasonably incidental to the use of any of the community lots, land tax will be levied against the common property or that part of it and the relevant community corporation is liable for the tax as though it were the owner of the common property.
- (4) If land is divided by a strata plan under the *Strata Titles Act 1988*, land tax will be assessed against the strata units but not against the common property.

## **Division 3—Land held on trust**

### **11—Separate assessment of trust land**

Where a person is the owner of land as trustee of a trust (other than a trust arising because of a contract to purchase or acquire an estate or interest in the land), the trustee is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee.

**Note—**

This means that where an interest in land is held on trust (other than a trust arising because of a contract to purchase or acquire an estate or interest in the land) and the trustee is the taxpayer for the land, the taxable value of the interest in land—

- will be aggregated with the taxable value of other land subject to the same trust; but
- will not be aggregated with the taxable value of other land owned by the same taxpayer and not subject to the same trust.

### **12—Land tax for fixed trust if beneficial interests notified to Commissioner**

- (1) A trustee of a fixed trust to which land is subject may lodge with the Commissioner a written notice of the beneficial interests in the land.
- (2) A notice must be in the form, and contain the information, determined by the Commissioner.
- (3) A notice takes effect, at the option of the trustee (which must be specified in the notice), for the tax year in which the notice is lodged or for the following year, and remains in force until it is withdrawn by the trustee.
- (4) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a fixed trust, the trustee cannot lodge another notice under this section in respect of that fixed trust.

**Note—**

For changes to beneficial interests see section 13D(6)

- (5) If a notice is in force under this section for a fixed trust, the following provisions apply:
- (a) a beneficiary of the trust is deemed, for the purposes of this Act (other than a residential land exemption), to be the owner (but not to the exclusion of the trustee) of land subject to the trust that bears the same proportion to the whole of the land subject to the trust as the beneficiary's beneficial interest in land subject to the trust bears to the total beneficial interests in land subject to the trust, and is liable for land tax on that land accordingly, together with any other land owned by the beneficiary, assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2;
  - (b) however, if any land—
    - (i) constitutes the principal place of residence for all of the beneficiaries of the trust; and
    - (ii) would, if it were owned by a natural person, be wholly or partially exempted from land tax under a residential land exemption,the beneficiaries are deemed to be the owners of the land for the purposes of the residential land exemptions;
  - (c) the trustee is liable for land tax on the whole of the land subject to the trust assessed, in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2, as if the land were the only land owned by the trustee.

**Note—**

If the beneficiaries are exempt from land tax under paragraph (b), the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax.

- (6) Subject to subsection (7), there is to be deducted from the land tax payable by a beneficiary under subsection (5)(a) an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:

$$A \times B$$

Where—

*A* is the proportion of the beneficiary's beneficial interest in the land subject to the trust to the total beneficial interests in land subject to the trust

*B* is the total amount of land tax assessed on the trustee under subsection (5)(c).

**Note—**

The deduction is applied to the total land tax assessed for the beneficiary and not just to the land tax assessed for the land subject to the trust.

- (7) If a deduction under subsection (6) would result in a negative amount—
- (a) zero is to be substituted for that amount; and
  - (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.

- (8) Subsection (5)(a) does not apply to a beneficiary who holds a beneficial interest as trustee of another trust.

**Note—**

Section 13B(1)(a) deems such a person to be the owner of land.

- (9) For the purposes of this section, a reference to a fixed trust does not include a public unit trust scheme.

### **13—Land tax for unit trust scheme if unitholdings notified to Commissioner**

- (1) A trustee of a unit trust scheme to which land is subject may lodge with the Commissioner a written notice of the unitholdings in the scheme.
- (2) A notice must be in the form, and contain the information, determined by the Commissioner.
- (3) A notice takes effect, at the option of the trustee (which must be specified in the notice), for the tax year in which the notice is lodged or for the following year, and remains in force until it is withdrawn by the trustee.
- (4) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a unit trust scheme, the trustee cannot lodge another notice under this section in respect of that unit trust scheme.

**Note—**

For changes to unitholdings see section 13D(7)

- (5) If a notice is in force under this section for a unit trust scheme, the following provisions apply:
- (a) a unitholder in the scheme is deemed, for the purposes of this Act (other than a residential land exemption) to be the owner (but not to the exclusion of the trustee) of land subject to the scheme that bears the same proportion to the whole of the land subject to the scheme as the unitholder's unitholding in the scheme bears to the total unitholdings in the scheme, and is liable for land tax on that land accordingly, together with any other land owned by the unitholder, assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2;
- (b) however, if any land—
- (i) constitutes the principal place of residence for all of the unitholders in the scheme; and
- (ii) would, if it were owned by a natural person, be wholly or partially exempted from land tax under a residential land exemption,
- the unitholders are deemed to be the owners of the land for the purposes of the residential land exemptions;
- (c) the trustee is liable for land tax on the whole of the land subject to the trust assessed, in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2, as if the land were the only land owned by the trustee.

**Note—**

If the unitholders are exempt from land tax under paragraph (b), the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax.

- (6) Subject to subsection (7), there is to be deducted from the land tax payable by a unitholder under subsection (5)(a) an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:

$$A \times B$$

Where—

*A* is the proportion of the unitholder's unitholding in the scheme to the total unitholdings in the scheme

*B* is the total amount of land tax assessed on the trustee under subsection (5)(c).

**Note—**

The deduction is applied to the total land tax assessed for the unitholder and not just to the land tax assessed for the land subject to the unit trust scheme.

- (7) If a deduction under subsection (6) would result in a negative amount—
- (a) zero is to be substituted for that amount; and
  - (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.
- (8) Subsection (5)(a) does not apply to a unitholder who holds units as trustee of another trust.

**Note—**

Section 13B(1)(b) deems such a person to be the owner of land.

- (9) For the purposes of this section, a reference to a unit trust scheme does not include a public unit trust scheme.

### **13A—Land tax for discretionary trust if beneficiary notified to Commissioner**

- (1) A trustee of a discretionary trust to which land is subject may, not later than 30 June 2021, lodge with the Commissioner a written notice specifying 1 beneficiary of the trust who, subject to subsections (13) and (14), is to be taken to be the designated beneficiary of the trust for the purposes of this section.
- (2) For the avoidance of doubt, a trust may only have 1 person who is the designated beneficiary for the purposes of this section (and may only substitute the designated beneficiary by notice lodged under subsection (5)).
- (3) A notice takes effect, at the option of the trustee (which must be specified in the notice), for the tax year in which the notice is lodged or for the following year, and remains in force until it is withdrawn by the trustee or until the designated beneficiary notifies the Commissioner, in writing, that they no longer consent to being the designated beneficiary (in which case the notice is deemed to have been withdrawn by the trustee).
- (4) A designated beneficiary may be substituted—
  - (a) if the designated beneficiary dies or becomes incapacitated; or

- (b) if the Commissioner is satisfied that, because of a marriage, de facto relationship or domestic relationship that has broken down irretrievably, the designated beneficiary will no longer be a beneficiary of the trust; or
  - (c) in circumstances prescribed by the regulations.
- (5) If the designated beneficiary may be substituted in accordance with subsection (4), a trustee of the trust may lodge with the Commissioner a written notice—
  - (a) advising the Commissioner of the grounds on which the designated beneficiary may be substituted; and
  - (b) specifying the name of another beneficiary of the trust who is to be taken to be the designated beneficiary for the purposes of this section in place of the beneficiary named in the original notice.
- (6) If a written notice is lodged under subsection (5)—
  - (a) subject to subsection (13), the beneficiary of the trust specified in the notice becomes the designated beneficiary of the trust; and
  - (b) the notice under subsection (1) is taken to have been varied accordingly.
- (7) A notice under this section must be in the form, and contain the information, determined by the Commissioner.
- (8) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a discretionary trust, the trustee cannot lodge another notice under this section in respect of that discretionary trust.
- (9) If a notice is in force under this section for a discretionary trust, the following provisions apply:
  - (a) the designated beneficiary of the trust is deemed, for the purposes of this Act (other than a residential land exemption), to be the owner (but not to the exclusion of the trustee) of land that was subject to the trust at the prescribed time (*pre-existing trust land*) and is liable for land tax on that land accordingly, together with any other land owned by the beneficiary, assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2;
  - (b) however, if any pre-existing trust land—
    - (i) constitutes the principal place of residence of the designated beneficiary; and
    - (ii) would, if it were owned by a natural person, be wholly or partially exempted from land tax under a residential land exemption,the designated beneficiary is deemed to be the owner of the land for the purposes of the residential land exemptions;
  - (c) the trustee for the trust is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee—
    - (i) in the case of pre-existing trust land—in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2; or
    - (ii) in the case of land that became subject to the trust after the prescribed time (*subsequent trust land*)—in accordance with section 8A(1a) at the rates set out in Schedule 1 Part 3; or

- (iii) in the case where land subject to the trust consists of both pre-existing trust land and subsequent trust land—in accordance with the following formula:

$$L = \left[ (R_1 \times T) \times \left( \frac{A}{T} \right) \right] + \left[ (R_2 \times T) \times \left( \frac{B}{T} \right) \right]$$

Where—

*L* is the land tax assessed for the trustee

*R*<sub>1</sub> is the applicable rate of land tax set out in Schedule 1 Part 2

*R*<sub>2</sub> is the applicable rate of land tax set out in Schedule 1 Part 3

*T* is the total taxable value of all taxable land subject to the trust

*A* is the total taxable value of the pre-existing trust land subject to the trust

*B* is the total taxable value of the subsequent trust land subject to the trust.

**Note—**

If the designated beneficiary is exempt from land tax under paragraph (b), the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax.

- (10) If land subject to the trust constitutes the principal place of residence of the trustee, this section does not affect the application of a residential land exemption to the land.
- (11) Any land tax payable by the trustee under subsection (9)(c) in respect of pre-existing trust land is to be deducted from land tax payable by the designated beneficiary.

**Note—**

The deduction is applied to the total land tax assessed for the designated beneficiary and not just to the land tax assessed for the land subject to the trust.

- (12) If a deduction under subsection (11) would result in a negative amount—
- zero is to be substituted for that amount; and
  - the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.
- (13) Subject to subsection (14), a beneficiary of a trust may be the designated beneficiary of the trust for the purposes of this section only if the beneficiary—
- is a natural person; and
  - was a beneficiary of the trust at the prescribed time; and
  - is over 18 years of age; and
  - has verified by statutory declaration that the beneficiary consents to being the designated beneficiary of the trust.
- (14) Where no beneficiaries of a trust are over 18 years of age, a notice under this section may specify that the trustee is to be taken to be the designated beneficiary (as if the trustee were a beneficiary of the trust) but only if the trustee is a natural person.

- (15) For the purposes of this section, a reference to a discretionary trust does not include a public unit trust scheme.
- (16) In this section—
- prescribed time* means midnight on the day on which the *Land Tax (Miscellaneous) Amendment Act 2019* was introduced in the House of Assembly.

### 13B—Land tax for beneficiary/trustees

- (1) A person who—
- (a) holds a beneficial interest in land subject to a fixed trust in respect of which a notice is in force under section 12 (the *first trust*) as trustee of another trust (the *second trust*) is deemed, for the purposes of this Act other than a residential land exemption, to be the owner of land subject to the first trust that bears the same proportion to the whole of the land subject to the first trust as the person's beneficial interest in the land subject to the first trust bears to the total beneficial interests in land subject to the first trust; and
- (b) holds units in a unit trust scheme in respect of which a notice is in force under section 13 (the *first scheme*) as trustee of another trust (the *second trust*) is deemed, for the purposes of this Act other than a residential land exemption, to be the owner of land subject to the first scheme that bears the same proportion to the whole of the land subject to the first scheme as the person's unitholding in the first scheme bears to the total unitholdings in the first scheme.
- (2) For the purposes of this section, a person referred to in subsection (1) is called a *beneficiary/trustee*.
- (3) Subject to subsection (4), there is to be deducted from any land tax payable by a beneficiary/trustee on land that is subject to the second trust an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:
- $$A \times B$$
- Where—
- A* is—
- (a) the proportion of the beneficiary/trustee's beneficial interest in land subject to the first trust to the total beneficial interests in land subject to the first trust; or
- (b) the proportion of the beneficiary/trustee's unitholding in the first scheme to the total unitholdings in the first scheme
- B* is the total amount of land tax assessed on the trustee of the first trust or the first scheme on the whole of the land subject to the first trust or first scheme.
- (4) If a deduction under subsection (3) would result in a negative amount—
- (a) zero is to be substituted for that amount; and
- (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.
- (5) This section does not apply where the first or second trust, or the first scheme, is an excluded trust.

### 13C—Land tax for excluded trusts and public unit trust schemes

A trustee of an excluded trust or of a public unit trust scheme is liable for land tax on the whole of the land subject to the trust assessed, in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2, as if the land were the only land owned by them as a trustee.

## Division 4—Miscellaneous trust land provisions

### 13D—Requirements for trustees to notify Commissioner

- (1) A person who becomes a trustee of land in South Australia, including a person who is already a trustee of land and acquires further land as trustee, must lodge a written notice with the Commissioner within 1 month after becoming a trustee of the land.
- (2) Subject to subsection (3), a person who, at the time of commencement of this section, is a trustee of land in South Australia and has not notified the Commissioner of that fact for the purposes of this Act, must lodge a written notice with the Commissioner within 1 month after the commencement of this section.
- (3) If, at the time of commencement of this section, land referred to in subsection (2) is excepted or exempted from land tax by the Commissioner, subsection (2) does not apply to a person who is a trustee of the land but, if circumstances change so that proper grounds for the exception or exemption cease to exist, the person must lodge a written notice with the Commissioner within 1 month after that change in circumstances.
- (4) A trustee who disposes of any land that is subject to the trust must lodge a written notice with the Commissioner within 1 month after disposing of the land if the disposal does not result in any change in the legal ownership of the land.
- (5) If—
  - (a) a person is trustee of land in South Australia; and
  - (b) anything happens that results in the trust to which the land is subject becoming a different category of trust,the person must lodge a written notice with the Commissioner within 1 month after the thing happens.
- (6) A trustee of a fixed trust in respect of which a notice is in force under section 12 must lodge a written notice with the Commissioner within 1 month after any change to the beneficial interests in land subject to the trust.
- (7) A trustee of a unit trust scheme in respect of which a notice is in force under section 13 must lodge a written notice with the Commissioner within 1 month after any change to the unitholdings in the scheme.
- (8) A corporation (*corporation 1*) that is the trustee of a fixed trust or a unit trust scheme, must lodge a written notice with the Commissioner within 1 month after another corporation becomes, or other related corporations between them become, the owner of more than 50% of—
  - (a) where corporation 1 is the trustee of a fixed trust—the total beneficial interests in land subject to the trust; or

- (b) where corporation 1 is the trustee of a unit trust scheme—the total number of units held by the unit holders in the scheme,

(and if, at the time of commencement of this section, a corporation already owns, or related corporations between them already own, more than 50% of the beneficial interests or units (as the case may be), corporation 1 must lodge a written notice with the Commissioner within 1 month after the commencement of this section).

- (9) A person who was a personal representative of a deceased estate that includes land in South Australia must lodge a written notice with the Commissioner within 1 month after the administration of that estate is completed.
- (10) A trustee of an administration trust must, instead of complying with subsection (1), lodge a written notice with the Commissioner within 1 month after probate has been granted, or letters of administration have been issued, in relation to the deceased estate.
- (11) A notice under this section must be in the form, contain the information and be accompanied by any documents or other evidence determined by the Commissioner.
- (12) In this section—

*category of trust* means—

- (a) a fixed trust; or
- (b) a unit trust scheme; or
- (c) a discretionary trust; or
- (d) an excluded trust; or
- (e) a public unit trust scheme.

## **Division 5—Land held on implied, constructive or resulting trust**

### **13E—Land held on implied, constructive or resulting trust**

- (1) A person who is the owner of land as trustee of an implied, constructive or resulting trust is liable for land tax on the land assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2.
- (2) The trustee is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee.

### **13F—Trustee's right to reimbursement under implied, constructive or resulting trust**

A trustee of an implied, constructive or resulting trust who pays any land tax assessed on land subject to the trust is entitled to recoup the amount of the tax from any trust property that is subject to the trust.

## **Division 6—Grouping of related corporations**

### **13G—What are related corporations?**

- (1) For the purposes of this Division, corporations are related corporations in any of the circumstances specified in this section.

- (2) Corporations are *related corporations* if 1 of those corporations—
- (a) controls the composition of the board of the other corporation; or
  - (b) is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other corporation; or
  - (c) holds more than 50% of the issued share capital of the other corporation.
- (3) Corporations are *related corporations* if the same person has, or the same persons have together, a controlling interest in each of the corporations.

**Note—**

*Controlling interest* is defined in section 13H.

- (4) Corporations are *related corporations* if—
- (a) more than 50% of the issued share capital of 1 of those corporations (*corporation 1*) is held by the other corporation (*corporation 2*) together with the shareholders of corporation 2; and
  - (b) the percentage of the issued share capital of corporation 2 held by shareholders of corporation 1 is more than the difference between 50% and the percentage of the issued share capital of corporation 1 held by corporation 2.
- (5) Corporations are *related corporations* if 1 of the corporations (*corporation 1*) is the trustee of a fixed trust or a unit trust scheme and another corporation owns, or other related corporations between them own, more than 50% of—
- (a) where corporation 1 is the trustee of a fixed trust—the total beneficial interests in land subject to the trust; or
  - (b) where corporation 1 is the trustee of a unit trust scheme—the total number of units held by the unit holders in the scheme.
- (6) Corporations are *related corporations* if 1 of those corporations is a related corporation of a corporation of which the other of those corporations is a related corporation (including a corporation that is a related corporation of the other of those corporations because of 1 or more other applications of this subsection).

**Example—**

If A and B are related corporations and B and C are related corporations, then by virtue of this provision A and C will also be related corporations because they are both related to B.

### **13H—What is a controlling interest in a corporation?**

For the purposes of this Division, a person has, or persons have together, a controlling interest in a corporation if—

- (a) that person, or those persons acting together, can control the composition of the board of the corporation; or
- (b) that person is, or those persons acting together are, in a position to cast or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of the corporation; or

- (c) that person holds, or those persons acting together hold, more than 50% of the issued share capital of the corporation.

### **13I—Further provisions for determining whether corporations are related corporations**

- (1) In determining whether corporations are related corporations, the following provisions apply:
  - (a) corporations may be related corporations whether or not they own land in South Australia;
  - (b) a reference to the issued share capital of a corporation does not include a reference to any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital;
  - (c) subject to paragraph (d), (e), (f) and (g), any shares held or power exercisable by a person or corporation as a trustee or nominee for another person or corporation are taken to be also held or exercisable by the other person or corporation;
  - (d) any shares held or power exercisable by an excluded trust must be disregarded;
  - (e) any shares held or power exercisable by a person or corporation by virtue of the provisions of any debentures of another corporation, or of a trust deed for securing any issue of any such debentures, must be disregarded;
  - (f) any shares held or power exercisable by, or by a nominee for, a person or corporation (not being held or exercisable as mentioned in paragraph (e)) are taken to be not held or exercisable by that person or corporation if—
    - (i) the ordinary business of that person or corporation 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, not being a transaction entered into with an associate of that person or corporation within the meaning of the *Corporations Act 2001* of the Commonwealth;
  - (g) if a trustee holds controlling interests in 2 or more corporations on behalf of different trusts, those corporations are not related to each other only because of that control;
  - (h) the composition of a corporation's board is taken to be controlled by a person or another corporation if the person or other corporation, by the exercise of a power exercisable whether or not with the consent or concurrence of any other person, can appoint or remove all or a majority of the members of the board.
- (2) Subsection (1)(h) does not limit the circumstances in which the composition of a corporation's board is to be taken to be controlled by a person or another corporation.

### 13J—Grouping of related corporations

- (1) Related corporations that own land are to be jointly assessed for land tax on the land as if it were owned by a single corporation.
- (2) Related corporations are jointly and severally liable for the land tax.
- (3) Section 42 of the *Taxation Administration Act 1996* applies to the liability under this section and, accordingly, the Commissioner may issue notices of assessment for the land tax—
  - (a) to the related corporations jointly; or
  - (b) to the related corporations separately; or
  - (c) to any 2 or more of the related corporations jointly and the remainder separately.
- (4) If 2 or more corporations are issued a notice of assessment jointly under subsection (3), those corporations will, for the purposes of that notice of assessment, be deemed to be a single corporation.
- (5) A corporation that is a related corporation of another corporation may apply to the Commissioner to be exempted from the application of this Division and to instead be treated as a single corporation for the purposes of assessment of land tax in relation to land held by the corporation.
- (6) The Commissioner may only grant an application under subsection (5) if the Commissioner is satisfied—
  - (a) that the land is being held for the purpose of being developed as a residential development of more than 10 allotments or lots; and
  - (b) as to any other matters prescribed by the regulations.
- (7) Subject to subsection (9), an exemption granted on an application under subsection (5) will be for an initial term specified by the Commissioner in the instrument of exemption (which will be based on the expected development period but may not exceed a period of 5 years).
- (8) The initial term of an exemption may, on application to the Commissioner, be extended for a further period specified by the Commissioner if the Commissioner is satisfied that the development of the land is occurring over a reasonable period in the circumstances.
- (9) An exemption will cease if the Commissioner determines that —
  - (a) the development has been substantially completed; or
  - (b) the development has not been substantially commenced within the period of 2 years after the grant of the application (or such longer period as the Commissioner may allow).
- (10) An application under subsection (5) or (8) must be in the form, and contain the information, determined by the Commissioner.
- (11) For the avoidance of doubt, the Commissioner may only treat a related corporation as if it were a single corporation if an exemption has been granted on an application under subsection (5).

## Part 4—Persons liable to land tax

### 14—Person liable to tax

- (1) Subject to this Act, an owner of land is liable for tax in respect of that land.
- (2) In any proceedings relating to tax in respect of land, the person named in a valuation roll under the *Valuation of Land Act 1971* as the owner of the land, being the valuation roll containing the site value required to be used in calculating the land tax in respect of the land, will be presumed, in the absence of proof to the contrary, to be the owner of the land liable to the tax.

### 15—Change of ownership

- (1) Subject to this Act, no land and no person assessed for tax is relieved of a charge or liability for tax in respect of a particular financial year by reason of a change in the ownership of the land, or any other event, occurring after the commencement of the financial year.
- (2) The Commissioner may refuse to recognise any change in the ownership of any land until the amount of the tax in respect of the land has been paid.
- (3) The Commissioner may refuse to recognise any change in the ownership of any land where notice of that change of ownership has not been given as required by the regulations.
- (4) Where the Commissioner refuses to recognise a change in the ownership of any land, the person who is recognised by the Commissioner as the owner of the land remains the taxpayer in respect of the land.

### 16—Liability for tax to be joint and several

Where there are two or more taxpayers in respect of the same land, they are jointly and severally liable to pay tax in respect of that land.

### 17—Distribution of burden

- (1) The burden of the tax will be distributed between the taxpayers in the relative proportions of the value of their interests in the land taxed.
- (2) A taxpayer who has paid tax in respect of land is entitled to recover from every other taxpayer in respect of the same land a proper proportion of the amount paid.

## Part 5—Enforcement

### 18—Contracts etc to evade land tax

- (1) Where a contract, agreement or arrangement entered into in writing or verbally (whether before or after the commencement of the *Land Tax Act Amendment Act 1977*) has or purports to have the purpose (whether as the main or a subsidiary purpose) of in any way directly or indirectly—
  - (a) altering the incidence of land tax; or
  - (b) relieving any person from liability to pay land tax, or reducing any such liability; or

- (c) defeating, evading or avoiding any obligation or liability imposed by this Act, the Commissioner may, by notice in writing given to the parties treat that contract, agreement or arrangement as void for the purposes of this Act.
- (2) Where the Commissioner has, in pursuance of this section, treated a contract, agreement or arrangement as void for the purposes of this Act, it will be presumed, in any legal proceedings, in the absence of proof to the contrary, that the purpose of the contract, agreement or arrangement is such as would attract the operation of this section.

### 19—Time for payment of tax

- (1) The amount specified in an assessment by the Commissioner as land tax payable in respect of land for a financial year must be paid to the Commissioner within 30 days after service of the assessment on the taxpayer, or, if there is more than one taxpayer liable to pay the tax in respect of the land, on any one of the taxpayers.
- (2) If—
- (a) a person who otherwise would have been served with an assessment for—
    - (i) the payment of an amount of land tax; or
    - (ii) the correct amount of land tax,has not been served with such an assessment or has been served with an assessment for an incorrect amount (as the case requires) on account of—
    - (iii) gaining an exemption (or partial exemption) from land tax that should not have applied under this Act (including by an exemption continuing after it should have come to an end); or
    - (iv) receiving a waiver or refund that should not have been given; or
    - (v) the liability of a person who owns land as trustee of a trust not being assessed in accordance with the applicable table under Schedule 1; or
    - (vi) an owner's total interest in land not being included in an assessment in accordance with section 9(6); or
    - (vii) corporations not being grouped as related corporations in accordance with section 13G(5); and
  - (b) the failure to serve the assessment, or to serve an assessment for the correct amount of land tax, is attributable (wholly or in part) to—
    - (i) false, misleading or incomplete information that has been provided to the Commissioner; or
    - (ii) information or a notification that should have been provided to the Commissioner not being so provided,then the provision, or non-provision, of that information (as the case may be) will be taken to constitute a tax default by the person for the purposes of the *Taxation Administration Act 1996*.
- (3) In connection with the operation of subsection (2)—
- (a) the tax default will be taken to have occurred—

- (i) in the case of a default resulting in a failure to serve an assessment for the payment of an amount of land tax on account of a matter referred to in subsection (2)(a)(iii) or (iv)—on the day on which the exemption applied from or the waiver or refund was given (as the case may be); or
  - (ii) in any other case—on the day on which the liability to an amount of land tax should have been raised; and
- (b) an assessment under subsection (1) may specify any interest accrued or penalty tax payable under the *Taxation Administration Act 1996* in respect of a preceding financial year, including where an assessment of land tax has not been previously served with respect to that financial year, or where an assessment served with respect to that financial year did not identify the tax default; and
  - (c) a liability to pay interest under the *Taxation Administration Act 1996* will accrue from the day applying under paragraph (a) (and not a day determined under section 25(1) of that Act).

## **20—Power to let or sell land liable to tax**

- (1) If tax is in arrears for 6 months or more, the Commissioner may have a notice published in the Gazette—
  - (a) specifying the land in respect of which the tax is payable; and
  - (b) specifying the amount of the tax in arrears; and
  - (c) stating that if the tax is not paid within 3 months of the date of the notice the Commissioner will let the land, or apply to the Supreme Court for an order for sale of the land.
- (2) If at the expiration of 3 months from the date of a notice published under subsection (1) any part of the tax remains in arrears the Commissioner may—
  - (a) let the land; or
  - (b) apply to the Supreme Court for an order for the sale of the land.
- (3) The Supreme Court may, on an application under subsection (2)(b)—
  - (a) make an order for the sale of the land; and
  - (b) give directions as to how the proceeds of sale are to be dealt with.
- (4) Subject to any directions of the Supreme Court under subsection (3), where land is leased or sold in pursuance of this section the proceeds will be applied by the Commissioner towards the payment of the arrears of tax and the costs of proceeding under this section and any surplus must be paid to the person beneficially entitled to the land or, if the land has been sold, to the person who was beneficially entitled to the land prior to the sale.

## **21—Transfer of land in satisfaction of tax liability**

Where land is unencumbered except by a liability to pay tax, the Commissioner may, on behalf of the Crown, accept a transfer of an estate in fee simple in the land in satisfaction of the liability for tax.

## 22—Tax first charge on land

- (1) Subject to this Act, tax is, until payment, a first charge on the land in respect of which the tax is payable.
- (2) Where land tax is levied against the common property, or part of the common property, of a community scheme under the *Community Titles Act 1996*, the tax is not a charge on the common property but is, instead, a first charge on each of the community lots of the community scheme.

## 23—Certificates in respect of liability to tax

- (1) Upon application by the purchaser of any land, or the purchaser's agent, and payment of the prescribed fee, the Commissioner may issue a certificate showing the amount (if any) of tax that is, or will be, payable under this Act in respect of the land on a specified date (the *relevant date*).
- (2) Where the Commissioner is unable to calculate exactly the amount referred to in subsection (1), the Commissioner may make an estimate of that amount.
- (3) Where the land in respect of which an application is made under this section is only part of the land included in a land tax assessment, the certificate referred to in subsection (1) must relate to the whole of the land comprised in the assessment.
- (4) Where—
  - (a) the amount (if any) stated in a certificate given under this section is paid within a period specified in the certificate; or
  - (b) the certificate indicates that no amount is or will be payable,

the purchaser and the purchaser's successors in title are released from any liability to tax that accrued in respect of the land before the relevant date, and no such liability is or remains a charge upon the land after it becomes vested in the purchaser.

## 24—Alterations to valuations

The right of the Commissioner to recover tax under this Act is not suspended or delayed by an objection, review or appeal in relation to a valuation under the *Valuation of Land Act 1971* and the Commissioner may recover tax on the assumption that the valuation is correct, but if any alteration to a valuation affecting the amount of land tax payable in respect of any land is made under that Act (whether in consequence of an objection, review or appeal, or otherwise) the Commissioner must make a reassessment of the liability to land tax in respect of the land.

## Part 6—Miscellaneous

### 25—Service

- (1) An assessment or other document to be served on a person for the purposes of this Act may be served on the person by affixing it conspicuously on any land to which the assessment or other document relates.
- (2) This section is in addition to and does not derogate from a provision of the *Taxation Administration Act 1996* as to the service of documents.

## 26—Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Any such regulation may impose a fine not exceeding \$125 for breach of a regulation.

## Schedule 1—Calculation of land tax (tables)

### Note—

For Threshold values see section 8A.

## Part 1—Interpretation

### 1—Interpretation

In this Schedule—

*LT (TA)* means the land tax payable with respect to land with a taxable value equal to Threshold A;

*LT (TB)* means the land tax payable with respect to land with a taxable value equal to Threshold B;

*LT (TC)* means the land tax payable with respect to land with a taxable value equal to Threshold C;

*LT (TD)* means the land tax payable with respect to land with a taxable value equal to Threshold D.

## Part 2—Scales of land tax

### 2—2020/2021 and 2021/2022

Land tax for the 2020/2021 financial year and the 2021/2022 financial year is calculated on the basis of the taxable value of the land in accordance with the following table:

| <b>Taxable value of land</b>                        | <b>Amount of tax</b>   |
|---|--|
| Not exceeding Threshold A                           | Nil  |
| Exceeding Threshold A but not exceeding Threshold B | \$0.50 for every \$100 or fractional part of \$100 over Threshold A              |
| Exceeding Threshold B but not exceeding Threshold C | LT (TB) plus \$1.25 for every \$100 or fractional part of \$100 over Threshold B |
| Exceeding Threshold C but not exceeding Threshold D | LT (TC) plus \$2.00 for every \$100 or fractional part of \$100 over Threshold C |
| Exceeding Threshold D                               | LT (TD) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold D |

### 3—2022/2023 and subsequent years

Land tax for the 2022/2023 financial year and for each subsequent financial year is calculated on the basis of the taxable value of the land in accordance with the following table:

| Taxable value of land                               | Amount of tax  |
|---|--|
| Not exceeding Threshold A                           | Nil  |
| Exceeding Threshold A but not exceeding Threshold B | \$0.50 for every \$100 or fractional part of \$100 over Threshold A              |
| Exceeding Threshold B but not exceeding Threshold C | LT (TB) plus \$1.00 for every \$100 or fractional part of \$100 over Threshold B |
| Exceeding Threshold C but not exceeding Threshold D | LT (TC) plus \$2.00 for every \$100 or fractional part of \$100 over Threshold C |
| Exceeding Threshold D                               | LT (TD) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold D |

## Part 3—Scales of land tax for trusts

### 4—2020/2021 and 2021/2022 (trusts)

Land tax for the 2020/2021 financial year and the 2021/2022 financial year is calculated on the basis of the taxable value of the land in accordance with the following table:

| Taxable value of land                               | Amount of tax  |
|---|--|
| Not exceeding \$25 000                              | Nil  |
| Exceeding \$25 000 but not exceeding Threshold A    | \$125 plus \$0.50 for every \$100 or fractional part of \$100 over \$25 000      |
| Exceeding Threshold A but not exceeding Threshold B | LT (TA) plus \$1.00 for every \$100 or fractional part of \$100 over Threshold A |
| Exceeding Threshold B but not exceeding Threshold C | LT (TB) plus \$1.75 for every \$100 or fractional part of \$100 over Threshold B |
| Exceeding Threshold C but not exceeding Threshold D | LT (TC) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold C |
| Exceeding Threshold D                               | LT (TD) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold D |

### 5—2022/2023 and subsequent years (trusts)

Land tax for the 2022/2023 financial year and for each subsequent financial year is calculated on the basis of the taxable value of the land in accordance with the following table:

| Taxable value of land                               | Amount of tax  |
|---|--|
| Not exceeding \$25 000                              | Nil  |
| Exceeding \$25 000 but not exceeding Threshold A    | \$125 plus \$0.50 for every \$100 or fractional part of \$100 over \$25 000      |
| Exceeding Threshold A but not exceeding Threshold B | LT (TA) plus \$1.00 for every \$100 or fractional part of \$100 over Threshold A |

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Schedule 1—Calculation of land tax (tables)

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| <b>Taxable value of land</b>                        | <b>Amount of tax</b>   |
|---|--|
| Exceeding Threshold B but not exceeding Threshold C | LT (TB) plus \$1.50 for every \$100 or fractional part of \$100 over Threshold B |
| Exceeding Threshold C but not exceeding Threshold D | LT (TC) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold C |
| Exceeding Threshold D                               | LT (TD) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold D |

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