

Information Circular No: 98

Land Tax Act 1936

State Budget 2016-17: Land Tax Amendments

Issued 15 December 2016

Replaces Information Circular 94

As part of the 2016-17 State Budget, the Government announced several amendments to the *Land Tax Act 1936* (the "Act"), which come into effect from midnight 30 June 2016.

The legislative amendments to implement these measures are contained in the *Statutes Amendment (Budget 2016) Act 2016*, which was assented to on 8 December 2016.

Insertion of a definition of 'association' for the purposes of Section 4(1)

Land held by Associations

Pursuant to section 4(1) of the Act, land that is owned by an association established for certain purposes may be exempt from land tax, subject to certain criteria being satisfied.

The current provisions require that the owner of the land be established for certain purposes, including where the land is held by a trustee on behalf of a trust, the trustee must also be established for those purposes.

In some cases this can result in a trustee (e.g. proprietary limited companies and other legal entities) that owns land on behalf of a trust not satisfying the criteria in Section 4(1) of the Act.

The Government has expanded the scope of the land tax exemption in Section 4(1) of the Act by inserting a definition of association as follows:

Association includes:

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

This amendment will ensure land held by a trustee on behalf of trust established for any of the following purposes:

- ▶ supplying to necessitous or helpless persons of living accommodation, food, clothing, medical treatment, nursing, pre-maternity or maternity care, or other help;
- ▶ one that receives an annual grant or subsidy from money voted by Parliament;
- ▶ the conservation of native fauna and flora;
- ▶ conducting an educational institution otherwise than for pecuniary profit;
- ▶ a charitable, educational, benevolent, religious or philanthropic purpose;

- ▶ playing cricket, football, tennis, golf or bowling or other athletic sports or exercises;
- ▶ horseracing, trotting, dog racing, motor racing or other similar contests;
- ▶ for 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;
- ▶ employers or employees, registered under the law of the Commonwealth or of the State relating to industrial conciliation and arbitration that occupies the land for the purposes of the association;
- ▶ the recreation of the local community;
- ▶ agricultural shows, and exhibitions of a similar nature;
- ▶ preserving buildings or objects of historical value on the land; and
- ▶ of a prescribed kind.

will be exempt subject to the other existing criteria in Section 4(1) of the Act applying.

Amendments to Section 4(1)(k)(i) & (ii)

Land held by Sporting & Racing Associations

A sporting association is an association established for sporting purposes, including the playing of cricket, football, tennis, golf or bowling, or other athletic sports or exercises, or the creation of a club for the purposes of playing those sports. A racing association is an association established for racing purposes, including horse racing, trotting, dog racing, motor racing or other similar contests, or the creation of a club for the purposes of racing.

Under the current provisions, land that is owned by a sporting or racing association that holds the land wholly or mainly for their respective purposes listed above is exempt from land tax.

However, other land owned by the sporting or racing association that is used for non-sporting or non-racing activities is not exempt from land tax.

The Government has announced that it will expand the scope of the land tax exemptions available to sporting and racing associations to include all non-residential and non-vacant land. Land held by a sporting or racing association that constitutes residential or vacant land will continue to be subject to land tax.

In order to receive the exemption, the association's rules/constitution must restrict the use of income and capital of the association to sporting or racing activities, including where this income is generated from non-sporting or non-racing activities. This includes a distribution on winding up of the association.

The Commissioner of State Taxation (the "Commissioner") will give consideration principally to the Land Use Code assigned to land to determine whether the land is exempt under the proposed amendments.

In addition, the Government has announced that it will provide *ex gratia* relief for eligible land held by sporting and racing associations for the 2015-16 financial year.

Ex gratia relief for the 2015-16 financial year will be processed in due course by RevenueSA. Relief will not be paid to eligible sporting or racing associations who have land tax outstanding from previous years.

Amendment to Section 5(10)(a) Renovating or Rebuilding a Principal Place of Residence

Currently, where a person moves out of their principal place of residence (PPR) to substantially renovate or rebuild their home, the site (land) may become liable for land tax.

The Government has announced that, from the 2016-17 financial year, it will expand the PPR exemption criteria to provide individuals with the ability to maintain a PPR on the site being redeveloped for up to two financial years. This will ensure that there is no additional land tax burden for home owners in circumstances where they move out so as to substantially renovate or rebuild their existing PPR. Individuals will be able to elect their existing PPR (that is under redevelopment) as exempt rather than the property they will reside in during the period of renovation/rebuild.

The impact of the previous and new arrangements for an individual that temporarily resides in an investment property they own whilst their PPR is renovated/rebuilt, can be illustrated as follows:

Example:

Taxpayer lives in their principal place of residence (PPR) and owns an investment property

Property A	Property B
Taxpayer's PPR	Taxpayer's investment property
site value \$450 000	site value \$350 000
EXEMPT	TAXABLE land tax bill of \$90

Taxpayer moves from PPR to their investment property to renovate/rebuild their PPR

Property A	Property B
Taxpayer's former PPR	Taxpayers temporary PPR (previously their investment property)

Land Tax without the changes

Land tax increases from \$90 to \$590 upon the taxpayer moving from their former PPR to their investment property.

Example: without the changes

Property A	Property B
Taxpayer's former PPR	Taxpayers temporary PPR (previously their investment property)
site value \$450 000	site value \$350 000
TAXABLE land tax bill of \$590	EXEMPT

Land Tax from 2016-17 Financial Year

The amendments allow the taxpayer to claim a PPR against either property rather than pay land tax on their former PPR. In this example, the taxpayer may elect to continue to claim a PPR exemption against their former PPR as this property has a higher site value. Land tax would therefore remain at \$90 (assuming no site value or rate increases between financial years) for up to two financial years whilst the property is renovated/rebuilt.

Example: from 2016-17 financial year

Property A	Property B
Taxpayer's PPR undergoing renovations/rebuild	Taxpayers temporary PPR (previously their investment property)
site value \$450 000	site value \$350 000
EXEMPT	TAXABLE land tax bill of \$90

A taxpayer who only owns the property being substantially renovated/rebuilt will be able to continue to claim the PPR exemption on that residence for up to two financial years whilst the property is renovated/rebuilt.

The extension of the exemption for the property being renovated/rebuilt is only available on the following conditions:

- ▶ the building(s) the subject of the renovation/rebuild will have, upon completion, a predominantly residential character;
- ▶ the taxpayer will be required to live in the renovated/rebuilt house for at least 12 months following completion;
- ▶ no rental income can be received from the property being renovated/rebuilt during the two year period or the 12 month period following completion of the renovation/rebuild;
- ▶ the application for relief must be received within five years from the date the taxpayer moved out of their initial PPR; and
- ▶ the taxpayer will only be entitled to one PPR exemption at any one time during the two year period and the following 12 month period (three years). The exemption can only be granted on a property owned by the person who lives in, or intends to live in, the property.

Purchasing a property that will become a Principal Place of Residence upon renovation/construction

The exemption may also extend to situations where a taxpayer purchases a property, whether vacant land or other unoccupied property, with the intention to renovate or construct what will become their PPR. Up until the 2015-16 financial year, the property would be taxable as the taxpayer is not occupying the property as their PPR.

The amendments provide for an exemption to be granted for up to two financial years, subject to the following conditions:

- ▶ the person intending to live in the property as their PPR must own the property;
- ▶ the building(s) the subject of the renovation/construction will have, upon completion, a predominantly residential character;
- ▶ the taxpayer will be required to live in the renovated/constructed house for at least 12 months following completion; and
- ▶ no rental income can be received from the intended PPR during the two year period or the 12 month period following completion of the renovation/construction.

Commissioner's Discretion

RevenueSA recognises that impediments to completing renovations, rebuilds or constructions within the two year time frame may present from time to time. Accordingly, the amendments provide that the Commissioner may alter the two financial year time frame and 12 month time frame, where the Commissioner is satisfied that good reasons exist.

Applications

A taxpayer who believes they are eligible for the exemption should apply in writing to the Commissioner as soon as possible.

Graeme Jackson
COMMISSIONER OF STATE TAXATION

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Further Information

Further information can be obtained from RevenueSA.

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