



Western Australia

Taxation Legislation Amendment Act 2015

As at 25 Feb 2015

No. 1 of 2015

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Taxation Legislation Amendment Act 2015

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Western Australia

Taxation Legislation Amendment Act 2015

No. 1 of 2015

An Act to amend the following Acts —

- **the *Duties Act 2008*;**
- **the *Land Tax Assessment Act 2002*.**

[Assented to 25 February 2015]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Taxation Legislation Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 and Part 3 Divisions 1 and 3 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 Division 1 — is deemed to have come into operation on 1 July 2014;
- (c) Part 3 Division 2 — is deemed to have come into operation immediately after the *Land Tax Assessment Act 2002* came into operation;
- (d) the rest of the Act — on the day after assent day.

Part 2 — Amendments about primary production

Division 1 — *Land Tax Assessment Act 2002* amended

3. Act amended

This Division amends the *Land Tax Assessment Act 2002*.

4. Section 15 amended

In section 15(1):

- (a) delete “rural business”;
- (b) in paragraph (a) delete “section 29 or subject to a concession under section 30” and insert:

Part 3 Division 3

Note: The heading to amended section 15 is to read:

Newly subdivided primary production business land, tax payable on

5. Section 20 amended

Delete section 20(1)(c) to (e).

6. Part 3 Division 3 replaced

Delete Part 3 Division 3 and insert:

Division 3 — Land used for primary production business

Subdivision 1 — Terms used

29. Terms used

In this Division —

beneficiary, in relation to a discretionary or other trust (other than a unit trust scheme), means an individual who is a beneficiary under the trust (whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust);

discretionary trust has the meaning given in the *Duties Act 2008* section 3;

family corporation has the meaning given in section 30H(b);

family member has the meaning given in the *Duties Act 2008* section 100;

family owner, in relation to land, has the meaning given in section 30H;

family trust has the meaning given in section 30H(c);

family unit trust scheme has the meaning given in section 30H(d);

non-rural land means all land in the State —

- (a) that is in the metropolitan region; or
- (b) that is outside the metropolitan region and is zoned other than for rural purposes under a local planning scheme or an improvement scheme;

partnership has the meaning given in the *Partnership Act 1895* section 7;

primary production, in relation to land, has the meaning given in section 30A;

primary production business has the meaning given in section 30B;

related, in relation to a family owner of land, has the meaning given in sections 30I to 30;

rural land means all land in the State other than non-rural land.

30A. What is primary production

- (1) Land is used for primary production if it is used for any of the following —
 - (a) the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;
 - (b) the breeding, rearing or maintenance of living creatures for any of the following purposes (*produce animals*) —
 - (i) selling them, or their progeny, for food;
 - (ii) the production or collection of their skins, shells or bodily produce;
 - (iii) selling parts of them or their skins, shells or bodily produce;
 - (c) the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny —
 - (i) for stud purposes; or
 - (ii) to be used for a purpose set out in paragraph (b)(i), (ii) or (iii);
 - (d) the breeding or rearing of horses for the purpose of selling them or their progeny;
 - (e) any other thing prescribed for the purposes of this subsection.
- (2) In determining whether or not land is used for primary production —
 - (a) it is irrelevant whether a thing is sold, or to be sold, in a natural, processed or converted state; but

- (b) the processing or converting of anything for the purpose of selling it is not primary production.

30B. When land is used for primary production business

Land is used for a primary production business if the land is used for primary production and that use of the land —

- (a) has a significant and substantial commercial purpose or character; and
- (b) is directed at making a profit and has a prospect of making a profit (whether or not a profit is actually being made); and
- (c) is planned, organised and carried on in a businesslike manner, rather than being carried on for recreation, hobby, sporting or similar activities; and
- (d) has the same or similar characteristics as, and is carried out in the same or a similar manner to, the ordinary trade in that line of business taking into account —
 - (i) scale, size and permanency; and
 - (ii) repetition and regularity;and
- (e) is in accordance with any other factor prescribed for the purposes of this section.

Subdivision 2 — Primary production business exemption

30C. Exemption for rural land

Land is exempt for an assessment year if, at midnight on 30 June in the previous financial year, the land is —

- (a) rural land; and
- (b) used solely for a primary production business.

30D. Exemption for non-rural land

- (1) Land is exempt for an assessment year if, at midnight on 30 June in the previous financial year, the land is —
- (a) non-rural land; and
 - (b) used solely for a primary production business; and
 - (c) used, as described in paragraph (b), only by one or more of the following —
 - (i) an owner of the land;
 - (ii) if an owner of the land is a family owner, a person related to the family owner.
- (2) However, land is not exempt under this section for an assessment year if, at midnight on 30 June in the previous financial year —
- (a) the land is owned jointly by 2 or more owners; and
 - (b) not every owner of the land is —
 - (i) a family owner; and
 - (ii) a person related to each other family owner;and
 - (c) the land —
 - (i) is used for a primary production business by a person related to a family owner of the land; or
 - (ii) is not used for a primary production business by any owner of the land.

30E. Exemption under section 30D after death of family owner or person related to family owner

The death of a person (the *deceased*) is to be disregarded in determining if land is exempt under section 30D for the assessment year following the financial year during which the death occurred and for that purpose section 30D applies as if —

- (a) where the deceased was a family owner of the land — a reference in that section to a family owner of the land included a reference to an owner of the land who is an executor or administrator of the deceased's estate; and
- (b) a reference in that section to a person related to a family owner of the land —
 - (i) where the deceased was a family owner of the land — were a reference to a person who, immediately before the death, was related to the family owner of the land; and
 - (ii) where the deceased was a person related to a family owner of the land — included a reference to an executor or administrator of the deceased's estate.

30F. Notice to Commissioner about changes to exempt land

- (1) If land was exempt under this Division for an assessment year, the owner of the land must notify the Commissioner if any of the following occurs (a *change*) —
 - (a) the land is no longer used solely for a primary production business;

- (b) if the land is non-rural land —
 - (i) the land is no longer used by one or more of the persons referred to in section 30D(1)(c); or
 - (ii) section 30D(2) applies in respect of the land.
- (2) The owner of the land must give notice under subsection (1) in writing before whichever of the following occurs later —
 - (a) the beginning of the next assessment year after the change occurs;
 - (b) 3 months after the day on which the change occurs.

Penalty for an offence under this subsection: a fine of \$5 000.

Subdivision 3 — Family owners of land and persons related to family owners of land

30G. References to individuals, family members and nominated individuals

For the purposes of determining who is a family owner, or a person related to a family owner, of land a reference in this Subdivision —

- (a) to an individual or a family member is a reference to the person in their capacity as an individual, and does not include any other capacity such as agent, trustee or otherwise on behalf of any other person; and

- (b) to a nominated shareholder, nominated beneficiary or nominated unit holder is a reference to the individual nominated in writing for the purposes of this Division —
 - (i) to the Commissioner by the family corporation, the trustee of the family trust or the trustee of the family unit trust scheme, as is relevant; or
 - (ii) if such a nomination is not made within a reasonable period of time after a request for a nomination is made by the Commissioner, by the Commissioner.

30H. Family owner of land

A *family owner* of land is an owner of the land that —

- (a) is an individual; or
- (b) is a corporation in which every shareholder is either the nominated shareholder or a family member of the nominated shareholder (a *family corporation*); or
- (c) holds the land in the capacity of trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the nominated beneficiary or a family member of the nominated beneficiary (a *family trust*); or
- (d) holds the land in the capacity of trustee of a unit trust scheme under which every unit is held by either the nominated unit holder or a family member of the nominated unit holder (a *family unit trust scheme*).

30I. Persons related to family owner who is an individual

- (1) A person is related to a family owner of land who is an individual (the *individual*) if the person is —
 - (a) a family member of the individual; or
 - (b) a partner in a partnership in which every partner is either the individual or a family member of the individual; or
 - (c) a corporation in which every shareholder is either the individual or a family member of the individual; or
 - (d) a trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the individual or a family member of the individual; or
 - (e) a trustee of a unit trust scheme under which every unit is held by either the individual or a family member of the individual.

- (2) If land is owned jointly by 2 or more individuals, then for the purposes of determining who is related to a family owner of land, a reference in subsection (1) to the individual is a reference to the individual nominated in writing for the purposes of this Division —
 - (a) to the Commissioner jointly by the 2 or more family owners who are individuals; or
 - (b) if such a nomination is not made within a reasonable period of time after a request for a nomination is made by the Commissioner, by the Commissioner.

30J. Persons related to family corporation

A person is related to a family owner of land that is a family corporation if the person is the nominated shareholder for the corporation (the *shareholder*) or is —

- (a) a family member of the shareholder; or
- (b) a partner in a partnership in which every partner is either the shareholder or a family member of the shareholder; or
- (c) another corporation in which every shareholder is either the shareholder or a family member of the shareholder; or
- (d) a trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the shareholder or a family member of the shareholder; or
- (e) a trustee of a unit trust scheme under which every unit is held by either the shareholder or a family member of the shareholder.

30K. Persons related to trustee of family trust

A person is related to a family owner of land that is a trustee of a family trust if the person is an individual who is the nominated beneficiary for the trust (the *beneficiary*) or is —

- (a) a family member of the beneficiary; or
- (b) a partner in a partnership in which every partner is either the beneficiary or a family member of the beneficiary; or
- (c) a corporation in which every shareholder is either the beneficiary or a family member of the beneficiary; or

- (d) a trustee of another discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the beneficiary or a family member of the beneficiary; or
- (e) a trustee of a unit trust scheme under which every unit is held by either the beneficiary or a family member of the beneficiary.

30. Persons related to trustee of a family unit trust scheme

A person is related to a family owner of land that is a trustee of a family unit trust scheme if the person is the nominated unit holder for the scheme (the *unit holder*) or is —

- (a) a family member of the unit holder; or
- (b) a partner in a partnership in which every partner is either the unit holder or a family member of the unit holder; or
- (c) a corporation in which every shareholder is either the unit holder or a family member of the unit holder; or
- (d) a trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the unit holder or a family member of the unit holder; or
- (e) a trustee of another unit trust scheme under which every unit holder is either the unit holder or a family member of the unit holder.

7. Schedule 1 Division 4 inserted

At the end of Schedule 1 insert:

Division 4 — Provisions for *Taxation Legislation Amendment Act 2015*

6. Term used: amending Act

In this Division —

amending Act means the *Taxation Legislation Amendment Act 2015*.

7. Application of section 15 during transitional period

(1) In this clause —

former section 30 means section 30 as in force immediately before the amending Act section 6 comes into operation;

transitional period means the period —

- (a) beginning on 1 July 2014; and
- (b) ending on 30 June 2018.

(2) Section 15 applies to and in respect of land that is subdivided during the transitional period as if section 15(1)(a) included a reference to land that was subject to a concession under the former section 30 for any of the 5 financial years reckoned retrospectively from, and including, the financial year during which the land was subdivided.

8. Application of section 20 to previous assessment years

(1) In this clause —

former section 20 means section 20 as in force immediately before the amending Act section 5 comes into operation;

previous assessment period means the period —

- (a) beginning on 1 July 2009; and
- (b) ending on 30 June 2014.

(2) Despite the amendment of section 20 by the amending Act section 5, the former section 20 continues to apply to and in

respect of an assessment year that occurred during the previous assessment period.

9. Application of section 30D to land held in trust for assessment year 2014/15

- (1) In this clause —
- compliant trustee*, in relation to land, means a trustee of a discretionary or other trust (other than a unit trust scheme) that is —
- (a) a family owner of the land under section 30H(c); or
 - (b) a person related to a family owner of the land described in section 30I(1)(d), 30J(d), 30K(d) or 30(d).
- (2) Land is exempt under section 30D for the assessment year ending 30 June 2015 if —
- (a) it would not be so exempt, but for this clause, solely because a trustee was not a compliant trustee at midnight on 30 June 2014; and
 - (b) on or before midnight on 30 June 2015 the trustee is a compliant trustee.

8. Glossary amended

- (1) In the Glossary clause 1 delete the definitions of:
- grazing business*
 - horse-breeding business*
 - non-rural zone*
 - rural business*
 - rural business land*
 - total net income*
- (2) Delete the Glossary clauses 4 and 5.

Division 2 — Duties Act 2008 amended

9. Act amended

This Division amends the *Duties Act 2008*.

10. Section 3 amended

In section 3 delete the definition of *primary production* and insert:

primary production has the meaning given in section 101A;

11. Section 101A inserted

After section 100 insert:

101A. References to primary production

- (1) A reference to *primary production* is a reference to any of the following —
 - (a) the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;
 - (b) the breeding, rearing or maintenance of living creatures for any of the following purposes (*produce animals*) —
 - (i) selling them, or their progeny, for food;
 - (ii) the production or collection of their skins, shells or bodily produce;
 - (iii) selling parts of them or their skins, shells or bodily produce;

- (c) the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny —
 - (i) for stud purposes; or
 - (ii) to be used for a purpose set out in paragraph (b)(i), (ii) or (iii);
 - (d) the breeding or rearing of horses for the purpose of selling them or their progeny;
 - (e) any other thing prescribed for the purposes of this subsection.
- (2) In determining whether or not something is primary production —
- (a) it is irrelevant whether a thing is sold, or to be sold, in a natural, processed or converted state; but
 - (b) the processing or converting of anything for the purpose of selling it is not primary production.

Part 3 — Other amendments to *Land Tax Assessment Act 2002*

Division 1 — Preliminary

12. Act amended

This Part amends the *Land Tax Assessment Act 2002*.

Division 2 — Amendments about exemptions

13. Section 17 amended

(1) In section 17 delete “Land” and insert:

(1) Land

(2) At the end of section 17 insert:

(2) Unless this Part provides otherwise, an exemption under a provision of this Part referred to in subsection (1)(b) applies, in accordance with section 18, to the whole or part of a lot or parcel of land.

14. Section 18 replaced

Delete section 18 and insert:

18. Whole and partial exemptions

(1) In this section —

exemption provision means a provision of this Part referred to in section 17(1)(b);

relevant requirements, in relation to an exemption provision, means one or more of the following by virtue of which land is exempt under the provision —

- (a) it is used, reserved or occupied for a purpose or purposes specified in the provision;
 - (b) it is used, owned or occupied by, vested in or held in trust for, a person or persons of a class or classes specified in the provision;
 - (c) it is of a class or description specified in the provision.
- (2) If an exemption under an exemption provision applies to a lot or parcel of land then —
- (a) the whole of the lot or parcel is exempt if all of the relevant requirements of the provision apply in respect of the whole of the lot or parcel; and
 - (b) otherwise, only a part of the lot or parcel is exempt.
- (3) An exemption that applies only to a part of a lot or parcel of land as referred to in subsection (2)(b) applies to the lot or parcel to the same extent that the relevant requirements of the exemption provision apply in respect of the lot or parcel.

15. Section 20 amended

In section 20(2) delete “the land” and insert:

a lot or parcel of land the subject of an application under subsection (1)

16. Section 38 amended

In section 38(3) delete “If land is not exempt under subsection (2) because it is not used solely as described in that subsection,” and insert:

If the whole of a lot or parcel of land is not used as described in subsection (2)(b) then an exemption under this section does not apply but

17. Section 39 replaced

Delete section 39 and insert:

39. Land used for retirement villages: exemption for

(1) In this section, each of these terms has the meaning given in the *Retirement Villages Act 1992* section 3 —

residence contract

residential premises

retirement village

retirement village scheme

(2) Land is exempt for an assessment year if, at midnight on 30 June in the previous financial year, it is used for residential premises that are —

(a) in a retirement village; and

(b) being occupied, or available for occupation, under a residence contract.

(3) If land used for residential premises in a retirement village is exempt under subsection (2), then the exemption applies not only to that land but also extends to any land that, at midnight on 30 June in that financial year, is —

- (a) part of the retirement village; and
- (b) appurtenant to the residential premises; and
- (c) being occupied or used for, or in connection with, the retirement village scheme for the retirement village.

18. Section 39B amended

Delete section 39B(3).

Note: The heading to amended section 39B is to read:

Dwelling park land: concession and exemption for

Division 3 — Transitional and validation provisions

19. Schedule 1 heading amended

In the heading to Schedule 1 after “**Transitional**” insert:

and validation

20. Schedule 1 Division 4 Subdivision 1 heading inserted

After the heading to Schedule 1 Division 4, as inserted by section 7, insert:

Subdivision 1 — Preliminary

21. Schedule 1 Division 4 Subdivision 2 heading inserted

After Schedule 1 clause 6, as inserted by section 7, insert:

Subdivision 2 — Provisions about primary production

22. Schedule 1 Division 4 Subdivision 3 inserted

At the end of Schedule 1 Division 4, as inserted by section 7, insert:

Subdivision 3 — Provisions about exemptions and rural business land

10. Terms used

In this Subdivision —

2012 to 2014 assessment period means the period —

- (a) beginning on 1 July 2012; and
- (b) ending on 30 June 2014;

amended Act means this Act as in force immediately after commencement;

commencement means the day on which the amending Act section 22 comes into operation;

modified rural business land provisions means Part 3 Division 3 as in force immediately before the amending Act section 6 comes into operation, as modified by inserting after section 29(4):

- (5) For the purposes of this section —
 - (a) income produced or derived from carrying out a rural business, or businesses, includes income produced or derived from the sale of produce or stock in a processed or converted state; but
 - (b) the processing or converting of anything for the purpose of selling it is not carrying out a rural business or businesses.

previous assessment means an assessment in respect of land for an assessment year during the validation period —

- (a) that the land was partially exempt due to the application, or purported application, of section 18; or
- (b) that the land was exempt due to the application, or purported application, of section 39;

rural business land assessment means an assessment in respect of land for an assessment year during the 2012 to 2014 assessment period that land was exempt, or subject to a concession —

- (a) due to the application, or purported application, of Part 3 Division 3; and
- (b) based on income that was, or included, income produced or derived from the sale of produce or stock in a processed or converted state;

validation period means the period —

- (a) beginning on the coming into operation of the *Land Tax Assessment Act 2002*; and
- (b) ending immediately before commencement.

11. Validation of previous assessments

- (1) A previous assessment made, or purported to be made, during the validation period is to be taken to be, and to have always been, valid and effective to the same extent as it would have been if the amended Act had been in force when the assessment was made.
- (2) The rights, obligations and liabilities of all persons are taken to be, and to have always been, the same as if a previous assessment had been validly made.
- (3) Anything done, or purportedly done, during the validation period is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if a previous assessment had been validly made.

- (4) In this clause, a reference to the doing of anything includes a reference to an omission to do anything.
- (5) This clause is subject to clause 12.

12. Land tax decisions made or pending

- (1) In this clause —
decision means —
 - (a) a decision of a court or tribunal made under a land tax Act before commencement; or
 - (b) an objection determined by the Commissioner before commencement.
- (2) To the extent of any conflict or inconsistency between clause 11 and a decision, the decision prevails.
- (3) Clause 11 does not apply to, or in respect of, a previous assessment —
 - (a) in respect of which an objection was lodged, but not finally determined by the Commissioner, under a land tax Act before 28 November 2013; or
 - (b) in respect of which review proceedings were commenced, but not finally determined, under a land tax Act before 28 November 2013.

13. Application of modified rural business land provisions during the 2012 to 2014 assessment period

The modified rural business land provisions apply, and are taken to have always applied, for the purposes of assessing, or reassessing, land tax for an assessment year during the 2012 to 2014 assessment period.

14. Validation of rural business land assessments

- (1) A rural business land assessment made, or purported to be made, in respect of land for an assessment year during the 2012 to 2014 assessment period is to be taken to be, and to have always been, valid and effective to the same extent as

it would have been if, when the assessment was made, the modified rural business land provisions had been in force.

- (2) The rights, obligations and liabilities of all persons are taken to be, and to have always been, the same as if a rural business land assessment had been validly made.
- (3) Anything done, or purportedly done, before commencement is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if a rural business land assessment had been validly made.
- (4) In this clause, a reference to the doing of anything includes a reference to an omission to do anything.

15. Reassessment

Subject to the *Taxation Administration Act 2003* section 17, the Commissioner may make any reassessment necessary to give effect to the amendments effected by the amending Act Part 3 Division 2 and this Subdivision.

Part 4 — Other amendments to *Duties Act 2008*

Division 1 — Preliminary

23. Act amended

This Part amends the *Duties Act 2008*.

Division 2 — Amendments about value of property and landholder duty

24. Section 36 amended

(1) Before section 36(4)(a) insert:

- (aa) the ordinary principles of valuation apply, except to the extent that those principles are modified due to the operation of another paragraph of this subsection; and

(2) Delete section 36(4)(b) and insert:

- (b) it is to be assumed that a hypothetical purchaser would, when negotiating the price of property, have knowledge of all existing information relating to the property; and
- (ca) information relating to the property (including the right to and use of the information) —
 - (i) will be regarded as an attribute of the property; and
 - (ii) will not be regarded as something to which an independent value can be ascribed;

and

25. Section 156 amended

After section 156(7) insert:

- (8) In determining whether an entity is linked to another entity —
 - (a) if the entity has entered into an agreement to acquire an interest in the other entity, the agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has entered into an agreement to dispose of an interest in the other entity but the agreement has not yet been completed, the agreement is to be disregarded.

26. Section 176 amended

Delete section 176(4A).

27. Section 195 amended

- (1) Delete section 195(1)(a) and insert:
 - (a) for the purposes of an assessment —
 - (i) an agreement to acquire an interest in land has, under section 149(1)(a), been regarded as having been completed; or
 - (ii) an agreement to acquire an interest in an entity has, under section 156(8)(a), been regarded as having been completed;
 - and

(2) Delete section 195(2)(a) and insert:

- (a) for the purposes of an assessment —
 - (i) an agreement to dispose of an interest in land has, under section 149(1)(b), been disregarded; or
 - (ii) an agreement to dispose of an interest in an entity has, under section 156(8)(b), been disregarded;
- and

Note: The heading to amended section 195 is to read:

Reassessment of duty where s. 149 or 156 applied

Division 3 — Transitional provisions

28. Schedule 3 Division 7 inserted

At the end of Schedule 3 insert:

Division 7 — Provisions for *Taxation Legislation Amendment Act 2015*

37. Terms used

In this Division —

amended provisions means sections 156(8)(b) and 195(2)(a) as in force immediately after commencement;

commencement means the day on which the *Taxation Legislation Amendment Act 2015* Part 4 comes into operation;

relevant acquisition means a relevant acquisition that occurred on or after 1 July 2008 but before commencement.

38. Duty on certain relevant acquisitions

- (1) The amended provisions apply, and are to be taken to have always applied, for the purposes of —
 - (a) assessing duty in respect of a relevant acquisition;
and
 - (b) reassessing duty in respect of a relevant acquisition on an application made under section 195(3)(b) before whichever is the later of the following —
 - (i) 5 years after the original assessment was made;
 - (ii) 12 months after commencement.
- (2) Subclause (1)(b) applies despite the *Taxation Administration Act 2003* section 17(4).

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