Western Australia

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Compare between:

[16 Nov 2006, 01-b0-05] and [13 Dec 2006, 01-c0-05]

Schedule 1 — Transitional provisions

[s. 47]

 [Heading inserted by No. 31 of 2006 s. 26.]

Division 1 — Provision for *Revenue Laws Amendment Act 2006*

 [Heading inserted by No. 31 of 2006 s. 26.]

1. Application of sections 24A, 25A and 27A

 Private residential property is exempt under section 24A, 25A or 27A (as inserted by Part 4 Division 2 of the *Revenue Laws Amendment Act 2006*) if the completion date for the construction or refurbishment of the private residence that forms part of the property is on or after 1 July 2006.

 [Clause 1 inserted by No. 31 of 2006 s. 26.]

Glossary

[s. 4]

1. Definitions

 Unless the contrary intention appears —

 **“**agent**”** includes every person who, in Western Australia, for or on behalf of any other person (the principal) —

 (a) has the control or disposal of any real or personal property owned by the principal, or the control, receipt, or disposal of any rents or proceeds derived from the property; or

 (b) directly or indirectly, whether by negotiation or in any other way, sells or disposes of any property, or offers any property for sale or disposition, or solicits or procures the sale or disposition of the property;

 **“**aggregated unimproved value**”**, in relation to 2 or more lots or parcels of land, means the amount equal to the sum of the unimproved values of each taxable lot or parcel;

 **“**approved**”** means approved by the Commissioner;

 **“**assessment**”** means assessment of land tax;

 **“**assessment year**”**, in relation to land tax, means the financial year for which the land tax is, or is to be, assessed;

 **“**building contract**” —**

 (a) means a contract under which a builder undertakes to construct or refurbish a private residence from the inception of the building work to the completion of that work; and

 (b) if, for any reason, the work to be carried out under such a contract is not completed — includes any further contract under which the work is to be completed;

 **“**clause**”** means a clause of this Glossary;

 **“**commencement date**”**, for the construction or refurbishment of a private residence, means —

 (a) if the residence is to be constructed or refurbished under a building contract — the date when the contract is made; or

 (b) if the residence is to be constructed or refurbished by an owner‑builder — the date when the building licence for the construction or refurbishment is issued under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*;

 **“**completion date**”**, for the construction or refurbishment of a private residence, means the date when the construction or refurbishment is completed to the point where the residence is ready for occupation;

 **“**conservation covenant**”** means a covenant that —

 (a) restricts or prohibits certain activities on the land that could degrade the environmental value of the land;

 (b) is permanent and registered on the title to the land (if registration is possible); and

 (c) is approved in writing by, or is entered into under a program approved in writing by, the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor;

 **“**disabled beneficiary**”**, in relation to land held in trust, means a person who has a beneficial interest in the trust, whether the interest is contingent or otherwise, and who —

 (a) has a disability as defined in section 3 of the *Disability Services Act 1993* and has been independently assessed by an appropriate assessor as requiring full‑time care;

 (b) is mentally incapacitated; or

 (c) is a minor who is an orphan;

 **“**exempt**”**, in relation to land, means exempt from land tax;

 **“**exempt purpose**”**, in relation to land, means a purpose for which the land is used or reserved and by virtue of which the land is exempt;

 **“**grazing business**”**, in relation to the use of land, includes its use on a commercial basis to produce income to the user from the grazing of cattle, sheep, pigs or goats for the sale of the stock, its natural increase, or its natural product but, except for a horse‑breeding business, does not include the grazing, agistment, breeding or training of horses;

 **“**home unit**”** means —

 (a) a strata title home unit (as defined below); or

 (b) a non‑strata home unit (as defined below);

 **“**horse‑breeding business**”**, in relation to the use of land, means its use on a commercial basis to produce income to the user from the rearing or breeding of horses for sale;

 **“**improvements**”**, in relation to land, means all works actually effected to the land, whether above or below the surface, and includes fixtures, but does not include machinery, whether fixed to land or not;

 **“**joint owners**”** means persons who own land jointly or in common, whether as partners or otherwise;

 **“**land**”** includes all tenements and all interests in land;

 **“**land tax**”** means tax imposed under the *Land Tax Act 2002*;

 **“**land tax Act**”** means —

 (a) this Act;

 (b) the *Land Tax Act 2002*; or

 (c) the *Taxation Administration Act 2003,* to the extent that it relates to land tax;

 **“**local planning scheme**”** has the meaning given to that term in the *Planning and Development Act 2005* section 4;

 **“**lot**”** has the meaning given in clause 2;

 **“**metropolitan region**”** has the same meaning as it has in the *Planning and Development Act 2005*;

 **“**non‑profit association**”** means a society, club or association that is not carried on for the purpose of profit or gain to its individual members;

 **“**non‑rural zone**”**, in relation to the location of land, has a meaning affected by clause 4;

 **“**non‑strata home unit**”** means a part of a building, being a building that —

 (a) contains 2 or more such parts, each of which is designed for use as a self‑contained unit for living purposes; and

 (b) is erected on land that is owned —

 (i) by 2 or more persons as tenants in common, each of whom is the registered proprietor under the *Transfer of Land Act 1893* of one or more undivided shares in the whole of the land and is lawfully entitled, under an agreement entered into between the person or his or her predecessor in title and all other owners of undivided shares in the land or their predecessors in title, to the exclusive right to occupy a specified home unit in the building; or

 (ii) by a body corporate in which all issued shares are owned by 2 or more persons, each of whom is entitled by ownership of shares in the body corporate to the exclusive right to occupy a specified home unit in the building;

 **“**owner**”** —

 (a) in relation to land (except an interest in a home unit), means a person who is entitled to the land for any estate of freehold in possession;

 (b) in relation to an interest in a strata title home unit, means the proprietor of the lot as defined in the *Strata Titles Act 1985*;

 (c) in relation to a non‑strata home unit, means a person who is entitled to an exclusive right to occupy the home unit because the person —

 (i) is a shareholder in the body corporate which owns the land on which the building containing the home unit is erected; or

 (ii) is the registered proprietor of an undivided share in the land on which the building containing the home unit is erected;

 or

 (d) in relation to any liability to pay land tax for land (including an interest in a home unit), if a person or body is taken to be the owner of the land under section 8, means the person or body;

 **“**owner‑builder**”** means an owner of private residential property who constructs or refurbishes a private residence that forms part of that property without entering into a building contract;

 **“**parcel**”** means 2 or more lots of land that are treated as a single property under clause 2;

 **“**primary residence**”**, in relation to an individual, means the individual’s sole or principal place of residence;

 **“**private residence**”** means a building or part of a building that was occupied, or fit to be occupied and intended by the owner to be occupied, as a place of residence of one or more individuals, except a building or part of a building that is —

 (a) used as a hotel, motel, hostel, lodging house or boarding house;

 (b) ordinarily used for holiday accommodation;

 (c) used as an educational institution, college, hospital or nursing home;

 (d) used as a club;

 (e) used as a home for aged or disabled persons by an eligible organisation within the meaning of the *Aged or Disabled Persons Care Act 1954* of the Commonwealth; or

 (f) prescribed or of a prescribed class;

 **“**private residential property**”** means —

 (a) a lot of land on which there is a private residence;

 (b) a parcel of land on which there is a private residence constructed so that part of the residence stands on each of the lots of land that constitute the parcel;

 (c) an interest in a home unit; or

 (d) for the purposes of sections 24, 24A, 27, 27A and 28 — a lot of land on which a private residence is being or has been constructed;

 **“**public statutory authority**”** means a body established or continued in existence by or under an enactment;

 **“**registered**”** means registered in the office of the Department within the meaning of the *Transfer of Land Act 1893*, the Registry of Deeds, the Forests Department2, or the Department of Mines3 under the provisions of any Act for the registration of titles to land, deeds, and other instruments;

 **“**reserved land**”**, for the purposes of section 32 or 33, has the meaning given in the respective section;

 **“**retirement village**”** has the same meaning as in the *Retirement Villages Act 1992*;

 **“**rural business**”**, in relation to land, means the use of the land on a commercial basis to produce income to the user from the sale of produce or stock in the course of carrying out a business of a kind referred to in section 29(1)(a) or (b);

 **“**rural business land**”** means land on which a rural business has been or is being carried on;

 **“**sport**”** includes any game;

 **“**sports association**”** means a non‑profit association whose principal object is to provide facilities for its members to engage in any form of sport;

 **“**strata scheme**”** has the same meaning as in the *Strata Titles Act 1985*;

 **“**survey‑strata scheme**”** has the same meaning as in the *Strata Titles Act 1985*;

 **“**strata title home unit**”** means a lot in a strata scheme, or survey‑strata scheme, that is registered under the *Strata Titles Act 1985*;

 **“**subdivided**”**, in relation to land, has the meaning given in clause 3;

 **“**subdividing owner**”**, in relation to land, means —

 (a) the owner of the land on the day on which the land is subdivided; or

 (b) if the ownership of the land changes on that day — the first owner on that day;

 **“**taxable land**”** means land on which land tax is payable under section 5;

 **“**taxable authority**”** means —

 (a) the Government Employees Superannuation Board within the meaning of the *State Superannuation Act 2000*; or

 (b) any other body established or continued under or by an enactment that is prescribed for the purposes of this paragraph;

 **“**taxes**”**, for the purposes of section 9 or 31, has the meaning given in the respective section;

 **“**total net income**”**, in relation to the owner of a rural business, has the meaning given in clause 5;

 **“**trustee**”**, in relation to land, means —

 (a) a person in whom the legal estate of the land is vested (whether solely or jointly with other trustees), and whether appointed or constituted trustee by act of parties, or by order or declaration of a court or by operation of law;

 (b) an executor or administrator, guardian, committee of management, receiver or liquidator having the administration or control of the land; and

 (c) a person having or taking upon himself or herself the administration or control of land effected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control, or management of the land of a person who is under a legal disability;

 **“**unimproved value**”**, in relation to land —

 (a) has the same meaning as in the *Valuation of Land Act 1978*; and

 (b) in relation to part of a lot, has the meaning given in section 13.

 [Clause 1 amended by No. 40 of 2003 s. 6; No. 12 of 2004 s. 5; No. 12 of 2005 s. 5; No. 38 of 2005 s. 15; No. 31 of 2006 s. 27.]

2. Lots and parcels of land

 (1) A reference to a lot of land is a reference to a defined portion of land —

 (a) that is depicted on a plan or diagram publicly exhibited in the public office of the Department of Land Administration4, or deposited in the Department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds and for which a separate Crown grant, certificate of Crown land title, qualified certificate of Crown land title, or certificate of title has been or can be issued, registered or depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not; and

 (b) that is approved by the Town Planning Board or the Western Australian Planning Commission, as the case requires, (whether the approval was given before or after the commencement of the *Town Planning and Development Act Amendment Act 1956*)*.*

 (2) A reference to a lot of land includes a reference to the whole of any land that is the subject of —

 (a) a Crown grant issued under the *Land Act 1933*5;

 (b) a certificate of Crown land title, or qualified certificate of Crown land title, created and registered under the *Transfer of Land Act 1893*;

 (c) a certificate of title registered under the *Transfer of Land Act 1893*;

 (d) a survey into a location or lot under section 27(2) of the *Land Administration Act 1997*;

 (e) a part‑lot shown on a plan of subdivision or diagram deposited in the Department of Land Administration4, or the Department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds;

 (f) a conveyance registered under the *Registration of Deeds Act 1856*;

 (g) a lot depicted on a strata plan; or

 (h) an entitlement to occupy a non‑strata home unit.

 (3) If 2 or more lots of land in the same ownership have common boundaries, the Commissioner may treat the lots as a single property for valuation and assessment if it is appropriate to do so.

 (4) However, for the purpose of determining the use of a lot or parcel of private residential property, 2 or more lots of land are not to be treated as a single private residential property unless the Commissioner is satisfied that the lot or lots on which the private residence is constructed and each other lot are established, and used by the individuals who reside there, as one integrated area that constitutes the place of residence.

3. Subdivided land

 (1) Land is subdivided when —

 (a) a plan of subdivision of the land is approved by the Western Australian Planning Commission for the purposes of section 135 of the *Planning and Development Act 2005*;

 (b) a transfer, conveyance, lease or mortgage of any land is approved by the Commission under section 147(1) of that Act or an application for the creation and registration of a certificate of title is approved by it under section 147(2) of that Act and the effect of the approval is to allow a dealing with a part of the land which is less than a whole lot;

 (c) on an application for review under section 251 of that Act, the State Administrative Tribunal gives an approval referred to in paragraph (a) or (b);

 (d) any plan required to be accompanied by a certificate under section 25 of the *Strata Titles Act 1985* is approved by the Commission; or

 (e) a statement is endorsed on a plan under section 25B of the *Strata Titles Act 1985*.

 (2) An approval referred to in subclause (1) is conclusively presumed to have been given on the date appearing in the approval as endorsed on the plan, instrument or application referred to in that paragraph.

 [Clause 3 amended by No. 55 of 2004 s. 584; No. 38 of 2005 s. 15.]

4. Land in a non‑rural zone

 Land is in a non‑rural zone if the land is in the metropolitan region, or is outside the metropolitan region but is not in an area zoned for rural purposes under a local planning scheme.

 [Clause 4 amended by No. 38 of 2005 s. 15.]

5. Total net income of rural business owners

 (1) For the purposes of sections 29 and 30, the total net income of the owner of a rural business is the amount equal to —

 (a) if the owner is an individual — the individual’s gross income from all sources less the expenses of earning the income;

 (b) if the owner is 2 or more individuals — the sum of the gross incomes from all sources of all the individuals less the respective expenses of earning the incomes; or

 (c) if the owner is a body corporate — the sum of the total net incomes of the body corporate and of any other body corporate deemed to be related to it under section 50 of the *Corporations Act 2001* of the Commonwealth.

 (2) If the ownership of the land changes during a financial year, the percentage of the total net income derived from the business or businesses by a person during the financial year is calculated by reference to the total net income derived by the person during the part of the year for which the person owned the land.

Notes

1 This is a compilation of the *Land Tax Assessment Act 2002* and includes the amendments made by the other written laws referred to in the following table 1a. The table also contains information about any reprint.

Compilation table

| **Short title** | **Number and year** | **Assent** | **Commencement** |
| --- | --- | --- | --- |
| *Land Tax Assessment Act 2002* | 52 of 2002 | 20 Mar 2003 | 1 Jul 2003 (see s. 2 and *Gazette* 27 Jun 2003 p. 2383) |
| *Acts Amendment (Equality of Status) Act 2003* Pt. 34 | 28 of 2003 | 22 May 2003 | 1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579) |
| *Business Tax Review (Assessment) Act 2003* s. 4‑86 | 40 of 2003 | 30 Jun 2003 | 1 Jul 2003 (see s. 2(1) and (2) and *Gazette* 27 Jun 2003 p. 2383) |
| *Business Tax Review (Assessment) Act (No. 2) 2003* s. 109 | 66 of 2003 | 5 Dec 2003 | 1 Jul 2003 (see s. 2(5) and *Gazette* 27 Jun 2003 p. 2383) |
| *Revenue Laws Amendment and Repeal Act 2004* Pt. 2 | 12 of 2004 | 29 Jun 2004 | 1 Jul 2004 (see s. 2(2)) |
| *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 2 Div. 697 | 55 of 2004 | 24 Nov 2004 | 1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130) |
| *Revenue Laws Amendment Act (No. 3) 2005* Pt. 3 | 10 of 2005 | 29 Aug 2005 | 1 Jul 2005 (see s. 2(2)) |
| *Revenue Laws Amendment Act (No. 2) 2005* Pt. 2 (s. 3-5) | 12 of 2005 | 30 Aug 2005 | s. 5: 1 Jul 2003 (see s. 2(2));s. 3 and 4: 30 Aug 2005 (see s. (2(1)) |
| *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15 | 38 of 2005 | 12 Dec 2005 | 9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078) |
| *Revenue Laws Amendment Act 2006* Pt. 4 (s. 19‑30) | 31 of 2006 | 4 Jul 2006 | s. 20‑27 and 29 and 30: 1 Jul 2006 (see s. 2(5));s. 19 and 28: 4 Jul 2006 (see s. 2(1)) |
| **Reprint 1: The *Land Tax Assessment Act 2002* as at 11 Aug 2006** (includes amendments listed above) |

1a On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

|  |  |  |  |
| --- | --- | --- | --- |
| **Short title** | **Number and year** | **Assent** | **Commencement** |
| *Land Information Authority Act 2006* s. 142 8 | 60 of 2006 | 16 Nov 2006 | To be proclaimed (see s. 2(1)) |
| *Liquor and Gaming Legislation Amendment Act 2006* s. 114 9 | 73 of 2006 | 13 Dec 2006 | To be proclaimed (see s. 2(2)) |

2 Under the *Conservation and Land Management Act 1984* s. 151(a) a reference in any written law to the Forests Department is read as a reference to the Department of Conservation and Land Management unless the context is such that it would be incorrect or inappropriate.

 Under the *Public Sector Management Act 1994* the names of departments may be changed. At the time of this compilation the former Department of Conservation and Land Management is called the Department of Environment and Conservation.

3 Under the *Alteration of Statutory Designations Order 2003* a reference in any law to the Department of Mines is to be read and construed as a reference to the Department of Industry and Resources.

4 Under the *Public Sector Management Act 1994* the names of departments may be changed. At the time this compilation was prepared, the former Department of Land Administration was called the Department of Land Information.

5 Repealed by the *Land Administration Act 1997* s. 281.

6 The *Business Tax Review (Assessment) Act 2003* s. 7 and s. 10 read as follows:

“

7. Financial years before the commencement day

 (1) Despite the amendments effected by this Part, the *Land Tax Assessment Act 2002*, as in force immediately before the commencement day, continues to apply in relation to land tax payable for financial years that commence before the commencement day.

 (2) In this section —

 **“commencement day”** means the day on which this Part comes into operation.

10. Requirement to reassess

 The Commissioner of State Revenue must make any reassessment necessary to give effect to the amendments effected by this Part.

”.

7 The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

8 On the date as at which this compilation was prepared, the *Land Information Authority Act 2006* s. 142 had not come into operation. It reads as follows:

“

142. *Land Tax Assessment Act 2002* amended

 (1) The amendments in this section are to the *Land Tax Assessment Act 2002*.

 (2) The Glossary is amended in clause 1 in the definition of “registered” by deleting “Department within the meaning of the *Transfer of Land Act 1893*, the Registry of Deeds” and inserting instead —

“

 Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5

 ”.

 (3) The Glossary is amended in clause 2 as follows:

 (a) in subclause (1)(a), by deleting “publicly exhibited in the public office of the Department of Land Administration, or deposited in the Department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds” and inserting instead —

“

 deposited with the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5

 ”;

 (b) in subclause (2)(e), by deleting “in the Department of Land Administration, or the Department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds;” and inserting instead —

“

 with the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5;

 ”.

”.

9 On the date as at which this compilation was prepared, the *Liquor and Gaming Legislation Amendment Act 2006* s. 114 had not come into operation. It reads as follows:

“

114. Amendments relating to the amended title of the *Liquor Licensing Act 1988*

 The Acts listed in the first column of the Table to this section are amended in the corresponding provisions listed in the second column by deleting “*Liquor Licensing Act 1988*” and inserting instead —

 “ *Liquor Control Act 1988* ”.

**Table**

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| --- | --- |
| .................. |  |
| *Land Tax Assessment Act 2002* | s. 39A(1) (“excluded purpose”, para. (b)) |
| ........................ |  |

”.