

Reprinted under the
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at 30 July 1996

WESTERN AUSTRALIA

LAND TAX ASSESSMENT ACT 1976

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WESTERN AUSTRALIA

LAND TAX ASSESSMENT ACT 1976

**AN ACT relating to the Assessment and Collection of a tax
upon land.**

s. 1

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Land Tax Assessment Act 1976*¹.

[Section 1 amended by No. 11 of 1982 s.1.]

Commencement

2. This Act shall come into operation on the 1st July 1976¹.

Repeal and saving

3. (1) The *Land Tax Assessment Act 1907* is hereby repealed.

(2) Without limiting the operation of the *Interpretation Act 1918* to or in relation to the repeal effected by subsection (1) —

(a) any assessment which might have been made under the repealed Act but was not so made, may be made under the provisions of the repealed Act, and all proceedings may be taken thereon, and all other consequences shall ensue thereon, as if that Act had not been repealed;

(b) any assessment made under the repealed Act and any assessment made under paragraph (a) of this subsection may be re-opened, altered, amended, or otherwise dealt with, under the provisions of the repealed Act and all proceedings may be taken thereon, and all other consequences shall ensue thereon, as if that Act had not been repealed.

(3) Notwithstanding subsection (2), any rebate under the provisions of section 8A of the repealed Act shall not be applicable unless an application is made to the Commissioner

within 12 months from the time when the erection of the residence concerned was completed on the land, and any such rebate shall not be made in respect of more than the 4 years of assessment immediately preceding the date that the erection of the residence was completed.

[4. *Repealed by No. 23 of 1989 s.4.*]

Interpretation

5. (1) In this Act, unless the context otherwise requires —

“agent” includes every person who, in Western Australia, for or on behalf of any other person (hereinafter called 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 any such property; or
- (b) directly or indirectly, whether by negotiation, or otherwise howsoever, sells or disposes of any such property, or offers any such property for sale or disposition, or solicits or procures the sale or disposition thereof;

“Commissioner” means the person holding or performing the duties of the office of Commissioner of State Taxation under the *Public Service Act 1978*¹⁶;

“concession” means assessment and payment of tax under this Act at 50% of the rate imposed by the *Land Tax Act 1976*;

“Crown” means the Crown in right of the State;

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“district” means an area that has been declared to be a district under the *Local Government Act 1995*;

“exemption” means an exemption from assessment and taxation under this Act;

“exempt land” means land that is exempted from assessment and taxation under this Act;

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

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

“land” includes all tenements and all interests therein;

“land tax” means the tax assessed under this Act or imposed by the *Land Tax Act 1976* and includes any additional taxes, interest, penalties, or charges prescribed by this Act or the *Land Tax Act 1976* and any law costs incurred in the recovery of land taxes levied under those Acts, including any fee paid for registration of a memorial pursuant to subsection (1) of section 46 or for subsequent endorsement of the title and land register or record pursuant to subsection (3) of that section, and the expression **“tax”** has the same meaning;

“Local Court” means a Local Court established under the *Local Courts Act 1904*;

“lot” means a defined portion of land depicted on a plan or diagram publicly exhibited in the public office of the Department of Lands and Surveys, or deposited in the Office of Titles or Registry of Deeds and for which a separate Crown grant or certificate of title has been or can be issued or depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not, but

which is, whether before or after the coming into operation of the *Town Planning and Development Act Amendment Act 1956*, approved by the Town Planning Board or the Western Australian Planning Commission, as the case requires, and includes the whole of any land the subject —

- (a) of a Crown grant issued under the *Land Act 1933*;
- (b) of a certificate of title issued under the *Transfer of Land Act 1893*;
- (c) of a survey into a lot pursuant to a direction given under section 17 of the *Land Act 1933*;
- (d) of a part-lot shown on a plan of subdivision or diagram deposited in the Department of Lands and Surveys, Office of Titles or Registry of Deeds;
- (e) of a conveyance registered under the *Registration of Deeds Act 1856*; or
- (f) of a lot depicted on a strata plan, or of a home unit entitlement as provided in section 19;

“owned” and similar expressions have a meaning corresponding with that of **“owner”** under this Act;

“owner” in relation to any land includes —

- (a) every person entitled to the land for any estate of freehold in possession;
- (b) every person entitled to the land under any lease or licence from the Crown with or without the right of acquiring the fee-simple; and

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- (c) every person entitled to use the land for a business, commercial, professional, or trade purpose under an agreement or arrangement with the Crown, or any agency or instrumentality of the Crown, or a local government or any public statutory authority,

and includes every person who by virtue of this Act is deemed to be an owner;

“parcel” means two or more lots of land in the same ownership which have common boundaries, and which, for good and sufficient reason, may be deemed by the Commissioner to be a single property for valuation and assessment under this Act;

“public notice” means a notice published in the *Government Gazette* or published in any newspaper circulating in a town or district;

“public statutory authority” means a public statutory authority established or continued in existence under a written law of the State, but does not include the Government Employees Superannuation Board established by the *Government Employees Superannuation Act 1987* or any other public statutory authority excluded by regulation from this definition;

“registered” means registered in the office of the Land Titles Office, the Registry of Deeds, the Department of Lands and Surveys, the Forests Department, or the Department of Mines under the provisions of any Act for the registration of titles to land, deeds, and other instruments;

“repealed Act” means the Act repealed by subsection (1) of section 3;

“Schedule” means the Schedule to this Act;

“section” means section of this Act;

“subsection” means subsection of the section in which the term is used;

“taxpayer” means any person liable to pay land tax, whether in his own behalf or in a representative capacity, or who, whether liable to taxation or not, is by this Act required to make any return relating to a land tax assessment;

“trustee” in addition to every person appointed or constituted trustee by act of parties, or by order or declaration of a court or by operation of law, includes —

- (a) an executor or administrator, guardian, committee of management, receiver or liquidator; and
- (b) every person having or taking upon himself 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 under any legal disability;

“unimproved value” in relation to any land —

- (a) means the unimproved value of that land in force under the *Valuation of Land Act 1978*;

[(b), (ba) *deleted*]

- (c) the owner of which falls within paragraph (c) of the definition of **“owner”** in this subsection and which is a portion of a lot in respect of which there is an unimproved valuation in force under the *Valuation of Land Act 1978*, means an amount, as determined by the Valuer-General,

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that bears the same proportion to the unimproved value of the lot as the area of the land (being the area the owner is entitled to use) bears to the total potential lettable area of the lot,

except that if section 23A applies it means the concessional unimproved value under that section;

“year of assessment” means the year commencing on the first day of July 1976, and each succeeding year thereafter commencing on the first day of July.

(2) The provisions of this Act have effect notwithstanding any provision to the contrary of the *University of Western Australia Act 1911*, the *Western Australian Institute of Technology Act 1966*, the *Teacher Education Act 1972*, the *Murdoch University Act 1973*, or any other Act, and, to the extent of any inconsistency between the provisions of this Act and the provisions of those other Acts or of any other Act, the provisions of this Act shall prevail.

(3) For the purposes of paragraph (c) of the definition of **“unimproved value”** in subsection (1), **“total potential lettable area”** in relation to a lot means the total area of the lot that is capable of being let, as determined by the Valuer-General on the assumption that none of the land is used for an exempt purpose and having regard to the lease conditions of the portion of the lot for which a value is required.

[Section 5 amended by No. 76 of 1978 s.70; No. 29 of 1980 s.2; No. 69 of 1986 s.4; No. 31 of 1988 s.4; No. 11 of 1990 s.4; No. 17 of 1993 ss.13 and 15; No. 63 of 1994 s.5; No. 84 of 1994 s.46; No. 9 of 1995 s.3; No. 14 of 1996 s.4; No. 12 of 1996 s.5.]

PART II — ADMINISTRATION

Power of Commissioner to administer Act

6. (1) The Commissioner of State Taxation shall have the general administration of this Act.

[(2) repealed]

[Section 6 amended by No. 98 of 1985 s.3.]

Application of *Financial Administration and Audit Act 1985*

6A. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the State Taxation Department and its operations under this Act.

[Section 6A inserted by No. 98 of 1985 s.3.]

Power of delegation

7. (1) The Commissioner may, by instrument in writing under his hand, delegate to the person holding the office of Assistant Commissioner (Land Tax) or other officers of the staff assisting the Commissioner in the administration of this Act, such powers, duties and functions other than the power of delegation conferred by this section as are conferred or imposed upon the Commissioner by or under this Act and which are specified in the instrument.

(2) A delegation under this section does not prevent the exercise of a power or the performance of a duty or function by the Commissioner.

Power of inspection of public offices

8. The Commissioner or any person authorized in writing by him may at all reasonable times inspect, free of charge, all rate records, assessment-books, and valuations relating to any land, and all other books and documents relating to any assessment or valuation in the custody of a local government, and all deeds, certificates, and other evidences of title, books, returns, accounts, and documents in the Land Titles Office, or the office for the Registration of Deeds or in any other public office, and may require and take copies thereof or extracts therefrom.

[Section 8 amended by No. 14 of 1996 s.4.]

Other powers of inspection

9. (1) The Commissioner or any person authorized by him in that behalf shall at all times have full and free access to all land, buildings, places, books, documents, and other papers for the purpose of ascertaining the ownership of any land or for any purpose relating to the assessment thereof, and may make extracts from or copies of any such books, documents or papers.

(2) A person shall not obstruct the Commissioner or any person authorized by him in the exercise of his powers under subsection (1).

Penalty: \$500.

[Section 9 amended by No. 76 of 1978 s.71.]

Attendance and giving evidence

10. (1) The Commissioner may, by notice in writing, require any person, whether a taxpayer or not, to attend and give evidence before him, or any officer authorized by him in that behalf, concerning any assessment, and to produce all books,

documents, and other papers whatsoever in such person's custody or under his control relating thereto.

(2) The Commissioner may require such evidence to be given on oath, and either orally or in writing and for such purpose he or the officer authorized as mentioned in subsection (2) may administer an oath.

Secrecy

11. (1) This section applies to every person who is or has been the Commissioner or member of the staff assisting the Commissioner in the administration of this Act.

(2) Subject to this section, section 12 and the *Taxation (Reciprocal Powers) Act 1989*¹, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act —

- (a) make a record of, or divulge or communicate to any person any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act; or
- (b) produce to any person any document furnished for the purposes of this Act.

Penalty: \$500.

(3) A person to whom this section applies —

- (a) may produce in any court any document relating to the affairs of any other person of which he has the custody or to which he has access by virtue of his office or employment under or for the purposes of this Act; and

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- (b) may divulge or communicate to any court any information concerning the affairs of any other person obtained by him by reason of such office or employment,

when required by that court so to do or when it is necessary to do so for the purposes of any proceedings for the recovery of any tax and fines, or of a prosecution under, or arising out of, this Act.

[Section 11 amended by No. 18 of 1989 s.16.]

Information obtained under this Act may be used under other Acts

12. (1) Any information obtained by the Commissioner or any officer of the State Taxation Department in the performance of his duties under this Act may be used in connection with duties under any other Act administered by the Commissioner, and any such information may be used as evidence in any legal proceedings under any such Act.

[(2) repealed]

[Section 12 amended by No. 18 of 1989 s.16.]

PART III — LIABILITY TO TAXATION

Land tax

13. Subject to the provisions of this Act, an annual land tax at such rates as are fixed by the *Land Tax Act 1976* shall be levied and paid upon the unimproved value of all land in the State that is not exempt land.

Date of charge

14. Land tax shall be charged on land as owned at midnight on the 30th June immediately preceding the year of assessment for which the tax is levied.

Payable by owner

15. (1) Land tax is payable by the owner of land upon the aggregated unimproved value of all the land owned by him that is not exempt land.

(2) The aggregated value on which tax is to be levied is the total sum of the unimproved values of each taxable lot or parcel.

(3) This section does not apply to —

- (a) aggregate the value of lands held in severalty, in trust for different persons who are not for any reason liable to be jointly assessed for land tax under this Act; or
- (b) aggregate the value of land beneficially owned by a person with the value of other land held by him as trustee unless for any reason he is liable to be jointly assessed for land tax under this Act on the respective interests in those lands.

[Section 15 amended by No. 69 of 1986 s.5; No. 63 of 1994 s.6.]

s. 15A

Liability of owner who subdivides certain exempt land

15A. (1) For the purposes of this section and of paragraph (b) (ii) of clause 10 of Part I of the Schedule —

- (a) **“owner”** means the owner of previously exempt land on the day on which the land is subdivided or, if the ownership changes on that day, the first owner on that day;

“previously exempt land” means any land which was exempt under clause 10 of Part I of the Schedule for any one or more years of assessment during the relevant period;

“the relevant period” means —

- (i) the 5 years of assessment reckoned retrospectively from and including the year of assessment in which the previously exempt land is subdivided; or
- (ii) the years of assessment reckoned from and including the year of assessment in which the previously exempt land is subdivided retrospectively to the year of assessment which commenced on the 1st July 1980,

whichever is the lesser period;

“the taxable portion of the land” means the previously exempt land —

- (i) after subtracting the lot or parcel of land on which, at the time of subdivision, is situated a dwelling-house the occupancy of which gives rise to an exemption or partial exemption of the land under clause 10 of the Schedule; or

- (ii) where there is no such lot or parcel, or any such lot or parcel is less than 2.023 4 hectares, after subtracting an area of 2.023 4 hectares;
- (b) land is subdivided when —
 - (i) a plan of subdivision of the land is approved by the Western Australian Planning Commission for the purposes of subsection 2 of section 20 of the *Town Planning and Development Act 1928*; or
 - (ii) a transfer, conveyance, lease or mortgage of any land is approved by the Western Australian Planning Commission under subsection (1) (a) of section 21 of the said Act or an application for the issue of a certificate of title is approved by it under subsection (2) of the said section, and the effect of the Western Australian Planning Commission's so doing is to approve a dealing with a part of the land which is less than a whole lot;
- (c) an approval referred to in paragraph (b) of this subsection shall be conclusively presumed to have been given on the date appearing in the Western Australian Planning Commission's approval as endorsed on the plan, instrument or application referred to in the said paragraph.

(2) Where during or after the year of assessment commencing on the 1st July 1980 any previously exempt land is subdivided the owner of the land is, notwithstanding clause 10 of Part I of the Schedule, liable to pay land tax on the taxable portion of the land assessed in accordance with the following provisions of this subsection —

- (a) subject to paragraph (b) of this subsection, the tax shall be assessed —
 - (i) for each year of assessment during the relevant period, at the rate imposed by the *Land Tax Act 1976*, on the unimproved value, as

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determined under section 26, of the taxable portion of the land; and

- (ii) shall be so assessed in respect of each such year as if the taxable portion of the land were the only land of the owner liable to land tax for that year;
- (b) if land tax has already been charged on any part of the taxable portion of the land under section 14 for any year of assessment and —
- (i) if no partial exemption from assessment and taxation applied to that part for that year under clause 10 of the Schedule, no land tax shall be assessed under paragraph (a) of this subsection on that part for that year; or
 - (ii) if a partial exemption applied to that part, or any interest therein, for that year under the said clause, land tax shall be assessed for that year under paragraph (a) of this subsection only on the part of the land, or an interest in the land, to which the partial exemption applied;
- (c) for the purposes of paragraph (a) of this subsection, the unimproved value of the taxable portion of the land shall be the same proportion of the unimproved value of the whole of the previously exempt land, determined under section 26, as the area of the former bears to the area of the latter.
- (3) Nothing in this section affects the liability of any person for land tax on the taxable portion of the land for any year of assessment after that in which the land is subdivided.

[Section 15A inserted by No. 29 of 1980 s.3; amended by No. 84 of 1994 s.46.]

Joint owners

16. (1) Where land tax is payable under section 15 in respect of land and the land is owned by joint owners, the joint owners shall be assessed and liable for the land tax in accordance with this section.

(2) An assessment in respect of land owned by joint owners shall be made as if the land were owned by one person and, for the purpose of ascertaining the extent (if any) to which the land is exempt land, there shall be taken into account —

- (a) each joint owner's use of the land by virtue of which the land is exempted from taxation under this Act (whether or not the use is common to any of the other joint owners); and
- (b) each joint owner's interest in the land by virtue of which the land is exempted from taxation under this Act (whether or not the interest is common to any of the other joint owners).

(2a) An assessment in respect of land owned by joint owners shall be kept separate and distinct from an assessment in respect of any land that is owned —

- (a) by any one of them individually; or
- (b) by any of them as a joint owner with any other person.

(2b) Joint owners of land are jointly and severally liable for land tax payable in respect of the land regardless of each of the joint owner's respective interests in, or use of, the land.

(3) The provisions of this section do not apply to the owners of home units within the meaning of section 19 who are liable for taxation on the unimproved value of their respective interests as provided in that section.

[Section 16 amended by No. 37 of 1995 s.4.]

s. 17

Buyer in possession liable

17. Where any agreement has been made for the sale of land, whether before or after the coming into operation of this Act, the purchaser shall be deemed to be the owner of the land for the purposes of this Act so soon as he has obtained possession of the land so purchased, whether the agreement has been completed by transfer or conveyance or not.

Seller to remain liable until delivery of possession

18. Where any agreement has been made for the sale of land, whether before or after the coming into operation of this Act, and whether the sale has been completed by transfer or conveyance or not, the seller shall be deemed to remain the owner of the land for the purposes of this Act until possession of the land has been delivered to the purchaser.

Assessment of certain home unit owners

19. (1) For the purposes of this section —

“**home unit**” means a part of a building, which building —

- (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, by virtue of an agreement entered into between him or his 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 part of the building; or

- (ii) by a body corporate in which all issued shares are owned by persons, each of whom is lawfully entitled, by virtue of his ownership of shares in the body corporate, to the exclusive right to occupy a specified part of the building;

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

“merged improvements” means any works in the nature of draining, filling, excavation, grading or levelling of the land, retaining walls or other structures or works for that purpose, the removal of rocks, stone or soil, and the clearing of timber, scrub or other vegetation;

“owner” in relation to a home unit means the person who —

- (a) is the registered proprietor of an undivided share in the land whereon the building, of which the home unit is part, is erected; or
- (b) is a shareholder in the body corporate which is the owner of the land whereon the building, of which the home unit is part, is erected,

as the case may be, and who is thereby entitled to the exclusive right to occupy that home unit.

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(2) The provisions of this section do not apply to or in relation to the assessment for taxation of land on which home units are erected unless —

- (a) apart from the home units erected on the land, there are no other improvements effected on the land other than —
 - (i) merged improvements; and
 - (ii) outbuildings, fences, garages or other improvements that are, in each case, designed for the use or enjoyment of the owners of the home units;
- (b) the owners of all of the home units erected on the land apply, in a form approved by the Commissioner and including details required by him, to have the provisions of this section applied to that land; and
- (c) in the case of land owned by a body corporate, there is submitted to the Commissioner, in a form approved by him and including details required by him, a statement setting out the respective proportions of the value of the land to be ascribed, for the purposes of this section, to the respective owners of the home units erected thereon, and the Commissioner is satisfied that the statement represents a fair and reasonable apportionment of the interests of the respective home unit owners in that land for the purposes of this section.

(3) For the purposes of this Act, land tax shall, subject to any exemption that is applicable, be levied and paid by each owner of a home unit erected on land to which this section applies, on such part of the unimproved value of that land as —

- (a) in the case where the owner of the home unit is the registered proprietor of an undivided share in the

land — bears to that unimproved value the same proportion as his undivided share in the land bears to the whole of the land;

- (b) in the case of an owner who is a shareholder in the body corporate which owns the land — bears to that unimproved value the same proportion as the proportion of that owner's interest in the land as ascribed to him in the statement submitted to and accepted by the Commissioner under paragraph (c) of subsection (2) bears to the total interests of all the shareholders in the land.

(4) Where, pursuant to an application made in accordance with this section by the owners of all the home units erected on any land, the provisions of this section are applied to the land, and each of those owners is separately assessed for land tax in accordance with subsection (3) —

- (a) the provisions of this section continue to apply to and in relation to the assessment for taxation of that land and to the owners for the time being of those home units until all of the owners for the time being of those home units apply, in a form approved by the Commissioner, for the revocation of the application of this section or until the Commissioner, irrespective of whether those owners have applied, by notice served on the owners for the time being of all the home units, revokes the application of this section;
- (b) land tax shall not be assessed in any way other than in accordance with subsection (3) on or in respect of that land; and
- (c) where the owner of a home unit assessed under subsection (3) is the owner of any other land, the part of the value of the land on which the home unit of which he is the owner is erected and in respect of which tax is assessed and levied upon him shall be deemed to be land for the purposes of all other

provisions of this Act and as such shall be deemed to have the value assessed under subsection (3).

(5) Subject to paragraph (a) of subsection (4), an application made in accordance with the provisions of subsection (2) shall be given effect to by the Commissioner with respect to the year of assessment immediately following that in which the application is received by the Commissioner.

(6) Where, immediately before the coming into operation of this Act, section 8C of the repealed Act applied to and in relation to an application made to the Commissioner in accordance with that section in respect of any matter on which applications could be made thereunder, this section applies to and in relation to that application as though it were an application made to the Commissioner in accordance with this section on a like matter on which applications may be made under this section.

[Section 19 amended by No. 76 of 1978 s.72.]

Agents, trustees, etc., how chargeable

20. (1) Every agent for any owner of any land subject to land tax under this Act, and every trustee of any land subject to land tax under this Act, shall be assessed respectively in respect of such land the owner of which is represented by such agent, or in respect of such land the legal estate in which is vested in such trustee, whether solely or jointly with other trustees.

(2) Every such agent and trustee shall, subject to the provisions of subsection (6), be chargeable with the land tax payable in respect of such land in the same manner as if such land were his own; but he shall be assessed in respect thereof in a representative character only, and the provisions of subsection (3) of section 15 shall apply, and each such assessment shall be kept separate and distinct from the individual assessment (if any) of such agent or trustee.

(3) Every such agent or trustee shall be answerable for the doing of all such acts, matters, or things as would be required to be done by the owner.

(4) Every such agent or trustee shall be subject to the same penalties or liability for any neglect, refusal, or default in respect of the obligations and requirements of this Act as the persons whom such agent or trustee represents would be subject to.

(5) Every such agent or trustee is hereby authorized to recover from any person for whom, or on whose behalf, he is compellable to pay and has paid land tax, the amount of the land tax so paid by him, or to retain out of any money which shall come to him in his representative character so much, from time to time, as shall be sufficient to pay such land tax.

(6) Such an agent or trustee shall not be personally liable for land tax to any further or greater extent than to the amount of such funds or securities for money as are or may be in his hands, in his representative character or as trustee, or of which he shall have the controlling power, after receiving notice of such assessment as provided by this Act.

[20A. *Repealed by No. 69 of 1986 s.6.*]

PART IV — EXEMPTIONS, CONCESSIONS AND REBATES

[Heading amended by No. 23 of 1989 s.5.]

Exemptions and concessions for specified land

21. (1) The classes of land respectively specified in Part I of the Schedule are exempted from assessment and taxation under this Act subject to the qualifications respectively specified in that Part and to clauses 1 and 2 of Part III of the Schedule.

(2) The concessions specified in Part I of the Schedule apply subject to clause 3 of Part III of the Schedule.

(3) Land of the class specified in Part II of the Schedule is subject to assessment and taxation under this Act at 50% of the rate imposed by the *Land Tax Act 1976*.

(4) The concession specified in subsection (3) applies subject to clause 3 of Part III of the Schedule.

Power of Commissioner to exempt land

22. (1) Where a lot or parcel, or part of a lot or parcel, of land in one of the classes mentioned in subsection (1) of section 21 is not exempt land by reason of one or more of the qualifications so mentioned, other than the qualifications specified in subparagraph (ii), (iii), (iv), (v) or (vi) of clause 9 (b) of Part I of the Schedule, the Commissioner may for reasonable cause shown by the person who is apart from this section liable to pay land tax in respect of that lot or parcel, or part thereof, exempt it, or part of it, from assessment and taxation under this Act.

(2) A person who is dissatisfied with the decision of the Commissioner on an application by that person for exemption under subsection (1) may within 42 days, or such further time as the Minister may for reasonable cause shown by that person, allow, after service by post of notice of the decision, post to or

lodge with the Minister an appeal in writing against the decision stating fully and in detail the grounds on which he relies.

(3) The obligation to pay, and the right to receive and recover land tax shall not be affected by any appeal to the Minister, but if the person succeeds on the appeal the amount (if any) of the tax received by the Commissioner in excess of the amount which, according to the decision on the appeal is payable by him, shall forthwith be repaid to him by the Commissioner.

(4) The Minister shall, with all reasonable despatch, consider the appeal and may either disallow it or, for reasonable cause shown by the person making the appeal, allow it wholly or in part.

(5) The Minister shall give to the person making the appeal written notice of his decision on the appeal.

[Section 22 amended by No. 87 of 1984 s.3; No. 69 of 1986 s.7.]

Rebates

23. (1) The Commissioner shall grant a rebate under this section of land tax levied on a person or persons (in this section called "**the owner**") in respect of the year of assessment commencing on 1 July 1989 or any subsequent year of assessment where the Commissioner is satisfied that —

- (a) the owner was at midnight on 30 June immediately preceding the year of assessment —
 - (i) the owner of exempt land that was exempt land because of the use of that land by the owner or other persons as an ordinary place of residence in accordance with clause 9, 10 or 11 of Part I of the Schedule; and

- (ii) the owner of other land (in this section called **“the non-exempt land”**) that would have been exempt land if, instead of the exempt land, the non-exempt land had been used by the owner or other persons as an ordinary place of residence in accordance with clause 9, 10 or 11 of Part I of the Schedule;
- (b) the owner became the owner of the exempt land or the non-exempt land during the year immediately preceding the year of assessment;
- (c) the use of the exempt land as an ordinary place of residence by the owner or other persons referred to in paragraph (a) (i) on that 30 June was —
 - (i) in the year before the year of assessment, preceded by similar use by the same persons of the non-exempt land; or
 - (ii) in the year of assessment, succeeded by similar use by the same persons of the non-exempt land;
- (d) during the year of assessment the owner sold or otherwise disposed of whichever of the exempt land or the non-exempt land the owner had first acquired and delivered possession to the new owner in that year;
- (e) the owner or any other person did not derive rent or other income in respect of the period during which the owner owned both the exempt land and the non-exempt land from whichever land was not used as an ordinary place of residence by the owner or other persons referred to in paragraph (a) (i);
- (f) a written application for a rebate under this section has been made by the owner in a form approved by the Commissioner and lodged with the Commissioner —
 - (i) after the sale or other disposition and delivery of possession of the land referred to in paragraph (d); and

- (ii) not later than 3 months after the end of the year of assessment.

(2) The amount of the rebate to be granted to an owner under this section shall be the amount by which the assessment of that owner would have been reduced if the non-exempt land were deemed to be exempt land on account of a deemed use of that land by the owner or other persons referred to in subsection (1) (a) (i) as an ordinary place of residence.

(3) Where a rebate is granted under this section, the Commissioner shall cause appropriate action to be taken for the amendment or cancellation of any assessment issued to the owner and for any refund of the rebated land tax to be made.

[Section 23 inserted by No. 23 of 1989 s.6.]

Rebate where lease etc. terminated before expiry

23AA. (1) The Commissioner shall grant a rebate under this section of land tax levied on a person as an owner where the person applies to the Commissioner in a form approved by the Commissioner and satisfies him that this section applies.

(2) This section applies where —

- (a) for a year of assessment a person is an owner under paragraph (b) or (c) of the definition of “**owner**” in section 5 (1); and
- (b) on a day during that year (“**the termination day**”) the lease, licence, agreement or arrangement by virtue of which the person is an owner is terminated before its expiry otherwise than —
 - (i) on account of some default by the person; or
 - (ii) with the person’s consent.

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s. 23AA

(3) A rebate under this section shall be calculated in accordance with the formula —

$$R = A \times T \text{ (where applicable)} \times P$$

where —

A = land tax levied on the aggregated unimproved value of taxable land ("**total value**") owned by the person;

T = the proportion which the unimproved value of the lot or parcel to which the termination relates bears to the total value; and

P = the proportion of the year of assessment remaining after the termination day.

(4) In this section —

"land tax" means —

(a) tax levied at the rate imposed by the *Land Tax Act 1976*;

(b) any amount for —

(i) additional tax under section 25;

(ii) interest under section 38 (3); and

(iii) a penalty under section 39 (1);

and

(c) any charge under the regulations for the payment of land tax in instalments,

but does not include any other amount that comes within the definition of "**land tax**" in section 5 (1).

[Section 23AA inserted by No. 20 of 1996 s.8.]

Concessional unimproved value for certain subdivided land

23A. (1) This section applies to the assessment of land tax for a year in relation to a new lot if —

- (a) it is not a habitable lot;
- (b) it was created to be used solely or principally for residential purposes;
- (c) its area is not more than 2 000 m² or, if its area is more than 2 000 m², it is to be used for a building or group of buildings that —
 - (i) is solely for residential purposes; and
 - (ii) contains a number of separate residential units;
- (d) since the subdivisional plan or diagram was approved by the Western Australian Planning Commission there has been no change of ownership of the lot as a result of an agreement for the sale of land; and
- (e) the owner gives to the Commissioner notice in accordance with subsection (2) that this section is to apply in relation to the lot,

except that this section only applies if the unimproved value of the lot would be reduced by applying it.

(2) The notice is required to be —

- (a) made in writing, in a form approved by the Commissioner, giving details required by the Commissioner; and
- (b) received by the Commissioner no later than 31 August in the current year.

Land Tax Assessment Act 1976

s. 23A

(3) If this section applies, the new lot has a concessional unimproved value that equals the former value, ascertained under subsection (4), of all the land in the new lot.

(4) The former value of a piece of land that —

(a) was, as at midnight on the 30th June immediately preceding the previous year, wholly within a lot in respect of which there was an unimproved valuation then in force under the *Valuation of Land Act 1978*; and

(b) is the whole or part of the land in a new lot,

is the appropriate proportion of the amount that was the unimproved value of the lot referred to in paragraph (a) under the valuation referred to in that paragraph.

(5) The appropriate proportion is what the area of the piece of land is as a proportion of the area of the lot referred to in subsection (4) (a).

(6) In this section —

“current year” means the year of assessment for which the Commissioner has been given notice under subsection (1) (e) that this section is to apply;

“habitable lot” means a lot that has on it a building that is used, or suitable to be used, for residential purposes;

“lot” does not include a lot depicted on a strata plan unless it is a lot in a survey-strata scheme;

“new lot” means a lot that was created by subdivision through a subdivisional plan or diagram approved by the Western Australian Planning Commission during the previous year;

“previous year” means the year of assessment before the current year;

“subdivision” refers to the creation of 2 or more lots.

[*Section 23A inserted by No. 12 of 1996 s.6.*]

PART V — RETURNS

Requirement for lodgement of returns

24. (1) Subject to this section, every person who is the owner of land in this State personally, or in any representative capacity, shall furnish to the Commissioner an annual return setting forth a full and complete statement of all land owned by him at midnight on the 30th June last past, with such particulars as are required by the Commissioner, and detailed in the return form provided by the Commissioner.

(2) The Commissioner shall give or cause to be given not less than 30 clear days' public notice of the requirement to furnish returns as provided in subsection (1), and in the public notice shall state the place where the return forms may be applied for and obtained and the date by which the returns shall be submitted.

(3) The Commissioner may at any time require any person to furnish a further or fuller return, or a copy of a return previously lodged, for the purposes of the assessment and taxation under this Act.

[(4) *repealed*]

(5) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act shall be taken and deemed to be duly made by or on behalf of that person unless it is proved that the return was not so signed or made.

(6) The fact that land may be exempt land does not of itself relieve any person from the obligation to furnish returns under this section in respect of that land.

(6a) The Commissioner may, by notice, relieve any person or class of persons from the obligation to furnish annual returns under subsection (1) and may, by further notice, re-impose that

obligation upon that person or upon persons of that class or any of them.

(6b) In subsection (6a) “**notice**” means public notice or notice in writing served on the person or persons to whom the notice applies.

(6c) The fact that a person may, by virtue of a notice under subsection (6a), be relieved from the obligation to furnish annual returns under subsection (1) does not affect the liability of that person, or any other person, to pay land tax.

(7) Joint owners liable under this Act to be jointly assessed and taxed shall be jointly and severally responsible for the due furnishing of returns, and liable in respect of any default in connection therewith, but it shall be sufficient that a single full and complete return is furnished on behalf of the joint owners.

(8) The Crown, an agency or instrumentality of the Crown, or a local government or any other public statutory authority is not required to furnish a return pursuant to this section.

[Section 24 amended by No. 18 of 1979 s.2; No. 14 of 1996 s.4.]

Additional tax for late returns and omissions in returns

25. (1) Any person who fails to duly furnish any return or copy thereof or information as and when required by this Act or by the Commissioner shall, if a taxpayer, be liable, apart from any other penalty provided by this Act, to pay on demand by the Commissioner, by way of additional tax an amount of not exceeding 10% of the amount of tax assessable to him, in addition to any sum by way of a penalty which may become payable by him in accordance with section 39, but the Commissioner may in any particular case, for reasonable cause shown by the taxpayer, remit all or part of the additional tax.

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(2) Any person failing to furnish a required return shall not be relieved from any penalty provided in this section by reason only of his having received no notice to furnish the return.

PART VI — VALUATIONS

Unimproved value of land

26. For the purposes of this Act the unimproved value of any land shall be the unimproved value as on the 30th June last preceding the year of assessment for which the valuation is required.

[Section 26 inserted by No. 76 of 1978 s.73; amended by No. 29 of 1980 s.4.]

PART VII — ASSESSMENTS

Assessment to be made

27. (1) Subject to this Act the Commissioner shall, for each year of assessment, cause an assessment to be made for each owner of land subject to land tax.

(2) The Commissioner shall, subject to this Act, also cause an assessment to be made for an owner of land who becomes liable to taxation under section 15A.

[Section 27 amended by No. 29 of 1980 s.5.]

Notice of assessment

28. (1) As soon as reasonably practicable after a taxpayer's assessment is made, the Commissioner shall cause a notice in writing of the assessment to be served on the taxpayer.

(2) The omission to serve such a notice shall not invalidate the assessment.

Particulars in notice

29. The Commissioner shall, in a notice of assessment of land tax, furnish such particulars of the assessment as he considers necessary, and of the amount of tax payable and the date when payment shall be due.

Assessment in certain cases

30. Where —

- (a) any taxpayer or person has not furnished a return, whether through default or because a notice under

subsection (6a) of section 24 has relieved him from the obligation to do so;

- (b) the Commissioner is not satisfied with the return made by any taxpayer or person; or
- (c) the Commissioner has reason to believe that any person (though he may not have furnished a return) is a taxpayer,

the Commissioner may make an assessment of the amount which, in his opinion, is the tax payable and the land tax so assessed shall be the land tax payable by that taxpayer or person until or unless the assessment is varied in accordance with the provisions of this Act.

[Section 30 amended by No. 18 of 1979 s.3.]

Amendment of assessments

31. (1) Subject to the provisions of this section, the Commissioner may, of his own motion or upon an application received from a taxpayer, amend any assessment by making such alterations in or additions thereto or such further alterations in or additions thereto as he thinks necessary to ensure its completeness and accuracy.

(2) An amendment may be made under this section —

- (a) at any time where an application by a taxpayer under this section is made within 5 years after the service of notice of the assessment or any amendment thereof and the taxpayer has supplied to the Commissioner within that period or such further period as the Commissioner may, for reasonable cause shown by the taxpayer, allow, all information required for the purpose of deciding the application;

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- (b) at any time where the Commissioner is of the opinion that a taxpayer has attempted to evade the payment of land tax by failing to lodge a complete and accurate return; or
- (c) in any other case — within 5 years after the service of notice of the assessment or of any amendment thereof.

(3) Where any amendment of an assessment has been made in accordance with this section and a period of more than 5 years has elapsed since the service of notice of the original assessment any further amendment of the assessment shall, subject to the provisions of this section, be limited to the matter the subject of such prior amendment notice of which was served within the previous 5 years.

(4) Where the amendment of an assessment has the effect of imposing any fresh liability, or increasing any existing liability —

- (a) the taxpayer shall be liable to pay the difference between any land tax which he has paid and the land tax which he ought to have paid if the assessment had been originally made as altered or added to; and
- (b) the alteration or addition shall be subject to objection in accordance with the provisions of this Act.

(5) Where an alteration in an assessment has the effect of reducing the taxpayer's liability the Commissioner shall refund any land tax overpaid.

[Section 31 amended by No. 31 of 1988 s.5.]

Validity of assessment

32. The validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

Evidentiary provision

33. (1) The production of any assessment or of any document under the hand of the Commissioner or Assistant Commissioner purporting to be a copy of an assessment shall —

- (a) be conclusive evidence of the due making of the assessment; and
- (b) be conclusive evidence that the amount and all the particulars of the assessment are correct, except in proceedings on appeal against the assessment, when it shall be *prima facie* evidence only.

(2) The production of any document under the hand of the Commissioner or Assistant Commissioner, purporting to be a copy of or extract from any return or assessment, shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

Assessments of trustees

34. Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he were beneficially entitled to the land, but —

- (a) where he is the owner of different lands in severalty, in trust for different persons who are not for any reason liable to be jointly assessed, the land tax so payable by him shall be separately assessed in respect of each of those lands; and
- (b) where a trustee is also the beneficial owner of other land, he shall be separately assessed for that land, and for the land of which he is a trustee, unless for any reason he is liable to be jointly assessed independently of this section.

PART VIII — OBJECTIONS AND APPEALS

Objection to assessment

35. (1) Subject to section 37, a taxpayer who is dissatisfied with his assessment made by the Commissioner under this Act may, within 42 days, or such further time as the Commissioner may, for reasonable cause shown by the taxpayer, allow, after service by post of the notice of assessment, post to or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail the grounds on which he relies.

(2) The Commissioner shall, with all reasonable despatch, consider the objection and may either disallow it or allow it wholly or in part.

(3) (a) The Commissioner shall promptly serve upon the objector written notice of his decision on the objection and a brief statement of his reasons for that decision.

(b) Where the Commissioner decides to allow an objection, wholly or in part, he shall also advise the objector of any consequent amendment of assessment; and where the Commissioner decides to disallow an objection, wholly or in part, he shall also advise the objector of the time within which and the manner in which an appeal against the decision may be made.

[Section 35 amended by No. 76 of 1978 s.74.]

Appeal against assessment

36. (1) A taxpayer who is dissatisfied with the decision of the Commissioner on an objection of the taxpayer may, within 42 days, or such further period as the Commissioner may, for reasonable cause shown by the taxpayer, allow, after the service by post of notice of the decision of the Commissioner, in writing request the Commissioner to treat his objection as an appeal against the assessment.

(2) Upon receipt of such request the Commissioner shall promptly refer the objection to a Land Valuation Tribunal under the *Land Valuation Tribunals Act 1978* as an appeal.

(3) A taxpayer who is dissatisfied with a decision of the Commissioner to refuse to extend the time for service of an objection against an assessment or for requesting the Commissioner to treat his objection as an appeal against the assessment may serve on the Commissioner a notice requiring the Commissioner to refer such decision to a Land Valuation Tribunal under the *Land Valuation Tribunals Act 1978* as an appeal.

(4) Upon receipt of such notice the Commissioner shall promptly refer the decision to a Land Valuation Tribunal as an appeal.

[*Section 36 amended by No. 76 of 1978 s.75.*]

Objection or appeal

37. There shall be no objection or appeal in respect of a valuation of land the subject of an assessment under this Act, except in accordance with the *Valuation of Land Act 1978*.

[*Section 37 inserted by No. 76 of 1978 s.76.*]

Liability to pay land tax not affected by objection or appeal

37A. The obligation to pay and the rights to receive and recover land tax shall not be affected by any objection or appeal, whether in respect of an assessment or in respect of a valuation of land the subject of an assessment under this Act.

[*Section 37A inserted by No. 76 of 1978 s.77.*]

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Amendment of assessment consequent on objection or appeal

37B. (1) The Commissioner shall issue a notice of an amended assessment of land tax when, in consequence of the allowance, wholly or in part, of an objection or appeal under this Act or under the *Valuation of Land Act 1978*, amendment of an assessment is necessary.

(2) If the amendment of the assessment has the effect of reducing the land tax payable, the Commissioner shall —

- (a) refund any tax overpaid; and
- (b) pay interest on the amount refunded at the prescribed rate from the date of payment of the tax.

[Section 37B inserted by No. 76 of 1978 s.77; amended by No. 63 of 1994 s.7.]

PART IX — RECOVERY OF TAX

When tax payable

38. (1) Land tax shall, subject to the other provisions of this Act, be due and payable 45 days after the service by post of a notice of assessment.

(2) Where an assessment is amended in accordance with this Act the amended amount of land tax shall, subject to the other provisions of this Act, be due and payable 45 days after the service by post of the notice of amended assessment upon the taxpayer.

(3) The Commissioner may, for reasonable cause shown by a taxpayer, grant an extension of time for the payment of land tax for which that taxpayer is liable and where such an extension is granted —

- (a) it shall, subject to paragraph (c) of this subsection, be for such period as the Commissioner considers the circumstances warrant;
- (b) it may be subject to the payment of such instalments as the Commissioner considers the circumstances warrant;
- (c) the Commissioner may at any time, by notice served on the taxpayer, revoke the extension;
- (d) the tax to which the extension relates becomes due and payable 14 days after the expiration of the period for which the extension was granted or the service on the taxpayer of notice of the revocation of the extension, whichever first happens; and
- (e) interest, at such rate not exceeding 20% per annum as is fixed by the Commissioner, shall, unless the Commissioner, for reasonable cause shown by the

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taxpayer, otherwise determines, be charged on such of the amount of land tax to which the extension relates as is from time to time outstanding,

and any interest so charged is due and payable at the same time as the tax to which the extension relates and if after that time any part of the land tax is outstanding the interest thereon accrues from day to day and is due and payable as and when it accrues.

(4) The Commissioner may, for reasonable cause shown by the taxpayer, remit the whole or any part of the interest charged under this section.

[Section 38 amended by No. 31 of 1985 s.4; No. 69 of 1986 s.8.]

Penalty for late payment

39. (1) A person who fails to pay the amount payable by him in respect of land tax after the amount has become due shall, in addition to the amount of the land tax, pay by way of penalty a sum equal to 5% of that amount and that sum is, subject to subsection (2), due and payable immediately after the land tax in respect of which the penalty is incurred has become due.

(2) In subsection (1) "**land tax**" does not include additional tax payable under section 25 or interest payable under subsection (3) of section 38 or any charge imposed by the regulations for the payment of land tax in instalments.

(3) The Commissioner may, for reasonable cause shown by the taxpayer, remit all or part of the penalty incurred, and refund the amount of any penalty paid under this section.

[Section 39 amended by No. 31 of 1985 s.5; No. 17 of 1993 s.16.]

Land tax and penalty a debt due to Her Majesty

40. Land tax, when it becomes due or is payable, is a debt due to Her Majesty, and payable to the Commissioner.

Tax recoverable by the Commissioner

41. Any land tax may be sued for and recovered by action in any court of competent jurisdiction by the Commissioner suing on behalf of Her Majesty, and in case of joint-ownership of land the owners may be sued jointly or severally for the recovery of the tax.

[Section 41 amended by No. 69 of 1986 s.9.]

Procedure in Local Court

42. With respect to proceedings in a Local Court for the recovery of tax —

- (a) when a summons for the recovery of tax is issued and served, then unless, 7 days before the day appointed for hearing, a statement in writing, by or on behalf of the defendant, showing a defence on the merits, is made to the clerk of the court in which the summons was issued, judgment shall be given for the amount claimed, without the necessity of the Commissioner, or anyone on his behalf, appearing in court or proving the liability of the defendant and the non-payment of the tax; and
- (b) it shall be sufficient in any such suit or proceeding if the particulars of demand state the amount sought to be recovered, the date on which the amount was payable, with such further and other particulars as the Commissioner may think necessary.

Mode of service when defendant absent

43. If, in any proceedings for the recovery of tax against any taxpayer who has been assessed, the defendant —

- (a) is absent from Western Australia, and has not, to the knowledge of the Commissioner, after reasonable inquiry in that behalf, any attorney or agent in Western Australia on whom service of process can be effected; or
- (b) cannot, after reasonable inquiry, be found,

then, notwithstanding any Act or rule of the court to the contrary, good service of any summons or writ may, without leave of the court, be effected on him by posting it, or a copy thereof, in a letter addressed to him at his last known place of business or abode in Western Australia.

Commissioner may appear by public officer

44. In all proceedings under this Act the Commissioner may appear by any officer in the Public Service of the State, and the appearance of such an officer, and his statement that he so appears by authority of the Commissioner, shall be sufficient evidence of that authority for all purposes.

Tax to be a first charge on the land

45. (1) Subject to section 47, land tax shall, until payment, be a first charge, whether registered or not, and whether or not a memorial has been registered under section 46, upon the land taxed in priority over all other encumbrances whatsoever, and where the land taxed comprises 2 or more lots or parcels the land tax payable on the land taxed shall be a first charge on each and every such parcel and notwithstanding any disposition of the land or any part thereof the land or part shall continue to be

liable in the hands of any purchaser or holder for the payment of the land tax so long as it remains unpaid.

(2) Subsection (1) does not apply to or in relation to land owned by, or vested in, the Crown or any agency or instrumentality of the Crown, or a local government or any other public statutory authority.

[Section 45 amended by No. 14 of 1996 s.4.]

Prohibition on dealings in land

46. (1) Where, in relation to any land, payment of land tax is in arrear, the Commissioner may deliver a memorial, in the prescribed form, to that effect to the Registrar of Titles, or the Registrar of Deeds, as the case requires, who, on payment of any fee which may be prescribed therefor under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*, as the case requires, shall register the memorial and endorse or note the title and land register or record, in respect of that land.

(2) When the memorial is registered the Registrar of Titles, or the Registrar of Deeds, as the case requires, is prohibited from registering and from accepting for registration an instrument affecting the land without the consent of the Commissioner until the land ceases under subsection (3) to be bound by this subsection.

(3) When the payment in respect of which a memorial is registered under this section ceases to be in arrear, the Commissioner shall deliver to the Registrar of Titles, or the Registrar of Deeds, as the case requires, a certificate signed and dated by the Commissioner certifying that the payment has ceased to be in arrear and the Registrar of Titles, or the Registrar of Deeds, as the case requires, shall, on payment of any fee which may be prescribed therefor under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*, as the case requires, endorse the title and land register or record to that

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effect and thereupon the land ceases to be bound by subsection (2).

(4) Subsections (1), (2) and (3) do not apply to or in relation to land owned by, or vested in, the Crown or any agency or instrumentality of the Crown, or a local government, or any other public statutory authority.

[Section 46 amended by No. 14 of 1996 s.4.]

Bona fide purchaser for value and his successors in title

47. Where land the subject of a charge under section 45 is purchased by a *bona fide* purchaser for value and at the time of the purchase —

- (a) there is, in relation to the land, no memorial registered under section 46; and
- (b) the Commissioner issues a certificate to the purchaser or his representative under section 48, other than a certificate to which subsection (3) of that section applies, and the certificate states that there is no assessed land tax outstanding in relation to the land,

the charge shall be of no effect against that purchaser and his successors in title to the land.

[Section 47 amended by No. 63 of 1994 s.8.]

Certificates as to land tax charges

48. (1) The Commissioner shall on application in respect of any land —

- (a) by the owner or a purchaser of the land; or

- (b) by a representative of the owner or of a purchaser of the land,

issue a certificate showing if there is any assessed land tax charged on the land described in the application.

(1a) In subsection (1) “**representative**” in relation to any land means a person who satisfies the Commissioner that he is authorized to act for the owner or purchaser.

(2) The Commissioner may release the land taxed or any part thereof from the charge in respect of land tax thereon on payment of an amount he calculates to be not less than the proportion of the tax referable to the land or part of the land.

(3) Where an application is made under this section requiring the Commissioner to calculate the tax applicable to any lot, parcel or interest for the assessment year in which the land is sold, and the annual assessment for that year has not issued, the certification specified in subsection (1) of this section shall be an estimate only, and where that estimate is less than the proportionate amount properly chargeable on assessment any underpaid tax remains the liability of the owner shown in that assessment, and continues to be a first charge on the land in the hands of any subsequent owner while the tax remains unpaid.

(4) For the purposes of this section or for any similar purpose under this Act the proportionate amount of land tax applicable to any lot, parcel or interest in land included in the whole of the land taxed under this Act, shall be that proportion of the assessed taxes that the unimproved value of the lot, parcel or interest bears to the total of the unimproved values of all of the land taxed.

[Section 48 amended by No. 63 of 1994 s.9.]

Construction of section 48

49. Nothing in section 48 shall be construed as altering or affecting the liability to taxation, and incidence of tax as provided elsewhere in this Act.

Power of sale

50. (1) Whenever any land tax payable in respect of any land remains unpaid for a period of 2 years, the Commissioner may, notwithstanding any judgment against the person chargeable with the land tax, so long as such judgment remains unsatisfied, cause to be published, for 3 consecutive weeks in the *Government Gazette*, a notice specifying the land, and the amount of tax due in respect thereof, and stating that if such amount is not paid within one year from the first publication of the notice the Commissioner intends to apply to the Supreme Court for an order for the sale of the land.

(2) The Commissioner, by petition to the Supreme Court or any Judge thereof, may apply for a sale of so much of the land described in the notice as may be necessary, and the Court or Judge, on being satisfied by affidavit or otherwise that the arrears are lawfully due, and were in arrear at the time of the first publication of such notice, and that all things required by this Act to be done by the Commissioner have been done, shall order the sale of the said land, or so much thereof as shall be sufficient to pay all arrears due up to the time of sale and all costs of and attending the application, and of attending the sale of the land, and that the proceeds be applied in accordance with paragraph (a) of section 51.

Application of proceeds of sale

51. Where any sale of any land has been ordered and effected under section 50 —

- (a) the Court or a Judge shall order payment of the said tax, costs, and expenses to be first made out of the

proceeds of sale, and the balance of the proceeds of the sale shall be paid into Court, and after such advertisement as the Court or Judge may direct shall be applied as the Court or Judge may think proper for the benefit of the parties interested therein;

- (b) the conveyance or transfer, as the case may be, shall be executed by the officer of the Court nominated by the Court or Judge for such purpose to the purchaser, in such form as shall be approved by the Court or Judge;
- (c) the conveyance or transfer shall vest the land, estate, or interest sold in the purchaser as completely and effectually as if the conveyance or transfer had been executed by the owner of the land, estate, or interest; and
- (d) where the land is under the provisions of the *Transfer of Land Act 1893*, the Registrar of Titles shall, upon production to him of the transfer, register it, and notwithstanding any provision of that Act to the contrary, production of the certificate of title shall not be required; but for the purposes of registration the Registrar of Titles shall, if necessary, do and perform all such acts and things as are provided for in the case of dealings with land where the certificate of title is lost or not produced, in which case the purchaser shall be entitled to receive a certificate of title to the land purchased.

PART X — MISCELLANEOUS

Duties and liabilities of a representative of a body corporate

52. (1) A body corporate which owns land in this State may, by instrument in writing served on the Commissioner, appoint a person who resides in this State as the representative of the body corporate for the purposes of this Act, but where such a representative has not been so appointed or after being so appointed he ceases to reside in this State or his whereabouts are unknown to the Commissioner, every person who resides in this State and is acting, or appearing to act, in the management of the affairs of the body corporate, or as attorney or agent of the body corporate shall be a representative of the body corporate for the purposes of this Act.

(2) Such a representative shall do all things that are required to be done under this Act by the body corporate and where there is more than one such representative they are jointly and severally liable to do so, and any such thing done by him or them is deemed to have been done by the body corporate.

(3) Any notice, process, or proceeding that may, under this Act, be served on or taken against the body corporate may be served on or taken against such a representative or, where there is more than one such representative, may be served on or taken against any one of them, and when it is served on or taken against him it is deemed to have been served on or taken against the body corporate.

(4) Any contravention of the provisions of this Act by such a representative shall be deemed to be such a contravention by the body corporate, and both he and the body corporate are liable for the penalty provided for the contravention but not so that the penalty is paid twice.

(5) The provisions of subsections (1), (2), (3), and (4) are in addition to and not in derogation of the obligations and liabilities

of the body corporate under this Act, and the provisions of subsection (3) as to service are without prejudice to any other method of due service on the body corporate.

Offence by occupier or person in possession

53. An occupier, or a person in possession, of any land who when requested by the Commissioner or any officer duly authorized in that behalf to —

- (a) disclose the name of the owner of the land or of the person entitled to receive the rents and profits of the land; or
- (b) give any information in his possession which is lawfully required for the purposes of this Act,

fails to do so or wilfully makes a false statement in respect thereof, commits an offence.

Penalty: \$500.

Penalty for making false returns, etc.

54. A person who —

- (a) fails to furnish any returns within the required time;
- (b) wilfully makes any false statement in any returns, application for a rebate, or notice under section 23A (1) (e), or makes any false answer for the purpose of evading or enabling any other person to evade assessment or taxation;
- (c) wilfully evades or attempts to evade assessment or taxation; or

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- (d) without just cause shown by him fails to attend and give evidence when required by the Commissioner or any officer duly authorized by him in that behalf, or to truly and fully answer any questions put to him, or to produce any books or papers required of him by the Commissioner or such an officer,

is liable a penalty of not less than \$20 nor more than \$500; and in any case where the offence was a wilful evasion of assessment or taxation, or a wilful attempt to evade assessment or taxation, the person offending is liable to be assessed and charged treble the amount of the tax to which such person would otherwise be liable.

[Section 54 amended by No. 23 of 1989 s.7; No. 12 of 1996 s.7.]

Penalty for obstructing officers

55. A person who obstructs any officer acting in the discharge of his duties under this Act or wilfully fails to answer or gives any false or evasive answer to any lawful question put by such an officer relating to any land belonging to such person, commits an offence.

Penalty: \$500.

Requirements of Commissioner to be complied with

56. Every person, whether a taxpayer or not, shall comply with any demand or requirement made under or for the purposes of this Act by the Commissioner or person duly authorized by the Commissioner in that behalf.

Contracts affecting assessments, incidence of assessment etc., void

57. Every contract, agreement, or understanding, whether arrived at or evidenced by matter of record under seal or by writing or by parol, having or purporting to have or which might have the effect of removing, qualifying, or altering the operation of any assessment, return, exemption or of in any way affecting the incidence of any assessment or tax or displacing the benefit of any exemption, authorized by or consequent upon any provision of this Act shall (whether such contract, agreement, or understanding shall have been or be made before, or after the coming into operation of this Act) be wholly void and inoperative as against the Commissioner so far as such contract, agreement, or understanding purports or is intended to have or might have that effect, but without prejudice to the validity of such contract, agreement, or understanding, in any other respect or for any other purpose.

General penalty

58. A person who contravenes any of the provisions of this Act is, except where otherwise expressly provided, liable to a penalty not exceeding \$500.

Extended time for laying complaints

59. Notwithstanding the provisions of any other Act, proceedings for an offence against this Act may be brought within the period of 3 years after the commission of the alleged offence.

Immunity of Commissioner and persons authorized by him

60. No liability shall attach to the Commissioner, or any person duly authorized by him, for any act or omission by him in good faith and in the exercise or purported exercise of his powers and functions, or in the discharge or purported discharge of his duties, under this Act.

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Evidentiary provisions

61. The production of a copy of the *Government Gazette* or a copy of a newspaper circulating in a town or district containing any notice purporting to be published in pursuance of this Act shall be conclusive evidence that the notice was duly published on the date shown on the copy of the *Government Gazette* or that newspaper, as the case may be.

Regulations

62. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations —

- (a) may require any agency or instrumentality of the Crown, or a local government or any other public authority to furnish to the Commissioner details of any land owned by or vested in it and which any other person is entitled to use for a business, commercial, professional, or trade purpose under an agreement or arrangement with it;
- (b) may impose charges for information supplied by or on behalf of the Commissioner to taxpayers or the public whether or not the charges exceed the costs of supplying the information;
- (c) may provide for the payment within 45 days after the service by post of a notice of assessment, or amended assessment, of the full amount of land tax less a discount at a rate prescribed by the regulations;
- (d) may provide that land tax may be paid in instalments, the first of any such instalments to be due and payable within 45 days after the service by post of a notice of assessment or amended assessment;

- (e) may provide, when land tax is paid in instalments under the regulations, for the imposition of a charge at a rate prescribed by the regulations;
 - (f) may provide, when an instalment is not paid under the regulations when it is due, that the full amount of unpaid land tax is due and payable; and
 - (g) may provide for matters necessary or expedient for the payment of land tax in instalments.
- (3) The regulations —
- (a) may be limited in their application to time, place, or circumstance; and
 - (b) may provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.
- (4) The regulations may provide penalties not exceeding \$200 for contravention of any of the regulations.

[Section 62 amended by No. 17 of 1993 s.17; No. 14 of 1996 s.4; No. 20 of 1996 s.9.]

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SCHEDULE

[Section 21]

PART I

1. (a) *Class of Land*

Land owned by, or vested in, the Crown, or any agency or instrumentality of the Crown, or a local government or any other public statutory authority.

(b) *Qualification*

Where by virtue of the interpretation “owner” in section 5, the owner of any land of the class specified in paragraph (a) of this clause includes a person of the class specified in paragraph (b) or (c) of that interpretation, that land is not exempt land but that person, and only he, is liable for assessment and taxation under this Act in respect of that land.

2. (a) *Class of land*

- (i) Land owned by, vested in, or held in trust for any religious body and *bona fide* used or reserved as a site for religious purposes including a site for a church, or a chapel, for public worship and the residence of a minister of the religious body, or *bona fide* used or reserved as a site for educational purposes.
- (ii) Any other land owned by, vested in, or held in trust for any religious body.

(b) *Qualifications*

- (i) Where land owned by, vested in, or held in trust for any religious body is used by the owner or any other person for business, commercial, professional, or trade purposes the owner of the land shall be liable for assessment and taxation under this Act at 50% of the rate imposed by the *Land Tax Act 1976*.
- (ii) Land of the class specified in subparagraph (ii) of paragraph (a) of this clause is exempt land, subject to all the other qualifications applicable thereto, only up to and including the year of assessment commencing on the 1st July 1977 but thereafter shall be subject to assessment and taxation under this Act at the rate imposed by the *Land Tax Act 1976* unless it is used by the owner or any other person for business, commercial, professional, or trade purposes in which case the owner of the land shall be liable

for assessment and taxation under this Act at 50% of that rate.

- (iii) Where, after the 1st July 1978, land owned by, vested in, or held in trust for a religious body is sold or used for a purpose other than an exempt purpose specified in subparagraph (i) of paragraph (a) of this clause, and the land was, on the 30th June last preceding the day on which the land was sold or so used, exempt land by reason of being reserved for such an exempt purpose, the land shall be subject to assessment and taxation under this Act as if it had not been exempt land at the rate imposed by the *Land Tax Act 1976* for the 5 years of assessment immediately before the land was so sold or used or for all the years of assessment as from and including the year of assessment in which it became such exempt land, whichever is the lesser period.

3. (a) *Class of land*

- (i) Land owned by, vested in, or held in trust for —
- (I) The University of Western Australia constituted under the authority of the *University of Western Australia Act 1911*;
 - (II) The Western Australian Institute of Technology established under the *Western Australian Institute of Technology Act 1966*;
 - (III) the Teacher Education Authority established under the *Teacher Education Act 1972* and constituent colleges within the meaning of that Act;
 - (IV) Murdoch University established under the *Murdoch University Act 1973*;
 - (V) any *bona fide* educational institution not carried on for the purpose of private profit or gain; or
 - (VI) any college, hostel, or hall of residence, that is affiliated with any one of the bodies or institutions specified in items (I) to (V) both inclusive of this subparagraph, that has as its objects the provision of residence or education and residence of enrolled students of such a body or institution, and that is not carried on for the purpose of private profit or gain,

and *bona fide* used or reserved as a site for the purpose of providing facilities necessary for or conducive to the attainment of the objects of the body, institution, college,

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hostel, or hall of residence, as the case may be, and the performance of its functions.

- (ii) Any other land owned by, vested in, or held in trust for such a body, institution, college, hostel, or hall of residence as is specified in subparagraph (i) of this paragraph.

(b) *Qualifications*

- (i) Where land owned by, vested in, or held in trust as specified in subparagraph (i) of paragraph (a) of this clause is used by the owner or any other person for business, commercial, professional, or trade purposes the owner of the land shall be liable for assessment and taxation under this Act at 50% of the rate imposed by the *Land Tax Act 1976*.
- (ii) Land of the class specified in subparagraph (ii) of paragraph (a) of this clause is exempt land, subject to all the other qualifications applicable thereto, only up to and including the year of assessment commencing on the 1st July 1977 but thereafter shall be subject to assessment and taxation under this Act at the rate imposed by the *Land Tax Act 1976* unless it is used by the owner or any other person for business, commercial, professional, or trade purposes in which case the owner of the land shall be liable for assessment and taxation under this Act at 50% of that rate.
- (iii) Where, after the 1st July 1978, land owned by, vested in, or held in trust as specified in subparagraph (i) of paragraph (a) of this clause is sold or used for a purpose other than the exempt purpose specified in that subparagraph, and the land was, on the 30th June last preceding the day on which the land was sold or so used, exempt land by reason of being reserved for that exempt purpose, the land shall be subject to assessment and taxation as if it had not been exempt land at the rate imposed by the *Land Tax Act 1976* for the 5 years of assessment immediately before the land was so sold or used or for all the years of assessment as from and including the year of assessment in which it became such exempt land, whichever is the lesser period.

4. *Class of land*

Land used exclusively for the purposes of a public hospital, or any hospital conducted by or on behalf of any religious body.

5. *Class of land*

All lands held as mining tenements within the meaning of the *Mining Act 1904*¹⁴ unless the land is owned in fee simple in which case

the owner of the land in fee simple is liable for assessment and taxation under this Act.

6. *Class of land*

All lands dedicated to, or vested in trustees and used for zoological, agricultural, pastoral or horticultural show purposes, a historical society, a public museum, or other public purposes.

7. *Class of land*

All lands owned by, vested in, or held in trust for a public charitable or benevolent institution and used exclusively for the public charitable or benevolent purposes for which the institution was established.

7A. (a) *Interpretation*

In this clause —

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

“sport” includes any game;

“sports association” means a non-profit association the principal object of which is to provide facilities for its members to engage in any form of sport.

(b) *Class of land*

Land owned by, vested in, or held in trust for —

(i) a sports association that is used as a site for the purposes of providing facilities necessary for or conducive to the attainment of the sporting objects of the association; or

(ii) any other non-profit association that is used solely as a site for the purposes of providing facilities that are —

(I) necessary for or conducive to the attainment of the objects of the association; and

(II) not available for use on a paying basis by persons (other than guests of members) who are not members of the association,

and the fact that facilities provided include facilities for the sale of liquor does not affect the application of this clause to the land.

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7B. (a) *Interpretation*

In this clause —

“**ancillary purpose**” means —

- (a) a facility provided under a retirement village scheme for the exclusive use of residents and their guests; and
- (b) a facility used for the provision of management services required by the scheme;

“**residence contract**” and “**resident**” have the meanings given to them by the *Retirement Villages Act 1992*;

“**retirement village scheme**” means a retirement village scheme within the meaning in the *Retirement Villages Act 1992* for which all necessary approvals under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* are in force.

(b) *Class of land*

Land comprised in a retirement village scheme that is —

- (i) occupied, or available for occupation, as residential premises under a residence contract; or
- (ii) used for an ancillary purpose,

under the scheme, but only to the extent that the land is not exempt land under any other provision of this Act.

8. *Class of land*

Land held by any widow of a member of the forces, or by the widowed mother of a member of the forces, who is in receipt of a pension under the provisions of Division I of Part III, of the *Repatriation Act 1920* of the Parliament of the Commonwealth or the provisions of any Act passed in amendment or substitution of those firstmentioned provisions, to the extent of the first \$10 000 of the total assessable value of the land on which the widow or widowed mother would otherwise be assessed.

9. (aa) *Interpretation*

- (i) In this clause “**exempt proprietary company**” has the same meaning as it has in the Corporations Law.
- (ii) Where —
 - (I) 2 persons have all of the shares in the share capital of an exempt proprietary company; and

- (II) one of those persons holds only one of those shares and that share is held in trust for the other person,

the latter person shall be deemed for the purposes of paragraph (a) to be the person who holds all of the share capital of the company.

(a) *Class of land*

Any lot or parcel of land not exceeding 2.023 4 hectares in area and on which is constructed a dwelling-house, or 2 or more lots of land which do not exceed 2.023 4 hectares in total area and on which is constructed a dwelling-house parts of which stand on each of the lots —

- (i) the owner of which is a natural person who uses the land solely or principally as his ordinary place of residence;
- (ii) the owners of which are natural persons all of whom use the land solely or principally as their ordinary place of residence;
- (iii) the owners of which are husband and wife one of whom uses the land solely or principally as his or her ordinary place of residence;
- (iv) the owners of which are natural persons at least one of whom uses the land solely or principally as his ordinary place of residence, and where the owner or owners who do not so use the land is or are an owner or owners solely by reason of a requirement by a financial institution for a guarantee of moneys advanced on security of that land;
- (v) the owners of which are natural persons not all of whom use the land solely or principally as their ordinary place of residence;
- (vi) the owner of which is an exempt proprietary company, and which is used by all the persons who have any share in the share capital of that company solely or principally as their ordinary place of residence;
- (vii) the owner of which is an exempt proprietary company, and which is not used by all the persons who have a share in the share capital of that company solely or principally as their ordinary place of residence;
- (viii) the owners of which are a natural person, or natural persons, and an exempt proprietary company, and which is used by the natural person or all the natural persons and all the persons who have any share in the share capital of that company solely or principally as his or their ordinary place of residence;

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- (ix) the owners of which are a natural person, or natural persons, and an exempt proprietary company, and which is not used by all of the natural persons and all of the persons who have any share in the share capital of that company solely or principally as their ordinary place of residence;
 - (x) the owner of which is an executor as trustee, or the owners of which are executors as trustees, of a will under which —
 - (I) a natural person whose identity is specified in the will has a right to use the land as a place of residence for as long as he or she wishes even though that person is not entitled under the will to any estate of freehold in possession in relation to the land; and
 - (II) the land is to be dealt with as residue of the estate to which the will applies when that person vacates the land or dies, whichever occurs first,

and that person uses the land solely or principally as his or her ordinary place of residence; or
 - (xi) the owners of which are —
 - (I) an executor or executors to whom paragraph (x) applies; and
 - (II) any other person or persons.
- (b) *Qualifications*
- (i) Where any part of any land of the class specified in paragraph (a) of this clause is used for a purpose other than that so specified and that other purpose is not an exempt purpose the exemption provided by that paragraph applies to the unimproved value of the land only to the extent of what the owner shows to the satisfaction of the Commissioner to be the proportion the part of the land used for the exempt purpose bears to the whole of the land.
 - (ii) The exemption provided by subparagraph (v) of paragraph (a) applies to the unimproved value of the land only to the extent of the proportion of the interest held in the land by the owner or owners who use the land solely or principally as his or their ordinary place of residence.
 - (iii) The exemption provided by subparagraph (vii) of paragraph (a), applies to the unimproved value of the land only to the extent of the proportion that the number of natural persons who have any share in the share capital of the company and who use the land solely or principally as their ordinary place of residence bears to the total number of persons who have any share in the share capital of the company.

- (iv) The exemption provided by subparagraph (ix) of paragraph (a) applies to the unimproved value of the land only to the extent of the proportion of the interest in the land held by —
 - (I) the natural person or natural persons who use the land solely or principally as his or their ordinary place of residence; and
 - (II) the resident shareholders of the company (being the proportion that the number of natural persons who have any share in the share capital of the company and who use the land solely or principally as their ordinary place of residence bears to the total number of persons who have any share in the share capital of the company).
- (iva) The exemption provided by subparagraph (xi) of paragraph (a) applies to the unimproved value of the land only to the extent of the proportion of the interest in the land held by —
 - (I) a part owner who is an executor, or part owners who are executors, to whom paragraph (a) (x) applies who allow, in accordance with that paragraph, a person to use the land and the person uses the land solely or principally as the person's ordinary place of residence;
 - (II) a natural person who is a part owner or the natural persons who are part owners who use the land solely or principally as the ordinary place of residence of the person or persons;
 - (III) the resident shareholders of a part owner that is an exempt proprietary company (being the proportion that the number of natural persons who have any share in the share capital of the company and who use the land solely or principally as their ordinary place of residence bears to the total number of persons who have any share in the share capital of the company).
- (v) Where on or after 1 July in any year of assessment land becomes land of the class specified in paragraph (a) and the owner of the land —
 - (I) is the person who owned that land at midnight on the 30 June immediately preceding that year of assessment;
 - (II) constructed or caused to be constructed the dwelling-house; and

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(III) is the first occupier of the dwelling-house,

the resultant exemption, as qualified by the qualifications specified in subparagraphs (i), (ii), (iii) and (iv) shall, subject to subparagraph (vi), be deemed to apply to that year of assessment and if an assessment relating to that land has been made it shall be amended accordingly.

(vi) Where on or after 1 July in any year of assessment —

(I) land becomes land of the class specified in paragraph (a) by reason of a person or persons (“**the occupier**”) using the land solely or principally as his or their ordinary place of residence;

(II) the land was not within that class at midnight on the 30 June immediately preceding that year of assessment by reason only that the occupier had ceased occupation, or not taken up occupation, to enable refurbishment of an existing dwelling-house on the land to be carried out;

(III) the occupier is the first occupier of the dwelling-house following the refurbishment; and

(IV) the occupier or the owner of the land or another person did not derive rent or other income from the land in respect of any part of the period from the beginning of the year of assessment to the time of re-occupation,

an exemption in respect of the land, as qualified by subparagraphs (i), (ii), (iii) and (iv), shall be deemed to apply to that year of assessment, and if an assessment relating to that land has been made it shall be amended accordingly.

(vii) The qualifications specified in subparagraphs (v) and (vi) do not apply where a person who uses the land solely or principally as his ordinary place of residence is entitled in that year of assessment to an exemption under this clause, clause 10 or clause 11 in respect of any other land.

10. (a) *Class of land*

An undivided lot or parcel of land exceeding 2.023 4 hectares in area and on which is constructed a dwelling-house and in respect of which the requirements of paragraph (a) of clause 9 of this Schedule other than those as to area have been met.

(b) *Qualifications*

- (i) The exemption provided by paragraph (a) of this clause is subject to the qualifications specified in paragraph (b) of clause 9 of this Schedule.
- (ii) Where on or after the 1st July 1980 any previously exempt land is subdivided, the land shall be liable to assessment and taxation as to part thereof as provided in section 15A.

11. (a) *Class of land*

An interest in a home unit —

- (a) which is registered as a lot under the *Strata Titles Act 1985*; or
- (b) which is one of a group of home units to and in relation to which the provisions of section 19 apply,

and in respect of which the requirements of paragraph (a) of clause 9 of this Schedule other than those as to area have been met.

(b) *Qualifications*

The exemption provided by paragraph (a) of this clause is subject to the qualifications specified in paragraph (b) of clause 9 of this Schedule.

12. (a) *Interpretation*

- (i) In this clause —

“business” in relation to the use of land means its use on a commercial basis to produce income to the user from the sale of produce or stock;

“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;

“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;

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“metropolitan region” has the same meaning as is from time to time ascribed thereto by the *Town Planning and Development Act 1928*;

“total net income” means —

- (a) where the owner is one person — his gross income from all sources less the expenses of earning that income; or
- (b) where the owner is 2 or more persons — the collective gross income of all those persons less the collective expenses of earning that income,

and the calculation of the percentage of the total net income derived from a business to which the exemption specified in this clause may apply shall be made by reference to the trading results of the business in the year preceding the date of assessment of liability for land tax unless the person or persons owning the land have not been the owner or owners of the land for the whole of that year in which case such calculation shall be made by reference to the trading results of the business for the part of that year for which that person or those persons were the owner or owners of the land; and

“town planning scheme” means a town planning scheme approved pursuant to the *Town Planning and Development Act 1928*.

- (ii) For the purposes of this clause in respect of an owner of land which is a body corporate —

[*(I) deleted*]

(II) a reference to the total net income of the owner shall be construed as a reference to the aggregate of the total net incomes of the body corporate and of any other body corporate to which the firstmentioned body corporate is deemed to be related within the meaning of section 50 of the Corporations Law; and

(III) a reference to the trading results of a business shall be construed as a reference to the aggregate of the total trading results of the body corporate and of any other body corporate to which the firstmentioned body corporate is deemed to be related within the meaning of section 50 of the Corporations Law.

(b) *Class of Land*

Land used solely or principally for all or any of the following businesses —

- (i) an agricultural, silvicultural, or reafforestation business; and
- (ii) a grazing, horse-breeding, horticultural, viticultural, apicultural, pig-raising, or poultry farming business.

(c) *Qualifications*

- (i) Land used as holding paddocks for stock in the course of any business not specified in paragraph (b) of this clause is not exempt land.
- (ii) Where land used solely or principally for one or more of the businesses specified in paragraph (b) of this clause is situated in the metropolitan region, or is situated outside that region and is zoned for other than rural purposes under a town planning scheme, the land shall not be exempt land unless —
 - (I) the person or persons so using the land is or are the owner or owners of the land;
 - (II) that person or those persons derive in excess of 33 $\frac{1}{3}$ % of his or their total net income by carrying out within the State a business or businesses specified in paragraph (b) of this clause or, where the land is used for a silvicultural or reafforestation business, either that income requirement is satisfied or the lot or parcel so used has an area of not less than 100 hectares which is fully stocked for that business.

PART II

(a) *Interpretation*

In this Part —

“area of the lot or parcel” includes any part of a building erected on the lot or parcel that is capable of being let;

“non-profit association” means a society, club or association not carried on for the purpose of profit or gain to its individual members.

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(b) *Class of land*

Any lot or parcel of land owned by, vested in, or held in trust for a non-profit association and partly used, to the extent of not less than one-half of the area of the lot or parcel, as a site for the purposes of providing facilities that are —

- (i) necessary for or conducive to the attainment of the objects of the society, club or association; and
- (ii) not available for use on a paying basis by persons (other than guests of members) who are not members of the association,

and the fact that facilities provided include facilities for the sale of liquor does not affect the application of this clause to the lot or parcel.

PART III

GENERAL QUALIFICATIONS

1. Where a lot or parcel of land is used or reserved for both an exempt purpose and a non-exempt purpose, any exemption that may apply shall do so only to the extent of the proportion the part of the lot or parcel which is used, or would be used under the reservation, for the exempt purpose, bears to the whole of the lot or parcel.

2. Subject to clause 4, an exemption in respect of any land in any of the classes specified in clauses 2 to 12 inclusive of Part I of this Schedule shall apply only if the owner of the land concerned makes an application to the Commissioner, in a form approved by him and including details required by him, and shows to his satisfaction that the requirements for the exemption have been met, otherwise that owner shall be liable to assessment and taxation under this Act at the rate imposed by the *Land Tax Act 1976*.

3. Subject to clause 4, a concession shall apply only if the owner of the land concerned makes an application to the Commissioner, in a form approved by him and including details required by him, and shows to his satisfaction that the requirements for the concession have been met, otherwise that owner shall be liable to assessment and taxation under this Act at the rate imposed by the *Land Tax Act 1976*.

4. The Commissioner may, by public notice, dispense with the requirements of clauses 2 and 3.

5. A notice under clause 4 —

- (a) shall be given with a notice under section 24 (2); and

- (b) may be given in respect of —
- (i) land generally or land of a particular class or classes;
 - (ii) owners generally or owners of a particular class or classes;
 - (iii) a particular period of time or periods of time.

[Schedule amended by No. 29 of 1980 s.6; No. 10 of 1982 s.28; No. 11 of 1982 s.4; No. 87 of 1984 s.4; No. 40 of 1985 s.11; No. 69 of 1986 s.10; No. 23 of 1989 s.8; No. 27 of 1993 s.4; No. 63 of 1994 s.10; No. 37 of 1995 s.5; No. 14 of 1996 s.4; No. 20 of 1996 s.10.]

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NOTES

¹ This reprint is a compilation as at 30 July 1996 of the *Land Tax Assessment Act 1976* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Land Tax Assessment Act 1976</i>	14 of 1976	3 June 1976	1 July 1976 (see section 2)	
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978, Part IX</i>	76 of 1978	20 October 1978	1 July 1979 (see section 2 and <i>Gazette</i> 11 May 1979 p.1211)	
<i>Land Tax Assessment Act Amendment Act 1979</i>	18 of 1979	30 August 1979	30 August 1979	
<i>Land Tax Assessment Amendment Act 1980</i>	29 of 1980	28 October 1980	28 October 1980	
<i>Companies (Consequential Amendments) Act 1982, Part XIII</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2 (1) and <i>Gazette</i> 25 June 1982 p.2079)	
<i>Land Tax Assessment Amendment Act 1982</i>	11 of 1982	14 May 1982	14 May 1982	Section 3 (2): transitional
<i>Land Tax Assessment Amendment Act 1984</i>	87 of 1984	29 November 1984	Sections 1, 2, 3 and 4 (1) (a) deemed operative 1 July 1984 (see section 2); balance: 27 December 1984	Section 4 (2): transitional
<i>Land Tax Assessment Amendment Act 1985</i>	31 of 1985	6 May 1985	1 July 1985 (see section 2)	Section 2 (2): transitional

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Strata Titles) Act 1985</i> , section 11	40 of 1985	13 May 1985	30 June 1985 (see section 2)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> , section 3	98 of 1985	4 December 1985	1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)	Section 4: savings and transitional
<i>Land Tax Assessment Amendment Act 1986</i>	69 of 1986	4 December 1986	4 December 1986	Section 6 (2): saving
<i>Land Tax Assessment Amendment Act 1988</i>	31 of 1988	19 November 1988	19 November 1988	
<i>Taxation (Reciprocal Powers) Act 1989</i> , section 16	18 of 1989	1 December 1989	5 October 1990 (see section 2 and <i>Gazette</i> 5 October 1990 p.5122)	
<i>Land Tax Assessment Amendment Act 1989</i>	23 of 1989	1 December 1989	1 December 1989	
<i>Land Tax Assessment Amendment Act 1990</i>	11 of 1990	31 July 1990	31 July 1990	Section 3: application
<i>Acts Amendment (Annual Valuations and Land Tax) Act 1993</i> , section 13 and Part 3	17 of 1993	29 November 1993	29 November 1993	Section 3: application ⁷
<i>Land Tax Assessment Amendment Act 1993</i>	27 of 1993	15 December 1993	15 December 1993	Section 3: application ⁸

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Land Tax Assessment Amendment Act 1994</i>	63 of 1994	7 November 1994	Section 7: 1 January 1995 (see section 2(2) and <i>Gazette</i> 16 December 1994 p.6767): balance on assent	Section 3: application ⁹ ; section 7 (2): transitional ¹⁰
<i>Planning Legislation Amendment Act (No. 2) 1994</i> , section 46	84 of 1994	13 January 1995	1 March 1995 (see <i>Gazette</i> 21 February 1995 p.567)	
<i>Land Tax Assessment Amendment Act 1995</i>	9 of 1995	7 June 1995	7 June 1995	
<i>Land Tax Assessment Amendment Act (No. 2) 1995</i>	37 of 1995	18 October 1995	18 October 1995	Section 6: application ¹¹ ; section 7: validation
<i>Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996</i> , Part 2	12 of 1996	28 June 1996	28 June 1996 (see section 2)	Section 4: application ¹³ ; Part 6: review ¹⁴
<i>Local Government (Consequential Amendments) Act 1996</i> , section 4	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Revenue Laws Amendment (Assessment) Act 1996</i> , Part 3	20 of 1996	28 June 1996	28 June 1996 (see section 2 (1))	Section 7: application ¹⁵

² Note no longer relevant.

³ Note no longer relevant.

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4 Note no longer relevant.

5 Note no longer relevant.

6 Note no longer relevant.

7 Section 3 of the *Acts Amendment (Annual Valuations and Land Tax) Act 1993* (Act No. 17 of 1993) reads as follows —

“ **Application**

3. The amendments made by this Part have effect in relation to a rate or tax for any period commencing on or after 1 July 1993 but do not have any effect in relation to a rate or tax for any period commencing before that date. ”.

8 Section 3 of the *Land Tax Assessment Amendment Act 1993* (Act No. 27 of 1993) reads as follows —

“ **Application**

3. The amendment made by section 4 has effect in relation to land tax for any period commencing on or after 30 June 1993 but does not have effect in relation to land tax for any period commencing before that date. ”.

9 Section 3 of the *Land Tax Assessment Amendment Act 1994* (Act No. 63 of 1994) reads as follows —

“ **Application**

3. (1) The amendment made by section 5 —

(a) applies in respect of the year of assessment commencing on 1 July 1994 and each subsequent year of assessment; and

(b) is to be taken to have applied in respect of the year of assessment that commenced on 1 July 1988 and each subsequent year of assessment up to and including the year of assessment that commenced on 1 July 1993.

(2) The amendments made by section 10 apply in respect of the year of assessment commencing on 1 July 1994 and each subsequent year of assessment. ”.

10 Section 7 (2) of the *Land Tax Assessment Amendment Act 1994* (Act No. 63 of 1994) reads as follows —

“ (2) Subsection (2) (b) of section 37B of the principal Act inserted by subsection (1) of this section applies to amended assessments in respect of objections or appeals allowed after the commencement of this section. ”.

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¹¹ Section 6 of the *Land Tax Assessment Act (No. 2) 1995* (Act No. 37 of 1995) reads as follows —

“ **Application**

6. Section 16 of the principal Act as amended by section 4 of this Act and clauses 9 (a)(x) and (xi) and (b) (iva) of Part 1 of the Schedule to the principal Act as inserted by section 5 of this Act apply in respect of the year of assessment commencing on 1 July 1995 and each subsequent year of assessment. ”

¹² Section 7 of the *Land Tax Assessment Act (No. 2) 1995* (Act No. 37 of 1995) reads as follows —

“ **Validation**

7. (1) In this section a reference to an assessment is a reference to an assessment in respect of land owned by joint owners where one or more of the joint owners had an interest in the land which would have been exempt from taxation under the provisions of the principal Act.

(2) Any assessment purported to have been done under section 16 of the principal Act before this Act comes into operation and any thing done under the purported assessment is, and always was, as valid and effective as it would have been if —

(a) the amendments referred to in section 4 of this Act had been made to the principal Act and had come into operation on 1 July 1976; and

(b) the assessment or the thing was done when the amendments referred to in section 4 of this Act had effect. ”

¹³ Section 4 of the *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* (Act No. 12 of 1996) reads as follows —

“ **Application**

4. The amendments made by this Part apply in relation to land tax for a period commencing on or after 1 July 1996 but do not apply in relation to land tax for a period commencing before that day. ”

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¹⁴ Part 6 of the *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* (Act No. 12 of 1996) reads as follows —

“ **PART 6 — REVIEW**

Review

17. (1) Each relevant Minister is to carry out a review of the operation and effectiveness of the amendments made by this Act as soon as is practicable after the expiration of 3 years from the commencement of this Act.

(2) The relevant Ministers are to prepare a joint report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

(3) In this section —

“**relevant Minister**” means a Minister responsible for the administration of an Act amended by this Act or the Minister responsible for the administration of the *Town Planning and Development Act 1978*. ”.

¹⁵ Section 7 of the *Revenue Laws Amendment (Assessment) Act 1996* (Act No. 20 of 1996) reads as follows —

“ **Application**

9. The amendments made by sections 8 and 10 apply in respect of the year of assessment commencing on 1 July 1996 and each subsequent year of assessment. ”.

¹⁶ Repealed by section 110 of Act No. 31 of 1994. Now see the *Public Sector Management Act 1994*.

¹⁷ Repealed by section 3 (1) of Act No. 107 of 1978. Now see the *Mining Act 1978*.

