

TASMANIA

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2013

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**TAXATION AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2013**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
19 September 2013

*(Brought in by the Minister for Finance, the Honourable Scott
Bacon)*

A BILL FOR

An Act to amend the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Land Tax Act 2000* and the *Taxation Administration Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2013*.

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.

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Part 1 – Preliminary

- (2) Part 5 is taken to have commenced on 1 July 2013.

PART 2 – DUTIES ACT 2001 AMENDED

3. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

4. Section 19 amended (What is the consideration for the transfer of dutiable property?)

Section 19 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(2) If, as part of an arrangement involving a dutiable transaction over dutiable property, the transferor or an associated person of the transferor agrees, expressly or by implication, with the transferee or an associated person of the transferee –

(a) to effect improvements to the dutiable property before or after the dutiable transaction; and

(b) those improvements are, or will be, required to comply with the *Building Act 2000* –

the consideration for the dutiable transaction over the dutiable property includes the consideration given, or

*No. 15 of 2001

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agreed to be given, to effect those improvements.

5. Section 26 amended (Partitions)

Section 26(5) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

6. Section 29 amended (General rate)

Section 29(1) of the Principal Act is amended by omitting

Not more than \$1 300	\$20
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from the table and substituting the following items:

Not more than \$3 000	\$50
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More than \$3 000 but not more than \$25 000	\$50 plus \$1.75 for every \$100, or part, by which the dutiable value exceeds \$3 000
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7. Section 36BA inserted

After section 36B of the Principal Act, the following section is inserted in Division 2:

36BA. Application to put and call options

(1) This Division applies to a put and call option as if –

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- (a) the put and call option were a sale agreement under section 36B(1)(a); and
 - (b) the person who enters the put and call option as the person who has the right to purchase the dutiable property were the first purchaser under section 36B(1)(a); and
 - (c) the person who enters the put and call option as the person who has the right to sell the dutiable property were the vendor under section 36B(1)(a); and
 - (d) where a right to acquire dutiable property, or part of dutiable property, under a put and call option is obtained by another person, that other person were a subsequent purchaser under paragraph (b) of section 36B(1) and that right were a transfer right under that paragraph.
- (2) For the purposes of section 36B(1)(b), the completion of the put and call option is upon the transfer of the dutiable property following the exercise of either the put or call rights under the option.
- (3) For the purposes of section 36D(1)(a), the consideration given or agreed to be given under the put and call option

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includes the consideration given or agreed to be given to obtain the put and call option and any consideration payable on the exercise of the put and call option.

- (4) For the purposes of section 36D(2)(a), the consideration given or agreed to be given to obtain the transfer right includes any consideration payable on the exercise of the put and call option.

8. Section 37 amended (Change in trustees)

Section 37 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “\$20” and substituting “\$50”;
- (b) by omitting from subsection (3) “\$20” and substituting “\$50”;
- (c) by omitting from subsection (5) “\$20” and substituting “\$50”;
- (d) by omitting from subsection (6) “\$20” and substituting “\$50”.

9. Section 38 amended (Transfers in relation to managed investment schemes)

Section 38 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “\$20” and substituting “\$50”;
- (b) by omitting from subsection (2) “\$20” and substituting “\$50”.

10. Section 39 amended (Property vested in an apparent purchaser)

Section 39(1) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

11. Section 40 amended (Transfers back from a nominee)

Section 40 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “\$20” and substituting “\$50”;
- (b) by omitting from subsection (2) “\$20” twice occurring and substituting “\$50”;
- (c) by omitting from subsection (3) “\$20” and substituting “\$50”.

12. Section 41 amended (Property passing to beneficiaries)

Section 41 of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

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Part 2 – Duties Act 2001 Amended

13. Section 42 amended (Establishment of a trust relating to unidentified property and non-dutiable property)

Section 42 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “\$20” and substituting “\$50”;
- (b) by omitting from subsection (2) “\$20” and substituting “\$50”.

14. Section 43 amended (Instrument relating to managed investment scheme)

Section 43 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “\$20” and substituting “\$50”;
- (b) by omitting from subsection (2) “\$20” and substituting “\$50”.

15. Section 44 amended (Instruments relating to superannuation)

Section 44(1) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

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16. Section 45 amended (Transfer of property from one superannuation fund to another)

Section 45(2) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

17. Section 46 amended (Transfers between trustees and custodians of superannuation funds or trusts)

Section 46(2) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

18. Section 47 amended (Deceased estates)

Section 47(1) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

19. Section 48 amended (Conversion of lots to strata title)

Section 48 of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

20. Section 49 amended (Duty where no change of beneficial ownership)

Section 49 of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

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Part 2 – Duties Act 2001 Amended

21. Section 50 amended (Adjustment of dutiable value of transfer on a company wind-up)

Section 50(2) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

22. Section 53 amended (Exemptions relating to various transactions)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “\$1 300” and substituting “\$3 000”;
- (b) by omitting paragraph (n) and substituting the following paragraph:
 - (n) a dutiable transaction for no consideration that is solely –
 - (i) in furtherance of any charitable, religious or educational purpose; or
 - (ii) to or in favour of any corporation or association that is incorporated or associated for any such purpose;

23. Chapter 3, Part 5 repealed

Part 5 of Chapter 3 of the Principal Act is repealed.

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Part 2 – Duties Act 2001 Amended

s. 24

24. Section 174 amended (What duty is payable?)

Section 174(5) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

25. Section 184 amended (Monthly returns and payment of duty)

Section 184(a)(v) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

26. Section 190 amended (What insurance is exempt from duty?)

Section 190(c) of the Principal Act is amended by omitting “an organisation registered under Part VI of the *National Health Act 1953*” and substituting “a private health insurer within the meaning of the *Private Health Insurance Act 2007*”.

27. Section 220 amended (Replicas)

Section 220(1) of the Principal Act is amended by omitting “\$20” and substituting “\$50”.

28. Section 225 amended (Intergenerational rural transfers)

Section 225 of the Principal Act is amended as follows:

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Part 2 – Duties Act 2001 Amended

- (a) by inserting in subsection (1) “an interest in” after “a transfer of”;
- (b) by omitting from subsection (1) “if the Commissioner is satisfied that the transfer” and substituting “to the extent that the Commissioner is satisfied that the transfer of the interest”;
- (c) by inserting the following subparagraph after subparagraph (ii) in subsection (1)(c):
 - (ia) a natural person to a company (other than as trustee) of which all the shareholders are relatives of the person at the time of the transfer; or
- (d) by omitting from subsection (1)(c)(v) “variation.” and substituting “variation; or”;
- (e) by inserting the following subparagraph after subparagraph (v) in subsection (1)(c):
 - (vi) a trustee of a trust to a company (other than as trustee) of which all the shareholders are relatives, at the time of the transfer, of all those named beneficiaries of the trust who are natural persons.

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(f) by omitting paragraph (e) from subsection (3) and substituting the following paragraphs:

(e) the spouse or caring partner of a person referred to in paragraph (a), (b), (ba), (c) or (d);
or

(f) an adopted child, natural child, step-child or surrogate child of a person referred to in paragraph (a), (b), (ba), (c), (d) or (e) or the spouse or caring partner of that child.

(g) by omitting subsection (4) and substituting the following subsection:

(4) For the purposes of this section –

(a) a reference to a relative of a person is to be taken to include a reference to the person himself or herself;
and

(b) a transfer from a deceased estate may be taken to be a transfer from the deceased person; and

(c) the death of a person does not alter the relationship between that person and any other person.

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s. 29

Part 2 – Duties Act 2001 Amended

29. Section 226 amended (Subsequent liability for duty in certain circumstances)

Section 226(1) of the Principal Act is amended as follows:

- (a) by inserting “of an interest in real property” after “that a transfer”;
- (b) by inserting “of an interest” after “not a transfer”.

30. Schedule 1 amended (Savings and transitional provisions)

Clause 2 of Schedule 1 to the Principal Act is amended by omitting subclause (3) and substituting the following subclause:

- (3) Without limiting section 255, the reference in section 41(c) to duty charged by this Act includes a reference to duty charged under the former Act.

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Part 3 – First Home Owner Grant Act 2000 Amended

s. 31

**PART 3 – FIRST HOME OWNER GRANT ACT 2000
AMENDED**

31. Principal Act

In this Part, the *First Home Owner Grant Act 2000** is referred to as the Principal Act.

32. Section 12 amended (Criterion 5 – Residence and ownership requirement)

Section 12 of the Principal Act is amended by inserting after subsection (1A) the following subsection:

- (1B) A decision to approve a lesser period of occupation, or to approve a longer period before occupation is commenced, may be made at any time before a decision on the application has been reversed or varied under section 23.

*No. 19 of 2000

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s. 33

Part 4 – Land Tax Act 2000 Amended

PART 4 – LAND TAX ACT 2000 AMENDED

33. Principal Act

In this Part, the *Land Tax Act 2000** is referred to as the Principal Act.

34. Section 6 amended (Principal residence land)

Section 6 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (2):
 - (ab) there is no dwelling on the land that is used as a place of residence; and
- (b) by omitting from subsection (3)(a)(iii) “and” and substituting “or”;
- (c) by inserting the following subparagraph after subparagraph (iii) in subsection (3)(a):
 - (iv) the trustee of a fixed trust in which all of the beneficiaries are individually named or are descendants of individually named beneficiaries; and

*No. 74 of 2000

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Part 4 – Land Tax Act 2000 Amended

s. 35

(d) by inserting the following subsection after subsection (3):

(3A) For the purposes of subsection (3)(b), a person is taken to be a beneficiary of a fixed trust referred to in subsection (3)(a)(iv) only if the person would be entitled, on the winding up of the trust, to 50% or more of the value of the income and capital of the trust.

35. Section 23 substituted

Section 23 of the Principal Act is repealed and the following section is substituted:

23. Assessed land value

- (1) The assessed land value of land is the land value as determined under the *Valuation of Land Act 2001* on applying any relevant adjustment factor determined under Part 9A of that Act.
- (2) If a parcel of land is subdivided from land which has a land value determined under the *Valuation of Land Act 2001* and the value of that subdivided parcel of land has not been so determined –
 - (a) the value of the subdivided parcel of land is to be determined by multiplying the assessed land

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Part 4 – Land Tax Act 2000 Amended

value of the total area of land before the subdivision (inclusive of any relevant adjustment factor determined by the Valuer-General under Part 9A of that Act) by the proportion that the subdivided parcel of land bears to the total area of land before the subdivision; and

- (b) the value of the remaining land from which the parcel was subdivided is the assessed land value of the total area of land before the subdivision less the value calculated under paragraph (a).

36. Section 37 amended (Land tax rebate)

Section 37 of the Principal Act is amended by omitting subsection (1A).

37. Section 39 amended (Recovery of unpaid land tax)

Section 39 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (2) and substituting the following paragraph:
 - (c) if the owner owns additional land –

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Part 4 – Land Tax Act 2000 Amended

s. 37

- (i) the total amount of land tax owing in respect of the land that was sold or transferred plus any penalty tax and interest payable; and
 - (ii) if a tax default, within the meaning of the *Taxation Administration Act 1997*, has occurred in respect of the additional land, the total amount of land tax to which the default relates plus any penalty tax and interest payable.
- (b) by omitting paragraph (b) from subsection (3) and substituting the following paragraph:
 - (b) if the owner owns additional land –
 - (i) the amount of land tax that would be payable had the land that was sold or transferred had an assessed land value equal to the determined value of that land plus any penalty tax and interest payable; and

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Part 4 – Land Tax Act 2000 Amended

- (ii) if a tax default, within the meaning of the *Taxation Administration Act 1997*, has occurred in respect of the additional land, the total amount of land tax to which the default relates plus any penalty tax and interest payable.

PART 5 – LAND TAX ACT 2000 AMENDED

38. Principal Act

In this Part, the *Land Tax Act 2000** is referred to as the Principal Act.

39. Section 19C inserted

After section 19B of the Principal Act, the following section is inserted in Division 2:

19C. Partially exempt land: flood levees

- (1) Land tax is not payable in respect of land that contains a flood levee, where the land is held or owned by a local authority or other local governing body or statutory public body (other than an applicable authority as defined in section 39A of the *Local Government Act 1993*).
- (2) However, for the purposes of subsection (1), if any part of land is not used for the purposes of a flood levee, the Commissioner is to apportion the land value of the land between exempt land and general land, for which purpose –
 - (a) the apportioned assessed land value in respect of exempt land is to be determined by multiplying

*No. 74 of 2000

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Part 5 – Land Tax Act 2000 Amended

the assessed land value of the land by the proportion of the land used for the purposes of a flood levee; and

- (b) the apportioned assessed land value in respect of general land is to be the assessed land value of the land less the apportioned assessed land value in respect of exempt land calculated under paragraph (a).

- (3) In this section –

flood levee means –

- (a) an improvement of any type that is designed and used to regulate water levels for the purposes of flood protection; and
- (b) a naturally occurring ridge or wall that regulates water levels.

40. Section 37B inserted

After section 37A of the Principal Act, the following section is inserted in Part 3:

37B. Extension of classification in case of natural disasters, &c.

- (1) Where land that is classified as principal residence land is affected by flood, fire or other similar disaster so that the land is not suitable to be occupied as principal residence land, the owner of the land may apply to the Commissioner of State Revenue to extend the classification of that land as principal residence land for a period of up to 2 years, notwithstanding that the land is unsuitable for use as principal residence land.
- (2) If an extension is granted under subsection (1), the owner of the principal residence land is not entitled to have any other land classified as principal residence land during the period of the extension.
- (3) Where land that is classified as primary production land is affected by flood, fire or other similar disaster so that the land is not suitable to be used as primary production land, the owner of the land may apply to the Commissioner of State Revenue to extend the classification of that land as primary production land for a period of up to 2 years, notwithstanding that the land is unsuitable for use as primary production land.

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Part 5 – Land Tax Act 2000 Amended

- (4) The Commissioner of State Revenue is not to extend the classification of land under this section unless satisfied that the flood, fire or other similar disaster was outside the control of the owner of the land.

**PART 6 – TAXATION ADMINISTRATION ACT 1997
AMENDED**

41. Principal Act

In this Part, the *Taxation Administration Act 1997** is referred to as the Principal Act.

42. Section 38 substituted

Section 38 of the Principal Act is repealed and the following section is substituted:

38. Remission of interest

- (1) The Commissioner, in any circumstances the Commissioner considers appropriate, may remit interest payable by a taxpayer by any amount.
- (2) If the Commissioner remits any interest under this section, he or she may, at any time, reimpose all or part of the interest in any circumstances that the Commissioner considers appropriate.

43. Section 45 substituted

Section 45 of the Principal Act is repealed and the following section is substituted:

*No. 74 of 1997

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s. 43

Part 6 – Taxation Administration Act 1997 Amended

45. Remission of penalty tax

- (1) The Commissioner, in any circumstances the Commissioner considers appropriate, may remit penalty tax by any amount.
- (2) If the Commissioner remits any penalty tax under this section, he or she may, at any time, reimpose all or part of the penalty tax in any circumstances that the Commissioner considers appropriate.

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Part 7 – Repeal of Act

s. 44

PART 7 – REPEAL OF ACT

44. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.