

TASMANIA

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2011

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**TAXATION AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2011**

*(Brought in by the Treasurer, the Honourable Larissa Tahireh
Giddings)*

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
*tPayroll Tax Act 2008***

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 2011*.

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 5 is taken to have commenced on 1 July 2010.

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Part 2 – Duties Act 2001 Amended

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 16 amended (No double duty)

Section 16 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) If a dutiable transaction is effected by more than one instrument, one instrument is to be stamped with the duty payable on the dutiable transaction and each other instrument is to be stamped with nil duty payable.

5. Section 36A amended (Definitions)

Section 36A(1) of the Principal Act is amended by inserting after the definition of “consideration” the following definition:

“excluded costs” means –

- (a) legal costs or other fees or charges, including reasonable

*No. 15 of 2001

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Part 2 – Duties Act 2001 Amended

s. 5

selling agents' fees and any statutory fees or charges; and

- (b) survey or valuation payments; and
- (c) GST other than in circumstances where an input tax credit or reduced input tax credit is available; and
- (d) any other costs that, in the Commissioner's opinion, were reasonably incurred –
 - (i) if the subsequent purchaser obtained the transfer right from the first purchaser, by the first purchaser as part of the sale contract; or
 - (ii) if the subsequent purchaser obtained the transfer right from another subsequent purchaser, by that other subsequent purchaser or an associate of that other subsequent purchaser in order for that other subsequent purchaser to obtain a transfer right;

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Part 2 – Duties Act 2001 Amended

6. Section 36B amended (Application of Division)

Section 36B(4) of the Principal Act is amended by inserting “, other than reimbursement of excluded costs,” after “obtain the transfer right ” in the definition of “additional consideration”.

7. Section 36D amended (Dutiable value of transactions)

Section 36D of the Principal Act is amended as follows:

- (a) by inserting in subsection (2)(a) “, other than excluded costs” after “transaction”;
- (b) by inserting the following subsection after subsection (2):
 - (3) If a subsequent purchaser has obtained a transfer right in the circumstances referred to in section 36A(2), the value of the subsequent transaction for the purposes of subsection (2)(b) is to be calculated only to the extent of the transfer right obtained by the subsequent purchaser under that subsequent transaction.

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8. Section 56 amended (Exemptions – break-down of marriages)

Section 56 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(4) In this section –

“child of the marriage” includes –

- (a) a child of either or both of the parties to the marriage; and
- (b) a trustee of such a child.

9. Section 56A amended (Exemptions – break-down of de facto relationships)

Section 56A of the Principal Act is amended by inserting after subsection (3) the following subsection:

(4) In this section –

“child of the relationship” includes –

- (a) a child of either or both of the parties to the relationship; and
- (b) a trustee of such a child.

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Part 2 – Duties Act 2001 Amended

10. Section 57 amended (Exemptions – personal relationships)

Section 57 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “partners” second occurring and substituting “relationship”;
- (b) by inserting the following subsection after subsection (2):

(2A) If –

- (a) *ad valorem* duty was paid on a transfer, or agreement for the sale or transfer, of relationship property to the parties to a personal relationship or to either of them, or to a child of the relationship who is under the age of 18; and
- (b) the transfer or agreement for the sale or transfer of relationship property is effected by or in accordance with –
 - (i) a document registered or approved under

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Part 2 – Duties Act 2001 Amended

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the *Relationships Act 2003*; or

(ii) an order of the court under that Act; or

(iii) a prescribed agreement; or

(iv) a purchase, at public auction, of property that, immediately before the auction, was relationship property, where the public auction is held to comply with any such document, prescribed agreement or order; and

(c) the Commissioner is satisfied that the personal relationship has been terminated –

the Commissioner must reassess the transfer or agreement and refund the duty paid.

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Part 2 – Duties Act 2001 Amended

- (c) by inserting the following definition before the definition of “prescribed agreement” in subsection (3):

“child of the relationship” means –

- (a) a child of either or both of the parties to the relationship; and
- (b) a trustee of such a child;

11. Section 72 amended (Exemptions)

Section 72 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) Parties to a personal relationship or either of them or a child of the relationship under the age of 18 years are entitled to a refund of duty paid on a relevant acquisition where –
- (a) *ad valorem* duty was paid on the relevant acquisition; and
 - (b) the acquisition was pursuant to –
 - (i) a document registered or approved under the *Relationships Act 2003*;
or

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Part 2 – Duties Act 2001 Amended

s. 11

- (ii) an order of the court under that Act; or
 - (iii) a prescribed agreement; and
- (c) the Commissioner is satisfied that the personal relationship has been terminated.
- (5) In this section –

“child of the marriage” includes –

- (a) a child of either or both of the parties to the marriage; and
- (b) a trustee of such a child;

“child of the relationship” means –

- (a) a child of either or both of the parties to the relationship; and
- (b) a trustee of such a child;

“prescribed agreement” means an agreement that is –

- (a) a personal relationship agreement or separation agreement within the meaning of the *Relationships Act 2003*; and

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s. 11

Part 2 – Duties Act 2001 Amended

- (b) in accordance with paragraphs (b), (c), (d) and (e) of section 62(1) of the *Relationships Act 2003*.

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

12. Principal Act

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

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

Section 12 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) An applicant must retain his or her relevant interest in the land to which the application relates until the residence requirement has been satisfied.

14. Section 18 amended (Amount of grant)

Section 18 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) \$7 000.

Note: Where the consideration is zero, a grant is not payable.

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Part 3 – First Home Owner Grant Act 2000 Amended

15. Section 20 amended (Payment in anticipation of compliance with residence requirement)

Section 20 of the Principal Act is amended as follows:

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

(3A) If a first home owner grant is paid in anticipation of compliance with the residence requirement and an applicant ceases to retain his or her relevant interest in the land before satisfying the residence requirement, the applicant must, within 14 days after ceasing to retain his or her relevant interest –

(a) give written notice of that fact to the Commissioner;
and

(b) repay the amount of the grant –

unless the Commissioner has exempted the applicant from the residence requirement in accordance with section 12(2).

(b) by omitting from subsection (4) “the condition” and substituting “a condition”;

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Part 3 – First Home Owner Grant Act 2000 Amended

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- (c) by inserting in subsection (4) “or subsection (3A)” after “subsection (2)”.

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s. 16

Part 4 – Land Tax Act 2000 Amended

PART 4 – LAND TAX ACT 2000 AMENDED

16. Principal Act

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

17. Section 6A amended (Shack land)

Section 6A(4) of the Principal Act is amended by omitting paragraphs (c) and (d) and substituting the following paragraph:

- (c) the owner of the land does not own, or if the owner has a spouse both the owner and the spouse do not own, in whole or in part (whether separately, together or with some other person) other land that has been determined by the Commissioner to be shack land.

18. Section 8 amended (General land)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “land.” and substituting “land; or”;

*No. 74 of 2000

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Part 4 – Land Tax Act 2000 Amended

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(b) by inserting the following paragraph after paragraph (b):

(c) shack land.

19. Section 24 amended (Aggregate land value)

Section 24(1A) of the Principal Act is amended as follows:

- (a) by omitting “3” and substituting “4”;
- (b) by inserting “, shack land” after “production land”.

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Part 5 – Land Tax Act 2000 Further Amended

PART 5 – LAND TAX ACT 2000 FURTHER AMENDED

20. Principal Act

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

21. Section 6A amended (Shack land)

Section 6A(4)(a) of the Principal Act is amended by inserting “or in another State or a Territory of the Commonwealth” after “State”.

*No. 74 of 2000

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Part 6 – Payroll Tax Act 2008 Amended

s. 22

PART 6 – PAYROLL TAX ACT 2008 AMENDED

22. Principal Act

In this Part, the *Payroll Tax Act 2008** is referred to as the Principal Act.

23. Section 26 amended (Place where wages are payable)

Section 26(2) of the Principal Act is amended by omitting the note and substituting the following note:

Note: The place where wages are paid or payable is sometimes relevant to determining whether the wages are liable to payroll tax under this Act. See section 11.

24. Section 72 amended (Groups of commonly controlled businesses)

Section 72(2)(g) of the Principal Act is amended by omitting “if” and substituting “is”.

*No. 16 of 2008

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Part 7 – Repeal of Act

PART 7 – REPEAL OF ACT

25. Repeal

This Act is repealed on the ninetieth day from the day on which it commences.