

TASMANIA

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**TAXATION AND RELATED LEGISLATION  
(MISCELLANEOUS AMENDMENTS) BILL (No. 2)  
2008**

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**TAXATION AND RELATED LEGISLATION  
(MISCELLANEOUS AMENDMENTS) BILL (No. 2)  
2008**

*(Brought in by the Premier, the Honourable David John  
Bartlett)*

**A BILL FOR**

**An Act to amend the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Land Tax Act 2000*, the *Land Titles Act 1980*, the *Payroll Tax Act 2008*, the *Strata Titles Act 1998* 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 (No. 2) 2008*.

**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

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- (2) Parts 3 and 7 are taken to have commenced on 1 July 2008.

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Part 2 – Duties Act 2001 Amended

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**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 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by omitting “parent and child, brothers, sisters, or brother and sister” from paragraph (a)(ii) of the definition of “related person” and substituting “grandparent and grandchild, a parent and child, brothers, sisters, or brother and sister”;
- (b) by omitting the definition of “trading undertaking”.

**5. Section 4 inserted**

After section 3 of the Principal Act, the following section is inserted in Part 2:

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\*No. 15 of 2001

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Part 2 – Duties Act 2001 Amended

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**4. Meaning of child for purpose of definition of “related person”**

For the purpose of the definition of “related person” in section 3, “child” includes a step-child and an adopted child.

**6. Section 6 amended (Imposition of duty on certain transactions concerning dutiable property)**

Section 6(1)(b) of the Principal Act is amended by omitting subparagraph (v) and substituting the following subparagraph:

- (v) an application for the amendment of a strata plan, made in accordance with Division 6 of Part 2 of the *Strata Titles Act 1998*; and

**7. Section 9 amended (What is dutiable property?)**

Section 9 of the Principal Act is amended by omitting subsection (2).

**8. Section 16 amended (No double duty)**

Section 16(4)(d)(i) of the Principal Act is amended by omitting “the” first occurring and substituting “a”.

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**9. Section 31 amended (Interim payment of duty)**

Section 31 of the Principal Act is amended as follows:

(a) by omitting subsection (3) and substituting the following subsection:

(3) The person liable to pay duty is to obtain and provide to the Commissioner, within 3 months of the date of the interim assessment of duty, evidence acceptable to the Commissioner of the dutiable value of the dutiable property and –

(a) is to resubmit the written instrument or written statement to the Commissioner for further assessment; and

(b) the Commissioner must reassess the duty payable on the dutiable transaction.

(b) by inserting the following subsections after subsection (6):

(7) The Commissioner may extend the time or period for ascertaining the dutiable value and resubmitting a transaction for further assessment.

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Part 2 – Duties Act 2001 Amended

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- (8) A tax default is taken to have occurred for the purposes of the *Taxation Administration Act 1997* if the person liable to pay duty fails to obtain evidence acceptable to the Commissioner of the dutiable value of the dutiable property and resubmit the transaction to the Commissioner for further assessment within 3 months of the date of the interim assessment of duty, subject to subsection (7).

**10. Section 35 amended (Vesting order)**

Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A” and substituting “Subject to subsection (4), a”;
- (b) by omitting from subsection (1) “were the capital value of the land within the meaning of the *Valuation of Land Act 2001*” and substituting “was the value calculated by multiplying the capital value of the real property as determined under the *Valuation of Land Act 2001* by an amount representing the latest estimated trend in capital values as advised by the Valuer-General before the

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date of the dutiable transaction relating to that property”;

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

(4) For the purposes of subsection (1), if, before land is vested in the person applying for the vesting order, the applicant has made improvements to the land, the dutiable value of the land is to be determined as if those improvements had not been made.

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

Section 39 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(a)(i) “money” and substituting “consideration”;

(b) by omitting from subsection (1)(a)(ii) “money” and substituting “consideration”;

(c) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:

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Part 2 – Duties Act 2001 Amended

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- (b) a transfer of dutiable property from an apparent purchaser to the real purchaser if –
  - (i) the dutiable property is property, or part of property, vested in the apparent purchaser upon trust for the real purchaser; and
  - (ii) the real purchaser provided the consideration for the purchase of the dutiable property and for any improvements made to the dutiable property after the purchase.
- (d) by omitting subsection (2) and substituting the following subsections:
  - (2) For the purposes of subsection (1), consideration provided by a person other than the real purchaser is taken to have been provided by the real purchaser if the Commissioner is satisfied that the consideration was provided as a loan and has been or will be repaid by the real purchaser.

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- (3) This section applies whether or not there has been a change in the legal description of the dutiable property between the purchase of the property by the apparent purchaser and the transfer to the real purchaser.

**Note:** For example, if the dutiable property is land, this section continues to apply if there is a change in the legal description of the dutiable property as a consequence of the subdivision of the land.

- (4) In this section –

“**purchase**” includes an allotment.

**12. Section 199 amended (Exemptions)**

Section 199(1)(f)(i) of the Principal Act is amended by inserting “or deregistration” after “winding-up”.

**13. Section 219 amended (Duplicates or counterparts)**

Section 219 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) If the proper duty has not been paid on the instrument referred to in subsection (1), the person liable to pay

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Part 2 – Duties Act 2001 Amended

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the duty is the person liable to pay the  
duty on that instrument.

**14. Section 220 amended (Replicas)**

Section 220 of the Principal Act is amended by  
omitting subsection (1) and substituting the  
following subsection:

(1) Duty of \$20 is chargeable on a replica.

**15. Section 247 amended (Valuation of property)**

Section 247(3) of the Principal Act is amended  
by inserting “or if a property value is not  
provided as requested” after “declared”.

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**PART 3 – DUTIES ACT 2001 FURTHER AMENDED**

**16. Principal Act**

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

**17. Section 9 amended (What is dutiable property?)**

Section 9(1) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (i) a partnership interest, being an interest in a partnership that has partnership property that is dutiable property elsewhere referred to in this section;

**18. Section 25 inserted**

After section 23 of the Principal Act, the following section is inserted in Part 2:

**25. Partnership interests**

- (1) The dutiable value of a partnership interest is to be determined in accordance with the following formula:

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\*No. 15 of 2001

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$$DV = A \times \frac{X}{Y}$$

where –

“**DV**” is the dutiable value;

“**A**” is the value of the partnership interest, or so much of the consideration for the dutiable transaction as relates to the partnership interest, whichever is the greater;

“**X**” is the unencumbered value of all dutiable property of the partnership;

“**Y**” is the unencumbered value of all assets of the partnership.

- (2) If the property of a partnership includes a land-related asset and an interest in the land-related asset is transferred as a result of the transfer of a partnership interest, the unencumbered value of all dutiable property of the partnership (“**X**” in subsection (1)) is to be reduced by the unencumbered value of the land-related asset, but only if ad valorem duty has been paid or is payable on the transfer of the interest in the land-related asset or if the transfer of the interest in the land-related asset is exempt from duty.

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- (3) For the purposes of subsection (2), each of the following items of dutiable property is a land-related asset:
- (a) land in Tasmania;
  - (b) a land use entitlement;
  - (c) an interest in an item of dutiable property referred to in paragraph (a) or (b).

**19. Section 53 amended (Exemptions relating to various transactions)**

Section 53 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b):
  - (c) a transfer of dutiable property as specified in section 9(1)(i) or (j) but does not include land, made between persons who are relatives if the relative is –
    - (i) a child or grandchild; or
    - (ii) a parent or grandparent;  
or
    - (iii) a brother or sister; or

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Part 3 – Duties Act 2001 Further Amended

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- (iv) a spouse or caring partner;  
or
  - (v) a spouse or caring partner  
of a child, grandchild,  
brother or sister;
- (b) by omitting paragraph (g).

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**PART 4 – FIRST HOME OWNER GRANT ACT 2000  
AMENDED**

**20. Principal Act**

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

**21. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended by omitting the definition of “authorised officer” and substituting the following definition:

“**authorised officer**” means a person appointed as an authorised officer under section 31A;

**22. Section 23 substituted**

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

**23. Power to correct decision**

- (1) If the Commissioner decides an application, and is later satisfied (independently of an objection under this Act) that –

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\*No. 19 of 2000

*Taxation and Related Legislation (Miscellaneous Amendments)*  
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Part 4 – First Home Owner Grant Act 2000 Amended

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- (a) the decision is incorrect; or
- (b) the decision was made on the basis of, or having regard to, false or misleading information provided by the applicant or a third party; or
- (c) the applicant failed to provide information that was relevant to the making of the decision on the application, which they ought reasonably to have provided; or
- (d) the applicant failed to comply with any condition(s) upon which the grant was made, or failed to comply with or meet any relevant eligibility criteria –

the Commissioner may vary or reverse the decision.

- (2) A decision cannot be varied or reversed under this section more than 5 years after it was made.

**23. Section 25 amended (Objections)**

Section 25 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) An applicant who is dissatisfied with the Commissioner's decision –

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Part 4 – First Home Owner Grant Act 2000 Amended

s. 24

- (a) on the application; or
- (b) to vary or reverse a decision in accordance with section 23; or
- (c) to impose a penalty under section 38 –

may lodge a written notice of objection with the Commissioner.

**24. Section 31A inserted**

After section 31 of the Principal Act, the following section is inserted in Division 1:

**31A. Authorised officers**

The Commissioner may appoint persons as authorised officers for the purposes of this Act.

**25. Section 38 amended (Power to require repayment and impose penalty)**

Section 38(1)(b) of the Principal Act is amended as follows:

- (a) by inserting “varies or” after “Commissioner”;
- (b) by omitting “paid for any other reason” and substituting “paid in accordance with section 23”.

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Part 4 – First Home Owner Grant Act 2000 Amended

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**26. Section 39 amended (Power to recover amount paid in error, &c.)**

Section 39 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

- (4) The Commissioner may recover as a debt due to the Crown –
  - (a) an amount to which this section applies; and
  - (b) any reasonable costs and expenses incurred by the Commissioner in connection with the recovery, or attempted recovery, by any lawful means of the amount referred to in paragraph (a).

**27. Section 39A inserted**

After section 39 of the Principal Act, the following section is inserted in Part 4:

**39A. Recovery of grants and costs from third parties**

- (1) The Commissioner, by notice in writing, may require any of the following persons instead of the applicant (or former applicant) for a first home owner grant to pay any amount due under section 39:

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Part 4 – First Home Owner Grant Act 2000 Amended

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- (a) a person from whom any money is due or accruing or may become due to the applicant;
  - (b) a person who holds or may subsequently hold money for or on account of the applicant;
  - (c) a person who holds or may subsequently hold money on account of some other person for payment to the applicant;
  - (d) a person who has authority from some other person to pay money to the applicant.
- (2) A copy of the notice is to be served on the applicant.
- (3) The amount of money required to be paid by a person under subsection (1) is –
- (a) if the amount of the money held or due or authorised to be paid does not exceed the amount payable by the applicant to the Commissioner, all the money; or
  - (b) if the amount of the money exceeds the amount payable, sufficient money to pay the amount payable.

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Part 4 – First Home Owner Grant Act 2000 Amended

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(4) A person required to pay money under this section must pay the money to the Commissioner –

- (a) on receipt of the notice; or
- (b) when the money is held by the person –

whichever is the later, or within any period specified by the Commissioner.

(5) A person subject to a requirement of the Commissioner under this section must comply with the requirement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) in any other case, a fine not exceeding 20 penalty units.
- (6) If the whole or a part of an amount is paid by another person –
- (a) the Commissioner is to promptly notify the person on whom the notice was served of the payment; and
  - (b) the notice is taken to be amended accordingly.

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*Bill (No. 2) 2008*  
*Act No. of*

Part 5 – Land Tax Act 2000 Amended

s. 28

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**PART 5 – LAND TAX ACT 2000 AMENDED**

**28. Principal Act**

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

**29. Section 6 amended (Principal residence land)**

Section 6 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “least” and substituting “least a”;
- (b) by omitting from subsection (2)(c) “land.” and substituting “land; and”;
- (c) by inserting the following paragraph after paragraph (c) in subsection (2):
  - (d) the owner of at least a 50% interest in the principal residence land is also the owner of at least a 50% interest in the adjoining land.

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\*No. 74 of 2000

*Taxation and Related Legislation (Miscellaneous Amendments)*  
*Bill (No. 2) 2008*  
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s. 30

Part 6 – Land Titles Act 1980 Amended

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**PART 6 – LAND TITLES ACT 1980 AMENDED**

**30. Principal Act**

In this Part, the *Land Titles Act 1980*\* is referred to as the Principal Act.

**31. Section 170B amended (Duty of Recorder to transmit notices)**

Section 170B of the Principal Act is amended as follows:

- (a) by omitting “section 13A of the *Land and Income Taxation Act 1910*,”;
- (b) by omitting “Taxes” and substituting “State Revenue”.

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\*No. 19 of 1980

*Taxation and Related Legislation (Miscellaneous Amendments)*  
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*Act No. of*

Part 7 – Payroll Tax Act 2008 Amended

s. 32

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**PART 7 – PAYROLL TAX ACT 2008 AMENDED**

**32. Principal Act**

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

**33. Schedule 2 amended (Tasmania-Specific Provisions)**

Clause 5 of Division 1 of Part 3 of Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting “employed –” and substituting “employed for the purposes of administering or participating in a group apprenticeship or group training scheme by a non-profit group training organisation that is registered with the Tasmanian Training Agreements Committee.”;
- (b) by omitting paragraphs (a) and (b).

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\*No. 16 of 2008

*Taxation and Related Legislation (Miscellaneous Amendments)*  
*Bill (No. 2) 2008*  
*Act No. of*

s. 34

Part 8 – Strata Titles Act 1998 Amended

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**PART 8 – STRATA TITLES ACT 1998 AMENDED**

**34. Principal Act**

In this Part, the *Strata Titles Act 1998*\* is referred to as the Principal Act.

**35. Section 21 repealed**

Section 21 of the Principal Act is repealed.

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\*No. 17 of 1998

*Taxation and Related Legislation (Miscellaneous Amendments)*  
*Bill (No. 2) 2008*  
*Act No. of*

Part 9 – Taxation Administration Act 1997 Amended

s. 36

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**PART 9 – TAXATION ADMINISTRATION ACT 1997  
AMENDED**

**36. Principal Act**

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

**37. Section 29A inserted**

After section 29 of the Principal Act, the following section is inserted in Part 4:

**29A. Payment of interest**

- (1) In addition to the amount of an overpayment of tax refunded under section 29, the Commissioner is required to pay interest on the amount of the overpayment, calculated on a daily basis from whichever of the following is the later until the date of the refund:
  - (a) the date of payment of the amount overpaid;
  - (b) the date on which the Commissioner made the assessment to which the overpayment relates.

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\*No. 74 of 1997

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Part 9 – Taxation Administration Act 1997 Amended

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- (2) Interest is to be calculated at the rate specified as the market rate component in section 35(2).
- (3) The Commissioner is not required to pay interest under subsection (1) on an amount refunded unless the amount of interest exceeds \$20.