

TASMANIA

**TAXATION LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2012**

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**TAXATION LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2012**

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

A BILL FOR

An Act to amend the *Duties Act 2001*, the *Land Tax Act 2000*, the *Payroll Tax Act 2008* 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 Legislation (Miscellaneous Amendments) Act 2012*.

2. Commencement

- (1) Except as provided by this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Part 4 is taken to have commenced on 1 July 2012.

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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 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of *de facto relationship property* and substituting the following definition:

de facto relationship property
means –

- (a) property of the parties to a de facto relationship or of either of them; or
- (b) property held by a related person of the parties to a de facto relationship or of either of them; or
- (c) any estate or interest in the property referred to in paragraph (a) or (b) of this definition;

*No. 15 of 2001

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- (b) by omitting the definition of *matrimonial property* and substituting the following definition:

matrimonial property means –

- (a) property of the parties to a marriage or of either of them; or
- (b) property held by a related person of the parties to a marriage or of either of them; or
- (c) any estate or interest in the property referred to in paragraph (a) or (b) of this definition;

- (c) by omitting the definition of *relationship property* and substituting the following definition:

relationship property, in relation to a personal relationship, means –

- (a) property of the parties to the personal relationship or of either of them; or
- (b) property held by a related person of the parties to the personal relationship or of either of them; or

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- (c) any estate or interest in the property referred to in paragraph (a) or (b) of this definition;

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

Section 53 of the Principal Act is amended as follows:

- (a) by omitting paragraph (d) and substituting the following paragraph:

- (d) a lease, except in the case of a grant, transfer or surrender of a lease where a premium of more than \$1 300 is paid for the grant, transfer or surrender;

- (b) by omitting paragraph (e).

6. Section 57A inserted

After section 57 of the Principal Act, the following section is inserted in Part 6:

57A. Partial exemptions

- (1) No duty is chargeable under this Chapter on a transfer to a council of real property that is –
 - (a) a public road; or

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- (b) a park or garden used for recreational purposes for which the council will normally provide free public access.
- (2) However, if any part of the real property so transferred is not to be used as –
- (a) a public road; or
 - (b) a park or garden for recreational purposes for which the council will normally provide free public access –

the dutiable value of the transfer is to be reduced by the value of the real property, inclusive of capital improvements, used for the purposes referred to in paragraphs (a) and (b).

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Part 3 – Land Tax Act 2000 Amended

PART 3 – LAND TAX ACT 2000 AMENDED

7. Principal Act

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

8. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *general land* the following definition:

Government Business Enterprise has the same meaning as in the *Government Business Enterprises Act 1995*;

9. Section 17 amended (Exempt Crown and public lands)

Section 17 of the Principal Act is amended as follows:

- (a) by omitting paragraph (e) from subsection (1);
- (b) by omitting from subsection (2)(a) “within the meaning of the *Government Business Enterprises Act 1995*”;
- (c) by omitting paragraph (b) from subsection (2);
- (d) by omitting subsection (3);

*No. 74 of 2000

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Part 3 – Land Tax Act 2000 Amended

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- (e) by omitting the definition of *Government Business Enterprise* from subsection (4).

10. Section 19 amended (Other exempt land)

Section 19 of the Principal Act is amended by omitting paragraph (d).

11. Sections 19A and 19B inserted

After section 19 of the Principal Act, the following sections are inserted in Division 2:

19A. Partially exempt land: conservation covenants

- (1) Land tax is not payable in respect of land –
- (a) that is subject to a conservation covenant; or
 - (b) in respect of which a conservation covenant has been entered into, where the conservation covenant has not been registered under the *Land Titles Act 1980*.
- (2) However, for the purposes of subsection (1), if the conservation covenant applies only to a part of the land, the Commissioner is to apportion the land value of the land between exempt land and general land, for which purpose –

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Part 3 – Land Tax Act 2000 Amended

- (a) the apportioned assessed land value in respect of exempt land is to be determined by multiplying the assessed land value of the land by the proportion of the land to which the conservation covenant applies; 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 as calculated under paragraph (a).

(3) In this section –

conservation covenant means –

- (a) a conservation covenant under Part 5 of the *Nature Conservation Act 2002*; or
- (b) a conservation covenant under a prescribed instrument.

19B. Partially exempt land: public parks and gardens

- (1) Land tax is not payable in respect of land that is a park or garden, where the park or garden is –
 - (a) held or owned by a local authority or other local governing or statutory public body (other

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than an applicable authority as defined in section 39A of the *Local Government Act 1993*); and

(b) in public recreational use.

(2) However, for the purposes of subsection (1), if any part of land is not in public recreational use, 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 the assessed land value of the land by the proportion of the land in public recreational use; 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) For the purposes of this section –

(a) a park or garden held or owned as provided in subsection (1) is taken to be in public recreational use if –

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Part 3 – Land Tax Act 2000 Amended

- (i) the park or garden is used for recreational purposes; and
 - (ii) the relevant local authority or other local governing or statutory public body normally provides the public with free access to the park or garden; and
 - (b) a park or garden held or owned by a local authority or other local governing or statutory public body is taken not to include any premises that are built, and used, for the specific purpose of conducting sporting activities; and
 - (c) a Government Business Enterprise is taken not to be a statutory public body.
- (4) In this section –
- park or garden* includes part of a park or garden.

PART 4 – LAND TAX ACT 2000 AMENDED

12. Principal Act

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

13. Section 3A amended (Owner of land)

Section 3A of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from the definition of *owner* in subsection (1) and substituting the following paragraph:
 - (a) the person in whom the estate in fee simple is vested; or
- (b) by inserting the following subsection after subsection (1):
 - (1A) For the purposes of subsection (1), the person in whom the estate in fee simple is vested is, unless the Commissioner on reasonable grounds determines otherwise, the person who appears, from a folio of the Register kept under section 33 of the *Land Titles Act 1980*, to be the owner of that estate.

*No. 74 of 2000

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Part 5 – Payroll Tax Act 2008 Amended

PART 5 – PAYROLL TAX ACT 2008 AMENDED

14. Principal Act

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

15. Section 53 amended (Maternity and adoption leave)

Section 53 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

- (4) In subsection (3) –
- (a) a reference to 14 weeks maternity leave or 14 weeks adoption leave includes a reference to an equivalent period of leave at a reduced rate of pay; and
 - (b) a reference to wages paid or payable in respect of a period of leave is a reference to the total wages that would normally have been paid or payable for that period of leave.

Note For a part-time employee, the exemption may apply to wages paid or payable for maternity leave or adoption leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.

*No. 16 of 2008

16. Schedule 2 amended (Tasmania-Specific Provisions)

Part 4 of Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting from the heading “**GOVERNMENT BODIES – SPECIAL PROVISIONS**” and substituting “**GOVERNMENT ENTITIES – SPECIAL PROVISIONS**”;
- (b) by inserting the following definitions after the definition of *Government Business Enterprise* in clause 7:

Government entity means –

- (a) an Agency; or
- (b) a State authority; or
- (c) the Office of the Governor; or
- (d) the House of Assembly; or
- (e) the Legislative-Council; or
- (f) the Legislature-General; or
- (g) a prescribed entity –

but does not mean a Government Business Enterprise or State-owned company;

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Part 5 – Payroll Tax Act 2008 Amended

Legislature-General means the
Legislature-General as referred to
in an Appropriation Act;

(c) by inserting the following clause after
clause 7:

7A. Exempt Government entities

(1) Wages are exempt wages if they
are paid by a Government entity
that the Minister, by notice
published in the *Gazette*, declares
to be an exempt Government
entity for this Act.

(2) A notice under subclause (1) is
not a statutory rule for the
purposes of the *Rules Publication*
Act 1953.

(3) In this clause –

Government entity includes a
part of a Government
entity.

(d) by omitting clause 9.

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

17. Principal Act

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

18. Section 85 amended (Suspension of determination)

Section 85 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “at the request of” and substituting “by written notice served on”;
- (b) by inserting the following subsections after subsection (3):
 - (4) The power of the Commissioner under subsection (3) may be exercised –
 - (a) on the Commissioner’s own motion; or
 - (b) at the request of the objector.
 - (5) The power of the Commissioner to suspend the determination of an objection under subsection (1) or (3) includes a power,

*No. 74 of 1997

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Part 6 – Taxation Administration Act 1997 Amended

exercisable in a like manner, for the Commissioner to revoke the suspension at any time if he or she considers there are reasonable grounds to do so.

19. Section 118A amended (Administrative fee)

Section 118A of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) The Commissioner, in his or her absolute discretion, may waive or, if applicable, refund all or any part of the prescribed fee.

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Part 7 – Miscellaneous

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PART 7 – MISCELLANEOUS

20. Repeal of Act

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