

TASMANIA

LAND TAX AMENDMENT (FOREIGN INVESTORS) BILL 2022

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LAND TAX AMENDMENT (FOREIGN INVESTORS) BILL 2022

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.

SHANE DONNELLY, *Clerk of the House*
24 May 2022

(Brought in by the Treasurer, the Honourable Michael Darrel Joseph Ferguson)

A BILL FOR

An Act to amend the *Land Tax Act 2000*

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Land Tax Amendment (Foreign Investors) Act 2022*.

2. Commencement

This Act commences on 1 July 2022.

3. Principal Act

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

*No. 74 of 2000

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4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting the definition of *assessed land value* and substituting the following definition:

assessed land value means –

- (a) in relation to the value of land for the purposes of determining the amount of land tax, other than foreign investor land tax, that is payable – the value as calculated under section 23; or
- (b) in relation to the value of land for the purposes of determining the amount, of land tax that is foreign investor land tax, that is payable – the value of the land as calculated under section 16A(2)(b) or section 16B, as applicable;

5. Section 10 amended (Liability for land tax)

Section 10 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) For the avoidance of doubt, land tax payable under this section includes any land tax that is imposed under Division 1A.

6. Section 12 amended (Assessment of land tax)

Section 12(2) of the Principal Act is amended by omitting “for reassessment of” and substituting “to reassess”.

7. Section 14 amended (Joint owners)

Section 14 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) For the purposes of Division 1A and the determination of foreign investor land tax within the meaning of that Division, subsection (2)(a) does not apply.

8. Part 2, Division 1A inserted

After section 16 of the Principal Act, the following Division is inserted in Part 2:

Division 1A – Foreign investor land tax

16A. Interpretation

- (1) In this Division –

foreign corporation has the same meaning as in the *Duties Act 2001*;

foreign investor land tax means the component of land tax that is imposed under this Division;

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foreign natural person has the same meaning as in the *Duties Act 2001*;

foreign person has the same meaning as in the *Duties Act 2001*;

foreign trust has the same meaning as in the *Duties Act 2001*;

foreign trustee has the same meaning as in the *Duties Act 2001*.

(2) For the purposes of this Division –

- (a) a reference to general land includes a reference to any part of land, to which part of land the Commissioner has apportioned, under Division 4, the land value as general land; and
- (b) the value of the part of land is, despite section 16B, the value so apportioned under Division 4.

16B. How assessment or reassessment of land to be made

- (1) An assessment, or reassessment, of the liability for foreign investor land tax is to be made in respect of each folio of the Register kept under section 33 of the *Land Titles Act 1980* in respect of the land to which the assessment or reassessment relates.

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(2) If –

- (a) there is a folio of the Register kept under section 33 of the *Land Titles Act 1980* in respect of land to which an assessment or reassessment relates; and
- (b) a determination of the value of the land has been made under the *Valuation of Land Act 2001* –

the assessed land value of the land is the value specified in the determination on applying any relevant adjustment factor determined by the Valuer-General under Part 9A of that Act.

(3) If –

- (a) an area of land (the ***initial area of land***) has been divided into areas of land (the ***subsequent areas***) consisting of –
 - (i) lots, or lots and common property, on a strata plan within the meaning of the *Strata Titles Act 1998*; or
 - (ii) lots created after land has been subdivided within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or

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(iii) areas of land that are distinguishable from each other; and

(b) folios of the Register kept under section 33 of the *Land Titles Act 1980* have not been, before 1 July of the financial year to which the assessment, or reassessment relates, issued in respect of the subsequent areas of land –

an assessment, or reassessment, in relation to the initial area of land, of the liability for foreign investor land tax is to be made in respect of each of the subsequent areas of land as if, for each of the subsequent areas, a folio of the Register kept under section 33 of the *Land Titles Act 1980* had been issued in respect of the subsequent area of land.

(4) Subsection (5) applies in relation to an area of land (referred to in this subsection and subsection (5) as the ***relevant land***) if –

(a) a folio of the Register kept under section 33 of the *Land Titles Act 1980* has been issued, or is, under subsection (3), taken to have been issued, in relation to the relevant land; and

(b) a determination of the value of the relevant land has not been

made under the *Valuation of Land Act 2001*, except as part of a larger area of land (referred to in subsection (5) as ***the larger area of land***) to which one or more other folios of the Register kept under section 33 of the *Land Titles Act 1980* have been issued or are taken under subsection (3) to have been issued.

- (5) For the purposes of an assessment, or reassessment, of liability for foreign investor land tax, if this subsection applies in relation to relevant land, the value of the relevant land is to be determined by multiplying the determination of the value of the larger area of land made under the *Valuation of Land Act 2001* (including any relevant adjustment factor determined by the Valuer-General under Part 9A of that Act) by the proportion that the relevant land bears to the larger area of land.
- (6) Sections 23, 24 and 25 do not apply, for the purposes of this Division, in relation to the determination of the land value of land to which this section applies.

16C. Application of foreign investor land tax

- (1) Subject to this Division, an owner of land is liable to pay foreign investor land tax in respect of the land for a financial year

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if, at the commencement of the financial year –

(a) the land is general land –

- (i) that is vacant land on which a building may be lawfully constructed and occupied as a place of residence so that the land is capable of being lawfully used, solely or primarily, for residential purposes; or
- (ii) that is capable of being lawfully used solely, or primarily, for residential purposes; or
- (iii) that includes a building, or part of a building, which is being, or has begun to be, constructed, refurbished, renovated or extended, if the work, when completed, will result in the land being capable of being lawfully used solely, or primarily, for residential purposes; and

(b) one or more owners of the land are foreign persons –

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- (i) who acquired an interest in the land, as a result of a dutiable transaction under the *Duties Act 2001*, or by right of survivorship, on or after 1 July 2022; or
 - (ii) who became foreign persons, other than foreign natural persons, on or after 1 July 2022.
 - (2) For the purposes of this section, if –
 - (a) an owner of land is a foreign person who acquired an interest in land before 1 July 2022; and
 - (b) on or after 1 July 2022, the foreign person acquired a further interest in the land as a result of a dutiable transaction under the *Duties Act 2001* or by right of survivorship –

all of the foreign person's interest in the land is taken to have been acquired on or after 1 July 2022.
 - (3) If, at the commencement of a financial year, foreign investor land tax is payable in respect of land, this section applies only to the percentage of the land –
 - (a) in which a foreign person holds, at the commencement of that financial year, an interest that is

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acquired on or after 1 July 2022;
or

- (b) held by a foreign person (except a foreign natural person) who became a foreign person on or after 1 July 2022.
- (4) For the avoidance of doubt, an interest under subsection (3) includes an interest that the person is taken, by virtue of subsection (2), to have acquired on or after 1 July 2022.

16D. Non-application of foreign investor land tax

- (1) Section 16C does not apply to general land on which a building is being lawfully used solely, or primarily, as one of the following premises:
 - (a) a commercial establishment whose primary purpose is to offer short-term accommodation, or lodging, to persons for consideration;
 - (b) a hostel or boarding house;
 - (c) premises that are primarily used, to provide residential accommodation, by or on behalf of –

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- (i) a school, within the meaning of the *Education Act 2016*; or
 - (ii) TasTAFE, within the meaning of the *Education Act 2016*; or
 - (iii) an institution within the meaning of the *Higher Education Funding Act 1988* of the Commonwealth;
 - (d) a residential care service;
 - (e) a retirement village.
- (2) For the purposes of subsection (1), premises that are short stay premises, within the meaning of the *Short Stay Accommodation Act 2019*, are not a commercial establishment.

16E. Reassessment of land tax if trust is not foreign trust

- (1) For the purposes of determining whether foreign investor land tax is payable in respect of land for a financial year, a trust is not a foreign trust for the financial year if –
- (a) at the commencement of the financial year, the trust was a foreign trust; and

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- (b) under the terms of the trust deed, a trustee of the trust has a power or discretion as to the distribution of the capital of the trust estate to a person or a member of a class of persons; and
- (c) the trust deed for the trust is amended no later than 6 months after the date on which the notice of assessment, for land tax that includes an amount for foreign investor land tax, has been issued, under the *Taxation Administration Act 1997*, in respect of the land for the financial year; and
- (d) as a result of the amendment to the trust deed, the trust is not a foreign trust.

(2) If –

- (a) a trust is not a foreign trust in respect of a financial year by virtue of subsection (1); and
- (b) foreign investor land tax was payable in respect of the land held by a trustee on behalf of the trust in the financial year –

the trustee may apply to the Commissioner, in writing, to reassess the foreign investor land tax payable in respect of the land for the financial year.

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- (3) If the Commissioner receives an application under subsection (2) for the reassessment of the foreign investor land tax payable in respect of the land held by a trustee on behalf of the trust for a financial year, the Commissioner must –
- (a) reassess the foreign investor land tax payable for the financial year as if, at the commencement of the financial year, the trust was not a foreign trust; and
 - (b) refund any amount of foreign investor land tax, paid in respect of the land for the financial year, that is in excess of the amount of foreign investor land tax so reassessed.

16F. Determination as to whether person is foreign person or land is capable of certain use

- (1) For the purposes of this Division and for the avoidance of doubt, the Commissioner may make a determination that a person is a foreign person if the Commissioner is satisfied, on the basis of any information available to the Commissioner, that the person is a foreign person.
- (2) For the purposes of this Division, the Commissioner may make a determination that a person is a foreign

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person if the person has failed to provide to the Commissioner, within the period specified in a notice to the person under section 65 of the *Taxation Administration Act 1997* or any extended period that the Commissioner allows, information that the Commissioner requires in order to determine whether the person is a foreign person.

- (3) For the purposes of this Division, the Commissioner may make a determination that land is, or will be, capable of being lawfully used primarily for residential purposes if the Commissioner is satisfied, on reasonable grounds, that at least 50% of the land is, or will be, capable of being used for such a purpose, whether or not the land is, or will be, capable of use for another purpose.

16G. Determination that owner of land is not foreign person

- (1) An owner of land may apply to the Commissioner, in writing, for a determination under this section, in respect of a financial year, if –
- (a) the owner was a foreign person at the commencement of the financial year; and
 - (b) as a result of being a foreign person, the owner is liable to pay

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foreign investor land tax in
respect of the financial year.

- (2) After considering an application under subsection (1) in respect of a financial year, the Commissioner may –
- (a) determine that the applicant is not a foreign person, in respect of the financial year, for the purposes of this Act; or
 - (b) refuse to grant a determination under this section to the applicant.
- (3) If the Commissioner makes a determination under subsection (2)(a) that an applicant is not a foreign person, in respect of a financial year, for the purposes of this Act, the Commissioner must –
- (a) reassess the foreign investor land tax payable in respect of the land for the financial year as if, at the commencement of the financial year, the applicant was not a foreign person for the purposes of this Act; and
 - (b) refund any amount of foreign investor land tax paid by the person for the financial year that is in excess of the amount of foreign investor land tax so reassessed.

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- (4) A determination of the Commissioner under subsection (2) is a non-reviewable decision within the meaning of the *Taxation Administration Act 1997*.
- (5) If a determination under subsection (2)(a) was made as a result of an application containing, or the applicant providing, false or misleading information, the Commissioner may –
 - (a) revoke the determination; and
 - (b) require the applicant to pay the foreign investor land tax that is payable for the financial year to which the application relates.

16H. Commissioner may publish circumstances where owner of land is not foreign person

- (1) The Commissioner may publish, in a manner that is freely available to members of the public, circumstances in which the owner of land is not taken to be a foreign person for the purposes of this Act.
- (2) Circumstances published under subsection (1) are in force only while the circumstances remain so published.
- (3) An owner of land is not a foreign person for a financial year, for the purposes of this Act, if the circumstances, published under subsection (1), that are in force at

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the commencement of the financial year
apply in relation to the owner of land.

- (4) An owner of land may apply to the Commissioner, in writing, to reassess the foreign investor land tax paid in respect of a financial year if –
- (a) the owner has paid foreign investor land tax in respect of the financial year; and
 - (b) the circumstances, published under subsection (1), that are in force at the commencement of the financial year, apply in relation to the owner of land.
- (5) If the Commissioner receives an application under subsection (4) and the Commissioner is satisfied that the circumstances, published under subsection (1), that were in force at the commencement of the financial year, apply in relation to the applicant, the Commissioner must –
- (a) reassess the foreign investor land tax payable for the financial year as if, at the commencement of the financial year, the applicant was not a foreign person; and
 - (b) refund any amount of foreign investor land tax paid by the applicant for the financial year that is in excess of the amount of

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foreign investor land tax so
reassessed.

**16I. Reassessment of land tax for certain
developers of property**

(1) In this section –

occupancy permit has the same
meaning as in the *Building Act*
2016;

reassessment period, in relation to a
relevant dwelling, means the
period between –

- (a) the acquisition of the
land, on which the
dwelling is situated, by
the relevant person,
within the definition of
relevant dwelling, for that
dwelling; and
- (b) the issue of the occupancy
permit, in respect of the
dwelling, to that relevant
person;

relevant dwelling means a dwelling
where –

- (a) the dwelling is situated on
land, within Tasmania,
that is acquired by a
person (the *relevant*

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person) on or after
1 July 2022; and

- (b) on or after that date –
 - (i) the laying of the foundations of the dwelling occurred; or
 - (ii) if no foundations are to be laid in respect of the dwelling, an equivalent act determined by the Commissioner occurred in respect of the dwelling; and
- (c) the completed dwelling is capable of being lawfully used solely, or primarily, for residential purposes; and
- (d) an occupancy permit is first issued, to the relevant person, in respect of the dwelling within 3 years after the relevant person acquired the land on which the dwelling is situated;

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Tasmania-based foreign developer, in respect of a financial year, means a foreign person who operates a business –

- (a) that acquires land within Tasmania with the aim of developing the land; and
 - (b) of which at least 80% of the wages of management and administration staff of the business are taxable wages, within the meaning of the *Payroll Tax Act 2008*, in that year; and
 - (c) that operates in Tasmania for the majority of its business hours in that year.
- (2) A person may apply to the Commissioner, in writing, to reassess the foreign investor land tax payable by the person for a specified financial year after the 2021-2022 financial year, if –
- (a) the person is a Tasmania-based foreign developer in respect of the financial year; and
 - (b) the person, or the business by virtue of which the person is a Tasmania-based foreign

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developer for the purposes of this section, has –

- (i) been issued with occupancy permits, in that year, in respect of at least 50 relevant dwellings; and
 - (ii) paid foreign investor land tax in respect of the land on which one or more of those relevant dwellings are situated.
 - (3) If the Commissioner receives an application under subsection (2) and is satisfied that the applicant meets the requirements of subsection (2) –
 - (a) the Commissioner must reassess the foreign investor land tax payable under this Act –
 - (i) in respect of the land on which each relevant dwelling, to which the application relates, is situated; and
 - (ii) for the reassessment period for each such relevant dwelling –
- as if the applicant were not a foreign person; and

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- (b) the Commissioner must refund any amount of foreign investor land tax, paid in respect of land referred to in paragraph (a) for the reassessment period, that is in excess of the amount so reassessed for that land; and
 - (c) the applicant is not liable to pay foreign investor land tax under this Act in respect of land, on which a relevant dwelling referred to in paragraph (a) is situated, for the 12-month period that commences on the applicant being issued with the initial occupancy permit for that dwelling.
- (4) Despite subsection (3) –
 - (a) the Commissioner must not refund an amount of foreign investor land tax paid in respect of land by an applicant; and
 - (b) an applicant is liable to pay foreign investor land tax under this Act in respect of land –

unless the Commissioner is satisfied that the applicant complied with all of the relevant requirements of the Foreign Investment Review Board, established by the Commonwealth Government, that

apply in respect of the acquisition of the land to which the land tax relates.

16J. Notice of change in certain circumstances

An owner of land must, within 30 days after one or more of the following changes occur, notify the Commissioner in writing of the change:

- (a) the owner of land ceases to be liable to pay foreign investor land tax, under this Division, in respect of the land;
- (b) the owner of land becomes liable to pay foreign investor land tax, under this Division, in respect of the land.

Penalty: Fine not exceeding 10 penalty units.

9. Repeal of Act

This Act is repealed on the first anniversary of the day on which this Act commenced.