

TASMANIA

TAXATION LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2006

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TAXATION LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2006

*(Brought in by the Premier, the Honourable Paul Anthony
Lennon)*

A BILL FOR

An Act to amend the *Duties Act 2001*, the *Land Tax Act 2000*, the *Pay-roll Tax Act 1971* 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 2006*.

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Parts 3 and 7 commence on 1 January 2007, but if this Act does not receive Royal Assent on or before that day those Parts are taken to have commenced on 1 January 2007.

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Part 1 – Preliminary

(3) Parts 4 and 5 commence on 1 July 2007.

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 inserting the following definitions after the definition of “business asset”:

“call option” means a right, conferred by an agreement or arrangement, to acquire dutiable property;

“call option assignment” means the assignment of a right, under a put and call option, to acquire dutiable property;

- (b) by inserting the following definitions after the definition of “public unit trust scheme”:

“put and call option” means an agreement or arrangement that provides for both a call option and a put option in respect of the same dutiable property;

*No. 15 of 2001

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Part 2 – Duties Act 2001 Amended

“put option” means a right, conferred by an agreement or arrangement, to require a person to acquire dutiable property;

5. Section 9 amended (What is dutiable property?)

Section 9(1)(j)(v) of the Principal Act is amended by omitting “vehicle;” and substituting “vehicle that is not exempted from motor tax under the *Vehicle and Traffic Act 1999* or the *Transport Act 1981*;”.

6. Section 25 amended (Partnership interests)

Section 25 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) 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 interest in the land-related asset that is transferred, but only if ad valorem duty has been paid or is payable on the transfer of the interest in the land-related asset.

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- (4) For the purposes of subsection (3), 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).

7. Chapter 3, Part 5 inserted

After section 90 of the Principal Act, the following Part is inserted in Chapter 3:

PART 5 – TRANSACTIONS INVOLVING PUT AND CALL OPTIONS

Division 1 – Making of put and call option

91. Application of Act to put and call option, &c.

For the purposes of this Act, a put and call option is taken to be an agreement for sale of dutiable property referred to in section 6(1)(b)(i) and, accordingly –

- (a) duty is chargeable on the put and call option under Chapter 2; and
- (b) the dutiable property which is the subject of the call option and the put option is taken to be property which is transferred by that

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Part 2 – Duties Act 2001 Amended

agreement for sale of dutiable property; and

- (c) the person who has the right to acquire the dutiable property under that put and call option is taken to be the purchaser or transferee of the dutiable property under that agreement for sale of dutiable property.

92. When does liability for duty arise?

The liability for duty under this Act in relation to the making of a put and call option arises on the day on which the option is made.

Division 2 – Assignment of rights under put and call option

93. Duty chargeable on assignment of rights under put and call option

If a right to acquire dutiable property under a put and call option is assigned to another person, that assignment is taken to be a transfer of dutiable property referred to in section 6(1)(a) and, accordingly –

- (a) duty is chargeable on the assignment under Chapter 2; and
- (b) the dutiable property which is the subject of the call option and the

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put option is taken to be the dutiable property so transferred; and

(c) the person to whom is assigned the right to acquire the dutiable property under that put and call option is taken to be the purchaser or transferee of the dutiable property so transferred; and

(d) the transfer of dutiable property is taken to occur when the right is assigned.

94. When does liability for duty arise?

The liability for duty under this Act in relation to a call option assignment arises on the day on which the right that is the subject of that assignment is assigned.

Division 3 – Dutiable value of property subject to put and call option or call option assignment

95. Dutiable value of property subject to put and call option or call option assignment

Despite section 18, the dutiable value of the dutiable property that is the subject of a put and call option or a call option assignment is the greater of the following amounts:

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- (a) the sum of –
 - (i) the consideration, or the value of the consideration, for the making of the put and call option or the consideration, or the value of the consideration, for the assignment of the right which is the subject of the call option assignment; and
 - (ii) the consideration, or the value of the consideration, that would be payable if the call option in the put and call option were exercised;
- (b) the unencumbered value of the dutiable property.

Division 4 – No double duty

96. No double duty

If the Commissioner is satisfied that the correct amount of duty has been paid –

- (a) on the making of a put and call option; and
- (b) where necessary, on the assignment of a call option under that put and call option –

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no further duty is payable by a person who exercises the call option under that put and call option.

Division 5 – Exemptions

97. Exemptions

- (1) Despite any other provision of this Part, duty is not chargeable in respect of the making of a put and call option or a call option assignment if the Commissioner is satisfied that –
 - (a) the put and call option was made for the sole purpose of obtaining finance; or
 - (b) the put and call option was assigned to a body established solely for the purpose of raising funds in relation to an investment scheme promoted by the person who assigned the call option; or
 - (c) the put and call option forms part of a scheme of call options and put options granted by the proprietors of a business that –
 - (i) were granted for the sole purpose of facilitating the continuation of the business by one or more of the proprietors; and

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- (ii) are exercisable only on the occurrence of an event specified in the call options or put options that would cause a proprietor referred to in subparagraph (i) to seek to acquire the interest in the business of one or more of the other proprietors.
- (2) This section does not affect any duty payable under Chapter 2 by the transferee on a transfer of an option to purchase land in Tasmania.
- (3) In this section –
 - “proprietor”** means –
 - (a) in the case of a business carried on by a partnership, a partner in that partnership; or
 - (b) in the case of a business carried on by a company within the meaning of the Corporations Act, a shareholder in the company; or
 - (c) in the case of a business carried on by a unit trust scheme, a holder of a unit in that scheme; or
 - (d) in any other case, a person the Commissioner determines to be a proprietor of the business.

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8. Section 192 amended (Imposition of duty)

Section 192 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “Act.” and substituting “Act; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) a notification under section 216 of a change of purpose from that specified in section 214(1).

9. Section 196A inserted

After section 196 of the Principal Act, the following section is inserted in Part 1:

196A. Effect of failure to pay duty

A failure to pay duty when it becomes payable under section 196 is a tax default for the purposes of the *Taxation Administration Act 1997*.

10. Section 204 amended (Exemptions for motor dealers)

Section 204 of the Principal Act is amended by inserting “and used solely” after “acquired”.

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Part 2 – Duties Act 2001 Amended

11. Section 207 amended (Form of exemption certificate)

Section 207 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) “certificate.” and substituting “certificate; and”;
- (b) by inserting the following paragraph after paragraph (f):
 - (g) include a unique identifying number.

12. Section 214 substituted

Section 214 of the Principal Act is repealed and the following section is substituted:

214. Applicable exemptions

- (1) An exemption certificate may only be used to obtain exemption from payment of duty in respect of the registration or transfer of a specified motor vehicle if –
 - (a) in the case of a new motor vehicle, it is acquired and used solely for the purpose of demonstration to prospective purchasers; or
 - (b) in the case of a used motor vehicle, it is acquired and used

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solely for resale in the ordinary course of business and for no other intermediate purpose; or

- (c) in the case of a holder who is a wholesaler, the motor vehicle is acquired and used solely for sale to other holders of exemption certificates or motor dealers in other States –

and if the holder of the exemption certificate records the unique identifying number of the exemption certificate on the application to register the motor vehicle.

- (2) If a motor dealer acquires a motor vehicle for a purpose mentioned in subsection (1) and then loans the motor vehicle to a charity that uses it for charitable purposes, that loan does not disqualify the motor dealer from using the exemption certificate as specified in that subsection so as to receive under section 204 an exemption from payment of duty under this Chapter.

- (3) In subsection (2) –

“charitable purpose” means any purpose that in the opinion of the Commissioner is charitable;

“charity” means an institution that is a religious, scientific, charitable or public educational institution

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Part 2 – Duties Act 2001 Amended

exempted by section 23 of the
Income Tax Assessment Act 1936
of the Commonwealth from the
payment of income tax under that
Act.

13. Section 216 amended (Change of purpose)

Section 216(1) of the Principal Act is amended
by omitting “a statement under section 214(2)
for which a motor vehicle was acquired” and
substituting “section 214(1) for which a motor
vehicle was acquired and used”.

14. Section 217 amended (Duty payable in certain circumstances)

Section 217(2)(a) of the Principal Act is
amended by omitting “private purposes” and
substituting “any purpose other than a purpose
referred to in section 214(1)”.

15. Section 248 amended (Assessment where consideration inadequate)

Section 248 of the Principal Act is amended as
follows:

- (a) by inserting in subsection (1) “or (2A)”
after “subsection (2)”;

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Part 2 – Duties Act 2001 Amended

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- (b) by omitting from subsection (2) “The” and substituting “If the relevant real property is not vacant land, the”;
 - (c) by omitting from subsection (2) “agreement, transfer, assignment or other instrument or dealing” and substituting “dutiable transaction”;
 - (d) by inserting the following subsection after subsection (2):
 - (2A) If the relevant real property is vacant land, the unencumbered value of the relevant real property is the value calculated by multiplying the capital value of the real property as determined under the *Valuation of Land Act 2001* by the adjustment factor determined by the Valuer-General under section 50A of the *Valuation of Land Act 2001* and applicable as at the date of the dutiable transaction.
 - (e) by omitting from subsection (3) “on which the agreement, transfer, assignment or other instrument was made” and substituting “of the dutiable transaction or relevant acquisition, for the purposes of Division 3 of Part 2 of Chapter 3,”;
 - (f) by inserting in subsection (3)(a) “or (2A)” after “subsection (2)”;

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(g) by inserting the following subsections after subsection (4):

(5) A person who is liable to pay duty in respect of any instrument referred to in this section may object to the unencumbered value of the relevant real property as determined under subsection (2) or (2A) in accordance with Part 10 of the *Taxation Administration Act 1997* by providing the Commissioner with a declaration by a competent valuer as to the unencumbered value of the real property.

(6) For the purposes of this section, on receipt of an objection the Commissioner may determine the objection by –

(a) charging duty in accordance with the value of the real property as declared in the declaration of a valuer provided under subsection (5); or

(b) if not satisfied with the value of the real property so declared, having the property valued and charging duty on the basis of that valuation.

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- (7) The Commissioner may recover the cost of a valuation obtained under subsection (6)(b) from the transferee.

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Part 3 – Duties Act 2001 Further Amended

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 13 amended (Necessity for written instrument or written statement)

Section 13(3) of the Principal Act is amended by omitting “If” and substituting “Subject to a special arrangement approved under Part 6 of the *Taxation Administration Act 1997*, if”.

18. Section 14 amended (Lodging written instrument or written statement with Commissioner)

Section 14 of the Principal Act is amended by omitting “A” and substituting “Subject to a special arrangement approved under Part 6 of the *Taxation Administration Act 1997*, a”.

19. Section 22 amended (Aggregation of dutiable transactions)

Section 22(6) of the Principal Act is amended by omitting “A” and substituting “Subject to a

*No. 15 of 2001

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Part 3 – Duties Act 2001 Further Amended

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special arrangement approved under Part 6 of the
Taxation Administration Act 1997, a”.

20. Section 231 amended (Stamping of instruments)

Section 231 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “The” and substituting “Subject to subsection (3), the”;
- (b) by inserting the following subsections after subsection (2):
 - (3) If an instrument is lodged with the Commissioner for stamping and the person who lodged it is authorised to deal with that instrument in accordance with the conditions of an approval given under Part 6 of the *Taxation Administration Act 1997*, the Commissioner may –
 - (a) assess the duty payable in respect of the instrument and stamp it if the duty, and any interest or penalty tax, under Part 5 of the *Taxation Administration Act 1997*, payable in respect of the instrument has been paid in full; or

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- (b) return the instrument to
the person who lodged it.
- (4) If the Commissioner makes an
assessment of duty and stamps an
instrument under
subsection (3)(a), the
Commissioner in his or her
discretion may charge an
administrative fee under section
118A of the *Taxation
Administration Act 1997*.

PART 4 – LAND TAX ACT 2000 AMENDED

21. Principal Act

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

22. Section 6 amended (Principal residence land)

Section 6(4) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “land.” and substituting “land; and”;
- (b) by inserting the following paragraph after paragraph (c):
 - (d) the Commissioner is satisfied that the person, by reason of his or her ownership of 50% or more shares in another company, does not have another principal residence situated on other land which –
 - (i) is beneficially owned by that other company; and
 - (ii) has been determined under this subsection to be principal residence land.

*No. 74 of 2000

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Part 4 – Land Tax Act 2000 Amended

23. Section 19 amended (Other exempt land)

Section 19 of the Principal Act is amended by omitting paragraph (d) and substituting the following paragraph:

- (d) land –
 - (i) that is subject to a conservation covenant under Part 5 of the *Nature Conservation Act 2002* or under a prescribed instrument; or
 - (ii) in respect of which a conservation covenant has been entered into under Part 5 of the *Nature Conservation Act 2002*, or under a prescribed instrument, where the conservation covenant has not been registered under the *Land Titles Act 1980*;

24. Section 24 amended (Aggregate land value)

Section 24 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “assessed” after “aggregate”;
- (b) by inserting in subsection (2) “assessed” after “aggregate”.

25. Section 26 amended (Apportioned assessed land value for principal residence land)

Section 26(2) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) “other purposes,” and substituting ‘principal residence purposes and other purposes but no part of the principal residence is used in common for both principal residence purposes and other purposes (in this subsection called the “common floor area”),’;

(b) by omitting paragraph (b) and substituting the following paragraphs:

(b) if the principal residence is used for principal residence purposes and other purposes and part of the principal residence is common floor area, by multiplying the assessed land value by the proportion of the principal residence used for principal residence purposes calculated in accordance with the following formula:

$$FAP = FP + \left\{ \left[\frac{FP}{FP + FNP} \right] \times C \right\}$$

where –

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Part 4 – Land Tax Act 2000 Amended

“**FAP**” is the floor area apportioned as used for principal residence purposes;

“**FP**” is the floor area used for principal residence purposes;

“**FNP**” is the floor area used for purposes other than principal residence purposes;

“**C**” is the common floor area;
or

- (c) if principal residence land is used for principal residence purposes and other purposes, by multiplying the assessed land value by the proportion of land used for principal residence purposes.

26. Section 38 amended (Special rate of land tax)

Section 38 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Minister,” and substituting “Commissioner,”;

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- (b) by omitting from subsection (2)(b) “Minister” and substituting “Commissioner”;
 - (c) by omitting from subsection (3)(a) “Minister” and substituting “Commissioner”;
 - (d) by omitting from subsection (5) “Minister” and substituting “Commissioner”;
 - (e) by omitting from subsection (6) “Minister” and substituting “Commissioner”.

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

Section 39 of the Principal Act is amended by omitting subsections (3) and (4) and substituting the following subsections:

- (3) The owner of land, on the sale or transfer of that land, if there is no land value assessed in respect of that land, must pay –
 - (a) if the owner owns only that land, the total of the following amounts:
 - (i) any amount of land tax owing and any penalty tax and interest payable;

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- (ii) an amount equivalent to the amount of land tax that would be payable had that land had an assessed land value equal to the determined value of that land; or
- (b) if the owner owns additional land, the lesser of the following amounts:
 - (i) the total of the amount of land tax owing, the amount of any penalty tax and interest payable and an amount equivalent to the amount of land tax that would be payable had that land had an assessed land value equal to the determined value of that land;
 - (ii) the amount calculated by multiplying the total amount of land tax owing, and any penalty tax and interest payable, by the ratio of the determined value of the land sold or transferred to the aggregate of the assessed land value and determined value of all land owned as at 1 July preceding the

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Part 4 – Land Tax Act 2000 Amended

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sale or transfer after
subtracting the assessed
land value or determined
value of any other land
sold or transferred after
that date.

Penalty: Fine not exceeding 10 penalty
units.

- (4) For the purpose of calculating any amount under subsection (2)(c)(ii) or (3)(b)(ii), any land in respect of which no land tax is payable is to be excluded.
- (5) For the purposes of subsection (3), the determined value of land is –
 - (a) if the Commissioner is satisfied that the contract price of the land is a true reflection of its value, the contract price of the land; or
 - (b) if the Commissioner is not satisfied that the contract price of the land is a true reflection of its value, the value of the land determined by a competent valuer and accepted by the Commissioner as a true reflection of the value of the land.
- (6) In subsection (5) –

“contract price” means the purchase price of the land as –

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- (a) specified in a written agreement for the sale or transfer of the land; or
 - (b) if there is no such written agreement, the purchase price for the sale or transfer of the land as agreed between the vendor and purchaser.
- (7) For the purpose of determining the determined value of land, the Commissioner –
 - (a) may require the owner of the land to provide a declaration by a competent valuer as to the value of the land; and
 - (b) if not satisfied that the value of the land as stated in a declaration provided under paragraph (a) is a true reflection of the value of the land, may have the land valued by another competent valuer.
- (8) The Commissioner may recover the cost of obtaining a valuation of land under subsection (7)(b) from the owner of the land.

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Part 4 – Land Tax Act 2000 Amended

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28. Section 42 amended (Searches)

Section 42(2)(c) of the Principal Act is amended by omitting “section 39(2);” and substituting “section 39(2) or (3);”.

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Part 5 – Pay-roll Tax Act 1971 Amended

PART 5 – PAY-ROLL TAX ACT 1971 AMENDED

29. Principal Act

In this Part, the *Pay-roll Tax Act 1971** is referred to as the Principal Act.

30. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended as follows:

- (a) by omitting “employer,” from the definition of “Australian wages” and substituting “employer under this Act or a corresponding Act,”;
- (b) by omitting “member,” from the definition of “Australian wages” and substituting “member under this Act or a corresponding Act,”;
- (c) by inserting the following definition after the definition of “corporation”:

“corresponding Act” means an Act in force in another State, a Territory or the Commonwealth that relates to the imposition upon employers of a tax on wages paid or payable by them and the assessment and collection of that tax;

*No. 43 of 1971

31. Section 11A amended (Annual adjustments)

Section 11A of the Principal Act is amended as follows:

- (a) by omitting from subsection (3B) “is –” and substituting “is as follows:”;
- (b) by omitting from subsection (3B)(a) “or” second occurring;
- (c) by omitting from subsection (3B)(b) “year” first occurring and substituting “year, being a financial year in which February has 28 days,”;
- (d) by inserting the following paragraph after paragraph (b) in subsection (3B):
 - (c) if adjusted Australian wages for the year, being a financial year in which February has 29 days, are more than \$1 010 000, an amount ascertained by applying the rate of 6.10% to the difference between the total of the taxable wages paid or payable by the employer during that financial year and an amount calculated in accordance with the following formula:

$$\frac{T}{A} \left(1\,010\,000 \times \frac{D}{366} \right)$$

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Part 5 – Pay-roll Tax Act 1971 Amended

- (e) by omitting subsection (5) and substituting the following subsection:

(5) In this section –

“adjusted Australian wages”
means –

- (a) in respect of a financial year commencing on or after 1 July 1992 in which February has 28 days, the Australian wages paid or payable by an employer during that financial year, multiplied by –

$$\frac{365}{D} \text{ ; or}$$

- (b) in respect of a financial year commencing on or after 1 July 1992 in which February has 29 days, the Australian wages paid or payable by an employer during that financial year, multiplied by –

$$\frac{366}{D} \text{ –}$$

where “D” is the number of days on which the employer was an

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Part 5 – Pay-roll Tax Act 1971 Amended

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employer during the financial year.

32. Section 11J amended (Group members jointly and severally liable for payment)

Section 11J of the Principal Act is amended as follows:

- (a) by inserting “under this Act in respect of any period, or any amount of interest or penalty tax relating to such failure,” after “required to pay”;
- (b) by omitting “who paid or was liable to pay taxable wages during the financial year in which the pay-roll tax liability has incurred”;
- (c) by inserting “(including such interest and penalty tax)” after “that amount”.

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Part 6 – Taxation Administration Act 1997 Amended

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

33. Principal Act

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

34. Part 11, Division 3A inserted

After section 113 of the Principal Act, the following Division is inserted in Part 11:

Division 3A – Tax avoidance

113A. Purpose and operation of Division 3A

- (1) The purpose of this Division is to deter artificial, blatant or contrived schemes to reduce liability to pay tax.
- (2) No provision of this Act or a taxation law limits the operation of this Division unless that provision expressly provides otherwise.

113B. Application of Division 3A

- (1) This Division applies if –

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- (a) a person has obtained, or would apart from this Division obtain, a tax benefit –
 - (i) from a scheme which was entered into after the commencement of this Division; or
 - (ii) from a scheme the carrying out of which was started after the commencement of this Division; and
 - (b) the tax benefit is not, or would not be, attributable to an exemption or concession under a taxation law; and
 - (c) taking into account the matters set out in section 113C, it is reasonable to conclude that a person, whether alone or with other persons, who entered into or carried out the scheme, or part of the scheme, did so for the sole or dominant purpose of enabling that person to obtain such a, or another, tax benefit from the scheme.
- (2) For the purposes of subsection (1), it does not matter –
- (a) whether the scheme, or any part of the scheme, is entered into or

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carried out in Tasmania or elsewhere; or

- (b) whether or not the tax benefit that the person obtained, or would have obtained, is the same kind of tax benefit referred to in subsection (1)(a).

113C. Matters to be considered when determining purpose of scheme

For the purposes of section 113B(1)(c), the following matters are to be taken into account in determining whether it is reasonable to conclude that the sole or dominant purpose of a person entering into or carrying out a scheme of a kind referred to in section 113B(1), or a part of such a scheme, is to enable that person to obtain a tax benefit from the scheme:

- (a) the manner in which the scheme, or part of the scheme, was entered into or carried out by the person;
- (b) the form and substance of the scheme or part of the scheme, including –
 - (i) the legal rights and obligations of the person under the scheme or part; and

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- (ii) the economic and commercial substance of the scheme or part;
- (c) the time when the person entered into or carried out the scheme or part of the scheme and the length of the period during which the person was involved in carrying out the scheme or part of the scheme;
- (d) the purpose of –
 - (i) this Act; and
 - (ii) any taxation law that is relevant to the scheme or part of the scheme; and
 - (iii) a provision of this Act or such a taxation law –

whether or not that purpose is expressly stated in this Act, the taxation law or the provision;
- (e) the effect that this Act, other than this Division, or a taxation law would have in relation to the scheme or part of the scheme;
- (f) any change in the person's financial position that has resulted, will result or may reasonably be expected to result from the person entering into or

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carrying out the scheme or part of the scheme;

- (g) any change in the financial position of any other person who is or has been connected with the person, through business or family or in any other manner, that has resulted, will result or may reasonably be expected to result from the person's connection with the scheme or part of the scheme;
- (h) any other consequence for the person, or another person referred to in paragraph (g), that results, will result or may reasonably be expected to result from entering into or carrying out the scheme or part of the scheme or from the person's or other person's connection with the scheme or part of the scheme;
- (i) the nature of the connection between another person referred to in paragraph (g) and the person;
- (j) the circumstances surrounding the scheme or part of the scheme;
- (k) the circumstances surrounding the entry of the person into the scheme or part of the scheme or

the carrying out by the person of
the scheme or part of the scheme.

113D. When tax benefit obtained

A person obtains a tax benefit if an amount of tax payable by the person under a taxation law is, or could reasonably be expected to be, less than it would have been if the person had not entered into or carried out a scheme of a kind referred to in section 113B(1) or part of such a scheme.

113E. Amount of tax benefit

The amount of the tax benefit obtained by a person who entered into or carried out a scheme of a kind referred to in section 113B(1), or part of such a scheme, is the difference between the amount of tax payable and the amount of tax that would have been payable had that person not entered into or carried out that scheme or that part of such a scheme.

113F. Assessments and reassessments if tax benefit obtained from scheme

- (1) If a person has obtained, or would but for this Division obtain, a tax benefit from

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entering into or carrying out a scheme of a kind referred to in section 113B(1), or part of such a scheme, the Commissioner may –

- (a) in making an assessment of tax liability under section 18, include as part of the person's tax liability the amount of the tax benefit obtained or that would be obtained; or
 - (b) reassess the person's tax liability under section 19 so that the person's tax liability includes the amount of the tax benefit obtained.
- (2) If the Commissioner takes action under subsection (1), the Commissioner must notify the person, in writing, that he or she has done so and his or her reasons for doing so.

**PART 7 – TAXATION ADMINISTRATION ACT 1997
FURTHER AMENDED**

35. Principal Act

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

36. Section 50 amended (Application for approval)

Section 50 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) If the Commissioner has not received an application for an approval under this Division from –
 - (a) a specified taxpayer or a taxpayer of a specified class referred to in section 49(1); or
 - (b) a specified agent on behalf of a specified taxpayer or a taxpayer of a specified class referred to in section 49(1) –

the Commissioner, by written notice provided to that taxpayer or agent and for the purpose of exercising his or her initiative under section 49(3), may require that taxpayer or agent to make

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that application, and to provide any other information specified in the notice, to the Commissioner.

- (4) A taxpayer or agent must comply with a notice provided under subsection (3) within the period specified in that notice or within such further period as the Commissioner allows.

Penalty: In –

- (a) the case of a body corporate, a fine not exceeding 500 penalty units; or
- (b) any other case, a fine not exceeding 100 penalty units.

37. Section 52 amended (Effect of approval)

Section 52 of the Principal Act is amended by omitting subsection (2).

38. Section 118A amended (Administrative fee)

Section 118A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) The Commissioner may charge a prescribed fee in respect of the lodging of

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an instrument for assessment or the
lodging of a return.