

CLAUSE NOTES

Land Tax Amendment (Foreign Investors) Bill 2022

- Clause 1 This Act may be cited as the *Land Tax Amendment (Foreign Investors) Act 2022*.
- Clause 2 This Act commences on 1 July 2022.
- Clause 3 In this Act the *Land Tax Act 2000* is referred to as the Principal Act.
- Clause 4 Amends the definition of “assessed land value” in section 3 of the Principal Act to provide that, for the purposes of determining the amount of foreign investor land tax (FILT) payable on land, the value of the land is calculated in accordance with section 16A(2)(b) or section 16B as applicable (rather than section 23 of the Principal Act).
- Clause 5 Amends section 10 of the Principal Act to clarify that land tax payable under section 10 includes any land tax that is imposed under Division 1A - Foreign investor land tax.
- Clause 6 Amends section 12(2) of the Principal Act by omitting “for reassessment of” and substituting “to reassess”.
- Clause 7 Amends section 14 of the Principal Act to provide that, for the purposes of the FILT, joint owners of land are not taken to be a single taxpayer.
- Clause 8 Inserts *Division 1A - Foreign Investor Land Tax* into Part 2 of the Principal Act.

16A - Interpretation

Subsection (1) defines “foreign investor land tax” as the component of land tax imposed under Division 1A, and adopts the definitions of foreign corporation, foreign natural person, foreign person, foreign trust and foreign trustee from the *Duties Act 2001*.

Subsection (2) provides that a reference to general land in relation to the FILT includes a reference to land that has been apportioned as general land under the apportionment provisions in Division 4 of the Principal Act. If land has been apportioned under Division 4, the value of the part of land is to be determined in accordance with the apportionment provisions rather than under section 16B.

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

Subsection (1) provides that an assessment or reassessment of the FILT is to be made in respect to each folio of the Register kept under section 33 of the *Land Titles Act 1980*.

Subsection (2) provides that where a folio exists and a determination of the value of the land has been made under the *Valuation of Land Act 2001*, the assessed land value is the value specified in the determination on applying any relevant adjustment factor determined by the Valuer-General under Part 9A of that Act.

Subsection (3) provides that if an area of land is divided into smaller areas of land that have not been issued a folio before 1 July of the financial year to which the assessment, or reassessment relates, the assessment or reassessment of the FILT on each smaller area of land is to be made as if a folio had been issued.

Subsections (4) and (5) provide that, if an area of land is divided into a number of smaller areas of land, for which folios have been issued but a value is yet to be determined by the Valuer-General, the value of the area for the purposes of the FILT is to be assessed or reassessed as a percentage of the assessed land value of the larger piece of land.

Subsection (6) provides that sections 23, 24 and 25 of the Principal Act (relating to the assessment and aggregation of land value and subdivisions) do not apply where the value of land is being determined for the purposes of the FILT.

16C - Application of foreign investor land tax

Subsection (1) provides that a land owner is liable to pay the FILT in respect of land for a financial year if:

- on 1 July, the land is general land (ie land that is not primary production or principal residence land) of a residential nature as described; and
- one or more owners of the land is a foreign person who:
 - acquired an interest in the land through a dutiable transaction, or by right of survivorship, on or after 1 July 2022; or
 - became a foreign corporation or a foreign trust on or after 1 July 2022.

Subsection (2) provides that if a foreign person acquired an interest in land prior to 1 July 2022, and acquires a further interest in the same land after that date, the entirety of that foreign person's interest in the land is taken to have been acquired on or after 1 July 2022.

Subsections (3) and (4) provide that the FILT only applies to the percentage of the land that is held by:

- a foreign person, if the interest was acquired on or after 1 July 2022 (including if the interest is taken to have been acquired on or after this date under subsection (2)); or
- a foreign corporation or trust that became foreign on or after 1 July .

Section 16D - Non-application of foreign investor land tax

Subsection (1) clarifies that the FILT does not apply to commercial establishments which offer short-term accommodation, hostels, boarding houses, certain student accommodation, residential care services, or retirement villages.

Subsection (2) provides that short stay premises within the meaning of the *Short Stay Accommodation Act 2019* are not commercial establishments for the purposes of this section.

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

Subsection (1) provides that a trust is not a foreign trust for the purposes of the FILT for a financial year if it was a foreign discretionary trust as at 1 July, and the trust deed is amended so that it is no longer a foreign trust within six months after the date of the notice of assessment for land tax (that includes an amount of FILT) for that year has been issued.

Subsection (2) provides that if a trust is not a foreign trust in respect of a financial year in accordance subsection (1), and FILT was payable in respect of the land for that year, the trustee may apply to the Commissioner to reassess the FILT.

Subsection (3) provides that, if the Commissioner receives such an application, the Commissioner must reassess the FILT and refund any amount of FILT paid for that year that is in excess of the reassessed amount.

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

Subsection (1) provides that the Commissioner may make a determination that a person is a foreign person for the purposes of FILT if satisfied, on the basis of information available, that they are a foreign person.

Subsection (2) provides that the Commissioner may also make a determination that a person is a foreign person if they have failed to provide information that the Commissioner has requested in order to determine whether they are foreign within the required time period.

Subsection (3) provides that the Commissioner may make a determination that land is (or will be) capable of being lawfully used primarily for residential purposes for the purposes of FILT, if satisfied that at least 50 per cent of the land is (or will be) capable of being used for residential purposes, whether or not it is also capable of being used for another purpose.

I 6G - Determination that owner of land is not foreign person

Subsection (1) provides that an owner of land may apply to the Commissioner for a determination that they are not a foreign person for the purposes of the FILT for a financial year.

Subsection (2) provides that the Commissioner may grant, or refuse to grant, such a determination.

Subsection (3) provides that, if the Commissioner makes a determination that an applicant is not a foreign person, the Commissioner must reassess the FILT and refund any amount of FILT paid for that year that is in excess of the reassessed amount.

Subsection (4) provides that a decision under subsection (2) is a non-reviewable decision within the meaning of the *Taxation Administration Act 1997*.

Under subsection (5), if a determination was made based on false or misleading information, the Commissioner may revoke the determination and require the applicant to pay the FILT that is payable for the relevant year.

I 6H - Commissioner may publish circumstances where owner of land is not foreign person

Subsections (1) and (2) provide that the Commissioner may publish circumstances where an owner of land is not taken to be a foreign person for the purposes of the Principal Act. These circumstances are only in force while published.

Under subsection (3), if the published circumstances apply to a land owner, they are not taken to be a foreign person for the purposes of the Principal Act for that financial year.

Subsection (4) provides that an owner of land may apply to the Commissioner, in writing, to reassess FILT paid in respect of a financial year if the published circumstances apply, and they have paid FILT for that year.

Subsection (5) provides that, where such an application is received and the Commissioner is satisfied that the circumstances published apply in relation to the applicant, the Commissioner must reassess the FILT and refund any amount of FILT paid for that year that is in excess of the reassessed amount.

16I - Reassessment of land tax for certain developers of property

Subsection (1) defines occupancy permit, reassessment period, relevant dwelling, and Tasmania-based foreign developer for the purposes of this section.

Subsection (2) provides that a Tasmania-based foreign developer may apply to the Commissioner for a reassessment of FILT paid on land for a specified financial year if a number of criteria are met. This includes a requirement that the business has a significant management and administration presence in Tasmania, and that it has built at least 50 residential dwellings in that financial year.

Under subsection (3), where such an application is received and the Commissioner is satisfied the applicant meets the requirements of subsection (2), the Commissioner must reassess the FILT as if the Tasmania-based foreign developer was not a foreign person and refund any amount of duty paid by the person that is in excess of the reassessed amount. The applicant is also not liable to pay FILT in respect of the land for the 12 month period that commences on the applicant being issued with an initial occupancy permit for that dwelling.

Subsection (4) provides that the Commissioner must not provide a refund, and the applicant will be liable for the FILT, unless the Commissioner is satisfied that the Tasmania-based foreign developer has complied with all relevant requirements of the Foreign Investment Review Board in relation to the land to which the land tax relates.

16J - Notice of change in certain circumstances

Section 16J provides that a land owner must notify the Commissioner within 30 days if their liability for the FILT changes.

Clause 9 This Act is repealed on the first anniversary of the day on which it commenced.