

Version No. 026
Land Tax Act 2005

No. 88 of 2005

Version incorporating amendments as at 31 March 2009

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Version No. 026
Land Tax Act 2005

No. 88 of 2005

31 March 2009

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to re-enact and modernise the law relating to land tax;
- (b) to repeal the **Land Tax Act 1958**;
- (c) to amend the **Taxation Administration Act 1997** so that it will apply to the administration and enforcement of land tax;
- (d) to make consequential amendments to other Acts.

2 Commencement

This Act comes into operation on 1 January 2006.

3 Definitions

(1) In this Act—

administration trust means a trust under which the assets of a deceased person are held by a personal representative, but only during the period ending on the earlier of—

- (a) the completion of administration of the deceased estate; or

**S. 3(1) def. of
administration trust
inserted by
No. 68/2007
s. 8(2).**

- (b) the third anniversary of the death of the deceased person or the further period approved by the Commissioner under subsection (3);

S. 3(1) def. of *applicable general valuation* repealed by No. 84/2006 s. 8.

* * * * *

approved means approved by the Commissioner;

S. 3(1) def. of *beneficiary* inserted by No. 85/2005 s. 22(1)(a).

beneficiary of a discretionary trust, means a person, or a member of a class of persons, in whom, by the terms of the trust, the whole or any part of the trust property may be vested—

- (a) in the event of the exercise of a power or discretion in favour of the person (whether or not that power is presently exercisable); or
- (b) in the event that a discretion conferred under the trust is not exercised;

S. 3(1) def. of *child maintenance land* inserted by No. 85/2005 s. 22(1)(a).

child maintenance land means land held on trust that was transferred to the trustee for the benefit of a beneficiary as the result of a family breakdown within the meaning of section 102AGA of the Income Tax Assessment Act 1936 of the Commonwealth;

S. 3(1) def. of *Commonwealth Superannuation Act* inserted by No. 85/2005 s. 22(1)(a).

Commonwealth Superannuation Act means the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

concessional trust means—

- (a) a trust of which each beneficiary is—
 - (i) a person in respect of whom a guardianship order or an administration order is in force under the **Guardianship and Administration Act 1986**; or
 - (ii) a person with a disability within the meaning of the **Disability Act 2006**; or
- (b) a trust created under an order of the Supreme Court for the benefit of a person under disability;

S. 3(1) def. of *concessional trust* inserted by No. 85/2005 s. 22(1)(a), amended by No. 23/2006 s. 245.

controlling interest has the meaning given in section 48;

corporation has the same meaning as in section 9 of the Corporations Act;

discretionary trust means a trust under which the vesting of the whole or any part of the trust property—

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries or the quantum of interest to be taken, or both; or
- (b) will occur in the event that a discretion conferred under the trust is not exercised—

S. 3(1) def. of *discretionary trust* inserted by No. 85/2005 s. 22(1)(a).

but does not include an excluded trust, a fixed trust or a trust to which a unit trust scheme relates;

S. 3(1) def. of *domestic partner* substituted by No. 12/2008 s. 73(1)(Sch. 1 item 34.1).

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *excluded trust* inserted by No. 85/2005 s. 22(1)(a), amended by No. 68/2007 s. 8(1).

excluded trust means—

- (a) a charitable trust;
- (b) a concessional trust;
- (c) a public unit trust scheme;
- (d) a wholesale unit trust scheme;
- (e) a trust the sole beneficiary or beneficiaries of which is or are—
 - (i) a club referred to in section 73; or
 - (ii) the members of such a club;
- (g) a trust, for any tax year in relation to which it is a superannuation trust;

exempt land means land that is declared by or under this Act to be exempt land;

exempt transmission easement means a transmission easement that is exempt from land tax under section 87(1)(b);

exempt transmission easement holder means a transmission easement holder who is exempt from land tax on the easement under section 87(1)(a);

S. 3(1) def. of *fixed trust* inserted by No. 85/2005 s. 22(1)(a).

fixed trust means a trust that is not an excluded trust, a discretionary trust or a trust to which a unit trust scheme relates;

home unit means a building or part of a building that—

- (a) is designed for use as a self-contained unit for living purposes; and
- (b) is situated on land owned—
 - (i) by 2 or more persons as tenants in common, each of whom is the registered proprietor under the **Transfer of Land Act 1958** of one or more undivided shares in the whole of the land and is lawfully entitled, by virtue of an agreement between the person or the person's predecessor in title and all other owners of undivided shares in the land or their predecessors in title, to the exclusive right to occupy a specified building or part of a building on the land; or
 - (ii) by a body corporate in which all issued shares are owned by 2 or more persons, each of whom is lawfully entitled, by virtue of that share ownership, to the exclusive right to occupy a specified building or part of a building on the land and is not required to make any payments of a rental nature for that right;

joint owners means persons—

- (a) who own land jointly or in common, whether as partners or otherwise; or
- (b) who are deemed by this Act to be joint owners;

land includes—

- (a) all land and tenements;
- (b) all interests in land;

S. 3(1) def. of
listed trust
inserted by
No. 85/2005
s. 22(1)(a).

listed trust has the same meaning as in the **Duties Act 2000**;

mortgage means—

- (a) a security by way of mortgage or charge over land; or
- (b) a security by way of a transfer of land held in trust to be sold and redeemable before the sale, except if the transfer is for the benefit of creditors who accept it in full satisfaction of debts owed to them; or
- (c) a transfer, assignment or disposition of any estate or interest in land that is apparently absolute but intended only as a security; or
- (d) an instrument that, on the deposit of documents of title to land, authority to control title or a pledge to provide that control, becomes a mortgage or evidences the terms of a mortgage;

S. 3(1) def. of
nominated beneficiary
inserted by
No. 85/2005
s. 22(1)(a).

nominated beneficiary of a discretionary trust, means a person nominated under section 46F;

S. 3(1) def. of
nominated PPR beneficiary
inserted by
No. 85/2005
s. 22(1)(a).

nominated PPR beneficiary means a person nominated under section 46H;

owner—

- (a) of land, has the meaning given in section 10;
- (b) of a home unit, has the meaning given in section 12;

parcel of land means any land that is—

- (a) contiguous or separated only by a road, railway or other similar area across or around which movement is reasonably possible; and
- (b) owned by the same person;

personal representative means a person acting in the capacity of an executor or administrator of a deceased estate;

S. 3(1) def. of *personal representative* inserted by No. 68/2007 s. 8(2).

post-2006 land, in relation to a trust, means land that became subject to that trust on or after 1 January 2006;

S. 3(1) def. of *post-2006 land* inserted by No. 85/2005 s. 22(1)(a).

pre-2006 land, in relation to a trust, means land that was subject to that trust at midnight on 31 December 2005;

S. 3(1) def. of *pre-2006 land* inserted by No. 85/2005 s. 22(1)(a).

principal place of residence includes sole place of residence;

public unit trust scheme means—

- (a) a listed trust; or
- (b) a widely held trust; or
- (c) a registered imminent public unit trust scheme or registered declared public unit trust scheme (within the meaning of the **Duties Act 2000**);

S. 3(1) def. of *public unit trust scheme* inserted by No. 85/2005 s. 22(1)(a).

public sector superannuation authority means a public body within the meaning of the **Financial Management Act 1994** that is required to submit an annual report under Part 7 of that Act in relation to a public sector superannuation fund;

public statutory authority means a public statutory body constituted under an Act but does not include a public sector superannuation authority;

related corporations has the meaning given in section 47;

relative in relation to a person means—

- (a) a spouse or domestic partner of the person;
- (b) a lineal ancestor or lineal descendant of the person or of the spouse or domestic partner of the person;
- (c) a brother or sister, or child of a brother or sister, of the person or of the spouse or domestic partner of the person;
- (d) a spouse or domestic partner of a child of the person;
- (e) a spouse or domestic partner of a brother or sister of the person;

return date, in relation to a valuation, is the date on which the valuation is returned to the municipal council by the person who carried it out;

site value has the same meaning as in the **Valuation of Land Act 1960**;

special land tax means land tax imposed under Division 5 of Part 2;

spouse of a person means a person to whom the person is married;

* * * * *

S. 3(1) def. of *subsequent general valuation* repealed by No. 84/2006 s. 8.

superannuation trust means, in relation to a tax year—

- (a) a trust established on or before 30 June in the year preceding the tax year that, in relation to the year of income ending in that year, is—
 - (i) a complying superannuation fund (within the meaning of section 42 or 42A of the Commonwealth Superannuation Act); or
 - (ii) a complying approved deposit fund (within the meaning of section 43 of the Commonwealth Superannuation Act); or
 - (iii) a pooled superannuation trust (within the meaning of section 44 of the Commonwealth Superannuation Act); or
- (b) a trust established after 30 June in the year preceding the tax year that, as at midnight on 31 December in that year, is—
 - (i) a regulated superannuation fund (within the meaning of the Commonwealth Superannuation Act) or is taken to be a regulated superannuation fund under that Act; or

S. 3(1) def. of *superannuation trust* inserted by No. 85/2005 s. 22(1)(a).

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- (ii) an approved deposit fund (within the meaning of the Commonwealth Superannuation Act); or
 - (iii) a pooled superannuation trust (within the meaning of the Commonwealth Superannuation Act);

supplementary valuation means a valuation made under section 13DF of the **Valuation of Land Act 1960** that is supplementary to the last general valuation returned to the municipal council before 1 January in the year immediately preceding the tax year;

taxable land means land that is not exempt land;

taxable value—

- (a) of land, has the meaning given in Division 3 of Part 2;
- (b) of transmission easements, has the meaning given in section 27;

tax year means a year for or in which land tax is being assessed;

transfer of land includes conveyance of the land;

transmission company has the same meaning as in the **Electricity Industry Act 2000**;

transmission easement means an easement held by a transmission company;

transmission easement holder has the meaning given in section 4;

trust—

- (a) includes a trust under which the assets of a deceased person are held by a personal representative; and
- (b) does not include an implied or constructive trust;

S. 3(1) def. of *trust* inserted by No. 85/2005 s. 22(1)(a), substituted by No. 68/2007 s. 8(3).

trustee, except in Division 1 of Part 4, includes trustee, executor, administrator, guardian, liquidator and any person having or taking upon themselves the possession, administration, or control of land, income, or other property of any description affected by any trust, or having the possession, control, or management of land of a person under any legal or other disability;

S. 3(1) def. of *trustee* amended by No. 85/2005 s. 22(1)(b).

unit in a unit trust scheme, means—

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme; or
- (b) a right to any such right or interest—

that entitles the beneficiary to participate proportionately with other unitholders in a distribution of the property of the trust on its vesting;

S. 3(1) def. of *unit* inserted by No. 85/2005 s. 22(1)(a).

unit trust scheme means an arrangement made for the purpose, or having the effect, of providing facilities for participation by a person, as a beneficiary under a trust, in any profit or income arising from the acquisition, holding, management or disposal of property under the trust, but does not include an excluded trust;

S. 3(1) def. of *unit trust scheme* inserted by No. 85/2005 s. 22(1)(a).

Victorian Minister means a Minister of the Crown in right of Victoria;

s. 4

S. 3(1) def. of *wholesale unit trust scheme* inserted by No. 85/2005 s. 22(1)(a).

wholesale unit trust scheme means a unit trust scheme that is registered under Division 7 of Part 2 of Chapter 3 of the **Duties Act 2000** as a wholesale unit trust scheme, an imminent wholesale unit trust scheme or a declared wholesale unit trust scheme;

S. 3(1) def. of *widely held trust* inserted by No. 85/2005 s. 22(1)(a).

widely held trust has the same meaning as that term would have in the **Duties Act 2000** if a reference in paragraph (b) of the definition of *widely held trust* in section 3(1) of that Act to "300 registered unitholders" were a reference to "50 registered unitholders";

year means a calendar year.

S. 3(2) substituted by No. 12/2008 s. 73(1)(Sch. 1 item 34.2).

(2) For the purposes of the definition of *domestic partner* in subsection (1)—

(a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

S. 3(3) inserted by No. 85/2005 s. 22(2), amended by No. 68/2007 s. 8(4).

(3) For the purposes of paragraph (b) of the definition of *administration trust* in subsection (1), the Commissioner may approve a further period in any particular case.

4 Transmission easement holders

(1) For the purposes of this Act, a *transmission easement holder* is a transmission company that holds a transmission easement.

-
- (2) A transmission company holds a transmission easement if the transmission easement has been—
- (a) acquired by the transmission company; or
 - (b) granted to, or reserved in favour of, the transmission company; or
 - (c) created by statute in favour of, or vested by statute in, the transmission company.
- (3) If a transmission company uses an easement of a related body corporate of that company—
- (a) that easement is, for the purposes of this Act, deemed to be a transmission easement; and
 - (b) the transmission company is, for the purposes of this Act, deemed to be a transmission easement holder and may be assessed for tax as if it held the transmission easement.
- (4) If the Commissioner is satisfied that a transmission company should not be liable for land tax under Division 4 of Part 2 on an easement referred to in subsection (3), having regard to—
- (a) the nature of the easement; and
 - (b) any other matters the Commissioner considers relevant—
- the Commissioner may treat the easement as not being a transmission easement for the purposes of this Act.
- (5) In this section—
- related body corporate* has the same meaning as in section 50 of the Corporations Act.

5 Taxation Administration Act 1997

This Act is to be read together with the **Taxation Administration Act 1997** which provides for the administration and enforcement of this Act and other taxation laws.

6 Act binds the Crown

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
 - (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.
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PART 2—IMPOSITION OF LAND TAX

Division 1—Imposition of land tax

7 General imposition of land tax

Land tax is imposed in respect of each year on all taxable land in Victoria.

Note

This Act also imposes land tax on transmission easements (see Division 4) and special land tax (see Division 5).

8 Who is liable for land tax?

The owner of taxable land is liable to pay land tax on the land.

9 When must land tax be paid?

The day specified in a notice of assessment of land tax must be not less than 14 days after the day the notice is served on the taxpayer.

Note

Section 14 of the **Taxation Administration Act 1997** provides for notices of assessment and provides that tax is payable on or before the day specified in the notice.

Division 2—Owners of land

10 Who is the owner of land?

The following persons are owners of land for the purposes of this Act—

- (a) a person entitled to land for a freehold estate in possession;
- (b) a person entitled to land under a lease from the Crown;
- (c) a person entitled to land under a licence from the Crown if the person has a right, absolute or conditional, of acquiring the fee simple;

-
- (d) a person who is a licensee of vested land under Part 3A of the **Victorian Plantations Corporation Act 1993**;
 - (e) a person deemed by this Act to be the owner of land.

11 Life tenants

For the purposes of this Act, a person who holds a life estate in possession in land is deemed to be the owner of the land instead of the person entitled to the fee simple in reversion or remainder.

12 Home units

- (1) This section applies if there are 2 or more home units on land.
- (2) For the purposes of this Act, an owner of a home unit is deemed to be the owner of land having a taxable value that is the taxable value of the home unit.
- (3) In this section—

land means the land on which the building or buildings of which a home unit is part is or are situated;

owner of a home unit, means the person who is entitled to the exclusive right to occupy the home unit because he or she—

- (a) is the owner of an undivided share in the land on which the home unit is situated; or
- (b) is a shareholder in the body corporate which owns the land on which the home unit is situated.

13 Person in possession of land deemed owner despite disposition of it

- (1) A person who disposes of land but retains possession of the land is deemed to be the owner of the land (but not to the exclusion of any other person) while the person retains possession.
- (2) In this section—
dispose includes dispose by way of transfer, settlement, declaration of trust or any other method.

14 Purchaser of land on credit or deferred payment

For the purposes of this Act, each of the following is deemed to be the owner of land—

- (a) a purchaser on credit or deferred payment;
- (b) an assignee or transferee of a purchaser on credit or deferred payment.

15 Purchaser of land under contract of sale

- (1) For the purposes of this Act, a purchaser under a contract of sale of land is deemed to be the owner of the land (but not to the exclusion of any other person) if the purchaser has taken possession of the land.
- (2) Subsection (1) applies whether or not the contract of sale has been completed by the transfer of the land.

16 Vendors of land

- (1) For the purposes of this Act, the vendor of land under a contract of sale of land is deemed to be the owner of the land (but not to the exclusion of any other person) until—
 - (a) the purchaser has taken possession of the land; and

-
- (b) subject to subsection (3), at least 15% of the purchase money has been paid.
- (2) Subsection (1) applies whether or not the contract of sale has been completed by the transfer of the land.
- (3) The Commissioner may determine that the vendor is deemed not to be the owner of land despite the fact that 15% of the purchase money has not been paid if the Commissioner is satisfied that—
- (a) the contract of sale was made in good faith and not for the purpose of evading the payment of land tax; and
 - (b) the contract of sale is still in force.
- (4) In determining the percentage of purchase money that has been paid, the following amounts must be considered to be unpaid purchase money—
- (a) all money owing by the purchaser to the vendor and secured by a mortgage over the land;
 - (b) all money lent to the purchaser by the vendor;
 - (c) all money owing by the purchaser to any other person that is directly or indirectly guaranteed by the vendor.
- (5) If the vendor and the purchaser are both deemed to be the owners of land under this Part, there is to be deducted from any land tax payable on the land by the vendor any land tax payable on the land by the purchaser.
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17 Mortgagees in possession

- (1) A mortgagee in possession of land is deemed to be the owner of the land for the purposes of this Act, but not to the exclusion of the mortgagor or other owner of the land.

Note

Section 43 sets out how land tax is to be assessed in the case of mortgagees in possession.

- (2) There is to be deducted from any land tax payable on land by the mortgagee in possession any land tax paid on the land by the mortgagor or other owner.

18 Holders of beneficial interests

The holders of beneficial interests in certain trusts are deemed to be the owners of land by Division 2A of Part 3.

S. 18
substituted by
No. 85/2005
s. 23.

Division 3—What is the taxable value of land?

19 Taxable value of land

- (1) The taxable value of land for a tax year is an amount equal to the site value of the land as at the relevant date.
- (2) The *relevant date* for land within the municipal district of a municipal council is—
 - (a) subject to paragraph (b), the date as at which rateable properties within the municipal district were valued for the purposes of the last general valuation returned to the municipal council before 1 January in the tax year;
 - (b) if the land has been valued for the purposes of a supplementary valuation after the return date of the last general valuation referred to in paragraph (a) but before 1 January in the

S. 19
substituted by
No. 84/2006
s. 9.

s. 21

tax year, the return date of the supplementary valuation.

- (3) If land is not within a municipal district of a municipal council, the *relevant date* for the land is 31 December in the year immediately preceding the tax year.

S. 20
repealed by
No. 84/2006
s. 9.

* * * * *

S. 21
amended by
No. 68/2007
s. 9 (ILA
s. 39B(1)).

21 Use of valuations

- (1) For the purposes of assessing land tax, the Commissioner may use—
- (a) valuations made by a rating authority within the meaning of the **Valuation of Land Act 1960**; or
 - (b) valuations made by the Valuer-General or a valuer nominated by the Valuer-General.
- (2) Without limiting subsection (1), the Commissioner may—
- (a) use a valuation made under the **Valuation of Land Act 1960** that has determined the value of each separate occupancy on land; and
 - (b) include in a notice of assessment a description of the occupancy on land.
- (3) A valuation of occupancy on land made under the **Valuation of Land Act 1960** is deemed to be a valuation of land for the purposes of this Act.

S. 21(2)
inserted by
No. 68/2007
s. 9.

S. 21(3)
inserted by
No. 68/2007
s. 9.

21A Objection to land tax valuation does not affect previous assessments

S. 21A
inserted by
No. 84/2006
s. 10.

If—

- (a) a person referred to in section 16(6A) of the **Valuation of Land Act 1960** objects to a valuation under that Act in relation to a notice of assessment of land tax; and
- (b) the same valuation was used as the basis for an assessment of land tax in respect of a previous tax year—

any decision on the objection, or on a review or appeal under the **Valuation of Land Act 1960** concerning the objection, has no effect on the assessment referred to in paragraph (b).

22 Taxable value of parts of land not separately valued

(1) This section applies if—

- (a) it is necessary to determine the taxable value of part of land (*the part*) for or in a tax year; and
- (b) the part was not valued separately as at the relevant date (within the meaning of section 19) in relation to that year; and
- (c) the whole land was valued separately as at the relevant date.

(2) The taxable value of the part is the same proportion of the taxable value of the whole land as the area of the part bears to the area of the whole land.

23 Taxable value of home units not valued separately

- (1) This section applies if there are 2 or more home units on land.
- (2) If a home unit is not valued separately as at the relevant date (within the meaning of section 19) in relation to a tax year, the taxable value of the home unit is determined in accordance with the formula—

$$\frac{A}{B} \times C$$

where—

A is the net annual value of the home unit;

B is the net annual value of all home units on the land;

C is the taxable value of the land.

- (3) In this section—

net annual value has the same meaning as in the **Valuation of Land Act 1960**.

Division 4—Land tax on transmission easements

24 Imposition of land tax on transmission easements

Land tax is imposed in respect of each year on all transmission easements in Victoria other than exempt transmission easements.

25 Who is liable for land tax on transmission easements?

The transmission easement holder is liable to pay land tax on a transmission easement.

26 When must land tax be paid?

The day specified in a notice of assessment of land tax on transmission easements must be not less than 14 days after the day the notice is served on the taxpayer.

Note

Section 14 of the **Taxation Administration Act 1997** provides for notices of assessment and provides that tax is payable on or before the day specified in the notice.

27 What is the taxable value of a transmission easement?

(1) The *taxable value* of a transmission easement is—

(a) in respect of the 2006 tax year—the value as at 1 January 2004 determined in a valuation made under section 5B of the **Valuation of Land Act 1960**;

(b) in respect of every tax year after 2006, the value as at the relevant easement valuation date determined in a valuation made under section 5B of the **Valuation of Land Act 1960**.

S. 27(1)(b)
substituted by
No. 84/2006
s. 11(1).

* * * * *

S. 27(1)(c)(d)
repealed by
No. 84/2006
s. 11(1).

(2) In this section—

relevant easement valuation date, for a transmission easement in respect of a tax year, means the date as at which a valuation of the transmission easement was last made in accordance with section 5B of the **Valuation of Land Act 1960**, being a date before 1 January in the tax year.

S. 27(2)
substituted by
No. 84/2006
s. 11(2).

28 Agreements relating to the payment of tax

- (1) The Commissioner may enter into an agreement with a transmission easement holder in relation to the payment of land tax imposed on the transmission easement.
- (2) An agreement under subsection (1)—
 - (a) may, despite anything to the contrary in this Act, permit the payment of the tax to be by instalments within such time as is set out in the agreement; and
 - (b) must not be for a period exceeding 5 years.
- (3) Nothing in this section limits the operation of section 49 of the **Taxation Administration Act 1997**.

Division 5—Special land tax

29 Imposition of special land tax

Special land tax is imposed in accordance with this Division on certain land that ceases to be exempt land.

30 What land is subject to special land tax?

- (1) Special land tax is imposed on the following land that ceases to be exempt land—

* * * * *

S. 30(1)(a)(b)
repealed by
No. 22/2007
s. 6(1).

- (c) land referred to in section 72 (sporting, recreational or cultural land);
- (d) land referred to in section 75 (rooming houses);
- (e) land referred to in section 76 (residential care facilities and supported residential services);

-
- (ea) land referred to in section 76A (residential service);
- (f) land referred to in section 77 (caravan parks);
- (g) land referred to in section 80(1) (land owned by public statutory authority);
- (h) land referred to in section 86(1) (land used as a mine).
- (2) Special land tax is not imposed on a parcel of land referred to in subsection (1)(g) if at the time the land ceases to be exempt land—
- (a) the taxable value of the parcel does not exceed \$249 999; and
- (b) it is used or proposed to be used exclusively by the owner, or by any one or more of joint owners, as his, her or their principal place of residence.
- (3) Special land tax is not imposed if the land ceases to be exempt land only because the relevant section referred to in subsection (1) is amended or repealed.
- (4) Special land tax is not imposed if the land ceases to be exempt land only because—
- (a) the land vests in an authority that acquires it under a compulsory acquisition law; or
- (b) an authority that is acquiring the land under a compulsory acquisition law takes possession of the land.
- S. 30(1)(ea)**
inserted by
No. 31/2008
s. 17(1).
- S. 30(2)(a)**
amended by
Nos 22/2007
s. 6(2),
31/2008
s. 17(2).
- S. 30(4)**
inserted by
No. 22/2007
s. 6(3).

S. 30(5)
inserted by
No. 22/2007
s. 6(3).

(5) In subsection (4)—

authority means a person who or body that is given power to acquire land under a compulsory acquisition law;

compulsory acquisition law means a law of Victoria or the Commonwealth that provides for the compulsory acquisition of land.

31 Who is liable for special land tax?

- (1) If the land ceases to be exempt land immediately on a change of ownership, or within 60 days after a change of ownership, the person who was the owner immediately before the change of ownership is liable to pay special land tax on the land.
- (2) In any other case, the person who owned the land immediately after it ceased to be exempt land is liable to pay special land tax on the land.

32 When does a liability for special land tax arise?

A liability for special land tax arises when the land on which the tax is imposed ceases to be exempt land.

33 When must special land tax be paid?

The day specified in a notice of assessment of special land tax must be not less than 14 days after the day the notice is served on the taxpayer.

Note

Section 14 of the **Taxation Administration Act 1997** provides for notices of assessment and provides that tax is payable on or before the day specified in the notice.

34 Deferral of special land tax in certain circumstances

- (1) This section applies to any land referred to in section 30(1) except where the land ceases to be exempt land immediately on a change of ownership, or within 60 days after a change of ownership.
 - (2) Despite section 32 or 33, the taxpayer may elect to defer the payment of the special land tax until the sooner of—
 - (a) a change of ownership of the land, or any part of it; or
 - (b) 3 years after the day on which the land ceased to be exempt land.
-

PART 3—ASSESSMENT OF LAND TAX

Division 1—Rate of land tax

35 What is the rate of land tax?

- (1) The rate of land tax (other than special land tax) is set out in Schedule 1.

Note to
s. 35(1)
inserted by
No. 85/2005
s. 24.

Note

Schedule 1 sets out 3 different rates of land tax. Part 1 sets out the general rates of land tax, Part 2 sets out the rate of land tax on transmission easements and Part 3 sets out the land tax surcharge rates for trusts—see also Division 2A of this Part.

- (2) The rate of special land tax is 5% of the taxable value of the land.

Division 2—How is land tax assessed?

36 Land tax assessed on aggregated basis

- (1) Subject to this Act, a taxpayer is to be assessed for land tax on land for a tax year on the total taxable value of all taxable land of which the taxpayer was the owner at midnight on 31 December immediately preceding that tax year.
- (2) Subject to this Act, a taxpayer is to be assessed for land tax on transmission easements for a tax year on the total taxable value of all transmission easements of which the taxpayer was the holder at midnight on 31 December immediately preceding the tax year.
- (3) For the purposes of an assessment, the applicable rate of land tax in Schedule 1 is to be applied to the total taxable value of that land or transmission easements (as the case requires).

37 Certain taxable land assessed separately

- (1) This section applies for the purposes of assessing land tax payable on the following land—
 - (a) taxable land owned by a charitable institution or held by a trustee on trust for charitable purposes;
 - (b) land referred to in section 81(1) that is taxable land because of section 81(2).
- (2) Land tax is to be assessed for a year on each parcel of land referred to in subsection (1) of which the taxpayer was the owner at midnight on 31 December immediately preceding that year as if that parcel were the only land owned by the taxpayer.
- (3) For that purpose, the applicable rate of land tax in Schedule 1 is to be applied separately to the taxable value of each parcel.
- (4) Part of a parcel of land (other than part of a building) is to be regarded as a separate parcel of land for the purposes of this section if the part—
 - (a) is occupied separately from other land in the parcel; or
 - (b) is obviously adapted to being so occupied.

38 Assessment of joint owners of land

- (1) Joint owners of taxable land are to be assessed for land tax on land in accordance with this section.
- (2) Joint owners of taxable land are to be jointly assessed for land tax on the land as if it were owned by a single person, without regard to—
 - (a) the separate interest of each joint owner; or
 - (b) any other land owned by any joint owner (either alone or jointly with someone else).

-
- (3) Each joint owner of taxable land is also to be separately assessed for land tax on—
- (a) the owner's individual interest in the land (as if the owner were the owner of a part of the land in proportion to that interest); and
 - (b) any other taxable land owned by the owner alone; and
 - (c) the owner's individual interest in any other taxable land.
- (4) There is to be deducted from the land tax assessed for a joint owner under subsection (3) an amount (if any) necessary to avoid double taxation, being the lesser of—
- (a) the amount determined by the formula—
$$A \times B$$
where—
 - A is the proportion of the owner's individual interest in the jointly-owned land to the total interests in that land;
 - B is the total amount of land tax assessed on the jointly-owned land under subsection (2); and
 - (b) the amount determined by the formula—
$$\frac{C}{D} \times E$$
where—
 - C is the value of the joint owner's individual interest in the jointly-owned land (as determined under subsection (3)(a));
-

D is the total value of all taxable land of the joint owner assessed under subsection (3);

E is the amount of land tax assessed under subsection (3).

(5) For the purposes of this section a joint owner may be separately assessed under subsection (3) in respect of land even though no land tax is jointly assessable in respect of that land under subsection (2).

(6) If a joint owner of land is a trustee of a trust to which the land is subject, no regard is to be had to the existence of the trust in relation to the joint assessment of the joint owners of the land as referred to in subsection (2), but regard is to be had to the existence of the trust in relation to the separate assessment of the joint owners as referred to in subsection (3).

S. 38(6)
inserted by
No. 85/2005
s. 25.

39 Joint assessments in the case of principal place of residence land

- (1) For the purposes of section 38 and subject to this section, if land that is jointly owned is exempt land because it is the principal place of residence of one or more, but not all, of the joint owners—
- (a) no land tax is jointly assessable in respect of that land under section 38(2);
 - (b) each joint owner who does not use and occupy the land as his or her principal place of residence may be separately assessed in respect of that land under section 38(3).

-
- (2) A joint owner of land (*joint owner 1*) that is exempt land in respect of a tax year because of its use and occupation as the principal place of residence of another joint owner of the land (*joint owner 2*) is not, in respect of the tax year, liable to pay or be assessed under section 38(3) for land tax on the land—
- (a) if, at any time during the year immediately preceding the tax year, the land was used and occupied as the principal place of residence of joint owner 1 and joint owner 2; or
 - (b) if—
 - (i) at any time during the second year preceding the tax year the land was used and occupied as the principal place of residence of joint owner 1 and joint owner 2; and
 - (ii) there is no other land that is exempt land in respect of the tax year because of its use and occupation as the principal place of residence of joint owner 1.
- (3) Despite anything to the contrary in this section or Division 1 of Part 4, if a joint owner of land (*the PPR land*) who, because of subsection (2), is not liable to be assessed under section 38(3) for land tax in respect of the PPR land in respect of a tax year, resumes use and occupation of the PPR land during the tax year, the joint owner is liable for land tax in respect of the tax year in respect of any other land that, but for this subsection, would be exempt land under Division 1 of Part 4 in respect of the tax year.
- (4) Except to the extent set out in subsection (3), nothing in this section takes away from or affects the operation of Division 1 of Part 4.
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40 Assessment of joint occupiers of land

- (1) This section applies if 2 or more persons own land in severalty but occupy it jointly.
- (2) Land tax is to be assessed on the persons as if they were joint owners of the land.
- (3) For the purposes of this Act, persons (the *joint occupiers*) are taken to occupy land jointly if the land is occupied, worked or managed—
 - (a) by any one or more of the joint occupiers on behalf of all of the joint occupiers or on a joint account; or
 - (b) by any other person as trustee for or otherwise on behalf of all of the joint occupiers.
- (4) Subsection (3) does not limit the circumstances in which persons may be taken to occupy land jointly.

41 Assessment of joint transmission easement holders

- (1) Joint transmission easement holders are to be assessed for land tax on transmission easements in accordance with this section.
- (2) Joint transmission easement holders are to be jointly assessed in respect of a transmission easement as if held by a single person, without regard to—
 - (a) the separate interest of each joint transmission easement holder in that transmission easement;
 - (b) any other transmission easement held by a joint transmission easement holder (either alone or jointly with someone else).

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- (3) Each joint transmission easement holder is also to be separately assessed in respect of—
- (a) the joint transmission easement holder's individual interest in the transmission easement as if the transmission easement holder were the holder of a part of the transmission easement in proportion to that interest; and
 - (b) any other transmission easement held by a joint transmission easement holder alone; and
 - (c) the joint transmission easement holder's individual interest in any other transmission easement.
- (4) There is to be deducted from the land tax assessed for a joint transmission easement holder under subsection (3) an amount (if any) necessary to avoid double taxation, being the lesser of—
- (a) the amount determined by the formula—
$$A \times B$$
where—
 - A is the proportion of the transmission easement holder's individual interest in the jointly-owned transmission easement to the total interests in that easement;
 - B is the total amount of land tax assessed on the jointly-owned transmission easement under subsection (2); and

(b) the amount determined by the formula—

$$\frac{C}{D} \times E$$

where—

C is the value of the joint transmission easement holder's individual interest in the jointly-owned transmission easement (as determined under subsection (3)(a));

D is the total value of all transmission easements of the joint transmission easement holder assessed under subsection (3);

E is the amount of land tax assessed under subsection (3).

(5) For the purposes of this section, a joint transmission easement holder may be separately assessed under subsection (3) in respect of a transmission easement even though no land tax is jointly assessable in respect of that easement under subsection (2).

(6) In this section—

joint transmission easement holder means a transmission easement holder who holds a transmission easement jointly with another person.

42 Assessment of owner of land on which there are home units

(1) For the purposes of assessing the land tax payable on land on which home units are situated by the owner of the land, the amount of the taxable value of the home units is to be deducted from the taxable value of the land.

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- (2) In subsection (1), the owner of land on which home units are situated means the person who is the owner of the land, whether or not that person is also the owner of one or more of the home units.
 - (3) For the purposes of this section, section 12(2) does not apply in determining who the owner of land is.

43 Mortgagees in possession of land

- (1) If there is a mortgagee in possession of land, land tax on the land is to be assessed at the rate that would have applied if the mortgagee had not been in possession of the land.
- (2) Subsection (1) applies until the earlier of—
 - (a) the mortgagee ceasing to be in possession of the land; or
 - (b) 31 December in the 3rd year after the mortgagee took possession of the land.

S. 44
repealed by
No. 85/2005
s. 26.

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45 Certain long-term lessees of private land

- (1) This section applies if—
 - (a) a person (the *lessee*) has a leasehold estate in land (other than under a lease from the Crown); and
 - (b) the lessee became entitled to that estate before 30 December 1978.
- (2) If this section applies, both the lessee and the owner of the freehold estate in the land are to be assessed for land tax on the land and, for the purpose of this Act, a reference to the owner of the land includes a reference to the lessee.

- (3) The Commissioner may apportion the land tax payable on the land as between the owner of the freehold estate and the lessee if the Commissioner is of the opinion that the value of the freehold owner's interest in the land is lessened by the covenants of the lease.
- (4) If the Commissioner apportions the land tax under subsection (3), the owner of the freehold estate and the lessee are each liable to pay the proportion of the tax determined by the Commissioner.

46 Land tax on parts of land

If it is necessary to assess land tax on a part of land, the land tax applicable to that part is the proportion of the land tax, assessed on the taxable value of the whole land, that the taxable value of the part bears to the total taxable value of the whole land.

Division 2A—Land held on trust

Pt 3 Div. 2A
(Heading and
ss 46A–46K)
inserted by
No. 85/2005
s. 27.

46A General land tax surcharge for trusts

S. 46A
inserted by
No. 85/2005
s. 27.

- (1) A person who is the owner of land as trustee of a trust is liable for land tax on the land at the applicable rate set out in Part 3 of Schedule 1.
- (2) The trustee is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee.
- (3) This section does not apply to—
 - (a) land subject to a unit trust scheme if an appointment of a nominated PPR beneficiary for the scheme is in force and the land is used and occupied as the principal place of

s. 46B

residence of the nominated PPR beneficiary;
or

- (b) land subject to a discretionary trust if—
- (i) an appointment of a nominated beneficiary for the trust is in force; or
 - (ii) an appointment of a nominated PPR beneficiary for the trust is in force and the land is used and occupied as the principal place of residence of the nominated PPR beneficiary; or

S. 46A(3)(c)
amended by
No. 68/2007
s. 10(a).

- (c) land subject to an excluded trust; or

S. 46A(3)(d)
inserted by
No. 68/2007
s. 10(b).

- (d) land subject to an administration trust.

- (4) This section is subject to sections 46B and 46C.
- (5) A trustee of child maintenance land who would be liable to land tax in accordance with subsection (1) but for this subsection is liable for land tax at the applicable rate set out in Part 1 of Schedule 1, and is to be assessed for that tax as if the child maintenance land were the only land owned by the trustee.

S. 46B
inserted by
No. 85/2005
s. 27.

46B Land tax for fixed trust if beneficial interests notified to Commissioner

- (1) A trustee of a fixed trust to which land is subject may lodge with the Commissioner a written notice of the beneficial interests in the land.
- (2) A notice must—
- (a) be in the form, and contain the information, determined by the Commissioner; and

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- (b) be lodged with the Commissioner on or before—
- (i) if any of the land subject to the trust is pre-2006 land—the later of 30 June 2006 or 3 months after the day on which a liability first arises for land tax on the land; or
 - (ii) if the only land subject to the trust is post-2006 land—in the year in which the land first became subject to the trust.
- (3) A notice takes effect—
- (a) for the 2006 tax year if it is lodged on or before 30 June 2006 in respect of pre-2006 land; or
 - (b) in any other case, for the tax year in respect of which the notice is lodged—

S. 46B(3)(b)
substituted by
No. 68/2007
s. 11.

and remains in force until it is withdrawn by the trustee.

- (4) If a notice is in force under this section for a fixed trust—
- (a) a beneficiary of the trust is deemed to be the owner (but not to the exclusion of the trustee) of land subject to the trust that bears the same proportion to the whole of the land subject to the trust as the beneficiary's beneficial interest in land subject to the trust bears to the total beneficial interests in land subject to the trust, and is to be assessed for land tax on that land accordingly, together with any other taxable land owned by the beneficiary, at the applicable rate set out in Part 1 of Schedule 1; and

-
- (b) the trustee of the trust is to be assessed for land tax on the whole of the land subject to the trust at the applicable rate set out in Part 1 of Schedule 1, as if the land were the only land owned by the trustee.
- (5) There is to be deducted from the land tax payable by a beneficiary under subsection (4)(a) an amount (if any) necessary to avoid double taxation, being the lesser of—
- (a) the amount determined by the formula:
- $$A \times B$$
- where—
- A is the proportion of the beneficiary's beneficial interest in land subject to the trust to the total beneficial interests in land subject to the trust;
- B is the total amount of tax assessed on the trustee under subsection (4)(b); and
- (b) the amount determined by the formula:
- $$\frac{C}{D} \times E$$
- where—
- C is the taxable value of the land of which the beneficiary is deemed by subsection (4)(a) to be the owner;
- D is the total taxable value of all taxable land owned by the beneficiary;
- E is the amount of tax assessed on the beneficiary under subsection (4)(a).
- (6) For the purposes of this section, the trustee's right of indemnity from the trust property is taken not to be a beneficial interest in the land subject to the trust.
-

- (7) Subsection (4)(a) does not apply to a beneficiary who holds a beneficial interest as trustee of another trust.

Note

Section 46D(1)(a) deems such a person to be the owner of land.

46C Land tax for unit trust scheme if unitholdings notified to Commissioner

S. 46C
inserted by
No. 85/2005
s. 27.

- (1) A trustee of a unit trust scheme to which land is subject may lodge with the Commissioner a written notice of the unitholdings in the scheme.
- (2) A notice must—
- (a) be in the form, and contain the information, determined by the Commissioner; and
 - (b) be lodged with the Commissioner on or before—
 - (i) if any of the land subject to the scheme is pre-2006 land—the later of 30 June 2006 or 3 months after the day on which a liability first arises for land tax on the land; or
 - (ii) if the only land subject to the scheme is post-2006 land—in the year in which the land first became subject to the scheme.
- (3) A notice takes effect—
- (a) for the 2006 tax year if it is lodged on or before 30 June 2006 in respect of pre-2006 land; or
 - (b) in any other case, for the tax year in respect of which the notice is lodged—

S. 46C(3)(b)
substituted by
No. 68/2007
s. 12.

and remains in force until it is withdrawn by the trustee.

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- (4) If a notice is in force under this section for a unit trust scheme—
- (a) a unitholder in the scheme is deemed, for the purposes of this Act other than Division 1 of Part 4, to be the owner (but not to the exclusion of the trustee) of land subject to the scheme that bears the same proportion to the whole of the land subject to the scheme as the unitholder's unitholding in the scheme bears to the total unitholdings in the scheme, and is to be assessed for land tax on that land accordingly, together with any other taxable land owned by the unitholder, at the applicable rate set out in Part 1 of Schedule 1; and
 - (b) the trustee of the scheme is to be assessed for land tax on the whole of the land subject to the scheme at the applicable rate set out in Part 1 of Schedule 1, as if the land were the only land owned by the trustee.
- (5) There is to be deducted from the land tax payable by a unitholder under subsection (4)(a) an amount (if any) necessary to avoid double taxation, being the lesser of—
- (a) the amount determined by the formula:
$$A \times B$$
where—
 - A is the proportion of the unitholder's unitholding in the scheme to the total unitholdings in the scheme;
 - B is the total amount of tax assessed on the trustee under subsection (4)(b); and
-

(b) the amount determined by the formula:

$$\frac{C}{D} \times E$$

where—

C is the taxable value of the land of which the unitholder is deemed by subsection (4)(a) to be the owner;

D is the total taxable value of all taxable land owned by the unitholder;

E is the amount of tax assessed on the unitholder under subsection (4)(a).

(6) Subsection (4)(a) does not apply to a unitholder who holds units as trustee of another trust.

Note

Section 46D(1)(b) deems such a person to be the owner of land.

46D Land tax for beneficiary/trustees

(1) For the purposes of this Act—

(a) a person who holds a beneficial interest in land subject to a fixed trust in respect of which a notice is in force under section 46B (*the first trust*) as trustee of another trust (*the second trust*) is deemed to be the owner of land subject to the first trust that bears the same proportion to the whole of the land subject to the first trust as the person's beneficial interest in the land subject to the first trust bears to the total beneficial interests in land subject to the first trust;

S. 46D
inserted by
No. 85/2005
s. 27.

-
- (b) a person who holds units in a unit trust scheme in respect of which a notice is in force under section 46C (*the first scheme*) as trustee of another trust (*the second trust*) is deemed, for the purposes of this Act other than Division 1 of Part 4, to be the owner of land subject to the first scheme that bears the same proportion to the whole of the land subject to the first scheme as the person's unitholding in the first scheme bears to the total unitholdings in the first scheme.
- (2) For the purposes of this section, a person referred to in subsection (1) is called a *beneficiary/trustee*.
- (3) There is to be deducted from any land tax payable by a beneficiary/trustee on land that is subject to the second trust an amount (if any) necessary to avoid double taxation, being the lesser of—
- (a) the amount determined by the formula:
- $$A \times B$$
- where—
- A is—
- (a) the proportion of the beneficiary/trustee's beneficial interest in land subject to the first trust to the total beneficial interests in land subject to the first trust; or
- (b) the proportion of the beneficiary/trustee's unitholding in the first scheme to the total unitholdings in the first scheme;
- B is the total amount of tax assessed on the trustee of the first trust or the first scheme on the whole of the land subject to the first trust or first scheme; and
-

(b) the amount determined by the formula:

$$\frac{C}{D} \times E$$

where—

C is the taxable value of the land of which the beneficiary/trustee is deemed by subsection (1) to be the owner;

D is the total taxable value of all taxable land owned by the beneficiary/trustee that is subject to the second trust;

E is the amount of tax assessed under this Act on the beneficiary/trustee in respect of all taxable land owned by the beneficiary/trustee that is subject to the second trust.

46E Land tax for excluded trusts

A trustee of an excluded trust is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee.

Note

The rate of land tax for this assessment is the applicable rate set out in Part 1 of Schedule 1.

S. 46E
inserted by
No. 85/2005
s. 27.

46F Nomination of beneficiary of pre-2006 discretionary trust for land tax purposes

- (1) This section applies to a discretionary trust if the trust property includes any pre-2006 land.
- (2) The trustee of the trust may nominate a person to be the nominated beneficiary of the trust for the purposes of this Act.

S. 46F
inserted by
No. 85/2005
s. 27.

-
- (3) The person nominated must be—
- (a) a natural person who—
 - (i) is a beneficiary of the trust; and
 - (ii) is of or over the age of 18 years on 31 December 2005; and
 - (iii) signifies in writing his or her acceptance of the nomination; or
 - (b) the trustee, if all beneficiaries of the trust are under the age of 18 years on 31 December 2005.
- (4) A nomination under subsection (2) must—
- (a) be in the form, and contain the information, determined by the Commissioner; and
 - (b) be lodged with the Commissioner on or before the later of—
 - (i) 30 June 2006; or
 - (ii) 3 months after the day on which a liability first arises for land tax on land subject to the trust.
- (5) A nomination lodged in accordance with subsection (4)—
- (a) takes effect—
 - (i) for the 2006 tax year if made on or before 30 June 2006; or
 - (ii) in any other case, for the tax year in respect of which the nomination is lodged; and
 - (b) remains in force until—
 - (i) revoked by the nominated beneficiary in writing given to the Commissioner; or
 - (ii) the nominated beneficiary dies.
-

S. 46F(5)(a)(ii)
substituted by
No. 68/2007
s. 13(1).

(6) If the nominated beneficiary revokes the nomination, the trustee of the trust may nominate as the nominated beneficiary—

(a) a natural person who—

- (i) is a beneficiary of the trust; and
- (ii) is of or over the age of 18 years on the date of the nomination; and
- (iii) signifies in writing his or her acceptance of the nomination; or

(b) the trustee, if all beneficiaries of the trust are under the age of 18 years on the date of the nomination—

if the Commissioner considers that the nomination of a beneficiary under this subsection is just and reasonable in the particular case.

(7) If the nominated beneficiary dies, the trustee of the trust may nominate as the nominated beneficiary—

(a) a natural person who—

- (i) is a beneficiary of the trust; and
- (ii) is of or over the age of 18 years on the date of the nomination; and
- (iii) signifies in writing his or her acceptance of the nomination; or

(b) the trustee, if all beneficiaries of the trust are under the age of 18 years on the date of the nomination.

(8) A nomination lodged under subsection (6) or (7)—

(a) must be in the form, and contain the information, determined by the Commissioner; and

s. 46G

S. 46F(8)(b)
substituted by
No. 68/2007
s. 13(2).

(b) takes effect for the tax year in respect of which the nomination is lodged; and

(c) remains in force until—

(i) revoked by the nominated beneficiary in writing given to the Commissioner; or

(ii) the nominated beneficiary dies.

(9) A nomination may be lodged under subsection (6) or (7) (as the case requires) on more than one occasion.

S. 46G
inserted by
No. 85/2005
s. 27.

46G Land tax for discretionary trust with nominated beneficiary

- (1) This section applies if the nomination of a nominated beneficiary for a discretionary trust is in force under section 46F.
- (2) The nominated beneficiary is deemed, for the purposes of this Act (other than Division 1 of Part 4) but for no other purpose, to be the owner of the pre-2006 land subject to the trust (but not to the exclusion of the trustee) and is to be assessed for land tax on that land accordingly, together with any other taxable land owned by the nominated beneficiary.

Note

The rate of land tax for this assessment is the applicable rate set out in Part 1 of Schedule 1.

- (3) The trustee of the trust is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee—
 - (a) in respect of any pre-2006 land—at the applicable rate set out in Part 1 of Schedule 1; and

(b) in respect of any post-2006 land—at the applicable rate set out in Part 3 of Schedule 1.

(4) For the purposes of subsection (3), if the trust property includes both pre-2006 land and post-2006 land, the trustee is to be assessed in accordance with the following formula—

$$L = \left[(R_1 \times T) \times \left(\frac{A}{T} \right) \right] + \left[(R_2 \times T) \times \left(\frac{B}{T} \right) \right]$$

where—

L is the land tax assessed for the trustee;

R₁ is the applicable rate of land tax set out in Part 1 of Schedule 1;

R₂ is the applicable rate of land tax set out in Part 3 of Schedule 1;

T is the total taxable value of all taxable land subject to the trust;

A is the total taxable value of the pre-2006 land subject to the trust;

B is the total taxable value of the post-2006 land subject to the trust.

(5) There is to be deducted from any land tax payable by the nominated beneficiary under subsection (2) any land tax payable by the trustee under subsection (3) in respect of pre-2006 land.

(6) Subsection (2) does not apply if the nominated beneficiary is the trustee.

46H Nomination of PPR beneficiary of unit trust scheme or discretionary trust for land tax purposes

S. 46H
inserted by
No. 85/2005
s. 27.

(1) The trustee of a unit trust scheme or discretionary trust may nominate a person to be the nominated PPR beneficiary of the scheme or trust for the purposes of this Act.

s. 46H

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- (2) The person nominated must be a natural person who is a unitholder in the scheme or a beneficiary of the trust.
 - (3) A nomination under subsection (1) must be lodged with the Commissioner in the form, and containing the information, determined by the Commissioner.
 - (4) A nomination lodged in accordance with subsection (3)—
 - (a) takes effect—
 - (i) for the 2006 tax year if it is lodged on or before 30 June 2006; or
 - (ii) in any other case, for the tax year in respect of which the nomination is lodged; and
 - (b) remains in force until whichever of the following occurs first—
 - (i) the nominated PPR beneficiary dies; or
 - (ii) the nominated PPR beneficiary ceases to use and occupy the land as his or her principal place of residence.
 - (5) The trustee of the scheme or trust may nominate a natural person who is a unitholder in the scheme or a beneficiary of the trust as the nominated PPR beneficiary if—
 - (a) the nominated PPR beneficiary dies; or
 - (b) the nominated PPR beneficiary ceases to use and occupy the land as his or her principal place of residence and the Commissioner considers that the nomination of a PPR beneficiary under this subsection is just and reasonable in the particular case.

S. 46H(4)(a)(ii)
substituted by
No. 68/2007
s. 14(1).

S. 46H(4)(b)
substituted by
No. 68/2007
s. 14(2).

S. 46H(5)
substituted by
No. 68/2007
s. 14(3).

- (6) A nomination lodged under subsection (5)—
- (a) must be in the form, and contain the information, determined by the Commissioner; and
 - (b) takes effect for the tax year in respect of which the nomination is lodged; and
 - (c) remains in force until whichever of the following occurs first—
 - (i) the nominated PPR beneficiary dies; or
 - (ii) the nominated PPR beneficiary ceases to use and occupy the land as his or her principal place of residence.
- (7) A nomination may be lodged under subsection (5) on more than one occasion.
- (8) This section does not apply to a unit trust scheme if a notice is in force for the scheme under section 46C.

S. 46H(6)(b) substituted by No. 68/2007 s. 14(4)(a).

S. 46H(6)(c) substituted by No. 68/2007 s. 14(4)(b).

46I Land tax for PPR land if nominated PPR beneficiary

S. 46I inserted by No. 85/2005 s. 27.

- (1) This section applies if the nomination of a nominated PPR beneficiary for a unit trust scheme or discretionary trust is in force under section 46H.
- (2) The trustee of the unit trust scheme or discretionary trust is to be assessed for land tax on land subject to the scheme or trust that is used and occupied as the principal place of residence of the nominated PPR beneficiary as if the land were the only land owned by the trustee.

S. 46I(2) amended by No. 68/2007 s. 15(1).

Note

The rate of land tax for this assessment is the applicable rate set out in Part 1 of Schedule 1.

s. 46J

S. 46I(3)
inserted by
No. 68/2007
s. 15(2).

- (3) Subsection (2) applies only if the land has been used and occupied as the principal place of residence of the nominated PPR beneficiary—
- (a) since 1 July in the year preceding the tax year in which the nomination for that PPR beneficiary is lodged under section 46H; or
 - (b) if the trustee became owner of the land on or after 1 July in the year preceding the tax year in which the nomination for that PPR beneficiary is lodged under section 46H, since a later date during that year.

S. 46J
inserted by
No. 85/2005
s. 27.

46J Trustee's right of reimbursement

A trustee of a trust who pays any land tax assessed on land subject to the trust is entitled to recoup the amount of the tax from any trust property that is subject to the trust or any like trust.

S. 46K
inserted by
No. 85/2005
s. 27.

46K Requirements for trustees to notify Commissioner

- (1) A person who becomes trustee of land in Victoria, including a person who is already a trustee of land and acquires further land as trustee, must lodge a written notice with the Commissioner within one month after becoming trustee.
- (2) A trustee who disposes of any land that is subject to the trust must lodge a written notice with the Commissioner within one month after disposing of the land.
- (3) If—
 - (a) a person is trustee of land in Victoria; and

- (b) anything happens that results in the trust to which the land is subject becoming a different category of trust—

the person must lodge a written notice with the Commissioner within one month after the thing happens.

Example

If a trust deed is varied so that a discretionary trust becomes an excluded trust, the trustee must notify the Commissioner within one month. Under subsection (6) the Commissioner could, for example, require the trustee to include information about the variation of the trust deed (including a copy of the deed and variation) and any other information necessary to prove that the trust has become an excluded trust.

- (4) A trustee of a fixed trust in respect of which a notice is in force under section 46B must lodge a written notice with the Commissioner within one month after any change to the beneficial interests in land subject to the trust.
- (5) A trustee of a unit trust scheme in respect of which a notice is in force under section 46C must lodge a written notice with the Commissioner within one month after any change to the unitholdings in the scheme.
- (5A) A person who was a personal representative of a deceased estate that includes land in Victoria must lodge a written notice with the Commissioner within one month after the administration of that estate is completed.
- (6) A notice under this section must be in the form, contain the information and be accompanied by any documents or other evidence determined by the Commissioner.
- (7) A notice under this section is in addition to any notice that the person is required to give under section 103.

S. 46K(5A)
inserted by
No. 68/2007
s. 16.

(8) In this section—

category of trust means—

- (a) a fixed trust;
- (b) a unit trust scheme;
- (c) a discretionary trust;
- (d) an excluded trust.

Division 3—Grouping of related corporations

47 What are related corporations?

- (1) For the purposes of this Division, corporations are related corporations in any of the circumstances specified in this section.
- (2) Corporations are *related corporations* if one of those corporations—
 - (a) controls the composition of the board of the other corporation; or
 - (b) is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other corporation; or
 - (c) holds more than 50% of the issued share capital of the other corporation.
- (3) Corporations are *related corporations* if the same person has, or the same persons have together, a controlling interest in each of the corporations.

Note

controlling interest is defined in section 48.

- (4) Corporations are *related corporations* if—
 - (a) more than 50% of the issued share capital of one of those corporations (*corporation 1*) is held by the other corporation (*corporation 2*)

-
- together with the shareholders of corporation 2; and
- (b) the percentage of the issued share capital of corporation 2 held by shareholders of corporation 1 is more than the difference between 50% and the percentage of the issued share capital of corporation 1 held by corporation 2.
- (5) Corporations are *related corporations* if one of those corporations is a related corporation of a corporation of which the other of those corporations is a related corporation (including a corporation that is a related corporation of the other of those corporations because of one or more other applications of this subsection).

48 What is a *controlling interest* in a corporation?

For the purposes of this Division, a person has, or persons have together, a *controlling interest* in a corporation if—

- (a) that person, or those persons acting together, can control the composition of the board of the corporation; or
- (b) that person is, or those persons acting together are, in a position to cast or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of the corporation; or
- (c) that person holds, or those persons acting together hold, more than 50% of the issued share capital of the corporation.

49 Further provisions for determining whether corporations are related corporations

- (1) For the purposes of this Division—
- (a) corporations may be related corporations whether or not they own land in Victoria;

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- (b) a reference to the issued share capital of a corporation does not include a reference to any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital;
 - (c) subject to paragraphs (d) and (e), any shares held or power exercisable by a person or corporation as a trustee or nominee for another person or corporation are taken to be also held or exercisable by the other person or corporation;
 - (d) any shares held or power exercisable by a person or corporation by virtue of the provisions of any debentures of another corporation, or of a trust deed for securing any issue of any such debentures, must be disregarded;
 - (e) any shares held or power exercisable by, or by a nominee for, a person or corporation (not being held or exercisable as mentioned in paragraph (d)) are taken to be not held or exercisable by that person or corporation if—
 - (i) the ordinary business of that person or corporation includes the lending of money; and
 - (ii) the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with an associate of that person or corporation within the meaning of the Corporations Act;
-

-
- (f) the composition of a corporation's board is taken to be controlled by a person or another corporation if the person or other corporation, by the exercise of a power exercisable whether or not with the consent or concurrence of any other person, can appoint or remove all or a majority of the members of the board.
- (2) Subsection (1)(f) does not limit the circumstances in which the composition of a corporation's board is to be taken to be controlled by a person or another corporation.

50 Grouping of related corporations

- (1) The Commissioner may treat related corporations as a single corporation for the purposes of this Act.
- (2) If the Commissioner does so—
- (a) the Commissioner must assess the related corporations jointly for land tax; and
 - (b) the related corporations are jointly and severally liable for the land tax; and
 - (c) section 46 of the **Taxation Administration Act 1997** applies accordingly.

Division 4—General

51 Reassessments

The Commissioner may make a reassessment of land tax under section 9 of the **Taxation Administration Act 1997** more than 5 years after the initial assessment.

S. 51
amended by
No. 26/2007
s. 112.

PART 4—EXEMPTIONS AND CONCESSIONS

Division 1—Principal place of residence

52 Definitions

(1) In this Division—

acceptable delay means a delay in the commencement or completion of a building or other work necessary to enable the intended use and occupation of the land to become its actual use and occupation that is due to reasons beyond the control of the owner or trustee;

S. 52(1) def. of *discretionary trust* repealed by No. 85/2005 s. 28(1)(a).

* * * * *

trustee means trustee within the meaning of section 3(1) but does not include—

- (a) a trustee of a discretionary trust; or
- (b) a trustee of a trust to which a unit trust scheme relates; or
- (c) a liquidator;

S. 52(1) def. of *unit trust scheme* repealed by No. 85/2005 s. 28(1)(a).

* * * * *

S. 52(2) repealed by No. 85/2005 s. 28(1)(b).

* * * * *

53 What is a principal place of residence?

- (1) For the purposes of this Division, land is not taken to be occupied as a place of residence unless there is a building affixed to the land (including a home unit) that, in the Commissioner's opinion—
 - (a) is designed and constructed primarily for residential purposes; and
 - (b) may lawfully be used as a place of residence.
- (2) In determining whether land is used or occupied as the principal place of residence of a person, account must be taken of every place of residence of the person, whether in Victoria or elsewhere.
- (3) For the purposes of this Division, if land on which home units are situated is owned by a body corporate, the land is deemed to be owned by the shareholders of the body corporate who are entitled to exclusive occupancy of the home units.

53A What is a right to reside?

- (1) For the purposes of this Division, a person has a right to reside on land if—
 - (a) the right was granted on the death of the person previously occupying the land; and
 - (b) the right was granted in writing under a will or testamentary instrument; and
 - (c) the right was not granted or acquired for monetary consideration.
- (2) For the purposes of this Division, a right to reside on land does not include—
 - (a) a right to occupy land as a lessee; or
 - (b) a right to occupy land as a beneficiary of a discretionary trust or as a unitholder in a unit trust scheme.

S. 53A
inserted by
No. 68/2007
s. 17.

54 Principal place of residence exemption

(1) Subject to this Division, the following land is exempt land—

(a) land owned by a natural person that is used and occupied as the principal place of residence of that person;

(ab) land owned by a person that is used and occupied as the principal place of residence of a natural person who has a right to reside on that land;

(b) land owned by a trustee of a trust that is used and occupied as the principal place of residence of a natural person who is a beneficiary of the trust.

S. 54(1)(ab)
inserted by
No. 68/2007
s. 18(1).

(1A) Despite subsection (1)(ab), land referred to in that subsection is not exempt land unless—

(a) immediately before the natural person who has a right to reside on the land was granted the right, the land was exempt land under section 54(1)(a) or (b); and

(b) that person is not entitled to—

(i) an exemption under this Part in respect of any land; or

(ii) an exemption from land tax under a law of any other State or Territory that corresponds to this Part.

S. 54(1A)
inserted by
No. 68/2007
s. 18(2).

(2) Subject to section 55, subsection (1)(a) or (b) only applies if the land has been used and occupied as the principal place of residence of the owner or beneficiary—

(a) since 1 July in the year preceding the tax year; or

S. 54(2)
amended by
No. 68/2007
s. 18(3).

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- (b) if the owner or trustee became the owner of the land on or after 1 July in the year preceding the tax year, since a later date during that year.
- (3) In addition to land of an owner that is used and occupied as a person's principal place of residence (*the PPR land*), land is also exempt land if it is owned by that owner and—
- (a) is contiguous with the PPR land or separated from the PPR land only by a road or railway or other similar area across or around which movement is reasonably possible; and
 - (b) enhances the PPR land; and
 - (c) is used solely for the private benefit and enjoyment of the person who uses and occupies the PPR land and has been so used—
 - (i) since 1 July in the year preceding the tax year; or
 - (ii) if the owner or trustee became the owner of the land on or after 1 July in the year preceding the tax year, so used and occupied since a later date during that year.
- (4) This section applies to land whether owned by a sole owner or joint owners.

55 Deferral of tax on certain residential land for 6 months

- (1) If—
- (a) land would be exempt land in respect of a year under section 54 but for section 54(2); and

-
- (b) the owner satisfies the Commissioner that the land is intended to be continuously used and occupied as the principal place of residence of the owner or, in the case of a trustee, as the principal place of residence of a beneficiary, for a period of at least 6 months from the date that the land was first so used and occupied—

the Commissioner may determine that land tax in respect of the land for that year is not payable until the expiry of that 6 month period.

- (2) If land that would be exempt land in respect of a year but for section 54(2) has been continuously used and occupied as the person's principal place of residence for the period of 6 months, the land becomes exempt land in respect of that year at the end of that period.

56 Temporary absence from principal place of residence

- (1) For the purposes of this Division, land is taken to be used and occupied as the principal place of residence of a person despite the person's absence from the land if the Commissioner is satisfied—
- (a) that the absence is temporary in nature; and
 - (b) that the person intends to resume use or occupation of the land as his or her principal place of residence after the absence; and
 - (c) that, in respect of the period of absence, no other land is exempt land under this Division as the principal place of residence of the owner or, in the case of a trustee, as the principal place of residence of a beneficiary; and

-
- (d) that the owner has not made any claim for exemption for land tax under a law of another jurisdiction (whether in or outside Australia) in respect of the period of absence for his or her principal place of residence or, in the case of a trustee, as the principal place of residence of a beneficiary.
- (2) For the purposes of section 62, land to which subsection (1) applies is not to be taken to be land used by a person to carry on a substantial business activity only because the owner lets the land for residential purposes during the absence.
- (3) Subsection (1) does not apply in the case of a temporary absence—
- (a) that continues for more than 6 years starting at the end of the last period of at least 6 consecutive months during which the land was used and occupied—
- (i) in the case of an owner, by the owner as his or her principal place of residence; or
- (ii) in the case of a trustee, by the beneficiary as his or her principal place of residence; or
- (b) if the owner or trustee rents the land for a period of 6 consecutive months or more in a particular year.

57 Exemption continues on death of resident

- (1) If land is used and occupied as the principal place of residence of a person and the person dies, liability for tax is to be assessed as if the person had not died but had continued to use and occupy the land as his or her principal place of residence.

S. 57(2)(a)
substituted by
No. 68/2007
s. 19(1).

- (2) Subsection (1) operates only until the earlier of—
- (a) the third anniversary of the person's death or the expiry of the further period approved by the Commissioner under subsection (3); or
 - (b) the day on which the person's interest in the land vests in another person under a trust; or
 - (c) the day on which the person's interest in the land vests in a person (other than the person's personal representative) under the administration of the person's estate.
- (3) For the purposes of subsection (2)(a), the Commissioner may approve a further period in any particular case.

S. 57(3)
inserted by
No. 68/2007
s. 19(2).

58 Exemption continues if land becomes unfit for occupation

- (1) If land that is exempt land under section 54(1) becomes unfit for occupation as the principal place of residence of a person because of damage or destruction caused by an event such as fire, earthquake, storm, accident or malicious damage, the land continues to be exempt land while the owner continues to own the land as if it had continued to be used and occupied as the person's principal place of residence.
- (2) Subsection (1) operates until the second anniversary of the day on which the land became unfit for occupation as the person's principal place of residence.
- (3) The Commissioner may extend the period of operation of subsection (1) beyond the period referred to in subsection (2) for a further period of not more than 2 years in any particular case if the Commissioner is satisfied that there has been an acceptable delay in that case.

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- (4) Subsection (1) does not apply if, at any time during which it would otherwise apply, any other land is exempt land under section 54(1) as the principal place of residence of the owner or, in the case of a trustee, as the principal place of residence of a beneficiary.

59 Purchase of new principal residence

- (1) If a person—
- (a) becomes the owner of land in a year for use and occupation as his or her principal place of residence; and
 - (b) as at 31 December in that year uses and occupies other land as his or her principal place of residence—

the land referred to in paragraph (a) is exempt land for the following year.

Note

In this situation, the land referred to in paragraph (b) will be exempt land in the circumstances set out in section 54(1)(a).

- (2) If a trustee—
- (a) becomes the owner of land in a year for use and occupation as the principal place of residence of a beneficiary under the trust; and
 - (b) as at 31 December in that year the beneficiary uses and occupies other land as his or her principal place of residence—

the land referred to in paragraph (a) is exempt land for the following year.

Note

In this situation, the land referred to in paragraph (b) will be exempt land in the circumstances set out in section 54(1)(b).

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- (3) An exemption under subsection (1) or (2) is revoked if the owner or beneficiary does not continuously use and occupy the land as his or her principal place of residence for at least 6 months, commencing within 12 months after the date on which the owner or trustee became the owner of the land.
 - (4) The Commissioner may assess the land tax payable by the owner or trustee in the circumstances referred to in subsection (3).

60 Sale of old principal residence

- (1) If an owner—
 - (a) as at 31 December in a year uses and occupies land as his or her principal place of residence; and
 - (b) as at that date is the owner of other land that, for a period of at least 6 months during that year, was continuously used and occupied as the principal place of residence of the owner—

the land referred to in paragraph (b) is exempt land in respect of the following year.

Note

In this situation, the land referred to in paragraph (a) will also be exempt land in the circumstances set out in section 54(1)(a).

- (2) If—
 - (a) as at 31 December in a year, land is used and occupied as the principal place of residence of a beneficiary under a trust; and

- (b) as at that date the trustee is the owner of other land that, for a period of at least 6 months during that year, was continuously used and occupied as the principal place of residence of the beneficiary—

the land referred to in paragraph (b) is exempt land in respect of the following year.

Note

In this situation, the land referred to in paragraph (a) will also be exempt land in the circumstances set out in section 54(1)(b).

- (3) An exemption under subsection (1) or (2) is revoked if the owner or trustee is still the sole or joint owner of the land referred to in subsection (1)(b) or (2)(b) at the end of the year in respect of which the land is exempt.
- (4) The Commissioner may assess the land tax payable by the owner or trustee in the circumstances referred to in subsection (3).

61 Unoccupied land subsequently used as principal residence

- (1) An owner who was assessed for and paid land tax in respect of a year in respect of land that is not occupied as the principal place of residence of the owner is entitled to a refund of that land tax if—
- (a) for at least 6 months commencing in that year, the land is continuously used and occupied as the principal place of residence of the owner; and
- (b) an application for a refund is made before the end of the next following year.

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- (2) A trustee who was assessed for and paid land tax in respect of a year in respect of land that is not occupied as the principal place of residence of a beneficiary under the trust is entitled to a refund of that land tax if—
- (a) for at least 6 months commencing in that year, the land is continuously used and occupied as the principal place of residence of a beneficiary under the trust; and
 - (b) an application for a refund is made before the end of the next following year.
- (3) If—
- (a) an owner or trustee is entitled under subsection (1) or (2) to a refund of land tax in respect of a tax year in respect of land; and
 - (b) the owner or trustee was assessed for and paid land tax in respect of that land in respect of the year preceding the tax year; and
 - (c) the owner or trustee was not entitled to an exemption under this Part in respect of any other land in respect of the year preceding the tax year—
- the owner or trustee is entitled to a refund of the land tax referred to in paragraph (b).
- (4) If—
- (a) an owner or trustee is entitled under subsection (3) to a refund of land tax in respect of the first year preceding the tax year referred to in that subsection (*the first year*) in respect of land; and
 - (b) the owner or trustee was assessed for and paid land tax in respect of that land in respect of the year or 2 years immediately preceding the first year; and
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- (c) the owner or trustee was not entitled to an exemption under this Part in respect of any other land in respect of the year or years referred to in paragraph (b)—

the Commissioner may refund to the owner or trustee the land tax paid in respect of the year or years referred to in paragraph (b) in a particular case if the Commissioner is satisfied that there has been an acceptable delay in that case.

Note

Refunds must be applied for under section 19 of the **Taxation Administration Act 1997**.

- (5) Subsections (1), (2), (3) and (4) do not apply if the owner or trustee derived any income from the land at any time during which it was not occupied as a principal place of residence of the owner or of a beneficiary under the trust, as the case may be.
- (6) For the purposes of calculating the amount of a refund under this section, the land referred to in subsection (1), (2), (3) or (4) is to be taken to have been exempt from land tax in respect of the tax year in respect of which the refund is payable.

Example

At midnight on 31 December 2005, A owned a block of unoccupied land valued at \$100 000 and an investment property valued at \$250 000. A's land tax for 2006 will be calculated on the aggregated value of both landholdings, that is \$350 000. If A occupies the block as A's principal place of residence for at least 6 months commencing at some time in 2005, A's refund under subsection (1) will be calculated as if the block had been exempt from land tax for 2005. Therefore, A's refund will be the difference between the land tax A paid on a land value of \$350 000 and the land tax A would have paid on a land value of \$250 000.

62 Partial exemption if land used for business activities

- (1) Despite anything to the contrary in this Part, if land that would be exempt land under another provision of this Division, but for this section, is used by any person to carry on a substantial business activity, the exemption applies only to the extent that the land is used and occupied for residential purposes.
 - (2) In determining whether land is used by a person to carry on a substantial business activity, account must be taken of—
 - (a) whether paid employees or contractors (other than employees or contractors who are relatives of, and who ordinarily reside with, the person who uses and occupies the land as his or her principal place of residence) work on the land; and
 - (b) whether any part of the land is used or allocated solely for business purposes; and
 - (c) if part of the land is used or allocated (whether solely or partly) for business purposes, the proportion of the area of the land, or of the floor space of buildings on the land, that is so used or allocated; and
 - (d) the amount of income (if any), and the proportion of the person's total income, that is derived from business activities carried on on the land; and
 - (e) such other matters (if any) as are prescribed for the purposes of this section.
 - (3) If subsection (1) applies, the Commissioner must apportion the value of the land as between use and occupation for residential purposes and use for business purposes, having regard to the proportion of the land used for each purpose and the extent to which each proportion is so used.
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- (4) The Commissioner may consult the Valuer-General in relation to an apportionment under this section.

63 Partial exemption or refund for trustees

- (1) Despite anything to the contrary in this Division, if—
- (a) an exemption from land tax or a refund of land tax is provided for in this Division as a consequence of the continuous use and occupation of land as the principal place of residence of one or more beneficiaries under a trust; and
 - (b) other beneficiaries under the trust who do not use and occupy the land as their principal place of residence have a beneficial interest in the land—

the amount of the exemption or refund is determined as if the value of the land for the purposes of the exemption or refund were such proportion of the value of the land as is equal to the proportion that the interest in the land held by the beneficiary bears to the total interests of all beneficiaries in the land.

- (2) Nothing in subsection (1) applies in the case of a beneficiary entitled to a life estate in possession.

Division 2—Primary production land

64 Definitions

- (1) In this Division—

greater Melbourne means—

- (a) *metropolitan area* within the meaning of section 201 of the **Melbourne and Metropolitan Board of Works Act**

S. 64(1) def. of *greater Melbourne* substituted by No. 85/2006 s. 173(Sch. 1 item 3.1).

1958 (as in force immediately before its repeal); or

- (b) any area declared by the Governor in Council under subsection (3) to be the metropolitan area;

primary production means—

- (a) cultivation for the purpose of selling the produce of cultivation (whether in a natural, processed or converted state); or
- (b) the maintenance of animals or poultry for the purpose of selling them or their natural increase or bodily produce; or
- (c) the keeping of bees for the purpose of selling their honey; or
- (d) commercial fishing, including the preparation for commercial fishing or the storage or preservation of fish or fishing gear; or
- (e) the cultivation or propagation for sale of plants seedlings mushrooms or orchids;

proprietary company has the same meaning as in the Corporations Act;

relevant period, in relation to a proprietary company means, for any point in time—

- (a) the previous 3 years; or
- (b) the period since the incorporation of the company—

whichever is the shorter;

urban zone means a zone under a planning scheme in force under the **Planning and Environment Act 1987** of a type declared under subsection (2) to be an urban zone for the purposes of this Division.

(2) The Governor in Council may by Order published in the Government Gazette declare specified types of zones under planning schemes to be urban zones for the purposes of this Division.

(3) The Governor in Council may, by Order published in the Government Gazette, declare an area to be the metropolitan area for the purposes of this section.

S. 64(3)
inserted by
No. 85/2006
s. 173(Sch. 1
item 3.2).

(4) An Order made under subsection (3) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—

S. 64(4)
inserted by
No. 85/2006
s. 173(Sch. 1
item 3.2).

(a) wholly or partially or as amended by order or other instrument; or

(b) as formulated, issued, prescribed or published at the time the order is made or at any time before then.

(5) Subsection (4) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department of Sustainability and Environment.

S. 64(5)
inserted by
No. 85/2006
s. 173(Sch. 1
item 3.2).

65 Exemption of primary production land outside greater Melbourne

(1) Land outside greater Melbourne that is used primarily for primary production is exempt land.

(2) If a part of any land outside greater Melbourne is used primarily for primary production that part is exempt land even if a business other than the business of primary production is carried on on any other part of the land.

66 Exemption of primary production land in greater Melbourne but not in an urban zone

Land is exempt land if the Commissioner determines that the land comprises one parcel—

- (a) that is wholly or partly in greater Melbourne; and
- (b) none of which is within an urban zone; and
- (c) that is used primarily for primary production.

67 Exemption of primary production land in an urban zone in greater Melbourne

(1) Land is exempt land if the Commissioner determines that—

- (a) the land comprises one parcel that is—
 - (i) wholly or partly in greater Melbourne; and
 - (ii) wholly or partly in an urban zone; and
 - (iii) used solely or primarily for the business of primary production; and
- (b) the owner of the land is a person specified in subsection (2).

(2) The owner of the land must be—

- (a) a natural person who is normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the land; or
 - (b) a proprietary company—
 - (i) in which all the shares are beneficially owned by natural persons; and
 - (ii) the principal business of which is primary production of the type carried on on the land; or
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- (c) a trustee of a trust of which—
- (i) the sole business is primary production of the type carried on on the land; and
 - (ii) each beneficiary is a natural person who is entitled under the trust deed to an annual distribution of the trust income; and
 - (iii) at least one of the beneficiaries, or a relative of at least one of the beneficiaries, is normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the land.
- (3) For the purposes of subsection (2)(b)(ii), the principal business of a proprietary company is not primary production of the type carried on on the land unless—
- (a) the main undertaking of the company is primary production of that type; and
 - (b) either—
 - (i) dividends distributed during the relevant period were made to all the holders of the issued share capital of the company in proportion to their respective paid up shareholdings and 60% of those dividends were paid to persons normally engaged in a substantially full-time capacity in the business of primary production; or
 - (ii) if no dividends were declared during the relevant period, ordinary shares representing more than 60% of the paid up capital of the company (excluding shares entitled to a fixed rate of dividend) have been beneficially owned for the relevant period by persons
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normally engaged in a substantially full-time capacity in the business of primary production.

- (4) If 2 or more persons are the owner of a parcel of land and—
- (a) at least one of them is normally engaged in a substantially full-time capacity in the business of primary production on the land; and
 - (b) the other or others are relatives of a person normally so engaged; and
 - (c) no other person is normally so engaged on that land—

the owners are deemed, for the purposes of subsection (2), to be normally so engaged.

- (5) If—
- (a) a person is, or 2 or more persons are, the owner of a parcel of land on which the business of primary production is carried on; and
 - (b) a relative of the person, or of each of the persons, is normally engaged in a substantially full-time capacity in that business (whether or not the person, or any of those persons, is also normally so engaged); and
 - (c) no other person is normally so engaged on that land—

the owner is deemed, for the purposes of subsection (2), to be normally so engaged.

- (6) For the purposes of this section—
- (a) a reference to the issued share capital of a company does not include a reference to any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital;
 - (b) a reference to an owner of land does not include a reference to a beneficiary of a trust or a unitholder in a unit trust scheme to which the land is subject.

S. 67(6)
substituted by
No. 85/2005
s. 28(2).

68 Exemption of land being prepared for use for primary production

- (1) Land is exempt land for a tax year if the Commissioner is satisfied that—
- (a) the land is being prepared for use primarily for primary production; and
 - (b) the land will become exempt land under section 65, 66 or 67 within 12 months after the day on which the preparation referred to in paragraph (a) commenced.
- (2) The Commissioner may extend the period referred to in subsection (1)(b) by a further period of 12 months.

69 Application for exemption under section 66, 67 or 68

To obtain an exemption from land tax under section 66, 67 or 68, the owner of the land must—

- (a) apply to the Commissioner for an exemption under the section; and
- (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under the section.

70 Parcels of land

For the purposes of section 66 or 67, a part of a parcel of land is to be regarded as a separate parcel of land if—

- (a) the part is occupied separately from or is obviously adapted to being occupied separately from other land in the parcel; and
- (b) the owner of the parcel is—
 - (i) a natural person who is normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the land; or
 - (ii) a proprietary company all the shares in which are beneficially owned by natural persons and the principal business of which is primary production of a type carried on on the land; or
 - (iii) a trustee of a trust of which—
 - (A) the sole business is primary production of the type carried on on the land; and
 - (B) each beneficiary is a natural person who is entitled under the trust deed to an annual distribution of the trust income; and
 - (C) at least one of the beneficiaries, or a relative of at least one of the beneficiaries, is normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the land.

Division 3—Sporting, recreational and cultural land

71 Land leased for sporting, recreational or cultural activities by members of the public

- (1) Land vested in a person or body is exempt land if the Commissioner determines that—
 - (a) it is leased for outdoor sporting, outdoor recreational, outdoor cultural or similar outdoor activities and is available for use for one or more of those activities by members of the public; and
 - (b) the proceeds from the leasing are applied exclusively by the person or body for charitable purposes.
- (2) To obtain an exemption from land tax under this section, the owner of the land must—
 - (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.

72 Sporting, recreational or cultural land owned by certain non-profit organisations

- (1) This section applies to land owned—
 - (a) by a non-profit organisation; or
 - (b) in the case of a non-profit organisation that is unincorporated, by a person on trust for the non-profit organisation.

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- (2) The land is exempt land if the Commissioner determines that—
- (a) the land is used by the non-profit organisation primarily or substantially for—
 - (i) sporting activities; or
 - (ii) outdoor recreational, outdoor cultural or similar outdoor activities; and
 - (b) the primary purpose or objective of the non-profit organisation is to conduct the sporting activities or outdoor recreational, outdoor cultural or similar outdoor activities for which the land is primarily or substantially used.
- (3) To obtain an exemption from land tax under this section, the owner of the land must—
- (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.
- (4) In this section—
- non-profit organisation*** means a body (whether incorporated or not) that—
- (a) applies its profits in promoting its purposes or objectives; and
 - (b) prohibits the payment of any dividends to members—
- but does not include a body that promotes or controls horse racing, pony racing or harness racing in Victoria.
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73 Concessional tax rate for club land

- (1) Land or part of land that is owned and solely occupied by a club is not liable for land tax at a rate greater than 0.357% of the taxable value of the land or part.
- (2) For the purposes of subsection (1) and assessing land tax on any part of the land that is not solely occupied by a club, the land tax that is or that would be, but for the operation of subsection (1), attributable to a part of land is the proportion of the land tax that would, but for the operation of subsection (1), be payable on the whole of the land owned by a club.
- (3) In this section, **club** means a society, club or association that—
 - (a) is not carried on for the purposes of the profit or gain to its individual members; and
 - (b) is carried on exclusively for one or more of the following purposes—
 - (i) providing for the social, cultural, recreational, literary or educational interests of its members;
 - (ii) promoting or controlling horse racing, pony racing or harness racing in Victoria.

Pt 4 Div. 4
(Heading)
amended by
No. 84/2006
s. 12.

Division 4—Charities and health services

74 Charitable institutions and purposes

- (1) Land is exempt land if the Commissioner determines that—
 - (a) it is used by a charitable institution exclusively for charitable purposes; or
 - (b) it is—
 - (i) owned by a charitable institution; and
 - (ii) vacant; and
 - (iii) declared by its owner to be held for future use for charitable purposes.
 - (2) If the Commissioner is satisfied that only a part of land is used by a charitable institution exclusively for charitable purposes—
 - (a) land tax is assessable on the remaining part of the land, unless another exemption applies to that part; and
 - (b) section 22 applies, if necessary, for that purpose.
 - (3) To obtain an exemption from land tax under this section, the owner of the land must—
 - (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.
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74A Health centres and services

- (1) Land is exempt land if it is used by any of the following bodies exclusively for the purposes of that body—
- (a) an ambulance service;
 - (b) a registered community health centre;
 - (c) a denominational hospital;
 - (d) a multi-purpose service;
 - (e) a public health service;
 - (f) a public hospital;
 - (g) the Victorian Institute of Forensic Mental Health established by section 117B of the **Mental Health Act 1986**.
- (2) Nothing in this section limits the application of any other exemption.

Example

If a denominational hospital is also a charitable institution, the exemption for charitable institutions under section 74 may still apply.

- (3) In this section—

ambulance service means an ambulance service created under section 23 of the **Ambulance Services Act 1986**;

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S. 74A
inserted by
No. 84/2006
s. 13.

S. 74A(1)(b)
substituted by
No. 79/2008
s. 18(1).

S. 74A(3)
def. of
*community
health centre*
repealed by
No. 79/2008
s. 18(2)(a).

denominational hospital means a hospital listed in Schedule 2 to the **Health Services Act 1988**;

multi-purpose service means—

- (a) a body referred to in section 115V(2) of the **Health Services Act 1988**; or
- (b) a body declared under Part 4A of that Act to be a multi purpose service;

public health service means a public health service listed in Schedule 5 to the **Health Services Act 1988**;

public hospital means a hospital listed in Schedule 1 to the **Health Services Act 1988**;

S. 74A(3)
def. of
public hospital
amended by
No. 79/2008
s. 18(2)(b).

registered community health centre means a community health centre registered under Division 6 of Part 3 of the **Health Services Act 1988**.

S. 74A(3)
def. of
registered community health centre
inserted by
No. 79/2008
s. 18(2)(c).

Division 5—Accommodation

75 Rooming houses

- (1) Land is exempt land if the Commissioner determines that the land is used and occupied—
 - (a) as a rooming house (within the meaning of the **Residential Tenancies Act 1997**) that is registered under Part XII of the **Health Act 1958**; and
 - (b) primarily for low cost accommodation by people with low incomes, in accordance with guidelines issued by the Commissioner for the purposes of this section.

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- (2) The guidelines may include provisions with respect to the following—
- (a) the circumstances in which accommodation is taken to be low cost accommodation;
 - (b) the types and location of premises in which low cost accommodation may be provided;
 - (c) the number and types of persons for whom the accommodation must be provided;
 - (d) the circumstances in which, and the arrangements under which, the accommodation is provided;
 - (e) maximum tariffs for the accommodation;
 - (f) periods within which tariffs may not be increased;
 - (g) the circumstances in which the applicant is required to give an undertaking to pass on the benefit of the exemption from taxation to the persons for whom the accommodation is provided in the form of lower tariffs.
- (3) A guideline—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances.
- (4) To obtain an exemption from land tax under this section, the owner of the land must—
- (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.
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- (5) If the Commissioner is satisfied that only a part of land is used and occupied as a rooming house or primarily for low cost accommodation by people with low incomes—
- (a) land tax is assessable on the remaining part of the land, unless another exemption applies to that part; and
 - (b) section 22 applies, if necessary, for that purpose.
- (6) Without limiting the other ways in which land ceases to be exempt under this section, land ceases to be exempt if a person breaches an undertaking given as referred to in subsection (2)(g).

76 Residential care facilities and supported residential services

- (1) Land is exempt land if the Commissioner determines that it is occupied, or currently available for occupation, as—
- (a) a residential care facility; or
 - (b) a supported residential service.
- (2) To obtain an exemption from land tax under this section, the owner of the land must—
- (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.
- (3) If the Commissioner is satisfied that only a part of land is occupied or currently available for occupation as a residential care facility or supported residential service—

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- (a) land tax is assessable on the remaining part of the land, unless another exemption applies to that part; and
 - (b) section 22 applies, if necessary, for that purpose.

(4) In this section—

residential care facility means any premises—

(a) in which—

- (i) a residential care service; or
- (ii) a multi purpose service—

within the meaning of the Aged Care Act 1997 of the Commonwealth, is operated by an approved provider within the meaning of that Act; and

- (b) in respect of which an allocation of residential care places is in effect under Division 15 of that Act;

supported residential service has the same meaning as in the **Health Services Act 1988**.

76A Residential services for people with disabilities

- (1) Land is exempt land if the Commissioner determines that it is occupied, or currently available for occupation, as a residential service within the meaning of the **Disability Act 2006**.
- (2) To obtain an exemption from land tax under this section, the owner of the land must—
 - (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.

S. 76A
inserted by
No. 31/2008
s. 18.

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- (3) If the Commissioner is satisfied that only a part of land is occupied or currently available for occupation as a residential service—
- (a) land tax is assessable on the remaining part of the land, unless another exemption applies to that part; and
 - (b) section 22 applies, if necessary, for that purpose.

77 Caravan parks

- (1) Land is exempt land if the Commissioner determines that it is used as a registered caravan park.
- (2) To obtain an exemption from land tax under this section, the owner of the land must—
 - (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.
- (3) If the Commissioner is satisfied that only a part of land is used as a registered caravan park—
 - (a) land tax is assessable on the remaining part of the land, unless another exemption applies to that part; and
 - (b) section 22 applies, if necessary, for that purpose.
- (4) In this section—

registered caravan park means a caravan park within the meaning of the **Residential Tenancies Act 1997** that is registered in accordance with regulations made under section 515 of that Act.

78 Retirement villages

- (1) Land is exempt land if it is occupied, or currently available for occupation, as a retirement village.
- (2) If the Commissioner is satisfied that only a part of land is occupied, or currently available for occupation, as a retirement village—
 - (a) land tax is assessable on the remaining part of the land, unless another exemption applies to that part; and
 - (b) section 22 applies, if necessary, for that purpose.
- (3) In this section—

retirement village means a complex containing residential premises (whether or not including hostel units) predominantly or exclusively occupied, or available for occupation, by retired persons under—

- (a) a residential tenancy agreement or any other lease or licence; or
- (b) a right conferred by shares; or
- (c) the ownership of residential premises subject to a right or option of repurchase on conditions restricting the subsequent disposal of the premises—

other than a complex or premises that is or are a residential care facility or supported residential service within the meaning of section 76.

Division 6—Public, government and municipal land

79 Crown land

- (1) Land is exempt land if it is—
- (a) the property of the Crown in right of Victoria; or
 - (b) vested in a Victorian Minister.
- (2) Subsection (1) does not apply to land that is held by—
- (a) a person who is entitled to the land under a lease from the Crown under which the person has no right, absolute or conditional, of acquiring the fee simple; or
 - (b) a licensee of vested land under Part 3A of the **Victorian Plantations Corporation Act 1993**.

80 Public statutory authorities

- (1) Land is exempt land if the Commissioner determines that the land—
- (a) is owned by a public statutory authority; and
 - (b) is not land to which subsection (2) applies.
- (2) Land or a part of land owned by a public statutory authority is not exempt land if—
- (a) the land or part is leased or occupied for any business purposes by a person or body other than—
 - (i) a public statutory authority; or
 - (ii) a person or body referred to in section 72(1), 81(1), 83(1) or 84(1); or

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- (b) the land or part is—
- (i) owned by a public statutory authority declared under subsection (4) to be an authority to which this subparagraph applies; and
 - (ii) not used exclusively as a public open space or as a park.
- (3) Subsection (2)(a) does not apply to land or part of land—
- (a) that is leased or occupied under or in accordance with an arrangement made with a municipal council for the purpose of promoting or assisting a decentralised industry; or
 - (b) that is used or occupied by persons carrying on business in movable stalls in a market during some but not all of the ordinary business hours in a week.
- (4) The Governor in Council may, by Order published in the Government Gazette, declare a public statutory authority to be an authority to which subsection (2)(b) applies.
- (5) To obtain an exemption from land tax under this section, the owner of the land must—
- (a) apply to the Commissioner for the exemption; and
 - (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.

S. 80(3)
substituted by
No. 85/2005
s. 29(1).

81 Municipal and public land

- (1) Land is exempt land if it is—
 - (a) owned by a municipal council; or
 - (b) vested in trustees appointed under an Act and held in trust for a municipal purpose; or
 - (c) vested in trustees appointed under an Act and held in trust for a public purpose.
- (2) Despite subsection (1), land or a part of land referred to in that subsection is not exempt land if the land or part is leased or occupied for any business purposes by a person or body other than—
 - (a) a municipal council or trustees of a kind referred to in subsection (1)(b) or (c); or
 - (b) a person or body referred to in section 72(1), 80(1), 83(1) or 84(1).
- (3) Subsection (2) does not apply to land or part of land—
 - (a) that is leased or occupied under or in accordance with an arrangement made with a municipal council for the purpose of promoting or assisting a decentralised industry; or
 - (b) that is used or occupied by persons carrying on business in movable stalls in a market during some but not all of the ordinary business hours in a week; or
 - (c) that is used exclusively for or in connection with a business the primary purpose of which is to provide outdoor sporting or recreational facilities.

S. 81(3)
substituted by
No. 85/2005
s. 29(2).

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- (4) Subsection (1) does not apply to land vested in or held in trust for, or for the purposes of, or for purposes that include the purposes of, a trade union, trades hall or council of trade unions.

82 Application of Division 6

- (1) Nothing in this Division applies to land—
- (a) owned or occupied by the Transport Accident Commission; or
 - (b) owned or occupied by the Victorian Urban Development Authority, other than—
 - (i) land to which a declaration under subsection (2) applies; or
 - (ii) land in the docklands area within the meaning of the **Docklands Act 1991**.
- (2) The Treasurer, on the recommendation of the Minister administering the **Victorian Urban Development Authority Act 2003**, may, by instrument, declare land owned or occupied by the Victorian Urban Development Authority to be exempt land if the Treasurer is satisfied that the land is, or is to be, used for the provision of rental housing in accordance with a housing agreement in force between the Commonwealth and the State.

Division 7—General exemptions

83 Armed services personnel

- (1) Land is exempt land if—
- (a) it is owned by, or held in trust for, an association of armed services personnel or the dependants of armed services personnel; and
 - (b) it is used by the members of the association for the purposes of the association.
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- (2) Despite subsection (1), land or a part of land referred to in that subsection is not exempt land if the land or part is leased or occupied for any business purposes by a person or body other than—
- (a) an association referred to in subsection (1);
or
 - (b) a person or body referred to in section 72(1), 80(1), 81(1) or 84(1).
- (3) Subsection (2) does not apply to land or part of land that is leased or occupied under or in accordance with an arrangement made with a municipal council for the purpose of promoting or assisting a decentralised industry.
- (4) In this section—
- armed services personnel*** means members or former members of—
- (a) the armed forces of the Commonwealth; or
 - (b) the armed forces of any current or former ally of the Commonwealth.

84 Friendly societies

- (1) Land is exempt land if it is owned by, or held in trust for, a friendly society.
- (2) Despite subsection (1), land or a part of land referred to in that subsection is not exempt land if the land or part is—
- (a) used for banking or insurance purposes; or
 - (b) leased or occupied for any other business purposes by a person or body other than—
 - (i) a friendly society; or
 - (ii) a person or body referred to in section 72(1), 80(1), 81(1) or 83(1).
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- (3) Subsection (2) does not apply to land or part of land that is leased or occupied under or in accordance with an arrangement made with a municipal council for the purpose of promoting or assisting a decentralised industry.

85 Land used for agricultural shows or farm field machinery days

Land is exempt land if—

- (a) it is owned by, or held in trust for, a body (whether incorporated or not) established to conduct agricultural shows, farm field machinery days or similar activities where the activities are not carried on for the purpose of profit or gain to the members of the body; and
- (b) it is used for the purposes of the body.

86 Mines

- (1) Land is exempt land if the Commissioner determines that it is used exclusively as a mine.
- (2) To obtain an exemption from land tax under this section, the owner of the land must—
- (a) apply to the Commissioner for the exemption; and
- (b) give the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.
- (3) In this section, *mine* means—
- (a) any land covered by a mining licence issued under the **Mineral Resources (Sustainable Development) Act 1990**; or

S. 86(3) def. of *mine* amended by No. 63/2006 s. 61(Sch. item 20).

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- (b) any land in the Latrobe area within the meaning of the **Electricity Industry (Residual Provisions) Act 1993** where a generation company or other body authorised under that Act mines coal for use in the generation of electricity.
 - (4) Despite subsection (3), the surface of any land is not at any time a mine unless at that time it is—
 - (a) occupied by or used for shafts or approaches to shafts, or occupied by buildings enclosing or covering those shafts or approaches; or
 - (b) used for the storage of debris or mining machinery.

Division 8—Exemptions from land tax on transmission easements

87 Governor in Council may exempt

- (1) The Governor in Council, on the recommendation of the Treasurer, may by Order published in the Government Gazette exempt—
 - (a) a transmission easement holder from liability to pay land tax on the transmission easement; or
 - (b) a transmission easement from land tax.
- (2) In considering whether to recommend an exemption under subsection (1), the Treasurer may have regard to—
 - (a) the need to promote the economic development of Victoria;
 - (b) the need to promote and not hinder the development of energy infrastructure in Victoria;
 - (c) any other factor that the Treasurer considers is appropriate.

88 Dispositions of transmission easements

- (1) A disposition of a transmission easement by a transmission easement holder, whether made before, on or after the commencement of this section, is not effective to exempt the transmission easement holder from any land tax that would have become payable on the easement had the disposition not taken place if, following the disposition, the easement continues to be, or may be, used by the transmission easement holder.
- (2) If the Commissioner is satisfied, having regard to—
 - (a) the nature of the easement that is disposed of;
 - (b) any other matters the Commissioner considers relevant—that a transmission easement holder should not pay any tax in respect of that easement that may become payable by reason of subsection (1), the Commissioner may exempt that transmission easement holder from tax payable under this Part.
- (3) In this section, *disposition* includes disposition by way of conveyance, transfer, settlement, declaration of trust or any other method.

**PART 5—RELIEF FROM OR POSTPONEMENT OF LAND
TAX**

Division 1—Preliminary

89 Definition

In this Part, *Board* means the Land Tax Hardship Relief Board referred to in section 95.

90 Arrangements for payment of tax

Nothing in this Part limits the operation of section 49 of the **Taxation Administration Act 1997**.

Division 2—Relief

91 Taxpayer may apply for relief

- (1) A taxpayer may apply for relief from the liability to pay land tax on one of the following grounds—
 - (a) if the taxpayer is a natural person—
 - (i) the taxpayer has suffered such a loss, or is in such circumstances, that payment of the full amount of the land tax would cause serious hardship; or
 - (ii) the taxpayer has died and his or her dependants are in such circumstances that payment of the full amount of the land tax would cause serious hardship;
 - (b) if the taxpayer is a company, persons holding more than 60% of the issued share capital of the company are in such circumstances that payment of the full amount of the land tax would cause serious hardship.

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- (2) An application for relief must—
- (a) be in writing; and
 - (b) be made to—
 - (i) the Commissioner, if the land tax assessed for the applicant taxpayer for or in a tax year does not exceed \$1000; or
 - (ii) the Board, if the land tax assessed for the applicant taxpayer for or in a tax year exceeds \$1000; and
 - (c) be made within—
 - (i) one month after notice of assessment of the land tax has been given to the taxpayer; or
 - (ii) a further time allowed by the Commissioner or the Board, as the case requires.
- (3) For the purposes of this section, a reference to the issued share capital of a company does not include a reference to any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital.

92 Relief granted by the Commissioner

- (1) The Commissioner may grant relief from the liability to pay land tax to a taxpayer on application under section 91 if the Commissioner is satisfied that the grounds for the application are made out.
- (2) Before granting relief, the Commissioner must obtain the approval of the Treasurer.

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- (3) In granting relief, the Commissioner may—
- (a) waive the payment of the land tax either wholly or in part;
 - (b) make a reassessment of the land tax;
 - (c) impose any conditions on the grant of relief that he or she considers appropriate.

93 Relief granted by the Board

- (1) The Board may grant relief from the liability to pay land tax to a taxpayer on application under section 91 if the Board is satisfied that the grounds for the application are made out.
- (2) If the Board decides to grant relief, it may direct the Commissioner to make a reassessment of the land tax and—
 - (a) postpone the payment of the land tax either wholly or in part until whichever of the following occurs first—
 - (i) the date the land is sold;
 - (ii) the expiration of a specified period of up to 5 years from the date the taxpayer applies for relief; or
 - (b) waive the payment of the land tax either wholly or in part.
- (3) The Board may grant relief subject to any conditions that the Board considers appropriate.

94 Reconsideration of postponed land tax

- (1) This section applies if the Board directs the Commissioner to postpone the payment of land tax under section 93(2)(a).
 - (2) The Board must reconsider the application for relief as soon as convenient after the date to which the payment of the land tax was postponed.
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- (3) If, at the time of reconsideration, the Board is satisfied that the grounds for the application are still made out in relation to the amount of land tax postponed, the Board may direct the Commissioner to—
- (a) waive the payment of the postponed amount of land tax either wholly or in part; and
 - (b) make a reassessment of the land tax.

Division 3—Land Tax Hardship Relief Board

95 Establishment and procedure

- (1) There is to be a Land Tax Hardship Relief Board.
 - (2) The Board consists of the following 3 members—
 - (a) the Secretary to the Department of Treasury and Finance or his or her nominee;
 - (b) the Commissioner or his or her nominee;
 - (c) a person selected by the Commissioner or his or her nominee from a panel of 3 persons appointed by the Governor in Council on the recommendation of the Minister.
 - (3) Before making a recommendation under subsection (2)(c), the Minister must consult with organisations that, in the Minister's opinion, represent persons engaged in the practice of law or accountancy or the valuation of land.
 - (4) The Board may regulate its proceedings as it thinks fit.
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PART 6—SECURITY, RECOVERY AND ENFORCEMENT

Division 1—Security for land tax

96 Land tax is a first charge on land

- (1) Unpaid land tax (including special land tax) is a first charge on the land on which the tax is payable.
- (2) The charge has priority over all other encumbrances to which the land is subject.
- (3) Subsections (1) and (2) do not apply to—
 - (a) land tax on Crown land or vested land under Part 3A of the **Victorian Plantations Corporation Act 1993**; or
 - (b) land tax on transmission easements.
- (4) If a person—
 - (a) is a bona fide purchaser for value of land; and
 - (b) obtains a certificate from the Commissioner under section 105 in respect of the land—the charge does not secure any amount of land tax on the land in excess of the amount set out in the certificate.

97 Registration of charge

- (1) The Commissioner may register a charge on land under section 96(1) by depositing with the Registrar of Titles a certificate describing the land charged and stating that there is unpaid land tax in respect of the land.
- (2) The Registrar of Titles must, without charge, make a recording of the certificate in the Register.

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- (3) When the tax is paid, the Commissioner may request the Registrar of Titles—
 - (a) to remove or delete the charge; or
 - (b) to make a recording in the Register of the discharge of the charge.
 - (4) The Registrar of Titles must, without charge, comply with a request made by the Commissioner under subsection (3).

Division 2—Recovery of land tax

98 Recovery from lessee, mortgagee or occupier

- (1) If a tax default occurs in relation to land tax, the Commissioner may require a lessee, mortgagee or occupier of the land to pay land tax that is payable but remains unpaid.
- (2) The Commissioner's requirement is to be made by notice in writing.
- (3) A copy of the notice must be served on the taxpayer.
- (4) The tax must be paid to the Commissioner on receipt of the notice or by the date specified in the notice, whichever is the later.
- (5) Section 45 of the **Taxation Administration Act 1997** applies to tax payable under this section as if the person required to pay the tax were the taxpayer.
- (6) A person who pays an amount of tax under this section is entitled to recover that amount from the taxpayer as a debt, or to set off the amount against any money owing to the taxpayer.

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- (7) If a mortgagee pays an amount of tax under this section, the amount is deemed to be secured by the mortgage in addition to any other amount secured by it.
 - (8) This section does not apply to land tax on transmission easements.

Note

General provisions for the recovery of land tax can be found in Part 7 of the **Taxation Administration Act 1997**.

Division 3—Prohibition on passing on land tax

99 Prohibition on passing on land tax

- (1) A provision in a residential tenancy agreement entered into on or after 1 January 1998 to the effect that the tenant is liable to pay, or to reimburse the landlord in respect of, any land tax payable by the landlord in respect of the rented premises is void.
- (2) In this section—

residential tenancy agreement means an agreement, whether or not in writing and whether express or implied, under which a person lets premises as a residence.

100 Prohibition on passing on land tax on transmission easements

- (1) A provision in an agreement to the effect that the owner of land encumbered by a transmission easement is liable, as owner, to pay, or to reimburse the transmission easement holder in respect of, any land tax on any transmission easement that is payable by the transmission easement holder is void.
- (2) This section applies to an agreement of the kind referred to in subsection (1) entered into before, on or after the commencement of this section.

Division 4—Tax avoidance schemes

101 What is a tax avoidance scheme?

- (1) For the purposes of this Division, a *tax avoidance scheme* is a scheme—
- (a) under or in connection with which a person has obtained a reduction in, or exemption from, land tax; and
 - (b) in respect of which, having regard to any one or more of the matters referred to in subsection (2), it would be concluded that a person, or one of the persons, who participated in the scheme did so for the purpose of enabling a person to obtain a reduction in, or exemption from, land tax under or in connection with the scheme.
- (2) The factors that may be considered for the purposes of subsection (1)(b) are—
- (a) the manner in which the scheme was entered into or carried out;
 - (b) the form and substance of the scheme;
 - (c) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;
 - (d) the result in relation to the operation of this Division that, but for section 102, would have been achieved by the scheme;
 - (e) any change in the financial position of any person that has resulted, will result or may reasonably be expected to result from the scheme;
 - (f) any other consequence for the person, or for any other person referred to in paragraph (e), of the scheme having been entered into and carried out;
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- (g) the nature of any connection (whether of a business, family or other nature) between the person and any other person referred to in paragraph (e).
- (3) A reference in subsection (1) to a scheme being carried out by a person for a particular purpose includes a reference to the scheme being entered into or carried out by the person for 2 or more purposes of which that particular purpose is the main purpose.
- (4) This section applies to a scheme—
- (a) whenever entered into; and
 - (b) whether the scheme has been or is entered into or carried out in or outside Victoria or partly in and partly outside Victoria.
- (5) In this section—
- scheme* includes the whole or any part of—
- (a) a contract, agreement, arrangement, understanding, promise or undertaking (including all steps and transactions by which it is carried into effect)—
 - (i) whether made or entered into orally or in writing;
 - (ii) whether express or implied;
 - (iii) whether or not enforceable; or
 - (b) a plan, proposal, action, course of action or course of conduct, whether or not unilateral; or
 - (c) a trust.
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102 Anti-avoidance provision

If the Commissioner considers that a person has participated in a tax avoidance scheme, the Commissioner may—

- (a) disregard the scheme; and
 - (b) determine what land tax would have been payable but for the scheme; and
 - (c) make an assessment or reassessment under the **Taxation Administration Act 1997** of the tax liability of the person or any other person to give effect to that determination.
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PART 7—GENERAL

Division 1—Notices of acquisition and land tax certificates

103 Notice of acquisition of land

- (1) A person who acquires land must give notice of the acquisition—
 - (a) to prescribed persons; and
 - (b) within a prescribed period.
- (2) The notice must—
 - (a) contain the prescribed information; and
 - (b) be in the prescribed form (if any); and
 - (c) be given in the prescribed manner.
- (3) Any information contained in a notice under this section may be disclosed to the Valuer-General.

104 Notice of acquisition of transmission easement

- (1) A transmission easement holder must, in relation to any transmission easement acquired by them, give notice—
 - (a) to prescribed persons; and
 - (b) within a prescribed period.
- (2) The notice must—
 - (a) contain the prescribed information; and
 - (b) be in the prescribed form (if any); and
 - (c) be given in the prescribed manner.

-
- (3) For the purposes of subsection (1), a transmission easement is taken to be acquired if it is granted to, reserved in favour of, created by statute in favour of or vested by statute in the transmission easement holder.
 - (4) Subsection (3) does not limit the ways in which a transmission easement may be acquired.

105 Land tax certificates

- (1) An owner, purchaser or mortgagee of land may apply to the Commissioner for a certificate under this section.
- (2) An application must be accompanied by the prescribed fee.
- (3) If an application is duly made, the Commissioner must issue a certificate showing if there is any land tax due and unpaid on the land described in the application.
- (4) The Commissioner may include any other information in the certificate that he or she thinks appropriate.

Division 2—General

106 Stating case to Supreme Court

- (1) The Commissioner may state a case for the opinion of the Supreme Court on any question of law that arises with regard to any matter under this Act.
- (2) The Supreme Court may give its judgment on the case stated and make any orders, including orders for costs, the Court thinks fit.

107 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances.

Pt 8
(Heading and
ss 108–115)
repealed by
No. 28/2007
s. 3(Sch.
item 37).

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**PART 9—FURTHER AMENDMENTS, REPEALS AND
TRANSITIONAL PROVISIONS**

116 Repeal of Land Tax Act 1958

The Land Tax Act 1958 is repealed.

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S. 117
repealed by
No. 28/2007
s. 3(Sch.
item 37).

118 Transitional provisions

Schedule 3, which contains transitional
provisions, has effect.

SCHEDULES

SCHEDULE 1

Sections 35(1), 36(3), 37(3)

LAND TAX RATES

PART 1—GENERAL RATES OF LAND TAX

1.1 Land tax for 2006

The rate of land tax for 2006 is set out in Table 1.1.

Sch. 1 cl. 1.1
(Table 1.1)
amended by
No. 22/2007
s. 7(1)(a).

TABLE 1.1

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1.	0	200 000	Nil
2.	200 000	540 000	\$200 and 0.2% of the taxable value that exceeds \$200 000
3.	540 000	900 000	\$880 and 0.5% of the taxable value that exceeds \$540 000
4.	900 000	1 190 000	\$2680 and 1% of the taxable value that exceeds \$900 000
5.	1 190 000	1 620 000	\$5580 and 1.5% of the taxable value that exceeds \$1 190 000
6.	1 620 000	2 700 000	\$12 030 and 2.25% of the taxable value that exceeds \$1 620 000

Land Tax Act 2005
No. 88 of 2005

Sch. 1

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
7.	2 700 000		\$36 330 and 3.5% of the taxable value that exceeds \$2 700 000

Note

Clause 5 of Schedule 3 has transitional provisions capping certain land tax increases in 2006.

1.2 Land tax for 2007

The rate of land tax for 2007 is set out in Table 1.2.

Sch. 1 cl. 1.2
(Heading)
amended by
No. 22/2007
s. 7(1)(b).

Sch. 1 cl. 1.2
substituted by
No. 38/2006
s. 8(1),
amended by
No. 22/2007
s. 7(1)(c).

TABLE 1.2

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1.	0	200 000	Nil
2.	200 000	540 000	\$200 and 0.2% of the taxable value that exceeds \$200 000
3.	540 000	900 000	\$880 and 0.5% of the taxable value that exceeds \$540 000
4.	900 000	1 190 000	\$2680 and 0.8% of the taxable value that exceeds \$900 000

Sch. 1 cl. 1.2
(Table 1.2)
amended by
No. 22/2007
s. 7(1)(d).

Land Tax Act 2005
No. 88 of 2005

Sch. 1

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
5.	1 190 000	1 620 000	\$5000 and 1.2% of the taxable value that exceeds \$1 190 000
6.	1 620 000	2 700 000	\$10 160 and 1.8% of the taxable value that exceeds \$1 620 000
7.	2 700 000		\$29 600 and 3% of the taxable value that exceeds \$2 700 000

Sch. 1 cl. 1.3 (Heading) amended by No. 31/2008 s. 19(1)(a).

Sch. 1 cl. 1.3 repealed by No. 38/2006 s. 8(2), new Sch. 1 cl. 1.3 inserted by No. 22/2007 s. 7(2), amended by No. 31/2008 s. 19(1)(b).

1.3 Land tax for 2008

The rate of land tax for 2008 is set out in Table 1.3.

TABLE 1.3

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1	0	225 000	Nil
2	225 000	540 000	\$250 and 0.2% of the taxable value that exceeds \$225 000
3	540 000	900 000	\$880 and 0.5% of the taxable value that exceeds \$540 000
4	900 000	1 620 000	\$2680 and 0.8% of the taxable value that exceeds \$900 000
5	1 620 000	2 700 000	\$8440 and 1.3% of the taxable value that exceeds \$1 620 000

Land Tax Act 2005
No. 88 of 2005

Sch. 1

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
6	2 700 000		\$22 480 and 2.5% of the taxable value that exceeds \$2 700 000

1.4 Land tax for 2009 and subsequent years

The rate of land tax for 2009 and each subsequent year is set out in Table 1.4.

Sch. 1 cl. 1.4
inserted by
No. 31/2008
s. 19(2).

TABLE 1.4

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1	0	250 000	Nil
2	250 000	600 000	\$275 and 0.2% of the taxable value that exceeds \$250 000
3	600 000	1 000 000	\$975 and 0.5% of the taxable value that exceeds \$600 000
4	1 000 000	1 800 000	\$2975 and 0.8% of the taxable value that exceeds \$1 000 000
5	1 800 000	3 000 000	\$9375 and 1.3% of the taxable value that exceeds \$1 800 000
6	3 000 000		\$24 975 and 2.25% of the taxable value that exceeds \$3 000 000

**PART 2—RATE OF LAND TAX ON TRANSMISSION
EASEMENTS**

2.1 Rate of land tax on transmission easements for 2007

The rate of land tax on transmission easements for 2007 is set out in Table 2.1.

Sch. 1 cl. 2.1
(Heading)
amended by
No. 22/2007
s. 7(3)(a).

Sch. 1 cl. 2.1
amended by
No. 22/2007
s. 7(3)(b).

Sch. 1 cl. 2.1
(Table 2.1)
substituted by
No. 38/2006
s. 8(3),
amended by
No. 22/2007
s. 7(3)(c).

TABLE 2.1

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1.	0	200 000	Nil
2.	200 000	540 000	\$200 and 0.2% of the taxable value that exceeds \$200 000
3.	540 000	900 000	\$880 and 0.5% of the taxable value that exceeds \$540 000
4.	900 000	1 190 000	\$2680 and 0.8% of the taxable value that exceeds \$900 000
5.	1 190 000	1 620 000	\$5000 and 1.2% of the taxable value that exceeds \$1 190 000
6.	1 620 000	2 700 000	\$10 160 and 1.8% of the taxable value that exceeds \$1 620 000
7.	2 700 000		\$29 600 and 5% of the taxable value that exceeds \$2 700 000

2.2 Rate of land tax on transmission easements for 2008

The rate of land tax on transmission easements for 2008 is set out in Table 2.2.

TABLE 2.2

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1	0	225 000	Nil
2	225 000	540 000	\$250 and 0.2% of the taxable value that exceeds \$225 000
3	540 000	900 000	\$880 and 0.5% of the taxable value that exceeds \$540 000
4	900 000	1 620 000	\$2680 and 0.8% of the taxable value that exceeds \$900 000
5	1 620 000	2 700 000	\$8440 and 1.3% of the taxable value that exceeds \$1 620 000
6	2 700 000		\$22 480 and 5% of the taxable value that exceeds \$2 700 000

Sch. 1 cl. 2.2
(Heading)
amended by
No. 31/2008
s. 19(3)(a).

Sch. 1 cl. 2.2
inserted by
No. 22/2007
s. 7(4),
amended by
No. 31/2008
s. 19(3)(b).

Sch. 1 cl. 2.3
inserted by
No. 31/2008
s. 19(4).

2.3 Rate of land tax on transmission easements for 2009 and subsequent years

The rate of land tax on transmission easements for 2009 and each subsequent year is set out in Table 2.3.

TABLE 2.3

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1	0	250 000	Nil
2	250 000	600 000	\$275 and 0.2% of the taxable value that exceeds \$250 000
3	600 000	1 000 000	\$975 and 0.5% of the taxable value that exceeds \$600 000
4	1 000 000	1 800 000	\$2975 and 0.8% of the taxable value that exceeds \$1 000 000
5	1 800 000	3 000 000	\$9375 and 1.3% of the taxable value that exceeds \$1 800 000
6	3 000 000		\$24 975 and 5% of the taxable value that exceeds \$3 000 000

PART 3—SURCHARGE RATES OF LAND TAX FOR TRUSTS

Sch. 1 Pt 3
(Heading and
cls 3.1–3.3)
inserted by
No. 85/2005
s. 30.

3.1 Land tax for trusts for 2006

Sch. 1 cl. 3.1
inserted by
No. 85/2005
s. 30.

The rate of land tax for 2006 for land held by an owner subject to a trust is set out in Table 3.1.

TABLE 3.1

<i>Item</i>	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	\$	\$	
1.	0	20 000	Nil
2.	20 000	200 000	\$75 and 0.375% of the taxable value that exceeds \$20 000
3.	200 000	540 000	\$750 and 0.575% of the taxable value that exceeds \$200 000
4.	540 000	900 000	\$2705 and 0.875% of the taxable value that exceeds \$540 000
5.	900 000	1 190 000	\$5855 and 1.375% of the taxable value that exceeds \$900 000
6.	1 190 000	1 620 000	\$9843 and 1.875% of the taxable value that exceeds \$1 190 000
7.	1 620 000	2 700 000	\$17 905 and 1.706% of the taxable value that exceeds \$1 620 000
8.	2 700 000		\$36 330 and 3.5% of the taxable value that exceeds \$2 700 000

Sch. 1 cl. 3.2
(Heading)
amended by
No. 22/2007
s. 7(5)(a).
Sch. 1 cl. 3.2
inserted by
No. 85/2005
s. 30,
substituted by
No. 38/2006
s. 8(4),
amended by
No. 22/2007
s. 7(5)(b).

3.2 Land tax for trusts for 2007

The rate of land tax for 2007 for land held by an owner subject to a trust is set out in Table 3.2.

TABLE 3.2

<i>Item</i>	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	\$	\$	
1.	0	20 000	Nil
2.	20 000	200 000	\$75 and 0.375% of the taxable value that exceeds \$20 000
3.	200 000	540 000	\$750 and 0.575% of the taxable value that exceeds \$200 000
4.	540 000	900 000	\$2705 and 0.875% of the taxable value that exceeds \$540 000
5.	900 000	1 190 000	\$5855 and 1.175% of the taxable value that exceeds \$900 000
6.	1 190 000	1 620 000	\$9263 and 1.575% of the taxable value that exceeds \$1 190 000
7.	1 620 000	2 700 000	\$16 035 and 1.256% of the taxable value that exceeds \$1 620 000
8.	2 700 000		\$29 600 and 3% of the taxable value that exceeds \$2 700 000

3.3 Land tax for trusts for 2008

The rate of land tax for 2008 for land held by an owner subject to a trust is set out in Table 3.3.

TABLE 3.3

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1	0	20 000	Nil
2	20 000	225 000	\$75 and 0.375% of the taxable value that exceeds \$20 000
3	225 000	540 000	\$844 and 0.575% of the taxable value that exceeds \$225 000
4	540 000	900 000	\$2655 and 0.875% of the taxable value that exceeds \$540 000
5	900 000	1 620 000	\$5805 and 1.175% of the taxable value that exceeds \$900 000
6	1 620 000	2 700 000	\$14 265 and 0.76% of the taxable value that exceeds \$1 620 000
7	2 700 000		\$22 480 and 2.5% of the taxable value that exceeds \$2 700 000

Sch. 1 cl. 3.3 (Heading) amended by No. 31/2008 s. 19(5)(a).

Sch. 1 cl. 3.3 inserted by No. 85/2005 s. 30, repealed by No. 38/2006 s. 8(5), new Sch. 1 cl. 3.3 inserted by No. 22/2007 s. 7(6), amended by No. 31/2008 s. 19(5)(b).

Sch. 1

Sch. 1 cl. 3.4
inserted by
No. 31/2008
s. 19(6).

3.4 Land tax for trusts for 2009 and subsequent years

The rate of land tax for 2009 and each subsequent year for land held by an owner subject to a trust is set out in Table 3.4.

TABLE 3.4

<i>Item</i>	<i>Column 1 Taxable value not less than</i>	<i>Column 2 Taxable value less than</i>	<i>Column 3 Rate of land tax</i>
	\$	\$	
1	0	25 000	Nil
2	25 000	250 000	\$82 and 0.375% of the taxable value that exceeds \$25 000
3	250 000	600 000	\$926 and 0.575% of the taxable value that exceeds \$250 000
4	600 000	1 000 000	\$2938 and 0.875% of the taxable value that exceeds \$600 000
5	1 000 000	1 800 000	\$6438 and 1.175% of the taxable value that exceeds \$1 000 000
6	1 800 000	3 000 000	\$15 838 and 0.7614% of the taxable value that exceeds \$1 800 000
7	3 000 000		\$24 975 and 2.25% of the taxable value that exceeds \$3 000 000

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Sch. 2
repealed by
No. 28/2007
s. 3(Sch.
item 37).

SCHEDULE 3

Section 118

TRANSITIONAL PROVISIONS

1 Definitions

In this Schedule—

commencement day means 1 January 2006;

old Act means the **Land Tax Act 1958** as in force immediately before the commencement day.

2 Savings and transitional regulations

The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

3 Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

4 Continuation of old Act and regulations

If a provision of the old Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—

- (a) any other provision of the old Act necessary to give effect to that continued provision; and
- (b) any regulation made under the old Act for the purposes of that continued provision.

5 Land tax capping for 2006

If, under clause 7.2 of the Second Schedule to the old Act, the duty of land tax payable for 2006 on the land of an owner would be a different amount from the amount of land tax payable under this Act as calculated by applying the rates in Table 1.1 in Schedule 1, the land tax payable under this Act on the land for 2006 is the amount calculated in accordance with clause 7.2 of the Second Schedule to the old Act.

Sch. 3 cl. 5A
inserted by
No. 38/2006
s. 9.

5A Land tax capping for 2007

- (1) The amount of land tax payable for 2007 on the land of an owner is—
 - (a) the amount determined in accordance with Table 1.2 or Table 3.2 in Schedule 1 (as applicable); or
 - (b) if that amount is more than 150% of the 2006 tax amount, 150% of the 2006 tax amount.
- (2) For the purposes of this clause—
 - (a) the **2006 tax amount**, in relation to land of an owner, means the amount determined by applying the rates of tax set out in Table 1.1 or Table 3.1 in Schedule 1 (as applicable) to the sum of—
 - (i) in respect of any land that was valued separately as at the relevant date (within the meaning of section 19) for the purpose of assessing land tax for 2006, the taxable value of that land determined for the purpose of assessing land tax for 2006; and
 - (ii) in respect of any land that was not valued separately as at the relevant date for the purpose of assessing land tax for 2006 but was rated separately as at the

relevant date for the purpose of assessing land tax for 2007, the taxable value of that land determined for the purpose of assessing land tax for 2007; and

(iii) in respect of all other land, the taxable value of the land as assessed under this Act for 2006;

(b) if, for the 2006 tax year—

(i) the capping provisions in clause 5 applied to land of an owner; and

(ii) no tax was payable by the owner at the rates of tax set out in Table 3.1 in Schedule 1—

the **2006 tax amount** is the amount referred to in paragraph (a) as capped in accordance with clause 5;

(c) if, for the 2006 tax year—

(i) the capping provisions in clause 5 applied to land of an owner; and

(ii) tax was also payable by the owner at the rates of tax set out in Table 3.1 in Schedule 1—

the **2006 tax amount** is that part of the amount referred to in paragraph (a) as capped in accordance with clause 5 plus that part of the amount referred to in paragraph (a) determined by applying the rates of tax set out in Table 3.1 in Schedule 1;

(d) if the 2006 tax amount is zero, the amount of land tax payable for 2007 is the amount determined in accordance with Table 1.2 or Table 3.2 in Schedule 1 (as applicable).

6 Application of this Act and old Act

- (1) This Act applies to land tax for the 2006 tax year and each subsequent tax year.
- (2) Despite its repeal, the old Act continues to apply to land tax for or in any tax year prior to 2006.

7 Saving of exemption in respect of decentralised industries

- (1) This clause applies to any land or part of land that was exempt from land tax under the old Act immediately before the commencement day because it was leased or occupied under or in accordance with an arrangement made by the Victorian Development Corporation or by a municipal council to promote or assist a decentralised industry.
- (2) On and after the commencement day, the land or part of land is taken to be exempt land for as long as it continues to be leased or occupied under or in accordance with an arrangement made by the Victorian Development Corporation or by a municipal council to promote or assist a decentralised industry.

8 Trusts

- (1) A notice given under section 52 of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it were a notice given under section 46B of this Act.
- (2) A notice given under section 52A of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it were a notice given under section 46C of this Act.

Sch. 3 cl. 8
inserted by
No. 85/2005
s. 31.

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- (3) A nomination of a beneficiary under section 52D of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it were a nomination of a beneficiary under section 46F of this Act.
 - (4) A nomination of a PPR beneficiary under section 52F of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it were a nomination of a PPR beneficiary under section 46H of this Act.

9 Amnesty for failing to lodge certain documents

- (1) Section 59 of the **Taxation Administration Act 1997** does not apply to a failure or refusal to lodge a notice with the Commissioner under section 46K.
- (2) This clause ceases to have effect on 31 December 2007.

Sch. 3 cl. 9
inserted by
No. 85/2005
s. 31.

10 Continuation of Orders

- (1) An Order under section 9(1AD) of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it were an order made under section 80(4) of this Act.
- (2) An Order under section 9(1B) of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it were an order made under section 64(2) of this Act.
- (3) An Order under section 13P(1) of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it were an order made under section 87(1) of this Act.

Sch. 3 cl. 10
inserted by
No. 85/2005
s. 31.

Sch. 3

Sch. 3 cl. 11
inserted by
No. 22/2007
s. 8.

**11 State Taxation and Gambling Legislation
Amendment (Budget Measures) Act 2007—special
land tax**

- (1) Section 30(4) applies to land that vests in an authority, or land of which an authority takes possession, on or after 1 May 2007.
- (2) A taxpayer is entitled to a refund of any special land tax paid on or after 1 May 2007 in respect of—
 - (a) land to which section 30(4) applies;
 - (b) land referred to in paragraph (a) or (b) of section 30(1) as in force immediately before the repeal of that paragraph, that ceased to be exempt land on or after 1 May 2007.
- (3) In this clause, *authority* has the meaning given in section 30(5).

Sch. 3 cl. 12
inserted by
No. 68/2007
s. 20.

**12 State Taxation and Accident Compensation Acts
Amendment Act 2007**

- (1) Despite its repeal, paragraph (f) of the definition of *excluded trust* in section 3(1) continues to apply on and after the commencement of section 8(1) of the **State Taxation and Accident Compensation Acts Amendment Act 2007** in relation to a testator who died before that commencement.
- (2) Division 2A of Part 3, as amended by sections 10 and 16 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**, applies to an administration trust if the person whose estate is subject to the trust died on or after the commencement of those sections.
- (3) Section 21 is deemed to have always been enacted as amended by section 9 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**.

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- (4) Sections 46B(3)(b), 46C(3)(b), 46F(5)(a)(ii), 46F(8)(b), 46H(4)(a)(ii) and 46H(6)(b) as substituted by the **State Taxation and Accident Compensation Acts Amendment Act 2007** apply and are taken always to have applied to nominations made on or after 1 January 2006.
- (5) A taxpayer is entitled to a refund of any land tax paid on or after 1 January 2006 that is not payable because of subsection (4).
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 8 September 2005

Legislative Council: 20 October 2005

The long title for the Bill for this Act was "to re-enact and modernise the law relating to land tax, to repeal the **Land Tax Act 1958**, to amend the **Taxation Administration Act 1997** and other Acts and for other purposes."

The **Land Tax Act 2005** was assented to on 29 November 2005 and came into operation on 1 January 2006: section 2.

2. Table of Amendments

This Version incorporates amendments made to the **Land Tax Act 2005** by Acts and subordinate instruments.

Duties and Land Tax Acts (Amendment) Act 2005, No. 85/2005

Assent Date: 29.11.05
Commencement Date: Ss 22–31 on 1.1.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Disability Act 2006, No. 23/2006

Assent Date: 16.5.06
Commencement Date: S. 245 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation (Reductions and Concessions) Act 2006, No. 38/2006

Assent Date: 20.6.06
Commencement Date: Ss 8, 9 on 21.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006

Assent Date: 29.8.06
Commencement Date: S. 61(Sch. item 20) on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation Legislation (Miscellaneous Amendments) Act 2006, No. 84/2006

Assent Date: 10.10.06
Commencement Date: Ss 12, 13 on 1.7.06: s. 2(3); ss 8–11 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Water (Governance) Act 2006, No. 85/2006

Assent Date: 17.10.06
Commencement Date: S. 173(Sch. 1 item 3) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation and Gambling Legislation Amendment (Budget Measures) Act 2007, No. 22/2007

Assent Date: 12.6.07
Commencement Date: S. 6(1)(3) on 1.5.07: s. 2(2); ss 7, 8 on 13.6.07: s. 2(1); s. 6(2) on 1.1.08: s. 2(4)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Land Tax Act 2005
No. 88 of 2005

Endnotes

Payroll Tax Act 2007, No. 26/2007

Assent Date: 26.6.07
Commencement Date: S. 112 on 1.7.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 37) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation and Accident Compensation Acts Amendment Act 2007, No. 68/2007

Assent Date: 11.12.07
Commencement Date: Ss 8–20 on 12.12.07: s. 2
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 34) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation Acts Amendment Act 2008, No. 31/2008

Assent Date: 17.6.08
Commencement Date: Ss 17(1), 18, 19 on 18.6.08: s. 2(1); s. 17(2) on 1.1.09: s. 2(4)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Health Services Legislation Amendment Act 2008, No. 79/2008

Assent Date: 11.12.08
Commencement Date: S. 18 on 31.3.09: Government Gazette 19.2.09 p. 328
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

3. Explanatory Details

No entries at date of publication.