

Authorised Version No. 051

Land Tax Act 2005

No. 88 of 2005

Authorised Version incorporating amendments as at
1 December 2014

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1 December 2014

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 of *applicable general valuation* repealed by No. 84/2006 s. 8.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), amended by No. 69/2011 s. 30.

beneficiary of a discretionary trust, means (except in Division 2 of Part 4) 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;

Council has the same meaning as in the **Local Government Act 1989**;

S. 3(1) def. of *Council* inserted by No. 40/2014 s. 13(a).

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), amended by No. 76/2012 s. 3.

but does not include an excluded trust;

S. 3(1) def. of *domestic partner* substituted by No. 12/2008 s. 73(1)(Sch. 1 item 34.1), amended by No. 4/2009 s. 37(Sch. 1 item 16.1).

S. 3(1) def. of *electronic instrument* inserted by No. 40/2014 s. 27.

S. 3(1) def. of *ELN* inserted by No. 40/2014 s. 27.

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

domestic partner of a person means—

- (a) a person who is in a registered domestic 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);

electronic instrument means a registry instrument that is prepared in an electronic form to be lodged electronically for the purposes of land titles legislation by means of an ELN;

ELN means ELN within the meaning of the Electronic Conveyancing National Law (Victoria);

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);

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

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

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;

land titles legislation has the same meaning as in section 5 of the **Electronic Conveyancing (Adoption of National Law) Act 2013**;

S. 3(1) def. of *land titles legislation* inserted by No. 40/2014 s. 27.

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

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

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;

municipal district has the same meaning as in the **Local Government Act 1989**;

S. 3(1) def. of *municipal district* inserted by No. 40/2014 s. 13(a).

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

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

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

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

non-rateable leviable land has the same meaning as in the **Fire Services Property Levy Act 2012**;

S. 3(1) def. of *non-rateable leviable land* inserted by No. 40/2014 s. 13(a).

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;

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

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

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

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 *pre-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;

principal place of residence includes sole place of residence;

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;

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

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**);

rateable land has the same meaning as in the
Local Government Act 1989;

S. 3(1) def. of
rateable land
inserted by
No. 40/2014
s. 13(a).

registry instrument has the same meaning as in
section 4(1) of the **Transfer of Land Act
1958**;

S. 3(1) def. of
*registry
instrument*
inserted by
No. 40/2014
s. 27.

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 valuation authority by the person who carried it out;

S. 3(1) def. of
return date
amended by
Nos 94/2009
s. 33(1)(a),
69/2011
s. 34(2).

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.

* * * * *

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

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

- (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 or 13L of the **Valuation of Land Act 1960** that is supplementary to the last general valuation returned to the valuation authority before 1 January in the year immediately preceding the tax year;

S. 3(1) def. of *supplementary valuation* amended by Nos 94/2009 s. 33(1)(b), 40/2014 s. 13(b).

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;

title-based time-sharing scheme means a scheme under which participants are—

S. 3(1) def. of *title-based time-sharing scheme* inserted by No. 69/2011 s. 27.

- (a) entitled to use, occupy and possess land to which the scheme relates for 2 or more periods during the scheme's operation; and
- (b) the registered proprietors of a share interest in respect of which a folio is created under section 98D of the **Transfer of Land Act 1958**;

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, except where expressly provided by this Act;

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;

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 *trust* inserted by No. 85/2005 s. 22(1)(a), substituted by No. 68/2007 s. 8(3), amended by No. 83/2009 s. 4.

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

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).

valuation authority has the same meaning as in section 2(1) of the **Valuation of Land Act 1960**;

S. 3(1) def. of *valuation authority* inserted by No. 69/2011 s. 34(1).

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

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 *wholesale unit trust scheme* 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";

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

year means a calendar year.

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

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

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

S. 3(2)(a) amended by No. 4/2009 s. 37(Sch. 1 item 16.2(a)).

S. 3(2)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 16.2(b)).

(b) in determining whether persons who are not in a registered domestic 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.
-

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?

- (1) 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 of Crown land;
 - (c) a person entitled to land under a licence of Crown land if the person has a right, absolute or conditional, of acquiring the fee simple;

S. 10
amended by
No. 83/2009
s. 6(3) (ILA
s. 39B(1)).

S. 10(b)
amended by
No. 83/2009
s. 6(1).

S. 10(c)
amended by
No. 83/2009
s. 6(2).

- (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.
- (2) Subsection (1)(b) does not apply to a person entitled to land under a sub-lease of Crown land.

S. 10(2)
inserted by
No. 83/2009
s. 6(3).

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.

S. 16A
inserted by
No. 83/2009
s. 7.

16A Transfer of land for no consideration

- (1) The Commissioner may determine that a person who has disposed of land is to be deemed to not be the owner of that land if the Commissioner is satisfied that—
 - (a) the person has disposed of the land for no valuable consideration; and
 - (b) the disposition of the land was made in good faith and not for the purpose of evading the payment of land tax; and
 - (c) the person to whom the land was disposed of had taken possession of the land on or before midnight on 31 December in the year immediately preceding the tax year.
- (2) If the Commissioner makes a determination under subsection (1)—
 - (a) the person who disposed of the land is deemed not to be the owner of the land; and
 - (b) the person to whom the land was disposed of for no valuable consideration is deemed to be the owner of the land.
- (3) Subsection (2) applies whether or not the person to whom the land was disposed of is the registered proprietor of the land.
- (4) In this section—

dispose of means dispose of by way of settlement, grant, assignment, transfer or conveyance.

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.

18A Managers of title-based time-sharing schemes

For the purposes of this Act, a person who manages a title-based time-sharing scheme is deemed to be the owner of the land to which that scheme relates instead of the participants under that scheme.

S. 18A
inserted by
No. 69/2011
s. 28.

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* is—
- (a) for non-rateable leviable land and for rateable land—
- (i) subject to subparagraph (ii), the date as at which the land was valued for the purposes of the last general valuation

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

S. 19(2)
amended by
No. 69/2011
s. 35,
substituted by
No. 40/2014
s. 14.

s. 21

returned to the valuation authority
before 1 January in the tax year; or

- (ii) 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 subparagraph (i) but before 1 January in the tax year, the return date of the supplementary valuation; or

- (b) for any other land, 31 December in the year immediately preceding the tax year.

S. 19(3)
repealed by
No. 40/2014
s. 14.

* * * * *

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 valuation authority; or

S. 21(1)(a)
amended by
Nos 69/2011
s. 36(a),
40/2014 s. 15.

- (b) valuations made for and on behalf of the Commissioner by the Valuer-General or a valuer nominated by the Valuer-General.

S. 21(1)(b)
amended by
No. 69/2011
s. 36(b).

- (2) Without limiting subsection (1), the Commissioner may—

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

- (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(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—

* * * * *

- (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);

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

- (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.

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).
- (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.
- (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.

* * * * *

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 of Crown land); 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.

S. 45(1)(a)
amended by
No. 83/2009
s. 8.

- (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.

46AA Title-based time-sharing schemes

S. 46AA
inserted by
No. 69/2011
s. 29.

- (1) The owner of land to which a title-based time-sharing scheme relates is to be assessed on the total value of all taxable land to which the scheme relates as if the land were the only land owned by that person.
- (2) A participant in a title-based time-sharing scheme incurs a debt in an amount equivalent to the proportion of the participant's interest in the land to the person who—
- (a) is the owner of the land to which the title-based time-sharing scheme relates; and
 - (b) has been assessed for land tax under subsection (1).

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.

Land Tax Act 2005
No. 88 of 2005
Part 3—Assessment of Land Tax

s. 46A

(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—

S. 46A(3)(a)
substituted by
No. 83/2009
s. 9(1)(a).

(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—

(i) used and occupied as the principal place of residence of the nominated PPR beneficiary; and

(ii) not used to carry on a substantial business activity; 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—

(A) used and occupied as the principal place of residence of the nominated PPR beneficiary; and

(B) not used to carry on a substantial business activity; or

S. 46A(3)(b)(ii)
substituted by
No. 83/2009
s. 9(1)(b).

(c) land subject to an excluded trust; or

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

(d) land subject to an administration trust.

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

-
- (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.
- (6) In determining whether land is used by a person to carry on a substantial business activity, account must be taken of the factors referred to in section 62(2).

S. 46A(6)
inserted by
No. 83/2009
s. 9(2).

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

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

- (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 be in the form, and contain the information, determined by the Commissioner.
- (3) A notice takes effect for the tax year following the year in which the notice is lodged and remains in force until it is withdrawn by the trustee.
- (3A) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a fixed trust, the trustee cannot lodge another notice under this section in respect of that fixed trust.

S. 46B(2)
substituted by
No. 40/2014
s. 16.

S. 46B(3)
amended by
No. 68/2007
s. 11,
substituted by
No. 40/2014
s. 16.

S. 46B(3A)
inserted by
No. 40/2014
s. 16.

S. 46B(4)(a)
amended by
No. 76/2012
s. 17.

- (4) If a notice is in force under this section for a fixed trust—
- (a) a beneficiary of the trust 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 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

(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 be in the form, and contain the information, determined by the Commissioner.

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

S. 46C(2)
substituted by
No. 40/2014
s. 17.

Land Tax Act 2005
No. 88 of 2005
Part 3—Assessment of Land Tax

s. 46C

S. 46C(3)
amended by
No. 68/2007
s. 12,
substituted by
No. 40/2014
s. 17.

(3) A notice takes effect for the tax year following the year in which the notice is lodged and remains in force until it is withdrawn by the trustee.

S. 46C(3A)
inserted by
No. 40/2014
s. 17.

(3A) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a unit trust scheme, the trustee cannot lodge another notice under this section in respect of that unit trust scheme.

(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, for the

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

S. 46D(1)(a)
amended by
No. 76/2012
s. 17.

purposes of this Act other than Division 1 of Part 4, 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;

- (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 and administration trusts

A trustee of an excluded trust or of an administration 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
(Heading)
amended by
No. 40/2014
s. 18(1).

S. 46E
inserted by
No. 85/2005
s. 27,
amended by
No. 40/2014
s. 18(2).

S. 46F
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.
- (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.
- (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—

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

s. 46G

- (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
 - (b) takes effect for the tax year following the tax year in 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. 46F(8)(b)
substituted by
No. 68/2007
s. 13(2),
amended by
No. 40/2014
s. 19.

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;

s. 46H

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.

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

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

- (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.
- (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 for the tax year in which the nomination is lodged; and

S. 46H(4)(a)
amended by
No. 68/2007
s. 14(1),
substituted by
No. 40/2014
s. 20(1).

-
- (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.
- (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 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.

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

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

S. 46H(6)(b) substituted by No. 68/2007 s. 14(4)(a), amended by No. 40/2014 s. 20(2).

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

s. 46I

- (8) This section does not apply to a unit trust scheme if a notice is in force for the scheme under section 46C.

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

46I Land tax for PPR land if nominated PPR beneficiary

- (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. 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. 46I(4)
inserted by
No. 83/2009
s. 10.

- (4) Subsection (2) does not apply if the land for which a nomination is in force is used to carry on a substantial business activity.

- (5) In determining whether land is used by a person to carry on a substantial business activity, account must be taken of the factors referred to in section 62(2).

S. 46I(5)
inserted by
No. 83/2009
s. 10.

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

46K Requirements for trustees to notify Commissioner

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

- (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 of the land.
- (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—

S. 46K(1)
amended by
No. 40/2014
s. 21(1).

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.

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

(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.

S. 46K(5B)
inserted by
No. 40/2014
s. 21(2).

(5B) If a nomination lodged under section 46H is in force and the nominated PPR beneficiary for the land ceases to use and occupy the land as his or her principal place of residence, the trustee of the land must lodge a written notice with the Commissioner within one month of that beneficiary ceasing to use or occupy the land as his or her principal place of residence.

(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.

(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 2B—Land held on implied or constructive trust

Pt 3 Div. 2B
(Heading and
ss 46L, 46M)
inserted by
No. 83/2009
s. 5.

46L Land held on implied or constructive trust

S. 46L
inserted by
No. 83/2009
s. 5.

- (1) A person who is the owner of land as trustee of an implied or constructive trust is liable for land tax on the land at the general rate set out in Part 1 of Schedule 1.
- (2) The trustee is to be assessed for land tax on the whole of the land subject to the implied or constructive trust as if the land were the only land owned by the trustee.
- (3) Despite subsection (2), if the trustee holds land as trustee of more than one implied or constructive trust for the same beneficiary or beneficiaries, the trustee is to be assessed for land tax on the whole of the land subject to those implied or constructive trusts as if that land were the only land owned by the trustee.

46M Trustee's right to reimbursement under implied trust or constructive trust

S. 46M
inserted by
No. 83/2009
s. 5.

A trustee of an implied or constructive 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.

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;
 - (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).

* * * * *

principal beneficiary, of a special disability trust—

S. 52(1) def. of *principal beneficiary* inserted by No. 69/2013 s. 14(1).

- (a) has the meaning given in section 1209M(1) of the Social Security Act, in the case of a special disability trust within the meaning of section 1209L of that Act;
- (b) has the meaning given in section 52ZZZWA(1) of the Veterans' Entitlements Act, in the case of a special disability trust within the meaning of section 52ZZZW of that Act;

separate residence means a building affixed to land that is capable of separate occupation as a residence;

S. 52(1) def. of *separate residence* inserted by No. 76/2012 s. 4.

Social Security Act means the Social Security Act 1991 of the Commonwealth;

S. 52(1) def. of *Social Security Act* inserted by No. 69/2013 s. 14(1).

special disability trust means—

S. 52(1) def. of *special disability trust* inserted by No. 69/2013 s. 14(1).

- (a) a special disability trust within the meaning of section 1209L of the Social Security Act; or
- (b) a special disability trust within the meaning of section 52ZZZW of the Veterans' Entitlements Act;

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).

vested beneficiary, in relation to land held on trust, means a beneficiary of the trust who—

S. 52(1) def. of *vested beneficiary* inserted by No. 76/2012 s. 4, amended by No. 69/2013 s. 14(2).

- (a) is a natural person; and
- (b) has a vested beneficial interest in possession in the land or is the principal beneficiary of a special disability trust;

Veterans' Entitlements Act means the Veterans' Entitlements Act 1986 of the Commonwealth.

S. 52(1) def. of *Veterans' Entitlements Act* inserted by No. 69/2013 s. 14(1).

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.

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

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.

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;

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

- (b) land owned by a trustee of a trust that is used and occupied as the principal place of residence of a vested beneficiary in relation to the land.

S. 54(1)(b)
amended by
No. 76/2012
s. 5(1).

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

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

- (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 Division in respect of any land; or

S. 54(1A)(b)(i)
amended by
No. 76/2012
s. 5(2).

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

S. 54(1A)(b)(ii)
amended by
No. 76/2012
s. 5(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 vested beneficiary—

S. 54(2)
amended by
Nos 68/2007
s. 18(3),
76/2012
s. 5(3).

- (a) since 1 July in the year preceding the tax year; or
 - (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; and
 - (d) does not contain a separate residence.
- (4) This section applies to land whether owned by a sole owner or joint owners.

S. 54(3)(c)(ii)
amended by
No. 76/2012
s. 5(4)(a).

S. 54(3)(d)
inserted by
No. 76/2012
s. 5(4)(b).

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 vested beneficiary in relation to the land, for a period of at least 6 months from the date that the land was first so used and occupied—

S. 55(1)(b)
amended by
No. 76/2012
s. 6.

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.

55A Deferral of tax for residential land to be used during tax year

S. 55A
inserted by
No. 76/2012
s. 7.

- (1) The Commissioner may determine that land tax in respect of land for a year is not payable until the expiry of a 6 month period that begins and ends in that year if—
- (a) a person becomes the owner of the land on or after 1 July in the preceding year; and
 - (b) as at 31 December in the preceding year, the person does not use or occupy the land as his or her principal place of residence; and

- (c) the Commissioner is satisfied that the person intends to continuously use and occupy the land as his or her principal place of residence for the 6 month period.
- (2) The Commissioner may determine that land tax in respect of land for a year is not payable until the expiry of a 6 month period that begins and ends in that year if—
- (a) a trustee becomes the owner of the land on or after 1 July in the preceding year; and
 - (b) as at 31 December in the preceding year, there is no vested beneficiary in relation to that land using and occupying it as his or her principal place of residence; and
 - (c) the Commissioner is satisfied that a vested beneficiary in relation to that land intends to continuously use and occupy it as his or her principal place of residence for the 6 month period.
- (3) If land referred to in subsection (1) or (2) that would have been 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.

S. 56
(Heading)
amended by
No. 76/2012
s. 8(1).

56 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 or under a law of another jurisdiction (whether in or outside Australia) as the principal place of residence of the owner or, in the case of a trustee, as the principal place of residence of a vested beneficiary in relation to the land.

S. 56(1)(c)
substituted by
No. 76/2012
s. 8(2).

* * * * *

S. 56(1)(d)
repealed by
No. 76/2012
s. 8(2).

(1A) 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—

S. 56(1A)
inserted by
No. 76/2012
s. 8(3).

- (a) the person has lost the ability to live independently; and
- (b) the person resides—
 - (i) at a hospital as a patient of the hospital; or
 - (ii) at a residential care facility or supported residential service within the meaning of section 76(4), or a residential service within the meaning of the **Disability Act 2006**, and receives residential or respite care at the facility or service; or
 - (iii) with another person who provides personal support to the person on a daily basis.

(2) For the purposes of section 62, land to which subsection (1) or (1A) 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.

S. 56(2)
amended by
No. 76/2012
s. 8(4).

s. 56

S. 56(3)
substituted by
No. 76/2012
s. 8(5).

(3) Land will not be taken to be used and occupied as the principal place of residence of a person under this section unless the conditions set out in subsections (4) and (5) are both satisfied.

S. 56(4)
inserted by
No. 76/2012
s. 8(5).

(4) The condition in this subsection is that the land—

- (a) was exempt land under section 54 immediately before the person's absence; or
- (b) was used and occupied—
 - (i) in the case of an owner—by the owner as his or her principal place of residence for a period of at least 6 consecutive months immediately before the owner's absence; or
 - (ii) in the case of a trustee—by a vested beneficiary in relation to the land as his or her principal place of residence for a period of at least 6 consecutive months immediately before the vested beneficiary's absence.

S. 56(5)
inserted by
No. 76/2012
s. 8(5).

(5) The condition in this subsection is that the owner or trustee has not rented out the land for a period which is 6 months or more, or for periods which total 6 months or more, in the year preceding the tax year.

S. 56(6)
inserted by
No. 76/2012
s. 8(5),
amended by
No. 69/2013
s. 15(1).

(6) The maximum period for which land can be taken to be used and occupied as the principal place of residence of a person despite the person's absence from the land under subsection (1) is 6 years from the date of the person's absence.

**Note to
s. 56(6)**
amended by
No. 69/2013
s. 15(2).

Note

If a person has been absent for more than 6 years and land ceases to be taken under subsection (1) to be used and occupied as the principal place of residence of the person, the land will no longer be exempt land under this Division unless another exemption applies.

(7) In this section—

personal support means the provision of one or more of the following—

S. 56(7)
inserted by
No. 76/2012
s. 8(5).

- (a) assistance with personal hygiene, toileting or dressing;
- (b) assistance to achieve and maintain mobility;
- (c) support to seek out and maintain contact with health professionals, social networks, family, friends and the community;
- (d) emotional wellbeing support;
- (e) assistance with or supervision in administering medication;
- (f) assistance with eating and maintaining adequate nutrition.

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.

(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.

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

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

- (3) For the purposes of subsection (2)(a), the Commissioner may approve a further period in any particular case.

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.
- (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 vested beneficiary in relation to the land.

S. 58(4)
amended by
No. 76/2012
s. 9.

59 Purchase of new principal residence

- (1) Land is exempt land in respect of a year if—
- (a) a person becomes the owner of the land in the preceding year for use and occupation as his or her principal place of residence; and

S. 59(1)
substituted by
No. 76/2012
s. 10(1).

- (b) as at 31 December in the preceding year, the person is the owner of other land that he or she uses and occupies as his or her principal place of residence.

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) Land is exempt land in respect of a year if—
- (a) a trustee becomes the owner of the land in the preceding year for use and occupation of a vested beneficiary in relation to the land as his or her principal place of residence; and
- (b) as at 31 December in the preceding year, the trustee is the owner of other land that the vested beneficiary uses and occupies as his or her principal place of residence.

S. 59(2)
substituted by
No. 76/2012
s. 10(1).

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).

- (3) The Commissioner may revoke an exemption under subsection (1) or (2) if the owner or vested beneficiary in relation to the land 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) Subsection (1) does not apply to land in respect of a year if the owner derived any income from the land at any time when it was not occupied as the principal place of residence of the owner.

S. 59(3)
amended by
No. 76/2012
s. 10(2).

S. 59(4)
substituted by
No. 76/2012
s. 10(3).

s. 60

S. 59(5)
inserted by
No. 76/2012
s. 10(3).

- (5) Subsection (2) does not apply to land in respect of a year if the trustee derived any income from the land at any time when it was not occupied as the principal place of residence of a vested beneficiary in relation to the land.

60 Sale of old principal residence

S. 60(1)
substituted by
No. 76/2012
s. 11(1).

- (1) Land owned by a person is exempt land in respect of a year if—
- (a) either—
- (i) the land was exempt land under section 54(1) for the preceding year; or
- (ii) the person used and occupied the land as his or her principal place of residence for a period of at least 6 months during the preceding year; and
- (b) as at 31 December in the preceding year, the person was the owner of other land that he or she used and occupied as his or her principal place of residence.

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).

S. 60(2)
substituted by
No. 76/2012
s. 11(1).

- (2) Land owned by a trustee is exempt land in respect of a year if—
- (a) either—
- (i) the land was exempt land under section 54(1) for the preceding year; or
- (ii) a vested beneficiary in relation to the land used and occupied it as his or her principal place of residence for a period of at least 6 months during the preceding year; and

- (b) as at 31 December in the preceding year, the trustee was the owner of other land that a vested beneficiary referred to in paragraph (a) used and occupied as his or her principal place of residence.

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).

- (3) The Commissioner may revoke an exemption under subsection (1) or (2) if the owner or trustee is still the sole or joint owner of the land referred to in subsection (1)(a) or (2)(a) at the end of the year in respect of which the land is exempt. **S. 60(3) amended by Nos 76/2012 s. 11(2), 69/2013 s. 16.**
- (4) Subsection (1) does not apply to land in respect of a year if the owner derived income from the land at any time when it was not occupied as the principal place of residence of the owner. **S. 60(4) substituted by No. 76/2012 s. 11(3).**
- (5) Subsection (2) does not apply to land in respect of a year if the trustee derived any income from the land at any time when it was not occupied as the principal place of residence of a vested beneficiary in relation to the land. **S. 60(5) inserted by No. 76/2012 s. 11(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) the owner was unable to occupy that land as his or her principal place of residence as at 31 December in the preceding year because a residence was being constructed or renovated on it; and **S. 61(1)(a) substituted by No. 76/2012 s. 12(1).**

s. 61

S. 61(1)(ab)
inserted by
No. 76/2012
s. 12(1).

(ab) once construction or renovation of that residence has been completed, the owner continuously uses and occupies the land as his or her principal place of residence for at least 6 months commencing in that year; and

(b) an application for a refund is made before the end of the next following year.

S. 61(2)
substituted by
No. 76/2012
s. 12(2).

(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 vested beneficiary in relation to the land is entitled to a refund of that land tax if—

(a) the vested beneficiary was unable to occupy the land as his or her principal place of residence as at 31 December the preceding year because a residence was being constructed or renovated on it; and

(b) once construction or renovation of that residence has been completed, the vested beneficiary continuously uses and occupies the land as his or her principal place of residence for at least 6 months commencing in that year; and

(c) 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 Division in respect of any other land in respect of the year preceding the tax year—

S. 61(3)(c)
amended by
No. 83/2009
s. 11.

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
- (c) the owner or trustee was not entitled to an exemption under this Division in respect of any other land in respect of the year or years referred to in paragraph (b)—

S. 61(4)(c)
amended by
No. 83/2009
s. 11.

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 to
s. 61(4)
repealed by
No. 76/2012
s. 12(3).

- (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 vested beneficiary in relation to land, as the case may be.

S. 61(5)
amended by
No. 76/2012
s. 12(4).

- (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

S. 62(1)
amended by
No. 76/2012
s. 13(1).

- (1) Despite anything to the contrary in this Division, 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 by the owner, a vested beneficiary in relation to the land or a natural person who has a right to reside on the land (as the case requires).
- (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) any other matters the Commissioner considers relevant.

S. 62(2)(e)
substituted by
No. 76/2012
s. 13(2).

- (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.
- (4) The Commissioner may consult the Valuer-General in relation to an apportionment under this section.

62A Partial exemption if separate residence is leased for residential purposes

S. 62A
inserted by
No. 76/2012
s. 14.

If land that would be exempt under this Division contains a separate residence that is leased for residential purposes—

- (a) land tax is assessable on the part of the land that is leased for residential purposes; and
- (b) section 22 applies, if necessary, for that purpose.

S. 63
substituted by
No. 76/2012
s. 15.

63 Partial exemption or refund for trustees

- (1) This section applies if—
 - (a) a trustee would be entitled to an exemption from or refund of land tax under this Division in respect of land because a vested beneficiary in relation to the land has used and occupied it as his or her principal place of residence; and
 - (b) there are other vested beneficiaries in relation to the land who have not used and occupied it as their principal place of residence.
- (2) Despite anything to the contrary in this Division, the amount of the exemption or refund is determined as if the value of the land were the proportion of the value of the land that is equal to the proportion that the interest in the land held by the vested beneficiary in relation to the land referred to in subsection (1)(a) bears to the total interests of all vested beneficiaries in relation to that land.
- (3) Nothing in this section applies in the case of a person entitled to a life estate in possession.

Division 2—Primary production land

64 Definitions

- (1) In this Division—

discretionary trust means a trust under which the distribution or vesting of the whole or any part of the trust income or 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

S. 64(1) def. of
discretionary trust
inserted by
No. 69/2011
s. 31(1).

- (b) will occur in the event that a discretion conferred under the trust is not exercised;

greater Melbourne means the aggregate area consisting of—

- (a) the area within the municipal district of each Council listed in Part 1 of Schedule 2; and
- (b) the area within an urban growth boundary specified in a planning scheme that is in force in the municipal district of each Council listed in Part 2 of Schedule 2;

S. 64(1) def. of *greater Melbourne* substituted by Nos 85/2006 s. 173(Sch. 1 item 3.1), 40/2014 s. 22(1)(b).

planning scheme means a planning scheme to which the **Planning and Environment Act 1987** applies;

S. 64(1) def. of *planning scheme* inserted by No. 40/2014 s. 22(1)(a).

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;

specified beneficiary of a discretionary trust means a person specifically named in the trust deed or specifically declared in writing pursuant to the trust deed as a beneficiary whom, by the terms of the trust, the whole or any part of the trust income or property may be distributed to or vested in—

- (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;

urban growth boundary has the same meaning as in the **Planning and Environment Act 1987**;

urban zone means a zone, or part of 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.

S. 64(1) def. of *specified beneficiary* inserted by No. 69/2011 s. 31(1).

S. 64(1) def. of *urban growth boundary* inserted by No. 40/2014 s. 22(1)(a).

S. 64(1) def. of *urban zone* amended by No. 69/2011 s. 31(2).

* * * * *

S. 64(3)–(5)
inserted by
No. 85/2006
s. 173(Sch. 1
item 3.2),
repealed by
No. 40/2014
s. 22(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 an activity other than primary production is carried on on any other part of the land.

S. 65(2)
amended by
No. 40/2014
s. 23.

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

s. 67

(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

S. 67(2)(b) amended by No. 69/2011 s. 32(1)(a).

(b) a proprietary company (not acting in the capacity of trustee of a trust)—

(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

S. 67(2)(c) amended by No. 69/2011 s. 32(1)(b)(i).

(c) a trustee of a trust (other than a discretionary trust) of which—

(i) the principal 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

S. 67(2)(c)(iii) amended by No. 69/2011 s. 32(1)(b)(iii).

(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; or

- (d) a trustee of a discretionary trust of which—
- (i) the principal business must be primary production of the type carried on on the land; and
 - (ii) either—
 - (A) each specified beneficiary is a natural person; or
 - (B) at least one of the specified beneficiaries is a natural person and each of the specified beneficiaries who is not a natural person is either—
 - (a) a charitable institution or a trustee of a charitable trust; or
 - (b) a company all of the shares in which are owned by one or more of the specified beneficiaries who are natural persons; or
 - (c) a trustee of a trust (except a charitable trust), all of the beneficiaries or specified beneficiaries of which are specified beneficiaries of the discretionary trust who are natural persons; and
 - (iii) either—
 - (A) at least one of the specified beneficiaries is 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

S. 67(2)(d)
inserted by
No. 69/2011
s. 32(1)(c).

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- (B) a relative of at least one of the specified 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 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 of the type carried on 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—

S. 67(4)(a)
amended by
No. 69/2011
s. 32(2).

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;

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

- (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.

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

- (1) For the purposes of section 66, a part of a parcel of land is to be regarded as a separate parcel of land if that part is occupied separately from or is obviously adapted to being occupied separately from other land in the parcel.

S. 70
amended by
No. 69/2011
s. 33,
substituted by
No. 40/2014
s. 24.

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- (2) For the purposes of section 67, a part of a parcel of land is to be regarded as a separate parcel of land if—
- (a) that 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 of land is the owner of the land within the meaning of section 67(2).

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.
- (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.

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.

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 328 of the **Mental Health Act 2014**.

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

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

S. 74A(1)(g)
amended by
No. 26/2014
s. 455(Sch.
item 19).

- (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**;

* * * * *

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 6 of the **Public Health and Wellbeing Act 2008**; 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.

S.75(1)(a)
amended by
No. 46/2008
s. 279.

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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.

-
- (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—

-
- (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 **Supported Residential Services (Private Proprietors) Act 2010**.

S. 76(4) def. of *supported residential service* amended by No. 49/2010 s. 230.

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

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

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- (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 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.

S. 78A
inserted by
No. 36/2010
s. 12.

78A Exemption of land under construction for certain exempt uses

- (1) Land is exempt land if the Commissioner is satisfied that any of the following is being constructed on that land—
 - (a) a residential care facility; or
 - (b) a supported residential service; or
 - (c) a residential service; or
 - (d) a retirement village.
- (2) An exemption under this section will apply in respect of the land until the earlier of—
 - (a) the date of completion of construction of the residential care facility, supported residential service, residential service or retirement village on the land; or
 - (b) the expiry of 2 tax years following the date of commencement of construction.
- (3) For the purposes of this section, the date of commencement of construction is—
 - (a) if a building permit for the construction of a residential care facility, supported residential service, residential service or retirement village on the land was issued on or before 31 December 2010 and construction is not completed at that date—31 December 2010; or
 - (b) in any other case—the date of issue of the building permit for the construction of the residential care facility, supported residential service, residential service or retirement village on the land.

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- (4) For the purposes of this section, the date of completion of construction is—
- (a) if the building permit for the construction states that an occupancy permit is required—the date of issue of the occupancy permit under the **Building Act 1993**; or
 - (b) in any other case—the date of issue of the certificate of final inspection under that Act.
- (5) If a building permit for the construction of a residential care facility, supported residential service, residential service or retirement village lapses before the applicable date under subsection (2) and a subsequent building permit is issued in respect of that construction, the date of issue of the building permit referred to in subsection (3) is the date of issue of the first building permit.
- (6) 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 to the Commissioner any information the Commissioner requests for the purpose of enabling the Commissioner to determine whether the land is exempt under this section.
- (7) If the Commissioner is satisfied that only a part of land is being used for the construction of a residential care facility, supported residential service, residential service or 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, to the land.

(8) In this section—

residential care facility has the same meaning as in section 76;

residential service has the same meaning as in section 76A;

retirement village has the same meaning as in section 78;

supported residential service has the same meaning as in 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—

S. 79(2)(a)
substituted by
No. 83/2009
s. 12(a).

(a) a person who is entitled to the land under a lease of Crown land, unless the lease is a retail premises lease within the meaning of the **Retail Leases Act 2003**; or

S. 79(2)(b)
amended by
No. 83/2009
s. 12(b).

(b) a licensee of vested land under Part 3A of the **Victorian Plantations Corporation Act 1993**; or

S. 79(2)(c)
inserted by
No. 83/2009
s. 12(c).

(c) a person who is entitled to the land under a licence of Crown land under which the person has a right, absolute or conditional, of acquiring the fee simple.

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
 - (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.

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

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- (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.

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.
- (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.

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

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 Urban Renewal Authority Victoria, 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 Urban Renewal Authority Victoria to be exempt

S. 82(1)(b)
amended by
No. 35/2011
s. 19(1).

S. 82(2)
amended by
No. 35/2011
s. 19(2).

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.
- (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).
- (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
 - (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.

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

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.

-
- (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.
- (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.
- (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.
-

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.

- (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.
- (1A) The Commissioner cannot require a lessee or occupier—
 - (a) to pay an amount of land tax under this section that is greater than the amount of rent the lessee or occupier is required to pay the taxpayer; or
 - (b) to pay an amount of land tax under this section before the day on which the lessee or occupier is required to pay rent to the taxpayer.
- (1B) Subsection (1A) does not apply to a lessee or occupier that is a related corporation or relative of the taxpayer.
- (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.

S. 98(1A)
inserted by
No. 76/2012
s. 16(1).

S. 98(1B)
inserted by
No. 76/2012
s. 16(1).

- (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.
- (6A) If a lessee or occupier pays an amount of tax under this section—
- (a) the amount is deemed to have been paid to the Commissioner by the taxpayer; and
 - (b) the lessee or occupier is deemed to have paid an equal amount of rent to the taxpayer under the lease or agreement or under any applicable tenancy law.
- (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.

S. 98(6A)
inserted by
No. 76/2012
s. 16(2).

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;
 - (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.

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.

PART 7—GENERAL

Division 1—Notices and certificates

Pt 7 Div. 1
(Heading)
substituted by
No. 83/2009
s. 13.

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.
- (4) This section does not apply to a person who acquires land in a manner that was effected by an electronic instrument lodged by means of an ELN.

S. 103(4)
inserted by
No. 40/2014
s. 28.

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.

S. 104A
inserted by
No. 83/2009
s. 14.

104A Notice of errors in notice of assessment of land tax

- (1) A person who is served with a notice of assessment of land tax must notify the Commissioner of any error or omission in the notice relating to—
 - (a) any land in Victoria owned by the person that is not specified in the notice;
 - (b) in the case of a notice of assessment for land jointly owned by two or more owners, any land in Victoria owned by the joint owners that is not specified in the notice;
 - (c) any land specified in the notice as exempt land.
- (2) Notice of the error or omission must be given to the Commissioner within 60 days from the date of issue of the notice of assessment.
- (3) If there is more than one owner of the land specified in the notice of assessment, it is sufficient compliance with this section if one of the owners provides the required information on behalf of all of them.

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.

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

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

116 Repeal of Land Tax Act 1958

The Land Tax Act 1958 is repealed.

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

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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.

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

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

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.

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

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
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

<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

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

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).

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

Sch. 1 cl. 14
inserted by
No. 31/2008
s. 19(2).

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.

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).

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

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).

Sch. 1

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).

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

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

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

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

Sch. 1

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

PART 3—SURCHARGE RATES OF LAND TAX FOR TRUSTS

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

3.1 Land tax for trusts for 2006

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

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

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).

Sch. 1

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).

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

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.

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

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

Sch. 2

Sch. 2
repealed by
No. 28/2007
s. 3(Sch.
item 37), new
Sch. 2
inserted by
No. 40/2014
s. 25.

SCHEDULE 2

Section 64(1)

GREATER MELBOURNE

PART 1

Banyule City Council
Bayside City Council
Boroondara City Council
Darebin City Council
Glen Eira City Council
Maribyrnong City Council
Melbourne City Council
Monash City Council
Moonee Valley City Council
Moreland City Council
Port Phillip City Council
Stonnington City Council
Whitehorse City Council
Yarra City Council

PART 2

Brimbank City Council
Cardinia Shire Council
Casey City Council
Frankston City Council
Greater Dandenong City Council
Hobsons Bay City Council

Hume City Council
Kingston City Council
Knox City Council
Manningham City Council
Maroondah City Council
Melton City Council
Mitchell Shire Council
Mornington Peninsula Shire Council
Nillumbik Shire Council
Whittlesea City Council
Wyndham City Council
Yarra Ranges Shire Council

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.

5A Land tax capping for 2007

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

- (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.

Sch. 3

- (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.

Sch. 3 cl. 9
inserted by
No. 85/2005
s. 31, expired
by force of
No. 88/2005
s. 118(Sch. 3
cl. 9(2)).

* * * * *

Sch. 3 cl. 10
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.

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

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

- (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).

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

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

- (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**.

Sch. 3

- (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).

Sch. 3 cl. 13
inserted by
No. 37/2009
s. 14.

13 Enactments applying to old Act

Despite anything to the contrary, the following enactments, as in force immediately before the commencement day, continue to apply on and after that day in respect of any matter to which the old Act continues to apply on and after that day and are taken always to have so applied—

- (a) **Taxation Administration Act 1997** and regulations made under that Act;
- (b) **Taxation (Reciprocal Powers) Act 1987**;
- (c) **Victorian Civil and Administrative Tribunal Act 1998** and regulations and rules made under that Act.

Sch. 3 cl. 14
inserted by
No. 76/2012
s. 18.

14 State Taxation and Other Acts Amendment Act 2012

- (1) Section 61, as in force immediately before the commencement day, continues to apply in relation to land tax paid in respect of the 2012 tax year.
- (2) Section 98, as amended by section 16 of the **State Taxation and Other Acts Amendment Act 2012**, applies on and after the commencement day irrespective of whether the lease or other arrangement under which the lessee or occupier occupies the land was entered into or made before, on or after that day.

(3) In this clause—

commencement day means the day on which Part 2 of the **State Taxation and Other Acts Amendment Act 2012** comes into operation.

15 Building a Better Victoria (State Tax and Other Legislation Amendment) Act 2014

Sch. 3 cl. 15
inserted by
No. 40/2014
s. 26.

- (1) Grandfathered land that was exempt under section 65 or 68 for the 2014 tax year does not cease to be exempt under either of those sections for the 2015 tax year or subsequent tax years only because it is no longer outside greater Melbourne.
- (2) Subclause (1) does not apply, or ceases to apply (as the case requires), if any of the following occurs after the relevant day—
- (a) the land is subdivided;
 - (b) the land is disposed of;
 - (c) the owner of the land acquires other land that—
 - (i) is contiguous with the grandfathered land or separated from the grandfathered land only by a road, railway or other similar area across or around which movement is reasonably possible; and
 - (ii) is wholly or partly in greater Melbourne within the meaning of section 64(1) as amended by the amending Act or would be wholly or partly in greater Melbourne within the meaning of that section as amended by the amending Act if Division 3 of Part 4 of the amending Act had come into operation before the acquisition.

(3) To avoid doubt, land is not disposed of or acquired for the purpose of subclause (2) if ownership of the land vests in a joint tenant on the death of another joint tenant of the land.

(4) In this clause—

acquire means acquire by way of settlement, grant, assignment, transfer or conveyance;

amending Act means the **Building a Better Victoria (State Tax and Other Legislation Amendment) Act 2014**;

commencement day means the day after the day on which the amending Act receives the Royal Assent;

dispose of means dispose of by way of settlement, grant, assignment, transfer or conveyance;

grandfathered land means land or part of land that, on the relevant day, was outside greater Melbourne within the meaning of section 64(1) as in force on that day but on and after the commencement day is in greater Melbourne within the meaning of section 64(1) as amended by the amending Act;

relevant day means the day on which the motion for the second reading of the Bill for the amending Act was moved in the Legislative Assembly.

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.

Where a provision has expired, the provision has been omitted and an explanatory sidenote included.

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**

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**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 279 on 1.1.10: s. 2(2)
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**

Land Tax Act 2005
No. 88 of 2005

Endnotes

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 16) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation Acts Amendment Act 2009, No. 37/2009

Assent Date: 30.6.09
Commencement Date: S. 14 on 1.1.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation Acts Further Amendment Act 2009, No. 83/2009

Assent Date: 8.12.09
Commencement Date: Ss 4, 5 on 1.1.06: s. 2(3); ss 6–14 on 9.12.09: s. 2(4)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Valuation of Land Amendment Act 2009, No. 94/2009

Assent Date: 15.12.09
Commencement Date: S. 33 on 1.5.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation Acts Amendment Act 2010, No. 36/2010

Assent Date: 15.6.10
Commencement Date: S. 12 on 1.1.11: s. 2(3)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Supported Residential Services (Private Proprietors) Act 2010, No. 49/2010

Assent Date: 24.8.10
Commencement Date: S. 230 on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Victorian Urban Development Authority Amendment (Urban Renewal Authority Victoria) Act 2011, No. 35/2011

Assent Date: 5.7.11
Commencement Date: S. 19 on 25.10.11: Special Gazette (No. 342) 25.10.11 p. 1
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation Acts Further Amendment Act 2011, No. 69/2011

Assent Date: 29.11.11
Commencement Date: Ss 27–36 on 30.11.11: s. 2(1)
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

State Taxation and Other Acts Amendment Act 2012, No. 76/2012

Assent Date: 4.12.12
Commencement Date: Ss 3–18 on 5.12.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

State Taxation and Financial Legislation Amendment Act 2013, No. 69/2013

Assent Date: 19.11.13
Commencement Date: Ss 14–16 on 20.11.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Mental Health Act 2014, No. 26/2014

Assent Date: 8.4.14
Commencement Date: S. 455(Sch. item 19) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Building a Better Victoria (State Tax and Other Legislation Amendment) Act 2014, No. 40/2014

Assent Date: 17.6.14
Commencement Date: S. 18 on 12.12.07: s. 2(2); ss 13–17, 19–26 on 18.6.14: s. 2(1); ss 27, 28 on 1.12.14: s. 2(6)
Current State: This information relates only to the provision/s amending the **Land Tax Act 2005**

Endnotes

3. Explanatory Details

No entries at date of publication.