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ENDNOTES  

15
State Taxation Acts (Further Miscellaneous Amendments) Act 2001†
[Assented to 8 May 2001]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to make further miscellaneous amendments to the First Home Owner Grant Act 2000, the Land Tax Act 1958, the Pay-roll Tax Act 1971, the Stamps Act 1958 and the Taxation Administration Act 1997.
2. Commencement

(1) This Act (except section 3) comes into operation on the day on which it receives the Royal Assent.

(2) Section 3 is deemed to have come into operation on 1 July 2000.
PART 2—FIRST HOME OWNER GRANT ACT 2000

3. New Zealand citizens eligible

In section 3 of the First Home Owner Grant Act 2000, for the definition of "permanent resident" substitute—

"permanent resident" means—

(a) the holder of a permanent visa within the meaning of section 30(1) of the Migration Act 1958 of the Commonwealth; or

(b) a New Zealand citizen who is the holder of a special category visa within the meaning of section 32 of that Act;'.

4. Eligibility criterion 4—prior relevant interests in property

(1) In section 10 of the First Home Owner Grant Act 2000, sub-section (3) is repealed.

(2) After section 11(2) of the First Home Owner Grant Act 2000 insert—

"(3) An applicant is ineligible if the applicant or the applicant's spouse has, on or after 1 July 2000 and before the date on which the application is made, held an interest in property (other than property to which the application relates) used at any time on or after 1 July 2000 as the residence of the applicant or the applicant's spouse, being—

(a) a relevant interest in residential property in Victoria; or
State Taxation Acts (Further Miscellaneous Amendments) Act 2001
Act No. 10/2001

(b) an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory.".

s. 4
PART 3—LAND TAX ACT 1958

5. Pro rata exemption for charitable purposes

(1) In the Land Tax Act 1958—

(a) in section 8(2), for "Tax on land referred to in section 9(1)(c) or (d) which is subject to tax because of the operation of sub-section (2) of section 9" substitute "Tax on land referred to in section 9(1)(c) that is subject to tax because of section 9(2) and tax on land owned by a charitable institution that is not exempt from tax under section 9(1)(d) (whether because of section 9(2AAA) or otherwise)";

(b) in section 9(2)—

(i) for "paragraphs (b), (c), (d), (e)" substitute "paragraphs (b), (c), (e)";

(ii) omit "or (d)" where twice occurring.

(2) After section 9(2A) of the Land Tax Act 1958 insert—

"(2AAA) If the Commissioner is satisfied that part only 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 an exemption (other than sub-section (1)(d)) applies to the remaining part; and

(b) section 3A applies, if necessary, for that purpose.".
PART 4—PAY-ROLL TAX ACT 1971

6. Exemption for apprentices

In section 10(1)(k) of the Pay-roll Tax Act 1971 for "exempted by the Minister from the application of this Act" substitute "declared by the Minister to be an apprentice or scheme, or class of apprentices or schemes, to which an exemption under this section applies.".
PART 5—STAMPS ACT 1958

7. *Private unit trust schemes*
   
   In section 75N of the *Stamps Act 1958*—
   
   (a) in sub-section (1), for the definition of "private unit trust scheme" substitute—
   
   "private unit trust scheme" means a unit trust scheme that is not a public unit trust scheme1;*
   
   (b) sub-section (2) is repealed.

8. *Motor vehicle duty*
   
   In section 137AK of the *Stamps Act 1958*, for sub-sections (4) and (5) substitute—
   
   "(4) If a registered used car dealer does not comply with this section, the registered used car dealer is liable to a penalty of—
   
   (a) an amount equal to the amount referred to in sub-section (1)(b) and interest on that amount at the rate of 20% per annum from the day on which the payment under that sub-section was required; or
   
   (b) $25—
   
   whichever is the greater.

(5) The penalty imposed by sub-section (4) is in addition to the dealer's liability for any amount under sub-section (1)(b) and for any penalty payable under section 17(3).

(6) The Comptroller, in such circumstances as the Comptroller considers appropriate, may
remit the penalty imposed by sub-section (4) by any amount.".
PART 6—TAXATION ADMINISTRATION ACT 1997

9. Payment of tax assessed

After section 14(2) of the Taxation Administration Act 1997 insert—

"(3) An amount of tax assessed in a notice of assessment is payable on or before the day specified by the Commissioner in the notice of assessment.".

10. Refunds of tax

(1) After section 18(4) of the Taxation Administration Act 1997 insert—

"(5) For the avoidance of doubt, it is declared that an amount by which tax is overpaid is taken to be tax for the purposes of this Part.".

(2) After section 96(1) of the Taxation Administration Act 1997 insert—

"(1A) A reference in sub-section (1)(d) to a decision does not include a refusal by the Commissioner to refund tax paid or purportedly paid by the taxpayer.

(1B) For the avoidance of doubt, it is declared that an amount by which tax is overpaid is taken to be tax for the purposes of sub-section (1A).".

(3) In section 114(1) of the Taxation Administration Act 1997, for "Within" substitute "Subject to section 115, within".
11. New section 115 substituted

For section 115 of the Taxation Administration Act 1997 substitute—

'115. Refund of amount

(1) If—

(a) a taxpayer's objection to an assessment is allowed in whole or in part; or

(b) a taxpayer's review or appeal in respect of an assessment is upheld—

the Commissioner must refund any amount paid under the assessment that is in excess of a requirement for payment under the relevant taxation law.

(2) If—

(a) a taxpayer's objection to a decision other than an assessment is allowed in whole or in part; or

(b) a taxpayer's review or appeal in respect of a decision other than an assessment is upheld—

the Commissioner must refund any amount paid in the relevant period in excess of a requirement for payment under the relevant taxation law.

(3) In sub-section (2), the "relevant period" is the period of 3 years immediately preceding the earlier of—

(a) the date of the decision;

(b) if the decision was made in response to a written request from the taxpayer that included a description of the facts and circumstances on which the request was
12. **Consequential amendment of section 116**

In section 116(a) of the **Taxation Administration Act 1997**, after "overpaid" insert "that is refunded".

13. **Electronic service**

In section 125(1)(d) of the **Taxation Administration Act 1997**, after "facsimile" insert "or other electronic".

14. **New section 125A inserted**

After section 125 of the **Taxation Administration Act 1997** insert—

"**125A. When is service effective?**

(1) For the purposes of a taxation law, a document must be taken, unless the contrary is proved, to have been served on or given to a person by the Commissioner—

(a) in the case of delivery in person—at the time the document is delivered;

(b) in the case of posting—2 business days after the day on which the document was posted;

(c) in the case of a facsimile or other electronic transmission—at the time the facsimile or transmission is received.

(2) If a facsimile or other electronic transmission is received after 4.00 p.m. on any day, it must be taken to have been received on the next business day.".
15. **Supreme Court—limitation of jurisdiction**

At the end of section 135 of the *Taxation Administration Act 1997* insert—

"(2) It is the intention of clause 13(8), (9) and (10) in Schedule 1 to alter or vary section 85 of the *Constitution Act 1975*."

16. **Transitional provisions**

In Schedule 1 to the *Taxation Administration Act 1997*, after clause 13(4) insert—

'(5) Section 96(1A), as inserted by section 10(2) of the *State Taxation Acts (Further Miscellaneous Amendments) Act 2001*, extends to any refusal by the Commissioner to refund tax paid or purportedly paid by a taxpayer that was made by the Commissioner before the commencement of that section 10(2).

(6) For the purposes of sub-clause (5) and section 96(1A), a failure by the Commissioner to refund tax within the period of 3 months after the application for refund is lodged with the Commissioner is taken to be a refusal to refund the tax.

(7) Section 115, as substituted by section 11 of the *State Taxation Acts (Further Miscellaneous Amendments) Act 2001*, extends to—

(a) any assessment or decision made; and

(b) any objection allowed, or review or appeal upheld—

before the commencement of that section 11.

(8) If—

(a) a taxpayer applied before 15 October 1993 for a refund of an amount paid or purportedly paid under a taxation law; and

(b) the Commissioner refused or failed to refund the amount; and
(c) the taxpayer did not commence proceedings in any court for the refund or recovery of the amount before 14 November 2000—

the taxpayer or any other person is not entitled, on or after 14 November 2000, to commence proceedings in any court for the refund or recovery of the amount or any part of it.

(9) If—

(a) a taxpayer applied before 15 October 1993 for a refund of an amount paid or purportedly paid under a taxation law; and

(b) the Commissioner refused to refund the amount; and

(c) the taxpayer lodged an objection to the refusal of the Commissioner to refund the amount; and

(d) the objection had not been determined by the Commissioner before 14 November 2000—

the Commissioner is not entitled to determine the objection on or after 14 November 2000 and the taxpayer or any other person is not entitled, on or after 14 November 2000, to take any further action in respect of the objection or commence proceedings in any court for the refund or recovery of the amount or any part of it.

(10) If a person commenced proceedings on or after 14 November 2000 but before the day on which the State Taxation Acts (Further Miscellaneous Amendments) Act 2001 received the Royal Assent ("the commencement day"), being proceedings that the person would not have been entitled to commence because of sub-clause (8) or (9) had those sub-clauses been in operation at the time, the court must, as soon as practicable after the commencement day, dismiss those proceedings.

(11) Nothing in sub-clause (5), (6), (7), (8), (9) or (10) affects the rights of the parties in the proceedings in the Supreme Court between—

(a) Drake Personnel Limited (ARBN 007 504 609) and Others and the Commissioner of State Revenue of the State of Victoria (No. 5418 of 1994);
(b) Select Appointments Pty Ltd (ACN 003 840 546) and the Commissioner of State Revenue of the State of Victoria (No. 5930 of 1998);

(c) MediHealth 2000 Pty Ltd (ACN 061 789 786) and the Commissioner of Pay-roll Tax for the State of Victoria (No. 5911 of 1997).
ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 14 November 2000
Legislative Council: 20 March 2001

The long title for the Bill for this Act was "to make further miscellaneous amendments to the First Home Owner Grant Act 2000, the Land Tax Act 1958, the Pay-roll Tax Act 1971, the Stamps Act 1958 and the Taxation Administration Act 1997 and for other purposes."

Constitution Act 1975:
Section 85(5) statement:
Legislative Assembly: 14 November 2000
Legislative Council: 20 March 2001

Absolute majorities:
Legislative Assembly: 1 March 2001
Legislative Council: 2 May 2001

1 S. 7: "Public unit trust scheme" is defined in section 3.