

Land Tax (Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 outlines the purpose of the Bill.
- Clause 2 is the commencement provision.
- Clause 3 states that the **Land Tax Act 1958** is the Principal Act.
- Clause 4 inserts a definition of "joint owners" and a definition of "principal place of residence" in section 3(1) of the Principal Act.
- Clause 5 inserts a new part, Part IIA, comprising 13 new sections, sections 13AA, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K and 13L in the **Land Tax Act 1958**:

Section 13AA provides definitions for Part IIA of the **Land Tax Act 1958**:

"discretionary trust" means a trust under which the vesting of all or part of the trust property is required to be determined by a person either in identifying the beneficiaries or the amount of interest or both;

"owner", in relation to land, means a person entitled to a freehold estate in possession of land, or if land is leased from the Crown, entitled to a leasehold interest as referred to under section 43 of the **Land Tax Act 1958** and includes the owner of a life estate as referred to in section 41;

"trustee" means trustee within the meaning of section 3(1) of the **Land Tax Act 1958** but does not include the trustee of a discretionary trust or of a trust to which a unit trust scheme relates or a liquidator;

"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.

Section 13A provides exemption from land tax liability for land owned, used and occupied by a natural person as their principal place of residence or owned by a trustee and used and occupied by a beneficiary of the trust as the principal place of residence. Subject to section 13B, the principal place of residence exemption applies only to land either used and occupied by the owner or beneficiary as the principal place of residence since 1 July in the year preceding the year for which the exemption is claimed or purchased by the owner or trustee after that date and on or before 31 December in that year.

The exemption applies whether the natural person or trustee is the sole or joint owner of the land.

Where land contiguous with land that is exempt as principal place of residence land enhances and is solely used for the private benefit and enjoyment of the person who uses and occupies the principal place of residence land, the exemption includes the contiguous land.

Every place of residence in Victoria or elsewhere of a person is to be taken into account in the determination of whether land is used or occupied as the person's principal place of residence.

Section 13B allows the Commissioner of State Revenue to defer an assessment of land tax for land that would be exempt under section 13A, but for sub-section (2) of that section, where the Commissioner is satisfied that the land is intended to be used and occupied as a person's principal place of residence for a continuous period of at least 6 months. If that land has been continuously used and occupied as the person's principal place of residence for a period of 6 months, that land becomes exempt from land tax at the end of that period.

Section 13C provides that a person is to be taken to use and occupy land as the principal place of residence, despite absence from the land, if the Commissioner of State Revenue is satisfied that—

the absence is temporary in nature; and

the person intends to resume use or occupation of the land as the principal place of residence; and

the owner or, in the case of a trust, the beneficiary, during such absence, is not claiming an exemption under section 13A of the **Land Tax Act 1958** for any other land.

For the purpose of section 13I, letting by a temporarily absent owner for residential purposes is not of itself to be taken to constitute carrying on a substantial business activity.

The section limits temporary absence to two years unless extended at the discretion of the Commissioner of State Revenue.

Section 13D provides that after the death of a person whose land was used and occupied as the principal place of residence, the exemption continues either for one year or until the interest in the land vests in another person (other than the deceased person's personal representative), whichever occurs earlier.

Section 13E provides for the continuation of an exemption under section 13A(1) for two years if the land becomes unfit for occupation as a person's principal place of residence due to damage caused by fire, earthquake, storm, accident or malicious damage and where the person does not claim the exemption in respect of any other land.

Sections 13F and 13G provide for a change of principal place of residence by sale and purchase. The exemption on the land purchased will be revoked unless the land is owned and used as the principal place of residence of the owner, or, in the case of land purchased by the trustee, occupied and used by the beneficiary, within 12 months of the purchase. Where the exemption is revoked the Commissioner may assess the tax payable by the owner or trustee.

Section 13G provides that the exemption on the land being sold will be revoked if the owner, or, in the case of land being sold by the trustee, the trustee, is still the owner of the property 12 months later.

Section 13H provides, if the owner is not entitled to an exemption under Part IIA of the **Land Tax Act 1958** in respect of any other land in that year, for a refund of land tax paid in respect of land that is not occupied by the owner if that land is used and occupied as a principal place of residence for at least 6

months commencing within 12 months after the payment of the tax.

A trustee who has paid tax for a year for land that is unoccupied is entitled to a refund of the tax if at any time during that or the following year the land is used as the principal place of residence of a beneficiary of the trust.

There is no entitlement to a refund if the owner or trustee derived income from the land while it was not occupied as a principal place of residence.

Section 13I provides that if land would otherwise be exempt under another provision of this Part but the property is used by any person to carry on a substantial business activity, the exemption applies only to the extent that the land is used for residential purposes. The value of the land is to be apportioned between business and residential purposes by the Commissioner of State Revenue. Criteria are spelt out for determining whether land is used by a person to carry on a substantial business activity. Additional criteria may be prescribed by regulation.

Section 13J provides for partial exemption or refund for certain trusts. The exemption or rebate is apportioned in relation to the value of the land and the proportionate interest held in the land by the beneficiary who uses and occupies the land.

Section 13K provides that any provision under a residential tenancy agreement entered into on or after 1 January 1998 that a tenant is liable to pay or reimburse the landlord for land tax payable by the landlord on the rented premises is void, despite anything to the contrary in section 71(3) of the **Land Tax Act 1958**.

"Residential tenancy agreement" is defined as any agreement under which a person lets premises as a residence.

Section 13L states that the exemptions and refunds contained in Part IIA of the **Land Tax Act 1958**. Apply with respect to land tax for 1998 and subsequent years.

Clause 6 repeals section 15(3) of the **Land Tax Act 1958** as the requirement for notices of disposition of land is obsolete.

Clause 7 substitutes a new section 45 and inserts a new section, section 45A, in the **Land Tax Act 1958** to clarify the assessment and

liability of joint owners to land tax. The **Land Tax Act 1958** assesses joint owners of land on a joint basis in respect of that land. If one of the joint owners also owns land separately, that person may receive an aggregated assessment (if the aggregated land holdings are of a sufficient value) for both his or her share of the jointly owned land together with the separately owned land. The section then allows a deduction from the amount of tax payable on the aggregated assessment. The purpose of the deduction is to prevent double taxation in respect of the jointly owned property. The amount of deduction is the lesser of—

- the amount of tax payable in respect of that person's share in the jointly owned land; or
- the proportionate share of the tax on the jointly owned property where the jointly held property and the solely held properties are assessed on an aggregated holding basis.

For the removal of doubt, it is expressly provided that any joint owner, eligible for a principal place of residence exemption in the joint assessment which will be nil in respect of the joint assessment, but who is individually not eligible for the exemption, on the secondary assessment cannot take advantage of the principal place of residence exemption.

Clause 8 repeals sections 50A and 91AB of the **Land Tax Act 1958** as consequential amendments.

Clause 9 amends section 93(1) of the **Land Tax Act 1958** to include a regulation-making power for the purposes of new section 13I.

Clause 10 repeals the **Land Tax (Revision) Act 1991** as it is a spent Act.

