

TASMANIA

TAXATION AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2010

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**TAXATION AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2010**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
17 June 2010

*(Brought in by the Deputy Premier, the Honourable Larissa
Tahireh Giddings)*

A BILL FOR

An Act to amend the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Land Tax Act 2000* and the *Taxation Administration Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2010*.

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Part 1 – Preliminary

2. Commencement

- (1) Except as provided in this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 3 is taken to have commenced on 8 October 2008.

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Part 2 – Duties Act 2001 Amended

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PART 2 – DUTIES ACT 2001 AMENDED

3. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

4. Section 22 amended (Aggregation of dutiable transactions)

Section 22 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) In considering whether or not he or she is satisfied for the purposes of subsection (2), it is just and reasonable for the Commissioner to determine that it is appropriate to aggregate a gift that is interdependent with, or forms substantially part of one arrangement with, a transaction of value.

5. Section 55 amended (Exemptions – transfers to partners in a marriage or relationship)

Section 55 of the Principal Act is amended as follows:

*No. 15 of 2001

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Part 2 – Duties Act 2001 Amended

- (a) by omitting subparagraph (ii) from subsection (1)(b);
- (b) by inserting the following subsection after subsection (1):

(1A) If –

- (a) *ad valorem* duty was paid on a transfer of vacant land; and
- (b) as a result of the transfer, the whole of the property is held by the parties to a marriage or significant relationship, or by caring partners, as joint tenants or as tenants in common in equal shares; and
- (c) the parties to the marriage or significant relationship, or the caring partners, within 2 years from the date of the transfer referred to in paragraph (a), use the land as the site of a private dwelling house that is solely or principally used as their principal place of residence; and

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- (d) both the transferor and the transferee are the parties to the marriage or significant relationship, or are the caring partners, or one of them and no other person is a party to the transfer –

the Commissioner must reassess the transfer and refund the duty paid.

6. Section 165 amended (When is a premium paid?)

Section 165 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “or insurance intermediary” after “insurer”;
- (b) by inserting in subsection (1)(b) “or insurance intermediary” after “insurer”;
- (c) by inserting in subsection (2) “or an insurance intermediary” after “directly by an insurer”;
- (d) by inserting in subsection (2) “or an insurance intermediary” after “received by an insurer”;
- (e) by inserting in subsection (2) “or insurance intermediary’s” after “insurer’s”.

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Part 3 – Duties Act 2001 Further Amended

PART 3 – DUTIES ACT 2001 FURTHER AMENDED

7. Principal Act

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

8. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of “declaration of trust”:

“de facto relationship” has the same meaning as in the *Family Law Act 1975* of the Commonwealth;

“de facto relationship property” means –

- (a) property of the parties to a de facto relationship or of either of them; and
- (b) any estate or interest in that property;
- (b) by inserting the following definition after the definition of “partnership interest”:

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“party to a de facto relationship”
means a person who lives, or has
lived, in a de facto relationship;

9. Section 56A inserted

After section 56 of the Principal Act, the
following section is inserted in Part 6:

**56A. Exemptions – break-down of de facto
relationships**

- (1) No duty is chargeable under this Chapter
on a transfer, or an agreement for the sale
or transfer, of de facto relationship
property if –
 - (a) the property is transferred, or
agreed to be sold or transferred,
to the parties to a de facto
relationship that has been
terminated, or to either of them,
or to a child of the relationship
who is under the age of 18; and
 - (b) the transfer or agreement is
effected by or in accordance
with –
 - (i) a document registered or
approved under the
Family Law Act 1975 of
the Commonwealth; or

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- (ii) a financial agreement made under section 90UB, 90UC or 90UD of that Act; or
 - (iii) an order of a court under that Act; or
 - (iv) a purchase at public auction of property that, immediately before the auction, was de facto relationship property, where the public auction is held to comply with any such document, financial agreement or order.
- (2) No duty is chargeable under this Chapter on a dutiable transaction to the extent that –
 - (a) for the purposes of or ancillary to a transfer referred to in subsection (1), it transfers a share that is de facto relationship property to a person not a party to the relevant de facto relationship in order to comply with a requirement of or prescribed under the Corporations Act; or
 - (b) it is a declaration of trust, by the transferee of a share transferred

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as referred to in paragraph (a), for the benefit of a party to the de facto relationship.

(3) If –

- (a) *ad valorem* duty was paid on a transfer, or agreement for the sale or transfer, of de facto relationship property to the parties to a de facto relationship or to either of them, or to a child of the relationship who is under the age of 18; and
- (b) the transfer or agreement for the sale or transfer of de facto relationship property is effected by or in accordance with –
 - (i) a document registered or approved under the *Family Law Act 1975* of the Commonwealth; or
 - (ii) an order of the court under that Act; or
 - (iii) a purchase, at public auction, of property that, immediately before the auction, was de facto relationship property, where the public auction is held to comply with

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Part 3 – Duties Act 2001 Further Amended

any such document or
order; and

- (c) the Commissioner is satisfied that the de facto relationship has been terminated –

the Commissioner must reassess the transfer or agreement and refund the duty paid.

10. Section 72 amended (Exemptions)

Section 72 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (f) in subsection (1):

(fa) if the interest was acquired by the parties to a de facto relationship that has been terminated, or by either of them, or by a child of the relationship under the age of 18 years, in accordance with –

(i) a document registered or approved under the *Family Law Act 1975* of the Commonwealth; or

(ii) a financial agreement made under section 90UB, 90UC or 90UD of that Act; or

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- (iii) an order of a court under that Act; or
- (b) by inserting in subsection (1)(h)(i) “, (fa)” after “paragraph (f)”;
- (c) by inserting the following subsection after subsection (2):
 - (3) Parties to a de facto relationship or either of them or a child of the relationship under the age of 18 years are entitled to a refund of duty paid on a relevant acquisition where –
 - (a) *ad valorem* duty was paid on the relevant acquisition; and
 - (b) the acquisition was pursuant to –
 - (i) a document registered or approved under the *Family Law Act 1975* of the Commonwealth; or
 - (ii) an order of the court under that Act; and

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Part 3 – Duties Act 2001 Further Amended

- (c) the Commissioner is satisfied that the de facto relationship has been terminated.

11. Section 199 amended (Exemptions)

Section 199(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (ca) an application to register a motor vehicle, or a notice of a change of beneficial ownership of a motor vehicle registered in the names of the parties to a de facto relationship or in the name of either of them, to the extent that the vehicle was, at the time the application was made or notice lodged, de facto relationship property, if it is proved to the satisfaction of the Commissioner that –
 - (i) the de facto relationship has been terminated (whether before or after the certificate of registration is issued); and
 - (ii) the application or notice was made for the purposes of or in accordance with an instrument registered or approved under the *Family Law Act 1975* of the Commonwealth, a financial agreement made under section

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90UB, 90UC or 90UD of that Act
or an order of a court under that
Act;

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Part 4 – First Home Owner Grant Act 2000 Amended

**PART 4 – FIRST HOME OWNER GRANT ACT 2000
AMENDED**

12. Principal Act

In this Part, the *First Home Owner Grant Act 2000** is referred to as the Principal Act.

13. Section 3 amended (Interpretation)

Section 3(2) of the Principal Act is amended by omitting “or” and substituting “and”.

14. Section 11 amended (Criterion 4 – Applicant (or applicant’s spouse) must not have had relevant interest in residential property)

Section 11 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) An applicant is also ineligible if the applicant or the applicant’s spouse has, at any time before the commencement date of the eligible transaction to which the application relates –
 - (a) held a relevant interest in residential property in Tasmania or an interest in residential

*No. 19 of 2000

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property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory; and

- (b) occupied the property as a place of residence for a continuous period of at least 6 months.

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s. 15

Part 5 – Land Tax Act 2000 Amended

PART 5 – LAND TAX ACT 2000 AMENDED

15. Principal Act

In this Part, the *Land Tax Act 2000** is referred to as the Principal Act.

16. Section 39 amended (Recovery of unpaid land tax)

Section 39(2) of the Principal Act is amended by omitting paragraph (b).

*No. 74 of 2000

**PART 6 – TAXATION ADMINISTRATION ACT 1997
AMENDED**

17. Principal Act

In this Part, the *Taxation Administration Act 1997** is referred to as the Principal Act.

18. Section 29A amended (Payment of interest)

Section 29A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) In addition to the amount of an overpayment of tax refunded under section 29, the Commissioner is required to pay interest on the amount of the overpayment, calculated on a daily basis from the date of payment of the amount overpaid until the date the refund is approved by the Commissioner.

19. Section 113B amended (Application of Division 3A)

Section 113B(1) of the Principal Act is amended by omitting paragraph (b).

*No. 74 of 1997

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Part 7 – Repeal

PART 7 – REPEAL

20. Repeal of Act

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.