

Land Tax Bill 2010

Explanatory Notes

Objectives of the Bill

The objectives of the Bill are to:

1. rewrite the provisions of the *Land Tax Act 1915* from 30 June 2010;
2. introduce extended payment arrangements for land tax;
3. provide a cap on the increase in value on which land tax is assessed for the 2010-11 financial year;
4. amend the *Taxation Administration Act 2001* and to make consequential changes to the *Duties Act 2001* and *Payroll Tax Act 1971* to introduce a single registration for charitable institutions that will apply for land tax, payroll tax and duties tax streams;
5. make consequential changes to *Airport Assets (Restructuring and Disposal Act) 2008*, and *Body Corporate and Community Management Act 1997*, *Building Units and Group Titles Act 1980*, *Industrial Development Act 1963*, *South Bank Corporation Act 1989*, *the Taxation Administration Regulation 2002* and *Valuation of Land Act 1944* to update the references to the *Land Tax Act 1915*.

Reasons for the Bill

Rewrite of the Land Tax Act 1915

The *Land Tax Act 1915* imposes land tax on the value of a taxpayer's total landholdings at 30 June in each financial year. Land values are determined by the chief executive of the Department of Environment and Resource Management, under the *Valuation of Land Act 1944*.

In the 2008-09 financial year, land tax raised \$838 million in revenue, representing 9.44% of the \$8.877 billion collected in state taxes. Many of the core taxing and exemption provisions for land tax have been in the *Land Tax Act 1915* since it was enacted in 1915, and have subsequently been amended numerous times. As a result, the legislation reflects

inconsistent and outdated drafting practices, lacks a coherent structure, and is difficult for taxpayers to understand.

The Bill rewrites the *Land Tax Act 1915*, to overcome these deficiencies. It simplifies the existing legislation by use of restructuring and plain English. The changes made will benefit taxpayers by promoting clarity and transparency in the legislation and its administration. As there are no changes to tax rates, exemptions or concessions, or significant policy changes proposed in the rewrite, the rewrite retains Queensland's current land tax revenue base.

Extended payments

The 2009-10 State Budget announced that an extended payment arrangement was proposed for land tax liabilities from the 2010-11 year to assist taxpayers who wish to spread the incidence of their land tax liability over a longer period. The rewrite proposed by the Bill incorporates the extended payment arrangement, enabling taxpayers to choose to pay in three instalments, 45, 90 and 150 days after an assessment issues, consistent with the announced proposals.

Capping of taxable value

In addition, the Bill includes a capping provision to limit increases in the taxable value of all parcels of land, other than newly created parcels or parcels subject to the subdivider's discount, to 150% of the previous year's taxable value. The cap will apply for the 2010-11 land tax year.

Single registration system for charitable institutions

The *Land Tax Act 1915* includes an exemption for exempt charitable institutions. The *Duties Act 2001* and *Payroll Tax Act 1971* contain similar exemptions. In general terms, all three Acts provide exemption for specified exempt charitable institutions (or "exempt institutions" in the *Duties Act 2001*) if the underlying transaction or land is or will be used for a specified exempt qualifying purpose. Although there are slight differences in the drafting of the definitions of these terms, and the Acts contain different "use tests" (or time periods during which use must be for an exempt qualifying purpose), generally the relevant provisions operate in the same way and are administered under common Public Rulings issued by the Commissioner of State Revenue (Commissioner).

The *Duties Act 2001* provides a system of registration for exempt institutions, so that once an institution is registered the Commissioner is not required to reinvestigate the institution's exempt status before granting

an exemption. A requirement for exempt institutions to advise the Commissioner if their circumstances change ensures that exemptions are not granted if an institution no longer has exempt status. Despite registration under the *Duties Act 2001*, a charitable institution must separately apply for exempt status under the *Land Tax Act 1915* and *Payroll tax Act 1971*. The Bill moves the system of registration of institutions from the *Duties Act 2001* to the *Taxation Administration Act 2001* so that a single registration system will apply across all three tax streams to reduce red tape for taxpayers and government.

Consequential amendments

As when enacted the Bill will repeal the *Land Tax Act 1915*, consequential amendments are required to be made to *Airport Assets (Restructuring and Disposal Act) 2008*, and *Body Corporate and Community Management Act 1997*, *Building Units and Group Titles Act 1980*, *Industrial Development Act 1963*, *South Bank Corporation Act 1989*, the *Taxation Administration Regulation 2002* and *Valuation of Land Act 1944* to update the references to the *Land Tax Act 1915*.

Achievement of the Objectives

Rewrite of the Land Tax Act 1915

The Bill rewrites the existing legislation by use of restructuring and plain English. The changes made will benefit taxpayers by promoting clarity and transparency in the legislation and its administration. However, as there are no changes to tax rates, exemptions or concessions, or significant policy changes proposed in the rewrite, the rewrite will retain Queensland's current land tax revenue base.

The Bill makes the following significant drafting changes from the existing approach in the *Land Tax Act 1915*.

Contemporary drafting practices

The language in the *Land Tax Act 1915* reflects a multitude of drafting styles from 1915 to the present and the current structure reflects the history of amendments: taxing, exemption and machinery provisions are intermingled, definitions are at the front of the Act instead of a dictionary at the end of the Act, and substantive and lengthy definitions are not located with related provisions as is current practice. The Bill will simplify the land tax legislation by introducing a systematic structure, resulting in the core taxing provisions at the front of the Act, followed by exemptions

that are grouped by subject matter, security and recovery, then avoidance and machinery provisions. Schedules comprise land tax rates and a dictionary of defined terms. The provisions within each of these parts reflect a modern and contemporary drafting approach that will be of benefit to taxpayers and administrators.

Public Rulings

As with all tax legislation, the *Land Tax Act 1915* is supplemented by a series of Public Rulings that explain how the Commissioner interprets and applies specific provisions. However in the some instances, Public Rulings have also been used to supplement the *Land Tax Act 1915* to address some of its deficiencies. Contemporary legislative standards require that in these instances the text of the Rulings should be included in the legislation. In particular:

- *Public Ruling Land Tax Act 1915 003E.2.2 Principal Place of Residence Deduction-house demolished or vacant due to renovations* explains when the Commissioner will allow a principal place of residence deduction where a taxpayer is not residing in a property because renovations are being undertaken, even though there is no reference in the *Land Tax Act 1915* to a deduction applying in these circumstances.
- *Public Ruling Land Tax Act 1915 025.1.2 Joint Owners – Application of section 25(2A)* when the Commissioner will exercise his discretion under section 25 *Land Tax Act 1915* to assess land tax at trustee rates where the land is owned by 5 or more co-owners. The Ruling lists general considerations such as whether the land is held for investment purposes and whether the taxable value of the land exceeds the threshold for trustee liability, even though these considerations are not referred to in the legislation.

By incorporating these general principles in the legislation, the Bill provides clarity, certainty and transparency for taxpayers and greater accountability for the Commissioner.

Valuation of Land Act 1944

The *Valuation of Land Act 1944* mandates that the valuations conducted under that Act are to be used for land tax purposes. Notwithstanding, the *Land Tax Act 1915* retains superseded provisions relating to the valuation of land. These provisions, including definitions of “unimproved value”, “improved value” and “improvements”, pre-date and are contrary to the

Valuation of Land Act 1944 provisions. To clarify current practice, the Bill replaces these provisions with the concept of “VOLA value”, which is defined as the value which applies to land under the *Valuation of Land Act 1944*.

Omission of section 39D of the Land Tax Act 1915

A provision currently in the *Land Tax Act 1915* (section 39D) was not included in the Consultation draft and has been omitted from this Bill. Section 39D of the *Land Tax Act 1915* is an exception to the general confidentiality provisions of the revenue legislation. Under this provision, details of land tax relating to leased premises may be given by the Office of State Revenue to a lessee or tenant of the land. However, the land tax must be calculated on the basis that the land is the only land owned by the owner.

The provision was inserted into the *Land Tax Act 1915* in 1991 with a view to assisting tenants to verify the amount of land tax passed onto them by landlords by allowing them to obtain details of the land tax payable for the leased premises. The provision was reaffirmed by the *Revenue and Other Legislation Amendment Act 2009* when section 39D was stated in the Explanatory Notes for the *Revenue and Other Legislation Amendment Bill 2009* to override the confidentiality provisions of the *Taxation Administration Act 2001*.

The *Revenue and Other Laws Amendment Act 2009* also repealed the prohibition against landlords passing on the cost of land tax to tenants. With the repeal of that prohibition, the existence of section 39D is now problematic. In particular, because section 39D requires that the land tax details must be provided on the basis that the land is the only land owned by the landlord, which may not be the case, the provision of this information is likely to not represent the true position of the taxpayer to the person to whom the information is provided and affect commercial lease negotiations between the parties.

Landlords and tenants need to contractually agree how liability and apportionment of land tax will be determined and appropriate verification processes as part of their lease negotiations, as occurs in other jurisdictions.

Extension of capping provisions

The *Land Tax Act 1915* contains a capping provision which has been applied for the 2007-8 to 2009-10 financial years and was due to finish in the 2009-10 year. Under the capping provision, if the lesser of the unimproved value or the averaged unimproved value of the land for a year

was more than 150% of the value that applied for land tax purposes for the previous year, the value of the land was capped at 150% of the previous year's value. The capping provision is included in the new Act and will apply for the 2010-11 financial year only.

Exemptions and Deductions

Under the *Land Tax Act 1915*, land tax does not apply to land used for a person's principal place of residence, certain land used for a primary production business, or to land used for other specified public, charitable or other purposes. While the effect of the relevant provisions of the *Land Tax Act 1915* all operate to exclude the value of particular land that would otherwise be taxable from the taxing formula, the provisions distinguish between *exemptions* for a principal place of residence (when the taxpayer owns that property only) and certain other purposes, and *deductions* for a principal place of residence (where the taxpayer owns more than one property) and for primary production businesses. This distinction is a historical drafting remnant serving no current purpose. The Bill streamlines the existing approach by removing the current terminology and declaring any land that is not taxable is "exempt land".

Principal Place of Residence

The main category of exemption and deduction (collectively "concession") in the *Land Tax Act 1915* is for the value of a taxpayer's principal place of residence. The concession for principal place of residence brings complexity into the *Land Tax Act 1915*, as it applies separately to each of the different forms of title of freehold land established since the *Land Tax Act 1915* was enacted in 1915 including home unit companies, strata titles under the *Building Units and Group Titles Act 1980*, and community titles under the *Body Corporate and Community Titles Act 1997*. This fragmented approach to drafting has resulted in the principal place of residence concession being replicated in the *Land Tax Act 1915* four times. The Bill amalgamates these provisions by stating the exemption once in a way that applies to all four types of title.

Family and other allowable lettings

The principal place of residence concession applies even if there is one "family letting" or one "allowable letting" for the land. While these terms are currently separately defined in lengthy and complex provisions in the *Land Tax Act 1915*, in practical terms a family letting is a subset of an allowable letting (being a letting occupied by a member of a person's family) except that a family letting has a maximum floor area of 50% of the

residential areas on the land, whereas an allowable letting has a maximum floor area of 28 square metres. Further, the current provisions mean that a taxpayer may have one allowable letting, one family letting, or one allowable letting and one family letting, but not two family lettings (even if the total area is less than 28 square metres). The Bill cures this anomaly and simplifies the existing provisions by providing that:

- an allowable letting may have a maximum floor area of up to 50% of the residential areas on the land;
- a family letting is a type of allowable letting where the tenant is a family member; and
- there may be two allowable lettings consisting of an allowable letting and a family letting or two family lettings provided the combined floor area of both lettings is 50% or less of the residential areas.

Anti-avoidance

The rewrite updates the anti-avoidance provision in the land tax legislation to reflect the contemporary approach in the *Duties Act 2001* and the *Land Tax Act 2005 (Victoria)*. These provisions have in turn been based on the anti-avoidance provisions in the *Income Tax Assessment Act 1936* which, unlike the *Land Tax Act 1915* provision, has been tested in court and anticipates current commercial practices. Adopting this approach also provides more certainty and transparency for taxpayers.

Extended payments

The *Taxation Administration Act 2001* provides the general administrative framework for the various Queensland revenue laws. The administration of land tax is governed by the *Taxation Administration Act 2001*.

A land tax assessment is issued each year to liable taxpayers. Most assessments issue in mid-to late August after the beginning of the land tax year. This delay occurs to allow land ownership data to be provided by the Department of Environment and Resource Management to the Commissioner and ensures that the majority of land tax assessments issuing are based on accurate land ownership data.

Prior to the 2009-10 land tax year payment of a land tax liability was required within 30 days of an assessment issuing.

For the 2009-10 land tax year the Treasurer announced as an interim measure, that the date for payment would be extended from 30 days to 90 days. No legislative amendment was necessary to achieve this result as

section 30(2) of the *Taxation Administration Act 2001* merely prescribes a minimum 30 day period in which the assessment must be paid. It was therefore open to the Commissioner to specify in the assessment a date greater than 30 days after the date of issue of the 2009-10 land tax assessments.

This Bill gives effect to the announcement in the 2009-10 Budget that an extended payment option would be introduced for land tax liabilities for 2010-11 and subsequent years.

The main features of the extended payment option are as follows.

Taxpayers issued with a land tax assessment will have two options for payment, either pay the full amount on the due date or pay by instalments under the extended payment option. Payment options are to be detailed in the land tax assessment issued by the Commissioner.

The full amount of the assessment will be due in 90 days. In contrast, the extended payment option will operate on 3 equal payments due at 45, 90 and 150 days.

Payment under an extended payment option will only be available using direct debit.

Objection and appeal rights and timeframes remain unaffected.

Failure to pay any instalment by the due date will result in the full outstanding balance becoming payable and will result in the imposition of unpaid tax interest on the outstanding balance by the usual unpaid tax interest start date.

Taxpayers unable to make a payment under an extended payment option due to financial hardship may still apply for an instalment arrangement under existing legislative provisions. Unpaid tax interest will apply from the usual start date, being the original due date for payment of an assessment if the extended payment option did not apply.

An extended payment option will not be offered for a default assessment.

Particular rules are provided in relation to the issue of a reassessment regarding payment of the reassessed amount and the calculation of unpaid tax interest. Put simply, if the reassessment issues more than 30 days before an instalment is payable the remaining instalments will be adjusted to reflect the reassessment. If the reassessment issues less than 30 days before an instalment is due, that instalment cannot be adjusted but any subsequent instalments will be adjusted. If a reassessment issues less than

30 days before the final instalment is due, the reassessed amount will be payable 30 days after the assessment issues and unpaid tax interest will apply from the due date of the final instalment.

Single registration system for charitable institutions

The Bill amends the *Taxation Administration Act 2001* to provide for a single registration system for charitable institutions that will apply across all three tax streams to reduce red tape for taxpayers and government. The new provisions reflect the existing arrangements for registration of institutions under the *Duties Act 2001*. While an underlying transaction or land will still be subject to the use tests applying under relevant tax law, this change means that an institution with exempt status will not need to separately register under each of the three tax laws, eliminating red tape for taxpayers and government.

Consequential amendments

The Bill makes consequential amendments to the *Airport Assets (Restructuring and Disposal Act) 2008*, and *Body Corporate and Community Management Act 1997*, *Building Units and Group Titles Act 1980*, *Industrial Development Act 1963*, *South Bank Corporation Act 1989*, the *Taxation Administration Regulation 2002* and *Valuation of Land Act 1944* to update the references to the *Land Tax Act 1915*, which will be repealed by the Bill.

Estimated Cost for Government Implementation

Implementation costs are not expected to be significant. These costs relate to client education activities, changes to publications, documents, website and systems, staff training and fielding any enquiries on amendments.

Consistency with Fundamental Legislative Principles

The Bill will impose land tax on the owner of taxable land. The inclusive definition of the term “owner” may raise the fundamental legislative principle that provisions affecting the rights and liberties of individuals are unambiguous and drafted in a sufficiently clear and precise way. Casting the definition of “owner” in exhaustive terms would raise the potential for avoidance through contrived structures. A number of instances where a person will be regarded as owner are specifically mentioned in the section to provide certainty for taxpayers. As such, the scope for owners not mentioned specifically is limited in practice. The proposed definition also

reflects the current definition in the *Land Tax Act 1915*, which despite being in the Act in its current form since 1995, has not been the subject of legal dispute.

The Bill contains provisions that provide the Commissioner with discretion to decide the following matters relevant to land tax liability: whether to assess land used for investment or commercial purposes that is owned by 5 or more co-owners as if held on trust; whether a person is an absentee because they do not ordinarily reside in Australia; whether a person is using land as his or her principal place of residence or for a substantial non-exempt purpose; and whether to extend the use requirement period that applies to vacant land owned by a charitable institution. These provisions may raise the fundamental legislative principle that rights and liberties only be dependent on administrative power if sufficiently defined and subject to appropriate review. However where appropriate these provisions specify criteria that are required to be considered when exercising these discretions. This contrasts to the current position under the *Land Tax Act 1915* which, despite containing corresponding discretions, in most cases fails to specify relevant criteria. Where possible, the criteria specified in the Bill have been drafted in a clear and unambiguous way.

In some cases these criteria may be considered inconclusive (such as the inclusive list of criteria for determining use as a principal place of residence, and the meaning of “use for investment or commercial purposes” in the case of co-owned land). In these cases, additional criteria have been specified in the Bill to provide further certainty for taxpayers. Public Rulings containing further guidelines for the exercise of these Commissioner discretions will also be published by the Office of State Revenue. As the Commissioner’s decisions are ultimately open to challenge via the objection, review and appeal processes that will apply to the resulting land tax assessments under the *Taxation Administration Act 2001*, it is considered that the proposed provisions strike an appropriate balance between ensuring the effective operation of the land tax regime and having sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The Bill also provides the Commissioner with discretion to recover unpaid land tax from a mortgagee and to apply anti-avoidance provisions, as is currently the case in the *Land Tax Act 1915*. The power to recover unpaid land tax from a mortgagee is a long standing land tax security provision. The *Land Tax Act 1915* specifically provides that the mortgagee can recover the amount from the taxpayer, which is usually done by adding the

amount to the moneys secured under the mortgage. The need to protect the revenue and reduce the risks associated with avoidance activity justifies any apparent breach of the principles regarding delegation of administrative power.

The Bill allows the Commissioner to reassess a land tax liability for previous periods if:

- a non-resident taxpayer was assessed at lower resident rates because their absence is employment-related and will be less than 5 years but is subsequently absent for a longer period; and
- a charitable institution has been granted an exemption but does not use the land for an exempt purpose within the use requirement period.

While the Land Tax Act 1915 does not currently contain corresponding provisions, these provisions are reflective of current practice. As such, it is considered that these provisions do not retrospectively affect rights and liberties of taxpayers. These concessions are granted in anticipation of compliance with the conditions after the event and the requirement to comply is clear in the legislation. Reassessment is not therefore retrospective but, rather, entitlement to the concession never existed in the first place. The alternative approach of assessing on a non-concessional basis and then reassessing when the conditions are subsequently met increases red tape and defers the benefit of the concession for eligible taxpayers.

Equity considerations also require that the benefit of exemptions and concessional rates be reassessed in the case of ineligible taxpayers. It is also noted that the *Taxation Administration Act 2001* will limit reassessments to a 5 year period, and that taxpayers have the usual rights of objection and review or appeal in relation to reassessments.

Under the provisions in the Bill that create a single registration system for exempt charitable institutions in *Taxation Administration Act 2001*, the Commissioner may decide not to register a charitable institution or to cancel an institution's registration. The absence of a right of review or appeal in relation to these decisions may raise the fundamental legislative principle that legislation be consistent with the principles of natural justice. However institutions will be afforded the right to be heard in the context of the usual objection and review or appeal rights that will apply in relation to any subsequent assessment of the institution's land tax liability. It is also noted that the corresponding provisions in the *Duties Act 2001* have been generally accepted by the community. The changes required to create a single

registration system for charitable institutions also involve replacement of the definitions for charitable institutions currently found in the *Land Tax Act 1915*, *Payroll Tax Act 1971* and *Duties Act 2001* with a generic definition in the *Taxation Administration Act 2001* that is based on the *Duties Act 2001* model. While there are slight differences in wording between the current definitions, it is not considered that these proposed changes will adversely affect the rights and liberties of the institutions affected. Despite the current differences in wording, the current disparate models are administered consistently under generic Public Rulings. This means that any institution that currently qualifies under any of the existing provisions will continue to do so under the new regime.

The other amendments in the Bill do not raise any fundamental legislative principles.

Consultation

Public consultation was undertaken in relation to the land tax rewrite. Consultation involved posting the draft provisions for these amendments on the Office of State Revenue website and notifying particular stakeholders. Stakeholders notified include: Queensland Master Builders Association, Shopping Centre Council of Australia, Urban Development Institute of Australia, Australian Property Institute, National Retail Association, Community Titles Institute of Australia, Property Council of Australia, Property Owners Association of Queensland Inc, Real Estate Institute of Queensland, Taxation Institute of Australia, Institute of Chartered Accountants, National Institute of Accountants, Australian Bankers Association, Queensland Law Society, Queensland Bar Association and Unit Owners Association of Queensland. Members of the Commissioner's Taxation Consultative Committee were also consulted. This Committee consists of members of the major legal and accounting bodies. Some of the bodies listed above were also consulted through that Committee.

Consultation with the Property Council of Australia and the Queensland Law Society also occurred with respect to the extended payment option proposal.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 provides that the new Act will apply from the 2010-11 land tax year.

Clause 3 provides that the definitions will be included in a Dictionary in Schedule 4 of the Act.

Clause 4 provides the relationship of this Act with the Administration Act.

Clause 5 is a standard clause to the effect that the State has to perform its obligations under the Act.

Part 2 Imposition of Land Tax

Clause 6 states the basic premise of the Act. It imposes land tax on the taxable value of all taxable land. The basic concepts of “taxable land” and “taxable value” are defined in Parts 2 and 3 respectively.

Clause 7 ensures that land tax liability arises on 30 June in each year.

Clause 8 provides that it is the owner of taxable land when a liability for land tax arises who is liable for land tax.

Part 3 Some Basic Concepts

Division 1 Meaning of taxable land

Clause 9 provides that taxable land is land in Queensland that is “an estate in fee simple.” Under the general law, a “fee simple” means freehold land,

and a life estate. Crown land is thereby excluded. Taxable land excludes exempt land Part 6 sets out when land is exempt.

Division 2 Who is the owner of land?

Clause 10 sets out a wide meaning of the term “owner”.

Clause 11 sets out the rules for ownership when land is subject to a contract of sale.

Clause 12 Under the *Building Units and Group Titles Act 1980* (BUGTA) and the *Body Corporate and Community Management Act 1989* (BCCM) a certificate of title issues to the body corporate as owner of the common property. This section makes it clear that the body corporate is not the taxpayer.

Clause 13 As the definition of “owner” is wide, this section makes it beyond doubt that a mortgagee is not an owner and therefore is not to be taxed.

Clause 14 Under the definition in clause 10, both the owner of the life estate and the remainder person would be owners. This section ensures that only the owner of the life estate is taxed.

Clause 15 provides for a special rule for time-sharing schemes. Although the scheme operator is taxed, the new clause 84 provides that the scheme participants pay the tax to the operator. “Time-sharing scheme” is defined in the Dictionary.

Division 3 Concepts about the value of land

Clause 16 ensures that a taxpayer is taxed on the lesser of either the VOLA value or the averaged value of land for the financial year. A note to this provision refers to the application of the capping provision (clause 91) for determining taxable value for the 2010-11 financial year.

Clause 17 provides that a “VOLA value” is the value which applies to the parcel of land under the *Valuation of Land Act 1944*. The Dictionary cross-refers to this definition.

Clause 18 explains “averaged value”. To mitigate the effect for taxpayers of potential increases in land values, an owner is taxed on the lower of the current value or the value of land averaged over the current and previous two years. Where no values exist for land prior to the current year, then an averaging factor applies.

Part 4 Assessment Of Land Tax

Division 1 Aggregation of land

Clause 19 sets out the general principle that a taxpayer is assessed on the total taxable value of all land owned by the taxpayer.

Clause 20 sets out the rules for assessing trust land. That is, a trustee is assessed separately on land held as trustee. Also, land the subject of different trusts is not aggregated. However, where there are “cloned trusts”, these are treated as the one trust for taxing purposes. “Cloned trusts” are trusts with the same trustee and the interests of the beneficiaries is the same.

Clause 21 provides that where the manager of a time-sharing scheme is taxed (see clause 15 above), the manager is assessed on that land separately from any other land owned by him or her.

Division 2 Co-owners

The Dictionary defines co-owners as persons who own land jointly or in common, whether as partners or otherwise. The term “co-owner” is consistent with the terminology in the *Land Title Act 1994* and the *Duties Act 2001*.

Clause 22 sets out the rules that a co-owner is only assessed on that proportion of the land that he or she owns. Under the general law a joint tenant owns an undivided share in the whole of the land. Subclause 22(2) has been inserted to make it clear that joint tenants are taken to hold equal interests in the land.

Where there are 5 or more co-owners, the Commissioner may assess the land as if it were held on trust by one of them for the others. The factors to be taken into account in making that decision are included in the provision.

Division 3 Trust land

Clause 23 provides that an executor or a trustee of a trust created under a will may elect to have the beneficiaries assessed as if they were the owners of the land. If the executor or trustee does not make an election under this section, then the normal rules in clause 20 relating to assessment of trust land apply.

Clause 24 sets out who are the beneficiaries of a discretionary trust for the purposes of the Act. The term “beneficiary” has relevance in two parts of the Act – clause 23 above and in those sections dealing with home exemptions.

Division 4 Home Unit Companies

Clauses 25 and 26

Prior to the *Building Units Titles Act 1965*, there was no specific legislation in Queensland which provided for separate freehold titling of communally held residential land. The practice was for home unit companies to be established. Each unit “owner” had shares in the company which entitled him or her to occupy the unit. There are still some buildings in Queensland which operate under this type of titling.

A “home unit” is defined as a unit used as the home of the owner of the relevant shares, or where the shares are held in trust, the home of the beneficiaries. Clause 26(2) is an anti-avoidance provision. The effect of clause 26(2) is to provide that where a home unit is held on trust, and another unit or other property is also held on trust for the same family and is used as their home, then subject to the commissioner’s discretion, the benefit of a home concession will only apply once. Clause 26(4) mirrors provisions in other sections of the Act providing that a home unit can attract proportionate concessionary treatment where part of the unit is used for purposes other than as a home. Clause 26(5) applies the “Basic concepts about homes” to the particular situation of a home unit.

The term “home unit company” is defined in the Dictionary.

Clause 27 provides the methodology for taxing home unit companies as well as for applying an exemption for homes to each respective unit, when appropriate. In recent years, it has been rare that any home unit company has actually been taxable, as utilising this formula has meant that they have been under the tax free threshold.

Accordingly, clause 27 provides:

- (a) Divide the taxable value of the parcel of land by the number of units/apartments on the land (to arrive at average unit value)
- (b) Ascertain the tax payable on that amount at the company rate; and
- (c) Multiply the tax payable on that amount by the number of units which are not home units (i.e. not principal places of residence) to arrive at the total tax payable.

Example:

Taxable value of land - \$4 000 000

No of units – 8. Only 2 units are used as principal place of residence.

Average unit value = \$500 000

Tax payable = \$4000 (tax @ company rates on \$500 000) x 6 (units not used for principal place of residence) = \$24 000

The formula also applies where part of a home unit is used for purposes other than as a home so the exemption for homes only applies to a proportion of the unit, eg:

- If 3 ½ units are used as a principal place of residence

- Tax payable = \$4000 (tax @ company rates on \$500 000) x 4.5 (units not used for principal place of residence) = \$18 000

Clause 28 provides for a reassessment of liability where clause 38 – “Land taken to be used as a home – demolition or renovations” has applied. Where the owner does not return to the home unit after demolition or renovation, then the commissioner reassesses liability on the basis that the concession does not apply. (See corresponding provision in clause 44 for other types of freehold title).

Division 5 Other provisions about assessments

BCCM is the current legislation which provides for community developments. It is used for a wide range of property development including residential units and provides for separate freehold titles in the one parcel of land. Although the BCCM largely replaces BUGTA, the latter still applies to a limited class of land development.

Clause 29 provides how, for assessing home units under BUGTA and BCCM, the commissioner must apportion the value applying under the *Valuation of Land Act 1944* (VOLA) to the owners of scheme land. The value is apportioned in accordance with the relevant lot entitlements.

Clause 29 also provides for the apportionment of VOLA value where all or some of the BUGTA or BCCM lots are subject to a time-sharing scheme.

Clause 30 – “Discounting of VOLA value – subdivided land not yet developed” provides that in certain cases where land has been subdivided but is still owned by the one person, then a discount of 40% will be applied to the value of the parcels.

Part 5 Rate of Land Tax

Clause 31 provides the definition of “absentee”, used in determining the rate of tax.

Clause 32 provides for different rates for resident individuals on the one hand and companies, absentees and trustees on the other hand. The rates are set out in Schedules 1 and 2.

Clause 33 provides that certain trustees are assessed at the lower rates in Schedule 1.

Clause 34 applies to a situation where an employee is still considered a resident although they have been overseas for 5 years (see clause 31(3)(b)). In these cases, the employee must give notice to the Commissioner of any extension of the five year period. Clause 34(3) provides that in these cases the Commissioner must reassess the taxpayer’s liability for any financial year for which he or she was absent. This accords with current practice.

Note that section 22 *Taxation Administration Act 2001* limits any reassessment to a five year period.

Part 6 Exempt Land

Division 1 Homes

Subdivision 1 Preliminary

Section 35 sets out an overview of the operation of the provisions relating to homes.

Subdivision 2 Basic concepts about homes

Clause 36 updates the terminology from “principal place of residence” to “home”, consistently with the *Duties Act 2001*. It provides the definition of “land used as the home” and also incorporates other tests for a “home” (see clauses 36 and 37 below).

Clause 36 also incorporates the factors considered by the Commissioner in determining whether land is used as a person’s principal place of residence and provides more certainty for taxpayers.

Clause 37 – Land taken to be used as a home – person who receives care - this section provides the rules which apply to allow land to be taken to be used as the home of a person who is not in occupation because of illness or having to reside elsewhere to receive care.

Clause 38 – Land taken to be used as a home – demolition or renovations – provides the circumstances in which land may be taken to be a person’s home when they are not in occupation temporarily because of renovations to the residence or the existing residence has been demolished and a new residence is being constructed on the land.

Clause 39 provides that the Commissioner may decide that land being used as a home is also being used for a non-exempt purpose. This occurs when

the land is being used for another purpose, and the use for that other purpose is substantial (unless the use is an allowable letting or a work from home arrangement – see clause 39(2)(c)). Subclause 39(3) sets out factors to be considered by the Commissioner in deciding whether the use is “substantial.”

Clause 40 provides that if a home is used only as a home, or only as a home and for:

- one allowable letting, or 2 allowable lettings if at least 1 is a family letting (subject to area limitations – see subclause 40(3)); and/or
- a work from home arrangement;

then the Commissioner cannot decide that the land is used for a non-exempt purpose. Subclause 40(2) defines an allowable letting. Subclause (4) provides that a family letting is a subset of an allowable letting – i.e. an allowable letting occupied by a member of the person’s family. “Member” of a family is defined in the Dictionary.

Note there is a slight policy change in relation to allowable lettings and family lettings. This change has been made with the intention of simplifying this exemption regime and of curing an anomaly which meant two family lettings were not allowed.

Subdivision 3 Exemptions

Clause 41 provides that certain land used as a home is exempt land.

Clause 42 provides that where certain land is used as a home but also for a non-exempt purpose, that part of the land used as a home is exempt land. The Commissioner must apportion the taxable value of the land accordingly. Where there is only one family letting, that family letting is taken to be included in the use of the land as a home.

Clause 43 The effect of this clause is to provide that where a home is held on trust, and another unit or other property is held on trust for the same family, then subject to the Commissioner’s discretion, the benefit of a home concession will only apply once.

Subdivision 4 Reassessment provisions

Clause 44 provides for a reassessment when a taxpayer has gained the benefit of an exemption on the basis of clause 38 – the home is temporarily vacant due to demolition or renovation – but the taxpayer fails to resume using the land as his or her principal place of residence as required.

Clause 45 provides that where a taxpayer has gained the benefit of a home concession, and the land is subsequently subdivided, in some circumstances the Commissioner must reassess the persons' liability for tax.

Note that section 22 *Taxation Administration Act 2001* places a five year limitation period on reassessments increasing tax liability, except where there is a deliberate tax default.

Division 2 Charitable institutions

Clause 46 defines the term “exempt purpose” The references to “preschool” and “rural training school”, previously included in *Land Tax Act 1915* have been omitted. In Queensland preschool has been abolished and the “prep” year is “an educational purpose.” The *Rural Training Schools Act 1965* was repealed in 1994. The *Agricultural Colleges Act 2005* establishes the Australian Agricultural Corporation which would attract an exemption under clause 52 – land owned by the State.

Clause 47 provides that land owned by or held in trust for a charitable institution (except for vacant land) is exempt land if it is used predominantly by the institution for one or more exempt purposes. In the case of vacant land, it is exempt if the institution intends to and does use it predominantly for one or more exempt purposes within a certain period – the “use requirement period.”

Clause 48 also provides that vacant land held by an exempt institution at 29 June 1989 continues to be exempt so long as it is not used for a purpose other than an exempt purpose.

Clause 49 provides that in the case of vacant land referred to in clause 47(2)(b), the institution may apply to the commissioner for an extension of the use requirement period.

Clause 50 provides that where vacant land is not used for an exempt purpose within the use requirement period (and in some other instances), the institution must notify the commissioner of that fact and the commissioner must reassess on the basis that the land was not exempt.

Section 22 *Taxation Administration Act 2001* limits any reassessment to a five year period.

Division 3 Other exemptions

Clause 51 provides an exemption for aged care facilities.

Clause 52 provides an exemption for government land.

Clause 53 provides an exemption for land used for primary production.

Clause 54 provides an exemption for certain moveable dwelling parks.

Clause 55 provides an exemption for certain port authority land.

Clause 56 provides an exemption for recreational and public land.

Clause 57 provides an exemption for retirement village land.

Clause 58 provides exemptions for land held by friendly societies, trade unions and the Mayne Estates.

Part 7 Security and Recovery

Clause 59 provides that, despite a disposition of the land, unpaid land tax may be recovered from the owner of the land for the time being. However, if the liability arose before the owner purchased the land and the owner obtained a clearance certificate stating that, at the time of purchase, there was no unpaid land tax on the land then the land tax cannot be recovered from that owner.

Clause 60 provides that land tax is a first charge on land, but that the charge has no effect against a purchaser for value and in good faith who has obtained a clearance certificate.

Clause 61 provides that the commissioner may take security for the payment of land tax.

Clause 62 provides that the commissioner may recover land tax from a mortgagee.

Clause 63 provides that an owner, purchaser or mortgagee of land may apply to the commissioner for the issue of a clearance certificate.

Part 8 Avoidance Schemes

Clauses 64 to 69 comprise general anti-avoidance provisions. These provisions are based upon Chapter 11 *Duties Act 2001* and Part 6, Division 4 *Land Tax Act 2005 (Vic)* which are both modelled on Part IVA *Income Tax Assessment Act 1936 (Cth)*.

Part 9 Miscellaneous Provisions

Division 1 Special provisions for payment of land tax

Clause 70 provides for the application of this division to assessments other than default assessments, self assessments or reassessments, subject to clause 75.

Clause 71 provides that land tax may be paid by 3 instalments at the election of the taxpayer. The date for payment of the instalments is 45, 90 and 150 days after the assessment notice is given to the taxpayer. The manner of payment of each instalment is direct debit.

Clause 72 requires the taxpayer to elect to pay by instalments by giving documents to the Commissioner within a period as prescribed by a regulation.

Clause 73 prescribes the requirements for an assessment notice to which this division applies.

Clause 74 provides the consequences if a taxpayer elects to pay by instalments and then fails to pay an instalment when due.

Clause 75 sets out the rules to be applied if a reassessment issues before the last instalment is due under an assessment. The *Taxation Administration Act 2001* will continue to apply to any later reassessment.

Division 2 Notices etc. to be given to commissioner

Clause 76 provides that an application for land to be exempt must be made in the approved form, with certain exceptions.

Clause 77 provides that an owner of land must notify the commissioner if their land has been exempt, but is no longer exempt.

Clause 78 provides that a person must give notice to the commissioner of becoming the owner, or ceasing to be the owner of land unless a combined form (Form 24) is given to the registrar of titles.

Clause 79 requires a taxpayer to give notice of a change of address for service to the Commissioner within 1 month after the change.

Clause 80 provides that a home unit company must provide information to the Commissioner in the approved form by 1 October if it has a liability for land tax for the financial year.

Division 3 Other provisions

Clause 81 provides that there are no objection, appeal or review rights against a land tax assessment on the basis that the value determined under the *Valuation of Land Act 1944* is incorrect. Objection and appeal rights against valuations are available under the *Valuation of Land Act 1944*.

Clause 82 provides that the commissioner is to have access to information in the land registry.

Clause 83 provides that where the manager of a time-sharing scheme pays land tax on the land (see clause 15 above), then each participant is in debt to the manager for a specified amount.

Clause 84 provides that the commissioner may approve forms for use under the Act.

Clause 85 provides that regulations may be made under the Act.

Part 10 Repeal, Savings And Transitional Provisions

Clause 86 inserts definitions of post-commencement liability and pre-commitment liability used in this Part.

Clause 87 repeals the *Land Tax Act 1915*.

Clause 88 provides for the application of this Act to post-commencement liabilities, ie it applies to the 2010-11 and subsequent financial years .

Clause 89 provides for the continued application of the repealed Act to pre-commencement liabilities ,ie, for financial years up to and including 2009-10

Clause 90 provides for the capping of the taxable value for 2010-11 so that it does not exceed 150% of the relevant unimproved value for the 2009-10 financial year.

Clause 91 is a transitional provision for section 37(6) in relation to use of land as home – person who receives care.

Clause 92 is a transitional provision in relation to the use requirement period for charitable institutions.

Clause 93 provides for the application of Part 7 to pre-commencement liabilities.

Clause 94 provides that if land was exempt under the repealed Act it will be taken to be exempt for sections 76 and 77 of this Act for the 2009-2010 financial year and section 77(2)(c) will be taken to be satisfied for the 2010-2011 financial year if certain conditions are satisfied.

Clause 95 provides that a notice of change of address given under the repealed Act before 30 June 2010 is taken to be a notice given under section 79.

Clause 96 provides for an amount relating to a post-commencement liability may be applied under section 38 of the Administration Act as payment for a liability arising before 30 June 2009 under the repealed Act.

Clause 97 provides for references in any Act or document to the repealed Act to be taken to be a reference to this Act, if the context permits.

Part 10 Amendments f Legislation

Clause 98 refers to Acts being amended in Schedule 3.

Clause 99 provides that the amendment of the *Taxation Administration Regulation 2002* by Schedule 3 of this Act does not affect the power of the Governor in Council to further amend or repeal the regulation.

SCHEDULE 1

Sets out the rate of land tax for individuals other than absentees and trustees. The rate in column 2 is to be applied to the total taxable value as set out in column 1.

SCHEDULE 2

Sets out the rate of land tax for companies, absentees and trustees. The rate in column 2 is to be applied to the total taxable value as set out in column 1.

SCHEDULE 3 LEGISLATION AMENDED

Schedule 3 makes the following amendments consequential upon the *Land Tax Act 2010* being enacted.

- Replacement of references to the *Land Tax Act 1915* with references to the *Land Tax Act 2010* and the repealed *Land Tax Act 1915* in section 99(2)(b) of the *Airport Assets (Restructuring and Disposal) Act 2008*, sections 80(1)(b) and 194(1) of the *Body Corporate and Community Management Act 1997*, section 62(2) of the *Building Units and Group Titles Act 1980*, section 3(6) of the *Industrial Development Act 1963*, section 100(2) of the *South Bank Corporation*

Act 1989, section 6(6) of the *Taxation Administration Act 2001*, sections 3A(1)(h) and 3A(2) of the *Taxation Administration Regulation 2002*, and sections 29A(1), 30(1)(c), 72(1)(a), 82(2)(c) and 101A(7)(c) of the *Valuation of Land Act 1944*.

- The *Duties Act 2001* is amended in many sections to reflect the change of the term “exempt institution” to “charitable institution” and to remove the registration provisions for such institutions which have now been inserted into the *Taxation Administration Act 2001* to commence on 30 June 2010.
- section 8(2) and parts of section 14 of the *Payroll Tax Act 1971* are amended to reflect the change of the term “exempt charitable institution” to “charitable institution” and that the registration provisions for such institutions are now in the *Taxation Administration Act 2001*.
- New Part 11 A is inserted in the *Taxation Administration Act 2001* to provide for the registration of charitable institutions for all revenue laws. In addition, a new Part 15 is inserted in the *Taxation Administration Act 2001* to provide transitional provisions in relation to the *Land Tax Act 2010*.

SCHEDULE 4 DICTIONARY

Sets out definitions used in the body of the Act.