



## ANALYSIS

<p>Title</p> <p>1. Short Title and application</p> <p>2. Recovery of tax from persons other than owners of land</p>	<p>3. Registration of land tax charge</p> <p>4. Application of certain provisions of Income Tax Act 1976 relating to recovery provisions</p>
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1988, No. 12

**An Act to amend the Land Tax Act 1976**

[24 March 1988

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and application**—(1) This Act may be cited as the Land Tax Amendment Act 1988 and shall be read together with and deemed part of the Land Tax Act 1976 (hereinafter referred to as the principal Act).

(2) This Act shall apply with regard to the land tax payable for the year of assessment commencing on the 1st day of April 1988 and for every subsequent year.

**2. Recovery of tax from persons other than owners of land**—The principal Act is hereby amended by repealing section 49, and substituting the following section:

“49. (1) When land tax has been assessed and has become due and payable in respect of any land, and the taxpayer has made default in payment thereof, the Commissioner may thereupon or at any time thereafter, so long as the default continues, by notice in writing, demand payment of the tax from any person who is at the time of the demand a tenant of the land, holding under the taxpayer, and the tenant shall thereupon become personally liable in the same manner as the taxpayer to the extent of any rent payable or to be payable by the tenant of the land at the time the demand is received by the tenant and any such tax so paid by the tenant shall be deducted from the rent so payable.

“(2) When land tax has been assessed and has become due and payable in respect of any land, and the taxpayer has made

default in payment thereof, the Commissioner may thereupon or at any time thereafter, so long as the default continues, by notice in writing, demand payment of the tax from any person who, in relation to that land, is a mortgagee who has failed to comply with the requirements of subsection (3) of this section and who at any time after the giving of the said notice exercises a power of sale over the land, and the mortgagee shall at the time that power of sale is so exercised become personally liable in the same manner as the taxpayer to the extent of the money referred to in paragraph (d) of section 104 of the Land Transfer Act 1952.

“(3) Any person who is a mortgagee of an estate or interest in any land (not being land that is exempt from land tax) and who intends to exercise a power of sale over that land shall inform the Commissioner, by notice in writing, of the intention to exercise the power of sale not less than one month before the date of sale.

“(4) Every person who, pursuant to subsections (1) and (2) of this section, pays any land tax due by a taxpayer shall, unless the person has agreed with the taxpayer to pay the land tax, be entitled to recover the amount so paid from the taxpayer as a debt or to retain or deduct that amount out of or from any money which is or becomes payable to the taxpayer by that person.

“(5) Nothing in this section shall be construed to affect any contract now or hereafter made between any persons as to the liability for the payment of any land tax as between the parties to that contract; and in any case where as between themselves, the owner has contracted to pay the land tax, the tenant of the property may pay the land tax if the owner has not paid it and deduct the amount from any rent or other money which is or becomes payable to the owner by that tenant.

“(6) All payments made under this section by any person on whom demand has been so made shall be deemed to be made on behalf of the taxpayer.

“(7) If the land so held by a tenant, or subject to a mortgage, is only part of the land in respect of which the tax was assessed, the tax shall for the purposes of this section be apportioned by the Commissioner in such manner as the Commissioner thinks fit, and the liability of the tenant or mortgagee shall be determined accordingly.”

**3. Registration of land tax charge**—(1) The principal Act is hereby amended by repealing section 50 (as amended by

section 2 (1) of the Land Tax Amendment Act 1982), and substituting the following section:

“50. (1) Where land tax has been assessed and has become due and payable in respect of any land, and the taxpayer has made default in payment thereof, the Commissioner may thereupon or at any time thereafter, so long as the default continues, register a charge on the land of the taxpayer in respect of which the land tax is payable by depositing with the District Land Registrar or Registrar of Deeds, as the case may require, in the land registration district in which the land is situated, a certificate referring to the land charge and stating that there are arrears of land tax payable in respect thereof, and the Registrar shall thereupon, without payment of any fee, register the certificate accordingly.

“(2) The certificate shall be signed by or on behalf of the Commissioner.

“(3) No disposition of any estate or interest in any land shall be registered while a charge under this section is registered against the land.

“(4) Notwithstanding anything in any other Act, if any land subject to a charge registered pursuant to this section is also subject to a charge created by that other Act, the charges shall rank equally with each other unless by virtue of that Act the charge created thereby would be deferred to the charge registered pursuant to this section.

“(5) If—

“(a) Land tax has been assessed and has become due and payable in respect of any land; and

“(b) A charge has been registered pursuant to this section against that land prior to a person acquiring any estate or interest in that land,—

that person shall, subject to the provisions of the Land Transfer Act 1952, be entitled to compensation under section 172A of that Act.

“(6) For the purpose of enforcing any charge registered under this section the High Court may make such order as it thinks fit, either for the sale of the estate or interest that is subject to the charge, or for the appointment of a Receiver, or otherwise howsoever, and any order for sale shall be carried into effect by the Sheriff in the same manner as in the case of a writ of sale, with any modifications that may be necessary or may be provided for by rules of Court in that behalf.

“(7) Every charge registered against any land under this section shall, until a release of the charge is registered, operate to secure all land tax from time to time payable by the

taxpayer in respect of that land for the year of assessment ending with the 31st day of March last preceding the registration of the charge or for any subsequent year of assessment, or so much thereof as from time to time remains unpaid.

“(8) The Commissioner shall cause the release of the charge registered pursuant to this section in the following circumstances:

“(a) Upon payment of all tax for the time being secured by the charge:

“(b) Where the land upon which the charge is registered is subject to a mortgage registered prior to the charge and the mortgagee has exercised a power of sale over the land.

“(9) On the registration of any such release, there shall be payable to the District Land Registrar or Registrar of Deeds, as the case may require, a registration fee of \$1, or, if the maximum amount of land tax secured by the charge at any one time was less than \$1, a registration fee equal to that maximum amount:

“Provided that, in special circumstances, and on the recommendation to the Commissioner, a release may be registered without payment of a registration fee.

“(10) The fees prescribed by subsection (10) of this section shall be payable by the owner of the land charged or other person by whom the land tax secured by the charge was payable, and shall be paid in the first instance to the Commissioner.

“(11) Application for the registration of a release shall be made by the Commissioner in writing, and in the application the Commissioner shall certify that the registration fee has been paid, or, if the case so requires, shall recommend that the release be registered without payment of a registration fee.”

(2) The Land Tax Amendment Act 1982 is hereby consequentially repealed.

**4. Application of certain provisions of Income Tax Act 1976 relating to recovery provisions**—Section 51 of the principal Act is hereby amended by omitting the expression “Sections 399 and 401 to 408 of the Income Tax Act 1976”, and substituting the expression “Sections 399 to 408 of the Income Tax Act 1976”.