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1989, No. 151

An Act to amend the Land Tax Act 1976

[*19 December 1989*

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 (No. 2) 1989, 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 respect to the land tax for the year of payment commencing on the 1st day of April 1990 and for every subsequent year.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term "year of assessment", and substituting the following definition:

" 'Year of payment' means the year for which land tax is payable."

(2) Section 2 of the principal Act is hereby amended by omitting from the definition of the term "taxpayer" the words "chargeable with", and substituting the words "liable for".

(3) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "European", the following definition:

" 'Hospital' means—

"(a) Any hospital or similar institution, under the control of an Area Health Board (as defined in the Area Health Boards Act 1983), and including any psychiatric hospital (as defined in the Mental Health Act 1969), where any such hospital or institution included in this paragraph is used principally for the treatment or diagnosis or rehabilitation or care of patients:

"(b) Any licensed hospital within the meaning of Part V of the Hospitals Act 1957:".

(4) Every reference in the principal Act to the year of assessment is hereby consequentially amended by omitting the word "assessment", and substituting the word "payment".

(5) Section 2 of the Income Tax Act 1976 is hereby consequentially amended by inserting, after the word "imposed" in the definition of the term "land tax", the words "or liable".

(6) The Income Tax Act 1976 is hereby consequentially amended by repealing section 140, and substituting the following section:

"140. **Year in which land tax is deductible**—For the purposes of calculating the assessable income of any person, land tax payable for any year of payment in respect of land used in the production of assessable income shall be deemed to be an expense incurred during the year in which that land tax is paid, and the deduction (if any) allowable in respect thereof under section 104 of this Act shall be computed accordingly."

3. Imposition of tax—The principal Act is hereby amended by repealing section 3, and substituting the following section:

"3. Land tax shall be imposed on the land value of the land owned by the taxpayer as determined in accordance with this Part of this Act."

4. Apportionment of land value—Section 7 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words "is assessable for the purposes of land tax, or different parts of which are assessable", and substituting the words "is subject to land tax, or different parts of which are subject to land tax":

(b) By omitting from subsection (2) (a) the words ", and make the assessment accordingly":

(c) By omitting from subsection (2) (b) the words ", and may make the assessment accordingly":

(d) By omitting from subsection (2) (c) the words ", and the assessment shall be made in accordance with that apportionment".

5. Land tax imposed—Section 10 of the principal Act (as amended by section 10 of the Land Tax Amendment Act (No. 2) 1986) is hereby amended—

(a) By omitting from subsection (3) the word "assessed", and substituting the word "imposed":

(b) By omitting from subsection (4) the words "which has been already assessed or paid or is still assessable and payable in or for that year", and substituting the words "which has been already imposed or assessed or paid or is still to be imposed or is still assessable and payable in or for that year".

6. Liability of life tenant—Section 12 of the principal Act is hereby amended by omitting the words "assessed and".

7. Joint owners to be jointly liable—Section 13 of the principal Act is hereby amended by omitting the words "assessed and" in both places where they occur.

8. Joint owners to be severally liable also—Section 14 of the principal Act is hereby amended by omitting from subsection (1) the words "In addition to the assessment under section 13 of this Act, each joint owner shall be assessed and", and substituting the words "In addition to the liability under section 13 of this Act, each joint owner shall be".

9. Liability of shareholders of company—Section 16 of the principal Act is hereby amended—

(a) By omitting from subsection (2) the words "assessed and liable for land tax accordingly in the manner provided by section 14 of this Act, and shall be entitled to the same deduction as is therein provided; and all references in that section to a joint assessment shall be read as references to the assessment of the company", and substituting the words "liable for land tax accordingly in the manner provided by section 14 of this Act, and shall be entitled to the same deduction as is therein provided, and all references to a joint owner being liable shall be read as references to the company being liable":

(b) By omitting from subsection (3) the word "assessable", and substituting the word "liable".

10. Two or more companies with substantially same shareholders—Section 17 (3) of the principal Act is hereby amended by omitting the words "jointly assessed and".

11. Liability of equitable owners—Section 22 of the principal Act is hereby amended by omitting the words "assessed and".

12. Liability of trustees—(1) Section 23 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

"(1) Any person owning land as a trustee shall be liable in respect of land tax as if the trustee were beneficially entitled to the land, save that when the trustee is the owner of different lands in severalty in trust for different beneficial owners who are not, by reason of joint occupation or otherwise, jointly liable for land tax in respect of the same lands, the tax so payable by the trustee shall be separately imposed in respect of each of those lands; and save also that when a trustee is also the beneficial owner of other land the trustee shall be separately liable in respect of that land and of the land of which the trustee is a trustee, unless, by reason of joint occupancy or for any other reason, the trustee is jointly liable independently of this section.

"(2) Notwithstanding anything in this section, a trustee may be liable for land tax in respect of the interest of any beneficiary in the land owned by the trustee at the rate at which the beneficiary is liable when, by reason of the

ownership of other land, or for any other reason, the beneficiary is liable in respect of land tax at a higher rate than that at which the trustee would be liable independently of this section."

(2) Section 23 (4) of the principal Act is hereby amended by omitting the words "assessable and".

13. Liability of mortgagees in possession—Section 24 of the principal Act is hereby amended by repealing the proviso, and substituting the following proviso:

"Provided that in each of the 5 years of payment immediately following the year in which the mortgagee entered into possession the Commissioner shall, if satisfied that the mortgagee is in possession solely for the purpose of furthering the realisation of the mortgagee's security, make the mortgagee liable separately in respect of the estate or interest of which the mortgagee is deemed to be the beneficial owner as aforesaid."

14. Exemptions of certain classes of land—(1) Section 27 (1) of the principal Act (as substituted by section 6 (1) of the Land Tax Amendment Act 1989) is hereby amended by repealing paragraph (b), and substituting the following paragraph:

"(b) Land vested in the Crown or owned by any public authority or owned by a local authority (not being land vested in, or owned by, the Crown, a public authority, or a local authority that is used for a purpose specified in paragraph (i) or paragraph (k) of this subsection) and where that land is not used for the pecuniary profit of any person, and forming any domain, recreation reserve, historic reserve, scenic reserve, nature reserve, scientific reserve, Government purpose reserve, or any other type of reserve within the meaning of the Reserves Act 1977, and including any land forming part of a conservation area, any land being managed pursuant to sections 61 and 62 of the Conservation Act 1987, any lands that comprise a wildlife management reserve, wildlife refuge, or wildlife sanctuary within the meaning of the Wildlife Act 1953, and any flood ponding area, foreshore, the bed of the territorial sea, the bed of any navigable lake or navigable river, and any land vested in the

Crown by virtue of the Land Subdivision in Counties Act 1946:".

(2) Section 27 (1) of the principal Act (as so substituted) is hereby further amended by repealing paragraph (q), and substituting the following paragraph:

"(q) Land which is—

"(i) Used principally as the site of any residence (being a house, flat, townhouse, home unit, or similar dwelling); or

"(ii) Vacant land which is intended to be used and can be lawfully used (without any application, dispensation, or waiver to permit such use pursuant to the Town and Country Planning Act 1977) as the site of any residence:

"Provided that where the area of land on which a residence is situated, or is to be situated, is greater than—

"(iii) 4500 square metres; or

"(iv) An area that would be reasonably appropriate for residential purposes, having regard to the nature of the land, and the size and character of the residence or residences on the land, or which could be sited on the land,—

such proportion of the value of the land as the Commissioner determines is not attributable to residential purposes shall not be exempt under this paragraph:".

(3) Section 27 (1) of the principal Act (as so substituted) is hereby further amended by adding the following paragraphs:

"(u) Any land to the extent that it is used as the site for a hospital, including servicing and landscaped areas directly associated with the operation of the hospital:

"(v) Any land used by an Area Health Board to the extent that such land is used principally for the provision of health services (as defined in the Area Health Boards Act 1983)."

15. Tax on Maori land—Section 29 of the principal Act is hereby amended—

(a) By omitting the words "chargeable with" in each place where they occur, and substituting the words "liable for":

(b) By omitting from subsection (6) the word "assessing", and substituting the word "imposing".

16. Annual returns by taxpayers—The principal Act is hereby amended by repealing section 30, and substituting the following section:

"30. Every taxpayer shall furnish to the Commissioner a return, in the prescribed form, setting forth a complete statement of all land in respect of which the taxpayer is liable for land tax, as owned by the taxpayer at noon on the 31st day of March in the preceding year, together with such other particulars as may be prescribed."

17. Returns by executors or administrators—Section 31 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words "and may assess the executor or administrator for land tax on that land in the same manner in which the taxpayer might have been assessed had he remained alive", and substituting the words "and may impose and make liable the executor or administrator for land tax on that land in the same manner in which the taxpayer might have been liable if that taxpayer had remained alive":

(b) By omitting from subsection (2) the words "so assessed".

18. Commissioner to make assessments—The principal Act is hereby amended by repealing section 36, and substituting the following section:

"36. (1) Where—

"(a) Any person makes default in furnishing any return required under this Act; or

"(b) Any person is not satisfied with any return furnished by that person in respect of any year of payment and requests the Commissioner, in writing, to make any alteration or addition to that return; or

"(c) The Commissioner is not satisfied with the return furnished by any person,—

the Commissioner shall make an assessment of the amount which, in the Commissioner's judgment, is the tax payable pursuant to this Act, and that taxpayer shall be liable to pay the tax so assessed, except in so far as that taxpayer establishes on objection that the assessment is excessive, or that tax is not payable.

"(2) If any assessment or amended assessment is made under this section of this Act, or as the case may be, under section 39 of this Act, the Commissioner shall cause notice of the

assessment or amended assessment to be given to the person liable to pay the tax."

19. Assessment upon disposal before payment date—Section 37 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the word "assessable", and substituting the word "liable"; and

(b) By omitting from subsection (5) the words "in the ordinary course".

20. Assessment where default made in furnishing returns—The principal Act is hereby amended by repealing section 38.

21. Payment of tax— The principal Act is hereby amended by repealing section 46, and substituting the following section:

"46. Subject to Parts III and IV of this Act, the amount set forth as imposed and liable on any return furnished by a taxpayer shall be conclusively deemed and taken to be correct for the purposes of this Act and such amount shall be due and payable for any year of payment in one sum on the 7th day of May in that year."

22. Transitional arrangements for 1990/91 year of payment—Notwithstanding the due date for payment specified in section 46 of the principal Act, land tax for the year of payment commencing on the 1st day of April 1990 shall be due and payable in 2 equal sums on the 7th day of May 1990 and the 7th day of October 1990.

23. Additional tax to be charged if default made in payment of tax—The principal Act is hereby amended by repealing section 47, and substituting the following section:

"47. (1) Subject to this section, additional tax shall be, and be deemed to be, added to any tax remaining unpaid, and shall be payable accordingly, as follows:

"(a) On the amount of any tax remaining unpaid at the expiry of the due date, additional tax of 10 percent:

"(b) On the amount of so much, if any, of the tax (being the tax referred to in paragraph (a) of this subsection and the additional tax added thereto in accordance with the provisions of paragraph (a) of this subsection) as remains unpaid on the day with which there expires the period of one month immediately

following the due date referred to in paragraph (a) of this subsection, additional tax of 2 percent:

"(c) On the amount of so much, if any, of the tax (being the tax referred to in paragraph (a) of this subsection and the additional tax added thereto in accordance with the provisions of paragraphs (a) and (b) of this subsection, and the additional tax, if any, theretofore added thereto in accordance with the provisions of this paragraph) as remains unpaid at the expiry of any of the periods of one month that, consecutively, succeed the period of one month referred to in paragraph (b) of this subsection, additional tax of 2 percent.

"(2) Subject to this section, the provisions of section 398 of the Income Tax Act 1976 (except subsections (2), (5), (6), and (7) of that section, shall apply to this Act as far as they are applicable and with any necessary modification as if—

"(a) Every reference in the said section 398 to income tax or tax were a reference to land tax; and

"(b) Every reference in the said section 398 to an assessment were to an assessment made under Part III of this Act; and

"(c) Every reference in the said section 398 to subsection (2) of that section were a reference to subsection (1) of this section; and

"(d) Every reference in subsection (4) (d) and (e) of the said section 398 to '6 months' and '10 percent' were a reference to '1 month' and '2 percent' respectively; and

"(e) Every reference in the said section 398 to the due date were a reference to the due date under this Act."

24. Recovery of tax from persons other than owner of land—Section 49 of the principal Act is hereby amended—

(a) By omitting from subsections (1) and (2) the words "has been assessed and":

(b) By omitting from subsection (7) the words "in respect of which the tax was assessed", and substituting the words "on which the tax was imposed".

25. Unpaid tax to constitute charge on land—Section 50 of the principal Act is hereby amended by omitting from subsections (1) and (5) the words "has been assessed and".

26. Refund of excess tax—The principal Act is hereby amended by repealing section 52, and substituting the following section:

"52. (1) In any case where the Commissioner is satisfied that tax has been paid in excess of the amount properly payable, the Commissioner shall refund the amount paid in excess:

"Provided that, subject to subsection (2) of this section, no refund shall be made under this section after the expiration of the period of 8 years immediately after the end of the year of payment to which that refund relates.

"(2) In any case where an assessment has been made pursuant to section 36 of this Act so as to change the amount of tax payable by any taxpayer or refundable by the Commissioner, and the Commissioner is satisfied that by reason of that assessment tax has been paid by that person in excess of the amount properly payable, the Commissioner shall, notwithstanding that the time limited in accordance with subsection (1) of this section for the making of a refund may have expired, refund, pursuant to this section, the tax so paid in excess or, as the case may be, the amount properly refundable to the extent that the amount exceeds the amount that has been refunded:

"Provided that, in any such case, no refund shall be made after the expiration of the period of 8 years immediately after the end of the year in which the assessment was made, unless written application for that refund is made by or on behalf of the taxpayer before the expiration of that period.

"(3) Notwithstanding subsections (1) and (2) of this section, where any taxpayer has, in respect of any obligation imposed under any other of the Inland Revenue Acts, failed to pay to the Commissioner, in whole or in part, any amount (in this subsection referred to as unpaid tax), the Commissioner may set off, against that unpaid tax, any amount of any tax otherwise refundable to the taxpayer under this Act, and shall treat any amount so set off as a payment received from that taxpayer."

27. Power of Commissioner in respect of small amounts—Section 54 of the principal Act is hereby amended by omitting the expressions "$2" and "50c", and in each case substituting the expression "$5".

28. Relief in cases of serious hardship—Section 56 of the principal Act is hereby amended by omitting the words "he may, subject to this section, release the taxpayer or the

executor or administrator of the deceased taxpayer (as the case may be) wholly or in part from his liability, and may make such alterations in the assessment as are necessary for that purpose; and may, if the tax as previously assessed or any part thereof has been already paid, refund any tax paid in excess of the amount of the assessment as altered under this section", and substitute the words "the Commissioner may, subject to this section, release the taxpayer or the executor or administrator of the deceased taxpayer, as the case may be, wholly or in part from the taxpayer's, or executor's, or administrator's liability, as the case may be, to pay the tax or, where the tax has already been paid, refund any tax paid in excess of the amount the Commissioner considers should be the amount of tax payable".

29. Agent to make returns and be liable as principal—Section 71 of the principal Act is hereby amended—

(a) By omitting the word "assessed", and substituting the words "liable for tax":

(b) By omitting the word "special".

30. Rate and amount of tax payable by agent—Section 72 of the principal Act is hereby amended—

(a) By omitting the words "so assessed and":

(b) By omitting the words "charged and".

31. Liability of principal not affected—(1) Section 73 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words "assessed and chargeable with tax", and substituting the words "liable for tax accordingly":

(b) By omitting from subsection (3) the words "to be assessed".

(2) Section 73 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

"(2) A liability for the tax by the agent shall not preclude a liability for the same tax on the principal, and the principal and agent shall be jointly and severally liable for all tax for which the agent is liable."

32. Return furnished deemed authority for payment of tax by agent—The principal Act is hereby amended by repealing section 75, and substituting the following section:

"75. A return furnished by an agent to the Commissioner shall, as between an agent and the agent's principal, be

sufficient authority for the payment by the agent of the tax calculated in accordance with that return, and the agent shall be entitled as against the principal to reimbursement accordingly."

33. Agents to be personally liable for payment of tax—Section 76 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

"(2) When the Commissioner is satisfied that an agent has no money of the principal with which the agent can pay the tax, and that the agent has not paid away any such money on or after the day referred to in section 46 of this Act, and that immediate enforcement of payment by the agent would be a cause of hardship, the Commissioner may allow the agent such further period for the payment thereof, not exceeding 6 months after the date referred to in section 46 of this Act, as the Commissioner thinks necessary, and the additional tax imposed by section 47 of this Act on taxpayers in default shall not accrue until the expiry of the period so allowed."

34. Liability of new companies for tax payable by former companies with substantially same shareholders or under same control—Section 78 of the principal Act is hereby amended by omitting from subsection (3) the words "or was liable to be assessed", and substituting the words "or would have been liable for any such tax".

35. Confirming rate of land tax for year commencing 1 April 1990—For the year of payment commencing on the 1st day of April 1990, land tax shall be imposed, levied, and paid pursuant to Part II of the principal Act at the rate specified in Part B of the Schedule to that Act (as substituted by section 8 of the Land Tax Amendment Act 1989).

This Act is administered in the Inland Revenue Department.