IPTI Xtracts

Property Tax and Assessment News from Around the World

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Rates claim against airport corporations crashes to earth

Two Tasmanian councils have lost a landmark $3.4 million claim for unpaid rates against the Hobart and Launceston airports just as Hobart Airport's private owner, a Macquarie Group-managed fund, receives final bids for its $250 million stake.

The Federal Court has dismissed a claim by Clarence City Council for $1.7 million in unpaid rates against Hobart International Airport and Northern Midlands Council's bid against Australian Pacific Airports Corporation, which runs Launceston, for a similar amount.

Both airports are privately controlled and run under long-term leases that were sold by the federal government in the late 1990s. If the case was successful, it would have reset how rates apply to other airports around the country.

Macquarie Group's infrastructure fund owns a 50.1 per cent stake in Hobart airport, worth an estimated $250 million, which is up for sale.

The spectre of the long-running court case has not put off some of Australia's largest fund managers which are eyeing Macquarie's airport stake, with final bids due at the end of this week.

Launceston Airport is owned by some of the country's largest super fund managers including AMP, IFM Investors, the federal government's Future Fund, SAS Trustee Corporation and Utilities of Australia.

Local government rates do not apply to Commonwealth-owned land, but when Australia's airports were sold off – in a bid to reduce the effect of unfair competition – lease owners were required to pay local councils equivalent or "fictional" rates.

Despite not being a party on the airport lease agreements, the Tasmanian councils took the airports' owners to court arguing the equivalent rates had not been applied to all the "rateable" land used for "trading or financial operations".

Council rates do not apply to an airport's runways, aprons, roads, vacant land, buffer zones or grass verges, but they should apply to departure and arrival lounges, baggage claim areas, security facilities, bathrooms and waiting and circulation areas, they said.

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The airport owners disagreed, saying rates under the leases did not apply to "aeronautical services and facilities".

Justice David O'Callaghan ruled in the airports' favour, saying the councils had no standing to bring proceedings for relief.

Northern Midlands Council mayor Mary Knowles said the loss of rate income was equivalent to 3.7 per cent of the council's revenue and it would have to adjust its budgets accordingly.

Clarence City Council mayor Doug Chipman labelled the decision a "significant setback for our community" and said it raised serious questions about the "equity of rates allocation".

Launceston Airport general manager Paul Hodgen said the ruling would allow a "reset" of the airport's relationship with the council.

"Our hope is that we can put these proceedings behind us," he said.

Macquarie Group's Macquarie Infrastructure and Real Assets (MIRA) fund declined to comment.

NSW government sets up website to compare councils' performance

Ratepayers across NSW can compare rates, local infrastructure and services in their area with those of councils across the state through a new website set up by the state government.

The NSW government will on Tuesday launch its Your Council website to provide information about how much money each of the state's 128 councils spends on roads, footpaths, libraries and culture.

It also features details of each council's rates and charges, as well as their assets and finances, while allowing users to compare this data with other local government areas and against state averages.

The website will also provide planning information including, for example, the average time it takes for each council to process development applications.

The initiative, similar to the state government's My School resource, mirrors websites in Western Australia and Victoria that compare the best and worst-performing councils in those states.

Local Government Minister Shelley Hancock spruiked the website as a demonstration of "the sheer size and scale" of the state's council sector and its responsibilities.

"Not only can residents learn about the work of our state's councils as a whole, they can also drill down and find out more about their local council and how it is serving their community."

Ms Hancock said ratepayers could use the website to access "comprehensive statistics on the operations of their local council and the profile of their community".

"The data for each council is also benchmarked against the average for similar councils so ratepayers can compare how their council is travelling."

The website draws on data already collected by the Office of Local Government from NSW councils and other agencies. The data that is available will be updated annually.

Ms Hancock said that the data would also help guide the development of a new performance measurement framework with consistent benchmarks for all NSW councils.

Local Government NSW president Linda Scott said the organisation welcomed "even more transparency in local government".

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"The Your Council website will make existing publicly available data about local governments easier to access.

"Existing data highlights the challenge for local governments, with councils managing 33 per cent of the nation's infrastructure with just 3 per cent of total public sector tax receipts."

However, Ms Scott, who is a City of Sydney councillor, said Australians "consistently report that local government is the most trusted level of government".

"A recent Essential Poll found 42 per cent of respondents trusted their local council, in comparison with 31 per cent for state government and just 28 per cent for federal government."

Qld land tax changes – beware when buying, selling and leasing property

Recent legislative changes may increase certain land tax assessments, and therefore careful consideration should be given to any outgoings adjustment under a land sale contract or any recovery of outgoings under a lease.

Do you know how land tax is adjusted under your contract or lease? Does it deal with foreign resident surcharges and delays in assessments issuing? Make sure you're aware of these points in any new or continuing contracts or leases in Queensland.

The 2019 Queensland Budget introduced a number of changes to land tax. Firstly, the land tax rates for companies and trusts with aggregate landholdings above $5 million and $10 million were increased by 0.25% respectively, and the absentee surcharge rate was increased from 1.5% to 2%. However, the biggest change was the extension of the absentee surcharge to foreign corporations and trustees of foreign trusts, where it previously only applied to foreign individuals.

When you get down to the numbers, this can have potentially significant impacts on the holding costs associated with property in Queensland – for example, a foreign company with aggregate landholdings having an unimproved value of $20 million could see an increase in land tax of over $480,000 per annum.

Now more than ever it is important parties ensure that leases and contracts to purchase property in Queensland appropriately address liability for land tax, particularly where the landholder is foreign (or suspected to be). In contracts for sale, the contract typically requires an adjustment at settlement for land tax (except in residential sales). In leases, land tax may form part of the outgoings that are recoverable from a tenant (except in residential or retail leases).

It is open to the parties to negotiate how land tax liability will be apportioned, which could be:

- not adjusting or re-allocating land tax liability at all (more common in residential property sales, and mandated in retail leases – this favours the buyer or tenant);
- on the amount actually assessed, including any surcharge (this favours the seller or landlord); or
- on some notional or deemed assessment, which could be determined based on some combination of the below criteria (each of which favours the buyer or tenant):
    - as if the seller or landlord was a natural person (reducing the rates to the individual rates);
    - as if the seller or landlord was resident in Queensland (avoiding any absentee surcharge); and
    - as if the land was the seller or landlord's only land (avoiding aggregation).

Given the significant impact of the absentee surcharge changes, the Office of State Revenue is currently delaying issuing assessments to foreign companies and trusts, while it considers potential concessions or relief. While this has been welcomed by the industry, one impact is that it is not possible currently to definitively determine the total land tax if an adjustment is being done based on the assessed amount inclusive of surcharge. Where a contract is due to settle soon (or before the OSR issues those assessments), alternative arrangements such as retentions may need to be set up to cater for potential liability.

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Parties currently negotiating contracts or leases should give very careful consideration to how the land tax adjustments or allocations are intended to operate and ensure the documents reflect that. If you are a party to an existing contract or lease, you should review the relevant adjustment or outgoings clauses to ensure that they operate appropriately (or look to renegotiate the terms, if there is scope to do so).

$349m or $7m? Essendon Airports loses valuation case

Billionaire trucking magnate Lindsay Fox and fellow rich-lister Max Beck have lost a multimillion-dollar court case against the federal government over how much they pay to run Essendon Airport and develop the surrounding land.

The pair's joint business could be obliged to pay millions in back taxes to the government - the Commonwealth took Essendon Airport to court almost two years ago alleging it had drastically undervalued the 305-hectare parcel of land.

The Fox and Beck families paid $22 million in 1998 for a 50-year lease on the airport and have since built the Hyatt Place hotel, the DFO shopping centre, supermarkets, car yards and office space around the airfield. The site is reported to be now worth more than $1 billion.

Land tax does not apply to government-owned property such as leased airports. But Essendon Airport must make annual "ex gratia" payments to the federal government instead, applied to the land it uses for non-aviation activity and based on Victorian land tax rates.

The court heard that as of January 2016, the Commonwealth valued the relevant land at $348.9 million, however the airport itself said it was worth $7.1 million.

This distinction determines whether the airport pays the government $7.8 million or $117,225 every year, according to the Victoria Government's land tax calculator.

Essendon Airport's valuer, m3property, started with a similar value for the site as the Commonwealth ($341.5 million), the court heard, but then made a series of downward adjustments, including the $207 million cost of building a brand new airport on the site including runways, taxiway, roads and fences.

That was based on the legal obligation for a new owner to keep operating a functioning airport at the site, while working on the basis that nothing had previously had been built there, in keeping with property valuation principals.

The firm slashed the value by a further 85 per cent, to $7.1 million, to reflect that only 15 per cent of the airport site is used for non-aviation activities.

In a judgement handed down on Monday, Justice Simon Steward said he did not accept the airport's position. He said the lease clearly stated that only certain parts of the site - those not used for aviation - should be used to calculate the annual payments.

On that basis, Justice Steward said the airport's valuer erred in valuing the land based on the entire site, and there was therefore no need to factor in the $207 million cost of building a new airport.

Justice Steward gave the Commonwealth and the airport 14 days to agree on relief or make submissions for court orders.

Essendon Fields chief executive Brendan Pihan said in a statement that "both parties were seeking direction on how to calculate land tax under the lease".

"It is a very complex matter and we will now take some time to review the reasons for the judgement and our next steps," he said.

The Department of Infrastructure, Transport, Cities and Regional Development, which manages the country's airports, declined to comment on the case.

Steven Marshall to wield land-tax axe to attract property investors

South Australia will fast-track an across-the-board reduction in land tax in a bid to attract more property investors and put pressure on the Queensland Labor government over its tax hikes.

The move will also help Premier Steven Marshall's Liberals end their war with cashed-up property investors, party donors and key industry groups over a crackdown on tax-minimisation schemes.

In the June state budget, the government changed land-tax rules to prevent investors from bundling their properties into trusts to reduce land-tax bills.

The Australian can reveal that next week Mr Marshall will announce a fast-tracked reduction in the maximum rate of land tax in a bid to seize control of the debate and provide immediate relief to investors.

However, the SA Property Council is yet to be convinced the modified plan will do enough to satisfy investor anger.

In the budget, the government flagged plans to reduce the top rate of land tax from 3.7 per cent to 2.9 per cent by 2027-28.

The Australian understands the government will now bring that reduction forward to as early as next year, and is also considering driving down the top land-tax rate below the 2.75 per cent proposed in Queensland.

However, it will retain its aggregation policy, which prevents investors from using trusts and other entities to spread out the value of their holdings, saving the budget $40m a year.

Liberal MPs spent two days at a Barossa Valley wine resort "love-in" this week, where Mr Marshall outlined his new land-tax proposals to his team.

While revealing none of the details of his compromise, the Premier said he had been thinking through his final plan and it could differ from what was outlined in June.

"Early next week, I will go out with the position that will further improve the competitiveness of SA," Mr Marshall told The Australian on Thursday.

"We have already removed stamp duty on all commercial and industrial transactions in SA and what we will finalise in terms of land tax will be a further reduction.

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"We are intent on aggregation but we also accept that our land-tax rates are far too high. I am absolutely obsessed with making SA a more attractive investment destination."

The aggregation model proposed by the government is already in place in NSW, Victoria and Queensland; its absence in South Australia has created haves and have-nots within the investor community.

The vast majority of investment properties in the state — about 22,500 — are aggregated, with 4500 using trusts to reduce tax burdens, and these are the investors furious at the changes.

Property Council SA executive director Daniel Gannon said the existing land-tax arrangements were "an anti-competitive regime that discourages investment and pinches pennies from mum-and-dad and institutional property investors".

Any reductions in the top rate would be negligible if the aggregation policy was not ditched, he said.

"While the state government's appetite to water down its initial budget measure would be welcomed, there are too many demons associated with aggregation to simply let that slip through.

"Aggregation needs to be rescinded to deliver on the Premier's election promise of lowering land tax and avoid taking a sledgehammer to business, jobs, mum-and-dad and nest-egg investors, and the state's investment attractiveness."

Mr Gannon said the added problem for the SA property market was that the state Valuer-General was currently undertaking a statewide property revaluation.

SA Government to continue with land tax aggregation plan but will lower top rate

The South Australian Government has refused to back down on its controversial stance on land tax aggregation in return for lowering the rate of the levy by more than promised and more quickly.

Key points:

- The SA Government plans to crack down on property owners splitting their portfolios to pay less land tax
- The plan has angered land owners, party donors and Liberal backbenchers
- It is standing strong on the crackdown but will lower the land tax rate

Treasurer Rob Lucas last night announced the State Government would continue with its plan to prevent people from splitting their properties into different names and trusts to lower their land tax bill.

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However, he said that would be offset by reducing the top land tax rate from 3.7 per cent to 2.4 per cent from July 1 next year.

The Government had announced in June's state budget that it would lower the tax rate for property portfolios worth $1.3 million–$5 million from 3.7 per cent to 2.9 per cent from next July, with a slower reduction for those worth more than $5 million.

While the rate reduction has been widely welcomed, the plan to tax individuals' properties as a whole rather than their separate entities divided the party and angered donors.

However, Mr Lucas said the new plan had received unanimous support in the party room yesterday.

"There was no opposition expressed at all — we're going out to consultation immediately," Mr Lucas said.

As announced previously and promised before last year's state election, the tax-free threshold will increase from $391,000 to $450,000.

Land tax revenue still falling

The aggregation crackdown will raise an extra $86 million per year for the Government according to the latest figures released last night, up from the $40 million the Treasurer had predicted in the budget.

Overall, though, Mr Lucas said $70 million less land tax revenue would be collected by the Government over the three years because of the lower rates.

The Government said under the changes, 4,300 individuals and 2,600 company groups would pay more land tax, compared with 47,800 individuals and 7,900 companies which would pay less land tax.

"We're going to stop the situation where someone can own $3 [million] or $4 million in property and not pay a single cent in land tax because they structure themselves into a complex series of trusts or companies," Mr Lucas said.

Analysis commissioned by the Government showed there were 22,300 South Australian property investors — including 16,300 individuals — who owned multiple properties but did not aggregate them under different entities.

"It blows out the water the claims from the Property Council and others that everyone who has multiple properties has actually structured themselves into trusts and properties to minimise the tax they pay in South Australia," Mr Lucas said.

Labor has not said whether it would support the changes.

Shadow Treasurer Stephen Mullighan said Parliament needed to see the full details and modelling.

"A family or a retiree with a small number of investment properties will receive a land tax bill thousands of dollars higher, while large corporates with millions of dollars of land ownings will receive tax cuts in the tens of thousands of dollars," he said.

Aggregation opposed by property groups

Property Council SA executive director Daniel Gannon said the reduction in the top rate was welcome, but it still opposed the aggregation changes.

"If aggregation is still part of the plan, it's not a plan that we support because it's incomplete and underdone," Mr Gannon said.

"Given the Government now accepts its $40 million revenue forecast was inaccurate, how can any investor — big or small — trust the latest figures and calculations?

"Statewide property revaluations will deliver $75 million every year if valuations increase by 10 per cent, let alone the tax tidal wave caused by changes to aggregation."

The Property Council held a lunch last week where major property owners spoke out against land tax aggregation, saying it would lead to less investment in the state.

The Government says its proposal will bring SA's laws in line with those in New South Wales and Victoria.

Majestic Hotels owner John Culshaw urged property owners to stick up their middle finger at the Government.

"People will walk from the state … they will walk," he said.

Real Estate Institute of South Australia general manager Andrew Shields said Mr Lucas's proposed changes would not please his industry.

"Not at all," he said yesterday.

"We see this as a missed opportunity to be innovative as opposed to being reactive.

"We know there is a GST black hole and this is what we see as an easy fix."

Consultation is open until October 2.

The Government plans to introduce the new laws to Parliament on October 15.

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