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Canberra cash should spell end of Queensland’s land tax grab

Queensland’s property industry is calling on the State Government to scrap significant increases to land tax, following the Commonwealth Government decision to bring forward \$650 million in major project funding for Queensland, and deliver \$680 million in new funding.

Property Council Queensland Executive Director, Chris Mountford, said that the land tax increases announced in June’s State Budget were an attempt to plug a Budget hole that will now no longer exist.

“This is a very welcome announcement by the Federal Government and comes at a critical time for the local economy,” Mr Mountford said.

“The Queensland Government should use this opportunity to scrap its economically damaging land tax increases in order to further support local jobs growth.”

June’s Queensland State Budget introduced a sizeable increase to the general business rate of land tax, and introduced a new surcharge for overseas companies and trusts that will effectively double their land tax liability.

In her Budget speech and subsequent media comments, the Treasurer outlined that the land tax measures were a reluctant result of “Canberra’s cuts” and committed to repeal them if Canberra restored “Queensland’s fair share.”

“The Federal Government’s new commitment will be a big boost to the State’s balance sheet, and affords Queensland the opportunity to avoid imposing these harmful new taxes” Mr Mountford said.

The Office of State Revenue has been devising an exemption framework from the overseas surcharge for economically significant investments since June’s Budget. While the Government has been working to finalise this framework, no land tax has been collected from overseas entities.

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“The Treasurer could make the decision today to repeal the overseas land tax surcharge and issue these entities with their normal land tax assessments.”

“If this tax is imposed, Queensland will face a substantial competitive disadvantage against southern jurisdictions for the retention and attraction of investment.”

“We will also see many Australian investors liable to pay the new foreign surcharge, and rents increasing for many Queensland businesses.”

Land tax rules for charities are missing the mark

Land tax rules in Victoria are providing a disincentive to good management of property by charities. And it seems that some charities may be sluggish with land tax for trying to be good stewards of their real estate.

Charities are under a legal obligation to ensure their property is applied for charitable purposes. They are also under a governance (and moral) obligation to use their assets to maximum benefit for the charity.

But Victorian law is currently proving a barrier for charities who want to take opportunities to maximise the benefit of any spare capacity or ‘downtime’ of their properties that trying to generate revenue from property from leasing, co-working and ‘external hire’ arrangements could result in a land tax assessment.

The problem in the law

The Land Tax Act 2005 (Vic) gives land tax exemptions for certain property or property uses. For general charitable use, the Act allows property in Victoria to be exempt from land tax if it is “used by a charitable institution exclusively for charitable purposes” (our emphasis).

Not “primarily” for charitable purposes, or “mostly” for charitable purposes – the words of the legislation recite a test of exclusivity.

The problem with this “all or nothing” approach is that it discourages use of spare capacity. No-one is levying income tax on charities when they invest spare money into the stock market. So why does the State of Victoria levy land tax on charities who redirect spare capacity of their properties into revenue-generating use to fund the organisation’s charitable activities?

The problem illustrated – the school theatre

Let’s say a school has a fantastic performing arts theatre. It cost a lot to build, so the business manager has the good sense to make it available for hire.

If the theatre is hired by another school for an event, there is no problem. The theatre is still being used for an educational purpose and the land tax exemption can still apply. Education is a charitable purpose.

When a local dance group wants to hold their annual concert in the theatre, it appears to be another good opportunity to earn some revenue from the facility’s spare capacity. The problem is that the local dance group is not a “charitable” activity and is not a charity itself.

The mere act of hiring out the facility for a non-charitable use has the potential of exposing the school to an assessment for land tax. A one-off hiring event might be long regretted if it were to result in a land tax assessment for a charity trying to do the right thing and put its spare capacity to good use.

A ‘commercial’ hire doesn’t even have to be one that makes money. If it is not a ‘charitable use’, then a literal reading of the current law puts the land tax exemption at risk.

The problem is everywhere

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The requirement of exclusive charitable use does not embrace the reality that modern charities are creative and entrepreneurial in generating revenue. They should not be discouraged from doing so – it helps our donation dollars go further.

It is largely a nonsense to think that charities want to use their properties for “exclusive charitable use”. A literal reading of the legislation will exclude taking advantage of things like:

- Renting out a spare office;
- Hiring out the church hall for functions;
- Renting car parking space to a neighbour;
- Allowing sports coaching groups or fitness classes to hire the sports field; and
- Private functions at campsites.

These are things that should be encouraged, not penalised. It would be undesirable to see charities “locking up” their facilities or limiting their use for fear of getting a land tax assessment. That just causes communities to miss out and makes charities look selfish.

Potential solutions

We don't necessarily advocate for land tax exemption just because a property is owned by a charity (although that is the situation in NSW). But we do believe in allowing room for charities to spread their entrepreneurial wings without being shot down by the tax man.

Here are alternatives that we think would work:

- Apply a “primarily or substantially” test If a property were used primarily or substantially for charitable purposes, the exemption would still apply. This test is applied to properties which are exempted from land tax as non-profit sporting or outdoor recreational facilities. If they are allowed to use a small amount of spare capacity for commercial hire arrangements, why can't other charities?
- Pro-rata exemption Charities could have their exemption reduced (rather than removed) to the extent of the days of non-charitable use. This could be on a self-assessed basis and subject to audits for compliance. This would be an improvement on the current “all or nothing” position and would allow charities to manage the tax cost of commercial hiring.

What can you do for now?

Until our parliamentary representatives see fit to address this issue, there are some things you can do:

- Find out whether you're paying land tax, whether you're exempt and why. Maybe you should be paying land tax. Maybe you shouldn't. Maybe you should be exempt from land tax, but for a different reason.
- Consider ways to preserve your exemption and still do commercial hire. This can come down to documenting the purpose of your hiring arrangements and creating some policies or guidelines around who you hire to and why.

And when the board asks you to look at ways to earn revenue from the spare capacity in your real estate assets and building facilities, send them a copy of this article.

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Call For Victorian Solar Farms To Pay Council Rates

The Municipal Association of Victoria wants to see solar farms and other electricity generators in the state coughing up more cash to councils.

“Mum and dad home owners and small businesses are paying their council rates,” said MAV President Cr Coral Ross. “Exempt private and commercial activities should also be paying a fair and equitable share of rates.”

Among these exempt private and commercial activities are wind and solar farms, coal, gas and hydro power generators. While these facilities may not pay rates, a payment in lieu of rates (PiLoR) provision operates. For the 2018/19 financial year, this was a fixed charge of \$54,400 and a variable charge of \$1,225 per megawatt capacity.

However, MAV says the amounts these facilities are paying are significantly less than what they would be if they were charged under a normal rates arrangement.

It offers several examples in its submission to the Victorian Government’s local council rating system review; among them:

- Swan Hill Rural City Council – it has three solar farms in its region. Estimated PiLoR of \$284,280 compared to a rates based charge of ~\$1,743,768.
- Moira Shire – Numurkah Solar Farm. Estimated PiLoR and other charges – \$339,818 compared to a rates based charge of ~\$587,405.

Solar Stronghold Gannawarra Shire Weighs In

Gannawarra Shire Council is a solar power hotspot and had this to say on the topic of revenue from electricity generators in its submission:

“The Electricity Industry Act 2000 allows for councils or a generation company to elect to pay rates under PiLoR, rather than under the Local Government Act 1989. There are also provisions for alterations on output and then further negotiations on the impact of the generation company on the local area.”

It notes some generating entities are paying more through the Fire Services Levy than they are for PiLoR and given the services provided by local government areas, this appears to be an “inequitable situation”.

Council says rating of electricity generating entities needs to be simpler and clearer for all involved.

Whether Gannawarra was referring to positive or negative impact (or both) of renewable energy developments on local areas in its submission isn’t clear, but earlier this year and across the border in New South Wales, Dubbo Regional Council said it believed developers or the State Government should be coughing up more cash to address “community impacts” associated with large scale solar projects.

Other Exemptions Targeted

This isn’t an anti-renewables crusade by the MAV or just targeting electricity generators. Beyond energy generation, there are others it wants to see paying proper rates:

- Private schools
- Some religious property holdings
- RSL gaming/gaming venues on Crown land
- Mining

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- Crown land used for commercial purposes

An independent panel's report regarding the local council rating system review will be submitted to the Victorian Minister for Local Government by 31 March 2020.

Melbourne property values could reach new heights by January

Forget the downturn — Melbourne's property values could reach record heights as early as January, with strong spring results promising good times ahead for vendors in 2020.

Melbourne's property market is on track to make a full recovery from the downturn and reach record high values by January, new research shows.

Rapid improvements in house and unit values over spring means the market may have completely corrected by early in the new year, leading property data firm CoreLogic suggests.

Property values have started to improve since June, after an 11.1 per cent drop that began at the market's peak in November 2017, CoreLogic's head of research Tim Lawless said.

Melbourne houses and units now sit at a median value of \$650,197.

"Values only have to rise a further 5.8 per cent before staging a recovery," Mr Lawless said.

"Considering the market was up 5.3 per cent over the past three months, the recovery phase is looking quite sharp at the moment. If the recent rate of growth is maintained, we could see Melbourne housing values reaching new record high in January or February next year."

He said the strong performance had been spurred on by low interest rates, looser lending regulations, renewed confidence after the federal election and population growth.

A surge in first-home buyers had also added to housing demand.

Melbourne's inner east notched the best three month improvement in Australia, with the median dwelling values increasing 8.3 per cent to \$1.135 million.

Inner city suburb values also increased 6.1 per cent to \$637,465 in that time and now sit just 1.5 per cent below their peak in October 2017.

Noel Jones Camberwell agent Greg Bowring said spring was a busy time for sales in the east, with people "rushing to get deals done" before the next school year started.

"There's been a massive turnaround in the past three months and the market was completely different a year ago," Mr Bowring said.

"Interest rates are low, but stock levels aren't great and people aren't spoiled for choice. The horse has now bolted for affordability in the area."

All Australian capital cities except Perth and Darwin have recorded a rise in dwelling values in the past three months to October.

Victoria's capital could reach record high values by January, while Sydney is predicted to only fully recover in about six months.

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Mr Lawless said while its good news for homeowners, reduced housing affordability could become a challenge for first-home buyers and low-income families.

Your views: on the ongoing 'land tax debacle'

Readers air their views on the ongoing debate surrounding land tax – including its likely impact on ‘mum and dad investors’, businesses, and the State Government itself.

Commenting on the story ‘Sort it out’: Business SA’s tax warning to Govt as confidence plummets: The land tax debacle is a sad reflection on the Liberals saying one thing – no tax increases – and doing another.

Every time a government says it is making changes to make something “fairer”, you just know that the result will be anything but.

Our current land tax regime is very unfair, with the highest impost in Australia. If the Government had fairness in mind it would have simply lowered the rate and increased the thresholds.

The aggregation proposal is a disaster – how can a government propose to look through perfectly legal structures just so it can raise more tax?

Combined with the revaluation rollout ordered by the Government, the tax hit on land will be enormous. As an example, my residential assessment in Walkerville increased by 29.5 per cent, leading to a council and SA Water rates increase of around 25 per cent.

I know there is no land tax on my home, but extrapolate these likely value increases across the state and you get some idea of the chaos that will reign.

The projection that the tax take will increase by \$80 million or so is rubbish – if the new land tax bill is ever passed, landholders will collapse under the tax burden.

Mr Marshall and Mr Lucas will not accept and admit that is the real problem – and may well lead to their party being a one-term government!

Hopefully, Mr Marshall will see the light, dump the proposed changes and amend the current land tax so South Australia becomes competitive and open for business. – Colin Gaetjens

WE ARE Mum and Dad investors ... we will be relying on our two investment properties to provide our superannuation income. We feel we are being penalised for planning ahead, by trying to reduce our dependence on the state. Thank you, Frank Pangallo, for sticking up for us. – Ali and Daryl Birbeck

I HAVE attended various forums and meetings to try and understand Rob Lucas’s proposal on land tax.

My husband and I are builders and we have some built units which are currently on the market, but are not selling due to the uncertainties of the day with land tax. We have stopped building further, until we know the outcome and where we stand. Therefore we have stopped employing anyone.

We also have built homes for low-income people and don’t receive a high rent in return.

We are in our late 60s and do not expect to receive a pension but if this new law is passed we could easily lose all we have worked for since we migrated to Australia. We may be entitled to the pension after all!

I believe this is detrimental to Mum and Dad investors who have made so many sacrifices and worked honestly all their life. – Giuseppina Condina

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IN ALL this kerfuffle, the Opposition and Greens Party are strangely silent, not offering constructive suggestions. Happy to sit back and receive their generous salaries. I would not be surprised if the Liberal Government approached the Federal Government seeking a bailout from their predicament. – Mike Lesiw

Crackdown on NSW land tax compliance - surcharge land tax and discretionary trusts

On 22 October 2019, the State Revenue Legislation Further Amendment Bill 2019 was introduced to the NSW Parliament. If this Bill is passed, then a discretionary trust is effectively deemed to be a “foreign person” unless its trust deed prevents (or is amended to prevent) foreign persons from being beneficiaries of the trust by 31 December 2019.

The effect of the proposed new laws will be that if a discretionary trust holds residential land in New South Wales and its trust deed does not prevent (or has not been amended to prevent) foreign persons from being a beneficiary of the trust, then it may be liable to pay surcharge land tax (currently 2 per cent) in addition to any land tax it is already liable to pay.

To “prevent” a foreign person from being a beneficiary of the trust, the trust deed of the discretionary trust must provide that:

no potential beneficiary of the trust is a foreign person (the “no foreign beneficiary” requirement); and the terms of the trust are not capable of amendment in a manner that would result in there being a potential beneficiary of the trust who is a foreign person (the “no amendment” requirement).

The NSW Commissioner of State Revenue issued a ruling in March 2017 allowing it to exempt discretionary trusts on a case-by-case basis from surcharge land tax (and/or surcharge purchaser duty) provided the relevant trust deeds were amended to exclude foreign beneficiaries within six months of the exemption being granted.

Once the new Bill is passed, then such exemption will likely be removed as “the Government considers that the end of 2019 allows sufficient time for any remaining trustees and their advisers to make necessary changes to trust deeds” (Victor Dominello in the Second Reading Speech of the new Bill).

A discretionary trust that holds residential land in NSW will need to ensure the trust deed is amended by 31 December 2019 to comply with the “no foreign beneficiary” and the “no amendment” requirements referred to above.

Land tax debate: wholesale reform needed

A new report from University of Adelaide economists argues that the South Australian Government should consider wholesale reform to land tax.

The report, released today by the South Australian Centre for Economic Studies (SACES) at the University of Adelaide, says land tax makes an important contribution to the State’s coffers but the structure of the tax needs improvement.

“What is needed is a root and branch review of land tax. Getting the structure of land tax right can help to promote the prosperity of South Australia and enhance the government’s capacity to achieve its social objectives.” Associate Professor O’Neil

“Amid the raging political debate about land tax, the fact remains that the State Government has an ongoing need to raise revenue. And land tax is one of the most efficient tax mechanisms that the government has,” SACES Executive Director and co-author of the report, Associate Professor Michael O’Neil.

“If structured properly, land tax can be more efficient, and more supportive of growth and employment, than other revenue mechanisms such as payroll taxes and stamp duties. But the current structure of South Australia’s land tax is far from ideal.

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“What is needed is a root and branch review of land tax. Getting the structure of land tax right can help to promote the prosperity of South Australia and enhance the government’s capacity to achieve its social objectives,” Associate Professor O’Neil says.

Associate Professor O’Neil says the problem with South Australia’s land tax is that “the tax base is riddled with exemptions, exclusions and concessional treatments”.

“In addition, South Australia presently has the most sharply rising land tax rate scale in Australia.

“These features of the land tax distort land use, land ownership and the timing of land development and transactions in land,” he says.

He says the most substantial exemption in the current system is the exemption of land used for owner-occupier housing.

“At present, owner-occupied housing is land tax exempt, while large industrial and commercial land uses are taxed.

“If South Australian retailers have land tax passed into their cost structure, their competitive position relative to online retailers is undermined. Equally, if the land tax is passed into the rents on large commercial offices, this undermines South Australia’s ability to compete for office-based activity,” he says.

Associate Professor O’Neil also pointed to adverse consequences from the sliding rate scale: “The problem with the sliding rate scale is that it tends to encourage the use of land in small holdings at the expense of larger holdings.

“One implication of this, as the Henry Review has said, is that it becomes less viable to offer multi-unit medium density housing, even though some households would probably like that. It also makes it harder for larger corporate landlords to enter housing markets, even though they might be able to offer more secure tenures to renters than small landlords.”

It is often argued that the exemptions and concessions in the land tax serve useful equity grounds, but Associate Professor O’Neil says he’s sceptical.

“While access to housing is a fundamentally important equity objective, the exemptions and concessions in the land tax don’t make a very useful contribution. Indeed in some respects they are quite perverse,” he says.

“For instance, an owner-occupier household is exempt from land tax but some part of the land tax paid by landlords is likely to be passed on to renters of housing. Yet low-income households are over-represented in the rental market, so a low-income household is more likely to carry the cost of land tax than a high-income household.”

Associate Professor O’Neil says the changes to aggregation arrangements announced by the State Government are a step in the right direction, and the flattening out of South Australia’s steeply rising rate scale is a “useful reform”.

“But more can be done,” he says. “For instance, Government could commit to revenue-neutral reforms in which exemptions are reduced and the resulting revenue is used to reduce land tax rates.”

The report identifies a number of aspects of the land tax that should be reconsidered.

“The biggest issues are housing and the tax rates themselves,” Associate Professor O’Neil says.

“One possibility is to bring all housing into the land tax at a flat rate. But if the exemption of owner-occupier housing is untouchable, the government should consider measures to extend that treatment to renters.

“The rising rate schedule on taxable land should be replaced with a flat rate. A broad-based flat rate land tax has a lot going for it. But even if that is not feasible politically it would still be worthwhile to consider constructive reforms to our current land tax,” he says.

“There are also questions about how land under development should be treated and whether there are improvements on the current approach of levying a full year tax bill on the basis of 30 June ownership.

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“And then there are questions about where land tax sits in the bigger State tax picture, which includes payroll taxes, stamp duties, insurance taxes and the Emergency Services Levy.”

The SACES report on land tax was commissioned by the Urban Development Institute of Australia (SA).

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