



AUSTRALIA – December 2019

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Queensland Land Tax changes - Important Update

The Queensland Government has announced that it will introduce guidelines to exempt certain taxpayers from the foreign owner land tax surcharge that was introduced by the Revenue and Other Legislation Amendment Act 2019 (Qld).

In our July 2019 alert on significant Queensland land tax increases, we flagged the introduction of a 2% 'absentee owner' land tax surcharge (AOS) for 'foreign companies' and 'foreign trusts' that own land in Queensland.

The AOS, which is effective from the 2019-20 land tax year onwards, applies to each dollar of taxable Queensland land value above \$349,999. Importantly, this measure applies to all types of land (i.e. residential, commercial, industrial or otherwise) unless that land is otherwise exempt from land tax.

Pleasingly, the Queensland Government has announced that it will introduce guidelines to exempt certain taxpayers from the foreign owner land tax surcharge that was introduced by the Revenue and Other Legislation Amendment Act 2019 (Qld).

The Queensland 2019-2020 Mid-Year Fiscal and Economic Review, released on 12 December 2019, says:

"The Queensland Government is committed to maintaining competitive taxation settings, and will establish guidelines, in consultation with stakeholders, that provide relief for commercial activities that make a significant contribution to the state economy. This will ensure Queensland continues to be an attractive destination for investment."

While the detail of such guidelines will not be available until at least January 2020, the government has indicated that it intends to mirror the Victorian regime, which governs exemptions from the Victorian 'absentee owner' land tax surcharge. If this is the case, exemptions should be available for listed groups and widely-held trusts, as well as for taxpayers with development projects or businesses that significantly contribute to the Queensland economy.

The Queensland Government forecasts that the exemption regime will result in a fall in land tax receipts by \$291 million over the four years to 2022-23. The proposed exemption regime is in large part the result of months of advocacy by the Property Council of Australia (PCA), with specialist assistance provided to the PCA by MinterEllison.

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One Page Guide to South Australia's New Land Tax Changes

The SA land tax “battle” is finally over. The Government’s land tax reform Bill has received Royal Assent and the new measures will take effect from 30 June 2020.

The new provisions are lengthy, detailed and complicated, and will need to be reviewed closely by property owners and their professional advisors. Importantly, there may be a number of opportunities for reducing the land tax potentially payable.

The new legislation differs in many respects from the Government’s initial proposal and contains significant concessions that were required to secure support from both Houses of Parliament.

Nevertheless, the measures represent significant and genuine tax reform, which should improve South Australia’s competitiveness to do business. In particular:

- the top rate of land tax will be reduced from 3.7% (highest rate in Australia) to 2.4%.
- the thresholds at which the marginal rates apply have been significantly increased, and new reduced rates introduced; with the Government claiming 90% of taxpayers—including “mum and dads” who have invested in SA real estate for their retirement—will be better off.
- \$25 million has been set aside to provide transitional relief, over the next 3 years, for those adversely affected by the changes.

Key Changes to SA Land Tax

1. Trusts will be subject to a 0.5% surcharge where they own property with a site value exceeding \$25,000. They will not be entitled to the new tax-free threshold of \$450,000 applying to other taxpayers. However, the surcharge will not apply to:

- discretionary trusts that owned SA land on 16 October 2019—by nominating an individual as a “designated beneficiary” and paying land tax as if the land were owned by that individual.
- fixed and unit trusts—by notifying the Commissioner of the holders of the fixed interests and units, in which case those entities will be liable for the land tax.
- certain excluded trusts, including charitable trusts and complying superannuation funds.

2. Trustees will also be subject to extensive notification requirements. In particular:

- a trustee who acquires or disposes of SA land must notify the Commissioner within 1 month of acquisition or disposal.
- a trustee who, at the time of the commencement of the measures (30 June 2020), owns SA land must notify the Commissioner of that fact within 1 month of commencement.
- a trustee of a fixed trust or a unit trust must notify the Commissioner within 1 month of a change of beneficial ownership or a change in unit holdings.

3. The value of land held by “related corporations” will be aggregated and taxed as if a single taxpayer owned all of the land. Related corporations will therefore no longer be treated as separate taxpayers. However, an exemption from aggregation will apply where land is held for the purpose of being developed as a residential development of more than 10 allotments or lots.

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4. There will be a 12-month land tax concession for developers of affordable housing, with ex-gratia relief to prevent land used for affordable housing being aggregated with other landholdings, provided certain conditions are met.

Planning Points

5. Trustees of discretionary trusts owning property before 16 October 2019 will need to decide whether:

(a) they can nominate a designated beneficiary; and

(b) that will be worthwhile from a tax-saving viewpoint.

They may also need to consider whether it is possible to nominate interstate and/or overseas family members as designated beneficiaries.

6. Fixed trusts and unit trusts need to review whether they should notify RevenueSA of the holders of fixed interests and/or units.

7. Investors owning property through 2 or more separate companies need to determine whether those companies will be related corporations.

8. Investors adversely affected by the changes should examine whether they are entitled to apply for transitional relief and/or whether it would be worthwhile restructuring.

9. Perhaps most importantly: investors need to give careful thought to the manner in which future property purchases should be structured to minimize the effect of the new rules.

10. Bearing in mind that, in certain cases, it should be possible for a family to hold land as natural persons, in trusts and companies, and in self-managed superannuation funds (SMSFs), without properties being aggregated into a single ownership.

SA Land Tax Changes Approved

The controversial changes to South Australia's land tax have been given the go-ahead by the state parliament, delivering tax cuts to investors.

The reform package includes a \$189m in tax cuts for investors over three years and tax relief for thousands of "mum and dad" investors.

The Land Tax Amendment Bill 2019 slashes the top land tax rate from a national high of 3.7% to 2.4%. While this new rate is still higher than those in New South Wales and Victoria, it is lower than those in Western Australia and Queensland.

Treasurer Rob Lucas said these reforms will deliver a "more competitive, investment-attracting environment" to the state and will boost jobs and economic growth.

"This is a once-in-a-generation opportunity for significant land tax reform that will benefit South Australians now and into the future. We see this as a big investment attractor and job creator" he said.

The changes were first introduced during the state budget in June, but the initial proposals were met with criticisms by business groups and investors.

After revamping the changes several times, the new measures won the support of both houses.

However, Lucas said the government refuses to compromise on its objectives to introduce changes to aggregation rules. As such, investors will not be able to use separate trust and company structures to avoid paying tax.

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"This means that no longer will it be possible for an investor to hold \$3m in property in seven separate companies and not pay a single dollar in land tax," Lucas said.

The tax reform will also include a \$25m transition fund over the next three years for investors who might be hit by the changes. The changes will take effect starting in July next year.

Property Council executive director for SA Daniel Gannon said the state now "boasts a more competitive land tax regime" that is compelling for investors.

"This state's anti-competitive land tax rates and low thresholds have long discouraged investors from looking to invest here. In terms of the residential environment, South Australia's median house price starts with a 'four' rather than ending in 'million' — this means we have a more affordable entry point for investors now combined with a more competitive set of rates and thresholds," he told The Australian Financial Review.

Land Tax Reform is Here - Buckle in!

After months of controversy, the South Australian Government has now passed its Land Tax measures through both Houses of Parliament. The final version of the Land Tax (Miscellaneous) Amendment Bill 2019 now awaits Royal Assent.

Aggregation to Become Law

The Bill has undergone significant amendments since its introduction into SA Parliament. The SA Government has made some major concessions on rates and thresholds including:

- an immediate reduction in the top marginal rate of land tax from 3.7% to 2.4%;
- for non-trust taxpayers, the introduction of a new tax bracket at 2.0% between approximately \$1.1m and \$1.35m and an increase in the highest threshold from approximately \$1.1m to \$1.35m (increasing to \$2m from 1 July 2022); and
- a reduction in the rate of land tax on land valued between approximately \$755,000 and \$1.1m.

The above amendments, amongst others, are intended to curb the adverse impact of the aggregation measures. It will now be imperative that property owners and their advisers are fully prepared so that they are well equipped to navigate the new regime.

Framework

Commencing 30 June 2020, the new land tax measures will dramatically change the landscape for the assessment of land tax in South Australia.

For land held by more than one owner, the owners will initially be assessed as if they are one taxpayer. Each owner is then also assessed on their fractional interest in the co-owned land, which interest is then aggregated with any interest in other land held by that owner (and assessed to land tax as such). The owner will receive a credit for the initial tax already assessed. This applies regardless of whether the owners are natural persons or entities.

For land owned by companies, the measures will seek to group "related corporations". Whether companies are related will broadly turn on whether the same person or group of persons has a controlling interest in terms of:

- holding more than 50% of the issued share capital of each company;
- being able to cast or control the casting of more than 50% of the votes at a general meeting of each company; or

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- being able to control the composition of the board of each company.

For land owned in unit trusts:

- Trustees are subject to surcharge rates of land tax unless the Commissioner is notified of the unitholders, in which case the trustee will be assessed at general rates on the whole of the taxable land subject to the trust.
- Where the Commissioner has been notified of the unitholders, each unitholder will be assessed (in addition to the trustee) on their proportionate interest in the land held by the unit trust. This interest is then aggregated with all interests of the unitholder in other taxable land.
- In this latter case, the unitholder will be subject to a reduction in its land tax liability on account of the land tax paid by the trustee (so as to avoid double taxation). If this deduction would result in a negative amount payable, the unitholder does not receive any credit for that amount.

While discretionary trusts will not be subject to aggregation, land held by the trustees of discretionary trusts will be taxed at surcharge rates. This is subject to the ability of a trustee of a discretionary trust to nominate a natural person beneficiary as the “owner” of existing land held in the trust for land tax purposes (which must be accompanied by a statutory declaration by the nominee).

Significantly, the nomination must be made by no later than 30 June 2021 (this has been extended from the initially proposed 30 June 2020 deadline). The nomination can only be made in respect of “pre-existing trust land”, being land already held by the trust on the day the draft legislation was introduced to the House of Assembly, namely, 16 October 2019. Where such a nomination is made, surcharge rates will not apply to the land owned by the trust and the land will be deemed for land tax purposes to be owned by the nominated beneficiary. All subsequent land acquired in discretionary trusts will be subject to the surcharge rates.

A number of specific types of trusts, including complying superannuation funds and deceased estates, are excluded from the new measures (i.e. from both the surcharge rates and from aggregation with land held by other taxpayers).

New Concessions

A number of new concessions have also been introduced in an effort to further ease any adverse impacts of aggregation. These measures include:

- A \$25m transition fund over three years for eligible individual taxpayers and company groups with possible relief of up to \$50,000 in 2020-21, \$30,000 in 2021-22 and \$15,000 in 2022-23 from any increased land tax payable due to the new aggregation changes. This may allow taxpayers an opportunity to restructure their affairs to the extent possible before bearing the full increase in tax due to aggregation.
- A land tax concession for eligible developers of “affordable housing”, which broadly involves land used for affordable housing not being aggregated with other land holdings subject to certain criteria.
- An independent review to be conducted on the impact of the Government’s land tax reform package, to be completed by the end of 2023.
- Specific relief for residential property developers from aggregation where the land being held is solely for the purpose of being developed (see immediately below).

Residential Developers’ Concession

On application, land owned by related companies may not be aggregated where the Commissioner is satisfied that the land held by those companies is being held solely for the purpose of being developed as a residential development of more than 10 allotments or lots.

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The exemption may be granted for an initial term specified by the Commissioner in writing based on the expected development period but which cannot exceed five years. The initial term can, however, be extended upon application.

Broadly, the exemption will cease if the Commissioner determines that:

- the development has been substantially completed; or
- the development has not been substantially commenced within the period of two years after the grant of the application.

It will therefore be critical for residential property developers to carefully consider their eligibility for this concession.

Property Group Planning Issues

Given the above changes, there are significant planning issues that should be considered by taxpayers. For example:

- For trustees of existing land owning discretionary trusts, thought should be given to whether a nomination is made and, if so, who is nominated. Regard must be had to any interests in other land owned by the nominated beneficiary as well as the existing “disregarded minor interest” provisions.
- For trustees of unit trusts, the trustee will need to consult with the unitholders to come to a satisfactory position on whether all of the unitholders’ interests are to be notified to the Commissioner, or whether the trustee will instead be subject to the surcharge rates.
- For corporate groups, there will be a need to carefully consider the director and shareholding structure of the various companies in the group. The controlling interest provisions will be important here, and in particular, determining whether a controlling interest might arise other than by way of the shareholding of the company (for example, by an ability to indirectly influence voting power).
- All groups will need to consider any available restructuring opportunities as some structures are bound to have less palatable taxation outcomes than others. Of course, potential exposure to the State general anti-avoidance measures should not be overlooked in any restructuring exercise.

Each group’s eligibility for the various new concessions should also be considered.

The Devil is in the Detail

There are a number of issues that will need to be carefully reviewed. These include, for example, the following matters:

- It will be imperative to form a view on whether a trust is in fact a discretionary trust, a unit trust or a fixed trust. Such action will be crucial for the purposes of determining whether a nomination in respect of pre-existing trust land can be made and, further, how the trust will be subject to land tax on an ongoing basis. This will require careful consideration of the trust deed in each case. Significantly, the legislative definition of a “discretionary trust” appears to turn only on the interests of beneficiaries as to trust capital (and not income).
- Issues arise as to how companies might be grouped in circumstances where they are owned by discretionary trusts with different trustees, but which are controlled within a family group. Often these involve overlapping (but not necessarily the same) interests. A careful assessment of how the new controlling interest provisions will apply to each group therefore becomes imperative.
- The new measures impose significant notification requirements on taxpayers, which include notifying the Commissioner whenever a trustee acquires or disposes of land in South Australia or where there is a change in the unitholdings of a unit trust that has made a notification. Notification requirements extend to existing land owning trustees who are required to notify the Commissioner of their South Australian landholdings within one month after the commencement of the new measures. The precise details required to be disclosed to the Commissioner are not

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clear on the face of the legislation. These additional disclosure requirements are likely to significantly change the face of land tax compliance and assessment going forward.

- Where the trustee of a fixed trust or a unit trust notifies the Commissioner of the beneficial land owners, but subsequently withdraws that notification, the legislation precludes that trustee from subsequently lodging another notice with the Commissioner in respect of that trust. It is therefore critical that decisions to make and/or withdraw notifications are not made lightly, but are instead the product of careful consideration of the likely outcomes.

Looking Ahead

With the implementation date just around the corner at 30 June 2020, it will be imperative for all groups subject to the measures to seek appropriate specialist advice.

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