

Article Information

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Land tax reform package and the implementation of new aggregation rules in South Australia - a general summary

The controversial Land Tax (Miscellaneous) Amendment Bill 2019 (SA) (Bill) has passed both houses of Parliament and is presently awaiting Royal Assent. After obtaining Royal Assent, the amendments to the Land Tax Act 1936 (SA) (Act) will come into force and effect on 30 June 2020.

The Bill has undergone several revamps and was initially (based on the form of the Bill issued for consultation and initially tabled in Parliament) projected to raise an additional \$86M in revenue (with this projection taking into account the reduction of the top marginal tax rate to 2.4% net of an estimated \$5M in foregone revenue as a result of companies restructuring assets into trust ownerships). This is contrasted with the present form of the Bill which will result in a net cost to the Government of \$39M over three years. The land tax reform package has morphed from a revenue raiser for the Government (which had been the Government's initial mandate) to a package which will give back to many taxpayers notwithstanding the implementation of new aggregation rules (with many changes to the Bill precipitated by pressure from key stakeholders and industry groups but noticeably arising from a deal with the Hon John Darley MLC who wanted further amendments to the Bill designed to particularly assist smaller "mum and dad" property investors).

The immediate reduction to the top marginal rate from 1 July 2020 from 3.7% to 2.4% (which will offset some or all of the increased tax burden expected through aggregation) is a positive (particularly amongst those landowners at the higher end of the value distribution or value spectrum of property holdings in South Australia). However, there is still a significant degree of uncertainty regarding the taxation environment in light of the "Revaluation Initiative" comprising a program to revalue the site values of every parcel of land in South Australia by the Office of the Valuer-General which is presently in progress. It appears that the Property Council of Australia's submission to postpone the implementation of the Government's land tax reform package until after the state-wide revaluation of land value is complete has been ignored by the Government - the obvious benefit of the submission being that taxpayers would be in a better position to assess their current and future land tax implications with certainty.

To mitigate the adverse impact of aggregation (which has the potential to diminish business confidence and activity, property investment and construction particularly in view of the uncertainty associated with the Revaluation Initiative), the Government has announced the following new features (which were not in the version of the Bill initially tabled in Parliament):

- increase to the threshold for the top marginal rate of 2.4% from \$1,098,000 to \$1,350,000;
- introduction of a lower rate of 1.25% (down from 1.65%) in relation to the threshold between \$755,001 and \$1,098,000;
- introduction of a 2% marginal land tax rate below the top threshold for value between \$1,098,001 and \$1,350,000 (with the trust surcharge at this threshold also reduced from 0.5% to 0.4% to ensure it does not exceed the top marginal rate);
- from 1 July 2022:
 - the top land tax threshold will be further increased to \$2,000,000 in the 2023 financial year; and
 - the land tax rate (general rate) between estimated site values of \$801,001 and \$1,165,000 will be reduced to 1% from 1.25% (with the trust surcharge rate at this threshold being reduced to 1.5% from 1.75%).

The new scales are as follows (with the thresholds reflecting expected site value growth as at the 2019-20 Budget - the thresholds are indexed based on an index value reflecting the average percentage change in site values for the relevant

year so may therefore be subject to change based on the final determination of site value growth by the Valuer-General in the relevant year):

2020-21 Financial year

Threshold	General Rate	Trust Surcharge Rate
\$0 – \$25,000*	Nil	Nil
\$25,001 – \$450,000*	Nil	\$125 + 0.50%
\$450,001 – \$755,000	0.50%	\$2,250 + 1.00%
\$755,001 – \$1,098,000	\$1,525 + 1.25%	\$5,300 + 1.75%
\$1,098,001 – \$1,350,000*	\$5,812.50 + 2.00%	\$11,302.50 + 2.40%
^{>} \$1,350,000*	\$10,852.50 + 2.40%	\$17,350.50 + 2.40%

*Threshold not subject to change (value fixed by legislation).

2021-22 Financial year

Threshold	General Rate	Trust Surcharge Rate
\$0 – \$25,000*	Nil	Nil
\$25,001 – \$464,000	Nil	\$125 + 0.50%
\$464,001 – \$778,000	0.50%	\$2,320 + 1.00%
\$778,001 – \$1,131,000	\$1,570 + 1.25%	\$5,460 + 1.75%
\$1,131,001 – \$1,350,000*	\$5,982.50 + 2.00%	\$11,637.50 + 2.40%
^{>} \$1,350,000*	\$10,362.50 + 2.40%	\$16,894.50 + 2.40%

*Threshold not subject to change (value fixed by legislation).

2022-23 Financial year

Threshold	General Rate	Trust Surcharge Rate
\$0 – \$25,000*	Nil	Nil
\$25,001 – \$477,000	Nil	\$125 + 0.50%
\$477,001 – \$801,000	0.50%	\$2,385 + 1.00%
\$801,001 – \$1,165,000	\$1,620 + 1.00%	\$5,625 + 1.50%
\$1,165,001 – \$2,000,000*	\$5,260 + 2.00%	\$11,085 + 2.40%
^{>} \$2,000,000*	\$21,960 + 2.40%	\$31,125 + 2.40%

*Threshold not subject to change (value fixed by legislation).

Aggregation

Landholders interests will continue to be aggregated across joint and individual ownerships (whether an individual or other entity owns the land). Joint ownerships will receive an assessment and each owner will then also be assessed on their proportionate interest in the jointly owned land (with such interest to be aggregated for land tax purposes with any interest in other land held by that owner). To avoid double taxation, a credit will be applied to the owner's land tax liability equal to their share of the land tax assessed on any jointly owned land (proportionate to the ownership share).

The provisions in the Bill designed to group "related corporations" still remain. Whether related corporations will be grouped will largely depend upon whether the person or group of persons:

- control the composition of the board of directors of each company;
- control voting power; or
- hold greater than 50 per cent of the issued share capital of each company.

Each company that is a related corporation will be jointly and severally liable for the land tax assessed.

There are concessions for residential developers holding greenfield and brownfield land for development. In that regard, the Bill has been amended to enable companies to apply to the Commissioner of State Taxation (**Commissioner**) to be de-grouped (and assessed as a single corporation for the purposes of assessment of land tax) where they hold land for the purposes of a residential development of 10 or more allotments or lots. The exemption will apply for a period based on the expected development period but may not exceed a period of 5 years. The exemption will cease to apply if the development is not substantially commenced within the period of two years after the grant of the application (or such other longer period that the Commissioner may allow).

The Bill also includes additional aggregation requirements for certain trusts owned by companies. In that regard, companies are related corporations for land tax purposes if one of the companies is the trustee of a fixed or unit trust and another company (or other related companies between them) owns more than 50% of the beneficial interests in land subject to the trust.

Trusts

The imposition of a surcharge rate of land tax for trusts remains a central feature of the Bill. Land held in certain types of trusts (including fixed, unit and discretionary trusts) will be subject to a trust surcharge rate which is 0.5% higher than the marginal rate applied to a non-trust holding at the relevant threshold except there is a reduction to the trust surcharge from 0.5% to 0.4% between \$1,098,001 and \$1,350,000 (refer to the tables above).

The trust surcharge will not apply to excluded trusts such as complying superannuation funds, deceased estate and public unit trust schemes.

With respect to fixed trusts and unit trusts, there is an option to lodge with the Commissioner a notice of unit holdings / beneficial interest(s). Where a notice is in place, the trustee will not be assessed at the trust surcharge rate but will be assessed pursuant to the general rate. Each beneficiary / unit holder will be deemed for the purposes of the Act to be the owner (but not to the exclusion of the trustee) and will be assessed proportionately to their beneficial interest in the subject land together with any interest in other land held by that beneficiary / unit holder.

To avoid double taxation, the land tax payable by the unit holder / beneficiary will be subject to a deduction to its land tax liability according to a formula which has regard to the land tax paid by the trustee. If the deduction will result in a negative amount payable, the unit holder will not receive any credit to any land tax it is liable to pay under the Act.

The rules differ for discretionary trusts. Land held by trustees of discretionary trusts will be taxed at surcharge rates subject to the availability of the trustee to nominate a designated beneficiary who is a natural person above the age of 18 years of age as the "owner" of the land held in the trust for land tax purposes. Where a designated beneficiary is in place, the trustee will be assessed according to the general rates (refer to tables above). The designated beneficiary will be deemed for the purposes of the Act to be the owner (but not to the exclusion of the trustee) and will be assessed proportionate to the designated beneficiary's beneficial interest in the subject land together with any other taxable land owned by the beneficiary. There will also be a deduction applied to the land tax liability of the designated beneficiary to avoid double taxation (as is the case with unit trusts and fixed trusts).

The period by which a nomination must be made has been extended to 30 June 2021 (previously 30 June 2020) which provides more time to make a decision as to whether a nomination should be made. The trustee of a discretionary trust will only be able to nominate a designated beneficiary for land tax purposes in relation to land that is owned by the discretionary trust as at 16 October 2019. Any land that becomes subject to a discretionary trust after 16 October 2019 will be assessed at the trust surcharge rate.

Additional Compromises and Concessions

In an attempt to rally support for the Bill and in conjunction with the introduction of the Bill, the Government announced three ex-gratia relief schemes outlined below.

First, the Government will implement a \$25M transition fund over three years for individuals and company groups who have an increase in their land tax assessment as a result of the changes in aggregation of land owned as at 16 October 2019. Relief will not be provided on higher trust rates of land tax that may be payable by trusts (the relief is only available to those taxpayers with an increase to their land tax liability due to the new aggregation rules). To be eligible for relief, the increase in the land tax assessment of the taxpayer must be above \$2,500.

The relief will be calculated as follows:

Year	Relief Calculation
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2020-21 year	<p>50% of increase in liability over \$2,500 (up to \$102,500 with any tax payer with an increase in their land tax assessment above \$102,500 not being eligible for any relief)</p> <p>The maximum level of relief will be \$50,000</p>
2021-22 year	<p>30% of increase in liability over \$2,500 (up to \$102,500 with any tax payer with an increase in their land tax assessment above \$102,500 not being eligible for any relief)</p> <p>The maximum level of relief will be \$30,000</p>
2022-23 year	<p>15% of increase in liability over \$2,500 (up to \$102,500 with any tax payer with an increase in their land tax assessment above \$102,500 not being eligible for any relief)</p> <p>The maximum level of relief will be \$15,000</p>

Revenue SA must receive applications for relief by 31 March in the relevant year. Taxpayers will also need to be up to date with their land tax payments.

Other than the above, there is no much more to report on with respect to the transition fund. Updates will be provided as more information becomes available.

The second ex-gratia relief scheme has been implemented to promote the development of affordable housing. Developers of affordable housing will be able to apply for relief equal to the difference between their land tax liability and the tax they would be liable for if each affordable housing parcel was taxed individually and not aggregated with their other land. Relief will be limited to a 12 month period and will be conditional upon developers entering into a Land Management Agreement or similar arrangement with the South Australian Housing Authority (with the developer agreeing to meet any requisite affordable housing requirements).

The third ex-gratia relief scheme exempts land tax being paid by property owners from 1 March 2020 where they rent their property through a registered community housing provider for affordable housing purposes (subject to certain conditions).

In addition to the above, the Bill provides for there to be an independent review of the Government's land tax reform package with the review to be prepared and submitted to the Treasurer on or before 31 December 2023.

The Bill also amends the Act include an additional exemption. In that regard, land that is subject to a heritage agreement under the *Native Vegetation Act 1991* that is noted against the relevant instrument of title, or against the land, in accordance with section 23B(3) of that Act will be eligible for a land tax exemption.

Prudent Planning

Taxpayers should turn their mind to various planning issues in view of the amendments to the Act 1. Specifically:

- Identify the trusts within the relevant group and determine whether the trusts fall within the category of discretionary trust, unit trust or fixed trust to determine how the trust will be subject to land tax and the nomination process.
- Consider how the controlling interest provisions will apply to companies within a large group and whether a controlling interest arises other than by way of shareholding of the company.
- Consider eligibility for participation in any of the relief schemes.
- Notification and disclosure requirements will need to be complied with by taxpayers including:
 - all trustees of land in South Australia must notify the Commissioner within one month after acquiring or disposing of land in South Australia;
 - trustees owning existing land must notify the Commissioner of their existing land holdings within month after the commencement of the amendments implemented by the Bill; and
 - trustees of unit trusts in respect of which a notice of unit holdings has been issued to the Commissioner will be required to notify the Commissioner of any change to the unitholdings in the scheme within one month after such change.
- With respect to unit trusts, the trustee should consult with unitholders to assess whether a notice of unit holdings

should be lodged with the Commissioner. A cost benefit analysis should be undertaken with respect to the potential land tax saving for the trust as against the financial burden or cost to each unitholder where it is deemed to be the “owner” for the purposes of the Act.

- With respect to trustees of discretionary trusts, the trustee should undertake an analysis as to whether a beneficiary should be nominated and who that beneficiary should be having regard to other interests in land that are held by that beneficiary or which may be acquired in the future.
- There may be restructuring opportunities available for larger groups. However, the anti-avoidance provisions must be considered in the process of any restructure.

A trustee of a fixed trust or unit trust which lodges a notice identifying the beneficial interests in land and subsequently withdraws such notice will be precluded from lodging another notice with the Commissioner in relation to the trust. Upon the withdrawal of the notice, the relevant trust will forfeit the right to have the general land tax rates apply to the relevant trust. On that basis, the decision to issue and/or withdraw a notification should be the subject of rigorous analysis and diligent decision making.

It is clear that company ownerships (with the same controlling interests) will be an ineffective structure for multiple land holdings and trusts can continue to be used at a cost in the form of a surcharge from a low rate. For that reason, diligent planning and structuring is required and appropriate legal advice should be sought.

Concluding Remarks

The revised land tax reform package as set out in the Bill softens the blow of aggregation but still does not present an ideal outcome for key stakeholder groups. In order to become truly nationally competitive, land tax rates should be lowered further than the proposed 2.4% (which is higher than Victoria (2.25%) and NSW (2%) but less than Western Australia (2.67%) and Queensland’s commercial property land tax (2.75%)) and thresholds increased.

The version of the Bill which had been initially tabled in Parliament created angst, uncertainty and harmed investor confidence and created strident disunity between the Government and many key stakeholders including property owners, developers, prospective investors and the business community. Whilst the passage of the Bill constitutes a victory for the Government it is not without its spoils in that key supporters and constituents of the Government appear to have lost confidence and support in the Government in view of the lack of consultation on the land tax reform package before its announcement in the 2019-20 Budget and the Government’s grossly understated revenue estimates predicated on poor economic and financial analysis.

With the Bill having passed both houses of Parliament, tax payers have the benefit of certainty with respect to aggregation rules. The ex-gratia relief schemes and the alterations to the thresholds and rates provide some relief for taxpayers to enable them to appropriately deal with aggregation and restructure (if this is viable in the circumstances having regard to the objects and strategy of the taxpayer and associated restructuring costs such as stamp duty (applicable on residential property), registration costs and capital gains tax) or to sell assets to avoid the burden of taxes that were not anticipated when original investment decisions were made. These responses will vary depending on the incentives faced by individual investors requiring careful analysis and proper accounting and legal advice.