Article Information

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Land Tax Changes – South Australia

The Marshall Liberal Government in South Australia (State Government) announced as part of its 2019/20 budget measures to change the aggregation principles in the *Land Tax Act* 1936 (SA) (Act). These budget measures have been the subject of significant political discourse and discontent amongst the investment and development community.

Adam Rinaldi, Partner, advises as to the proposed scope of the budget measures and its prospective impact on investors and developers in South Australia.

The Act is presently based on a system of ownership. The State Government has enunciated their intention to implement a regime which "looks through" separate legal structures to determine the true owner of the property and to identify the person or entity holding the ultimate beneficial interest in the property for the purposes of aggregating that person's or entity's interest in all properties controlled or beneficially held by that person or entity.

The State Government has sold this reform as an integrity measure which will be engineered to ensure there is equity between taxpayers. Conversely, the property development and investment community in South Australia view this policy reform as unfair and poorly conceived and a reason to look for investment opportunities in other States or to invest capital in other investment structures or asset classes.

The measures have sparked controversy and palpable anger amongst the property development and investment community in South Australia. The South Australian division of the Property Council of Australia, at the behest of Daniel Gannon (South Australia Executive Director), has been spearheading a high-profile public campaign against the implementation of such reforms which it believes are a risky tax change which will pose significant levels of risk to South Australia's investment environment, property owners, tenants and consumers. The measure also has the propensity to deter investment into the South Australian real estate sector which has experienced some positive growth in recent times following the abolition of stamp duty with respect to qualifying land which has made investing in South Australia a very appealing business proposition.

The measure has created disunity and division amongst the SA Liberal Party with speculation that there may be a few Liberal MPs that decide to cross the floor to vote against the reform.

In summary, the State Government has announced that the measures will comprise:

- a shift to aggregating based on an owner's interest in every piece of land, rather than only aggregating properties held in the same ownership structure;
- introducing provisions to allow two or more related companies to be grouped for land tax purposes; and
- introducing a surcharge on land owned in trusts where the interests of beneficiaries are not disclosed or cannot be identified.

The measures have been announced to apply from 1 July 2020. The budget paper speaks to these reforms in extremely general, vague and broad terms. The Government has not provided any specific details as to the intended design and operation of these measures and the devil will definitely be in the detail. Despite the vagueness of the State Government's announcement, the State Government has indicated that it will adopt an approach which is similar to that used in Victoria and New South Wales. For that reason, it is appropriate to identify the approach taken in these jurisdictions.

Regime in Victoria and New South Wales

The first point to note is that the top rates of land tax in these jurisdictions are lower than in South Australia. In that regard:

- land tax in Victoria is imposed at progressive rates, with a top general rate of 2.25% imposed on land holdings with a taxable value of $3M or more; and
- land tax in New South Wales is also imposed at progressive rates with the land tax threshold set at $692,000 – the amount of land tax paid is $100 plus 1.6% up to the value between the aforesaid land tax threshold and the premium rate threshold (presently set at $4,231,000) and 2% above this premium rate threshold.

In Victoria, the land tax regime with respect to trusts applies as follows:

- land held on trust for common trust structures such as fixed, discretionary or unit trusts is generally assessed at trust surcharge rates of land tax;
- the trust surcharge does not apply to land held by an "administration trust" an "excluded trust" or an "implied/constructive trust" or if the beneficial interests in the land are notified to the State Revenue Office;
- the trust surcharge rates are higher than general land tax rates and apply if the total value of the taxable land held by the trust is more than $25,000 but less than $3M. For land holdings valued at $3M or more, the general land tax rate applies;
- if the State Revenue Office has been notified of the beneficial interests in the land the subject of a fixed trust or unit trust, the beneficiary (if a fixed trust) or unitholder (if a unit trust) is deemed to be the owner of the land and will be assessed proportionate to their beneficial interest in the subject land together with any other taxable land owned by the beneficiary/unitholder;
- the trustee will also be liable for land tax at the general rate as if the land was the only land owned by the trustee. However, to avoid double taxation, the land tax payable by the beneficiary/unitholder will be subject to a deduction according to a formula.

The land tax regime with respect to trusts in NSW is similar to Victoria in that land owned in a special trust (with examples including most family trusts, discretionary trusts, most unit trusts and some trusts created by a will) is taxed at a flat surcharge rate of 1.6% for amounts up to $4,231,000 and then at 2% thereafter. The beneficiaries of a special trust are not considered to be owners.

A fixed trust (which includes some unit trusts and bare trusts) is where the beneficiaries or unit holders are considered owners of the land as at the taxing date. This is because they are presently entitled to the income and capital of the trust and these entitlements cannot be varied by the trustee in any way. The beneficiaries or unit holders of a fixed trust (in addition to the trustee):

- are assessed on the combined value of their interest of the land held in the trust and any other taxable land owned; and
- may be entitled to a secondary deduction to prevent double taxation.

In summary, the Victorian and New South Wales regimes seek to include a beneficiary's/unit holder's proportionate interest in land held by the relevant trust in the beneficiary's/unit holder's aggregated landholdings, or alternatively, seek to levy a surcharge rate.

In relation to land owned by companies, the Victorian and New South Wales regimes are designed to group "related companies". Companies are typically related where a person or group of persons (with the term person to also include a company):

- controls the composition of the board of directors of each company;
- is able to cast, or to control the casting of, more than 50 per cent of the maximum number of votes that might be cast at a general meeting of each company; or
- holds greater than 50 per cent of the issued share capital of each company.

In New South Wales, when assessing related companies the concessional company receives the benefit of the threshold and each other company (non-concessional) is assessed without the threshold. This means that:

- where the concessional or joint concessional companies' land value exceeds the premium rate threshold, the land value of each non-concessional company is assessed at 2 per cent of the taxable value.
- where the land value does not exceed the premium rate threshold, but exceeds the general threshold, the land value of each non-concessional company is assessed at 1.6 per cent of the taxable value.

Moving Forward

Treasurer Rob Lucas MLC has publicly promised consultation as the legislation is drafted. The State Government has been criticised for announcing this reform on the basis that:

- the land tax aggregation initiative is intended to generate operating revenue of $40M – this figure has not been substantiated and has been viewed as an arbitrary figure. The Property Council of Australia is undertaking its own modelling to determine the financial implications to land holders in South Australia;
- it is possible that by virtue of the Valuer-General's program to revalue all property in South Australia (which the Property Council of Australia has advised could see property values increase by 40 per cent or more) there will be a significant uplift in land tax revenue – to achieve revenue neutrality following such revaluations, the Property Council of Australia has recommended the Government reduce the brackets applicable to land tax. It has been suggested that the State Government should delay implementing the proposed land tax changes until the financial impact of this revaluation is fully and properly understood.

Stakeholders in the property sector are keen for definitive answers to enable informed and strategic decisions to be made in relation to the impact of the reforms.

Piper Alderman is maintaining a close watch on the proposed land tax changes and we will be able to assist in advising on the impact of these changes once more is known.