SA Land Tax

'Aggregation' Law Summary

Land Tax Bill passes SA Parliament

Highlights of changes to original bill

Final Land Tax 'Aggregation' measures to apply from 1 July 2020.

- Increase in threshold for top marginal rate of 2.4% to $1.35m (up from $1.098m);
- Lower rate of 1.25% (down from 1.65%) for value between $755k & $1.098m;
- Introduction of new 2% threshold for value between $1.098m and $1.35m (the trust surcharge at this threshold is also reduced from 0.5% to 0.4% to ensure it does not exceed the top marginal rate);
- A further increase in the top marginal threshold to $2m in the 2023 financial year;
- Additional aggregation for certain trusts owned by companies;
- Exemption from company group 'aggregation' for certain land held for development of affordable housing
- Extension of nomination period for trust beneficiaries for one year to 30 June 2021; and,
- A new exemption for land subject to a heritage agreement under the Native Vegetation Act 1991.

What are the changes?

What are the new tax rates?

The land tax rate schedules will be amended as follows:

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[1]	0.50%	$2,250 + 1.00%
$755,001 - $1,098,000[1]	$1,525 + 1.25%	$5,300 + 1.75%
$1,098,001 - $1,350,000	$5,813 + 2.00%	$11,303 + 2.40%
>$1,350,000	$10,853 + 2.40%	$17,351 + 2.40%

[1] Estimated thresholds based on estimated site value growth

2021-22 Financial Year		
Threshold	General rate	Trust surcharge rate
$0 - $25,000	Nil	Nil
$25,001 - $464,000[1]	Nil	$125 + 0.50%
$464,001 - $778,000[1]	0.50%	$2,320 + 1.00%
$778,001 - $1,131,000[1]	$1,570 + 1.25%	$5,460 + 1.75%
$1,131,001 - $1,350,000	$5,983 + 2.00%	$11,638 + 2.40%
>$1,350,000	$10,363 + 2.40%	$16,894 + 2.40%

2022-23 Financial Year		
Threshold	General rate	Trust surcharge rate
$0 - $25,000	Nil	Nil
$25,001 - $477,000[1]	Nil	$125 + 0.50%
$477,001 - $801,000[1]	0.50%	$2,385 + 1.00%
$801,001 - $1,165,000[1]	$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%

What is the new 'transition' fund?

In rallying support for the land tax bill, the Liberals have also proposed two ex-gratia schemes. The first is a $25m transition fund.

The new transition fund should provide ex-gratia relief for individuals and company groups to offset increases in land tax resulting from the changes to the law. This only applies to properties owned by the taxpayer at 16 October 2019. The relief is calculated as follows:

Year	Relief available
2020-21 year	50% of increase in liability over $2,500 (up to $102,500)
2021-22 year	30% of increase in liability over $2,500 (up to $102,500)
2022-23 year	15% of increase in liability over $2,500 (up to $102,500)

Any taxpayer with an increase in their land tax bill below $2,500 or above $102,500 is not eligible for any relief.

For example, four related companies each own a $300,000 parcel of land.

Under the original law there would be no land tax payable for the companies. The transition fund should apply to reduce the land tax liability as follows[2]:

Year	Land tax liability	Relief available	Amended liability
2020-21 year	$7,853	$2,677	$5,176
2021-22 year	$7,853	$1,606	$6,247
2022-23 year	$7,853	$803	$7,050

[1] Estimated thresholds based on estimated site value growth
[2] Assumes no change in the land tax liability for each year (i.e. property value movement aligns with threshold movement).

Eligible taxpayers will have to apply for the ex-gratia relief by 31 March in the relevant year. Taxpayers will also have to be up to date with their land tax payment instalments.

At this stage, there is not much detail available with respect to this fund. We will provide updates when more information is announced.

What is the new affordable housing concession?

The second ex-gratia scheme proposed by the Liberals is to incentivise the provision of affordable housing.

Developers of affordable housing will be able to apply for relief such that their land to be used for affordable housing will not be aggregated with other land that they hold during a 12 month ex-gratia period. This means that each parcel developed for affordable housing will be taxed separately during the 12 month concession period.

We will provide further details on this concession as it becomes available.

What are the carve-outs for property developments?

Related corporations may apply to the Commissioner to be exempted from aggregation where the applying company holds land for the purpose of developing at least 10 residential allotments or lots. The disaggregation will only apply in relation to land of this nature and not to any other land held by the company.

The previous version of the bill included a similar disaggregation for land held for developing commercial and industrial developments, however this has been removed in the current version. However, the previous version of the bill limited this disaggregation to companies that were related via unit trusts. The current bill allows companies that are related in any way to access the exemption.

How do the changes apply to different ownership arrangements?

The final legislation will have the following impacts:

Direct property holdings (more than one owner):

Land tax is applied to the property at general rates (per above). Land tax is also assessed to the owners in their ownership proportion. This is aggregated with other property holdings of the owner. A non-refundable credit is available for the share of land tax paid at the property level.

Individual owner:

The individual owner will have their proportionate interests in properties aggregated and taxed at general rates. Interests held in trusts will only be aggregated where the trustee nominates the individual as a beneficiary. The individual will receive a non-refundable credit for taxes paid at property or trust level.

Transitional relief may be available to affected individuals for properties held as at 16 October 2019.

Unit trust or Fixed Trust Holdings:

Land tax is generally applied to the property held by the trust (including the trust proportionate interest in other nominated property interests) at a rate which includes a 0.5% surcharge up to a top marginal rate (2.4%).

The trustee can elect to nominate the beneficiaries of the trust. If this happens, the trust will not be subject to the surcharge. Each beneficiary will include their share of the property in their own aggregated land tax assessment. They will get a non-refundable credit for the tax paid by the trust.

Where more than 50% of the units or interests in the trust are held by a company (or company group), the trust land will instead be aggregated with other company land at the general rates.

Transitional relief may be available to affected trust property aggregated as part of company groups for properties held as at 16 October 2019.

Discretionary Trusts:

Land tax is applied to the property held by the trust (including proportionate interests in other property) at a rate which includes a 0.5% surcharge up to the top marginal rate (2.4%).

The trustee can elect to nominate a beneficiary of the trust to be the land tax 'owner' of the trust. This nomination must be made before 30 June 2021 and only applies to property held at 16 October 2019. This beneficiary will include the value of the trust's land in their own aggregated land tax assessment. They will get a non-refundable credit for the tax paid by the trustee.

Companies:

Property held in "related companies" will be aggregated together and land tax applied on the aggregated value.

Companies are generally related where there is a common shareholding which is greater than 50%, although there are several other means by which companies can be related.

Companies holding property as trustee will be taxed as trusts at the trust surcharge rate (or with the nomination mechanism where available) unless the trust is also deemed part of the corporate group (see above).

Transitional relief may be available to affected company groups for properties held as at 16 October 2019.

Superannuation Funds:

Superannuation Funds are excluded from the trust surcharge rules and taxed at normal rates and thresholds. Property held by the Fund will generally be aggregated with other Fund property, although this will not apply to partially owned property.

Each Limited Recourse Borrowing Arrangement (LRBA) Trust will be treated as a separate excluded trust and taxed at a normal rate (with tax-free threshold).

Other excluded trusts:

Certain other trusts will be excluded from the trust surcharge arrangements. This includes:

- Deceased Estates in the first three years of administration;
- Public Unit Trust arrangements – listed trusts or greater than 50 members;
- Charitable Trusts; and
- Guardianship or disability trusts.
- Trusts where the sole beneficiary or beneficiaries are certain kinds of associations which are already exempt from land tax

Principal Place of Residence

There are also changes to the way that the principal place of residence exemption interacts with trust holdings.

Examples

Example 1: Multiple low value holdings

Peppe holds 10 rental properties in 10 different discretionary trusts. Each property has a current site value of $300,000 for a total property value of $3m. The new aggregation measures will result in the following land tax:

Property Value	Existing land tax rules	New land tax rules
$300,000 per property	Nil	$ 1,500 per trust
Total value - $3,000,000	**Nil**	**$15,000 Total**

Peppe instead holds each property in a separate company. The properties are related under the new measures.

Property Value	Existing land tax rules	New land tax rules
$300,000 per property	Nil	Aggregated – N/A
Total value - $3,000,000	**Nil**	**$50,452.50**

Therefore, Peppe potentially pays an additional $35k p.a. from holding the properties in companies rather than trusts. However, he may be eligible for transition relief of $23,976.25 (in 2021) for properties held in companies to reduce his liability to $26,476.25.

Example 2: Jointly held property in trust – effect of nomination

Michael and James jointly own a $1.1m commercial property in a unit trust. Michael already has an extensive property portfolio in his own name of $2m. James owns no other property. The land tax outcomes are as follows:

	No nomination – surcharge	With nomination – no surcharge
Tax at trust level	$11,351	$ 5,853
Tax for Michael	$26,453	$39,653
Credit for Michael	N/A	($2,927)
Tax for James	N/A	$ 500
Credit for James	N/A	($ 500)
Land tax liability	**$37,804**	**$42,579**

Example 3: Commercial properties held in discretionary trusts

Becky holds two commercial properties in separate discretionary trusts. One has a site value of $2m, the other $3m. She does not have any individual beneficiaries she could nominate, so she pays the surcharge. The outcome under these rules compared to current rates is:

Property	Value	Current land tax rates[3]	New land tax rates[4]	Saving from new measures
Property one	$2,000,000	$39,070	$32,951	($6,119)
Property two	$3,000,000	$76,070	$56,951	($19,119)
Total	**$5,000,000**	**$115,140**	**$89,902**	**($25,238)**

[3] This does not take into account existing proposed reductions from 1 July 2020.
[4] Estimated threshold increases

What action should you take now?

Our experienced tax team are more than happy to meet with you to discuss the impact of the changes on your group structure.

We are familiar with the detail of the legislation and have calculation models available to assess the impact.

We can assist you to look at opportunities to restructure your group holdings to mitigate the impact.

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Steven D’Annunzio is our resident subject matter expert on the SA land tax changes.

Disclaimer

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