

## Overview of the *Land Tax (Miscellaneous) Amendment Bill 2019*

### 1) Overview

The Government has announced a number of measures relating to land tax commencing 1 July 2020:

- An increase in the tax-free threshold to \$450,000;
- A reduction in the top land tax rate from 3.7% to 2.4%; and
- The introduction of improved aggregation of ownerships for land tax purposes (including a surcharge on land held in certain trusts).

The final details of the changes to aggregation for land tax purposes are subject to consultation prior to implementation.

In South Australia land tax is levied on the site value of land above a tax-free threshold, based on a progressive land tax scale. Ownerships are aggregated together to ensure equity in the taxation system, with owners of land paying equivalent land tax rates on the total value of land regardless of the composition of land held. For example, an owner with one land parcel worth \$1 million pays the same tax as an owner of three separate parcels worth a combined value of \$1 million.

However, the current aggregation arrangements create an incentive for land owners to set up structures designed to minimise the impact of aggregation provisions and land tax payable. This includes the use of trusts and companies so that the same taxpayer receives the benefit of multiple tax-free thresholds and lower marginal tax rates.

The new measures are intended to introduce a fairer approach to aggregation based on the approach used in other jurisdictions, particularly New South Wales and Victoria, and to lower the land tax rate in South Australia to make it more competitive with other jurisdictions.

Draft legislation has now been prepared for public consultation.

### 2) What are the changes?

A draft Bill, the *Land Tax (Miscellaneous) Amendment Bill 2019* (the Bill), has been prepared for release as part of the public consultation process.

This document is intended to provide a summary of the key policy measures included in the draft Bill. This document should not be read in isolation to the Bill and does not in any way override the intent of the draft Bill.

The draft Bill is subject to passage through Parliament.

The main changes in the Bill are outlined below. Key references in the Bill are included.

### Reduction in the top land tax rate

- Refer to clause 12 in the Bill to amend section 8A of the *Land Tax Act 1936* (the Act) (pages 9-10 of the Bill) and clause 18 to insert Schedule 1 into the Act (pages 24-25 of the Bill).
- The top land tax rate will be reduced to 2.4%, from 3.7%, from 1 July 2020.

#### Current rate structure

2019-20 scales					
0	to	391,000	0	+	0.00%
391,001	to	716,000	0	+	0.50%
716,001	to	1,042,000	1,625.0	+	1.65%
1,042,001	to	1,302,000	7,004.0	+	2.40%
1,302,001	&	over	13,244.0	+	3.70%

#### Proposed rate structure

The tables below provide the proposed rate structure for 2020-21. Thresholds are indexed annually in line with average site value growth as determined by the Valuer-General. Apart from the \$450,000 threshold (which has been legislated for 2020-21), all thresholds are estimates only and are be subject to change based on the final determination of relevant average site value growth by the Valuer-General for use in the 2020-21 land tax year.

2020-21 estimated scales (general rates)*					
0	to	450,000	0	+	0.00%
450,001	to	755,000	0	+	0.50%
755,001	to	1,098,000	1,525.0	+	1.65%
1,098,001	&	over	7,184.5	+	2.40%

2020-21 estimated scales (surcharge rates)*					
0	to	25,000	0	+	0.00%
25,001	to	450,000	125.0	+	0.50%
450,001	to	755,000	2,250.0	+	1.00%
755,001	to	1,098,000	5,300.0	+	2.15%
1,098,001	&	over	12,674.5	+	2.40%

\* Thresholds are indexed annually and subject to change.

## Aggregation

- Key point of reference is clause 13 of the Bill, to substitute in the Act proposed section 9 (pages 10-11 of the Bill).
- The Bill includes a simplified version of the New South Wales / Victoria approach to aggregation.
- Landholders' interests will be aggregated across joint and individual ownerships. Joint ownerships will receive a land tax bill as at present, but if the joint owners own other properties in their own right they will receive a separate bill for their total landholdings (including their share of the joint ownership).
- To avoid double taxation, a deduction will be made on an individual's liability equivalent to their share of the land tax assessed on any jointly owned land (proportional to the ownership share). This is simpler than the approach taken in Victoria and New South Wales and can result in a bigger deduction for taxpayers.
- This deduction will be taken off the entire liability, even if the liability includes land tax payable on properties other than joint ownerships. Where the deduction for jointly owned land is greater than the individual land tax liability, the individual liability is set at zero.
- Individuals in a domestic partnership who own land in their own right (i.e., not a joint ownership) will not have their properties aggregated with their partner.
- Individuals who already pay land tax on an aggregated basis (all landholdings contained in a single ownership) will not be affected by the changes to aggregation. They will benefit from the increase in the tax free threshold, and may also benefit from the reduction in the top tax rate.
- For further detail on how the new arrangements will work, refer to examples 1- 4.

## Trusts

- Key point of reference is clause 13 of the Bill, to include in the Act proposed sections 11-13G (pages 12-21 of the Bill).
- The nature of trusts means that it can be difficult to determine the true beneficiary of land held in trust and that land is therefore unable to be aggregated.

- The land tax surcharge rates will apply for land held in non-exempt trusts with a value greater than \$25,000, where a notice of beneficial interest(s) / unit holdings or a designated beneficiary is not in place (see below for further detail on this). The surcharge rates incorporates a 0.5% surcharge on the land tax general rates for land holdings valued below the top marginal tax threshold of around \$1.1 million
- Where the surcharge is applied, it will be levied on the full value of the land (no surcharge-free threshold). The value of the surcharge will be capped for land exceeding the top marginal tax threshold. This means that for any site value at or above approximately \$1.1 million, the value of the surcharge will never be higher than \$5,490 (current estimate based on 2020-21 thresholds).
- The capped surcharge is broadly in line with the arrangements in Victoria and New South Wales.
- All trusts will be liable for the land tax surcharge rates unless specifically excluded through legislation. The following trusts are excluded trusts for the purposes of the surcharge:
  - Charitable trusts;
  - Concessional trusts (such as guardianship trusts, special disability trusts);
  - A public unit trust scheme;
  - A trust where the beneficiary(ies) is an association or member(s) of an association otherwise exempt from land tax per section 4(1) of the *Land Tax Act 1936*. These may include charitable, sporting or educational associations;
  - Superannuation trusts, including limited recourse borrowing arrangements;
  - Administration trusts (deceased estates); and
  - Child maintenance land.
- An exclusion from the trust surcharge does not exempt land from land tax.
- All existing land tax exemptions are retained, including the principal place of residence (PPR) exemption. The PPR exemption for nominated trust beneficiaries will be expanded. The PPR exemptions for fixed, unit, and discretionary trusts differ, given the different trust arrangements, which is summarised further below.

- Once the legislation has been passed, trustees will have one month to notify of the existence of land held in that trust (if they have not already done so).
- There is also an option to lodge with the Commissioner of State Taxation a notice of beneficial interest(s) / unitholdings or a designated beneficiary for the trust. Where a notice or designated beneficiary is in place, the trust land will attract the general rates rather than the surcharge rates (i.e., avoids the 0.5% surcharge).

*Unit & Fixed Trusts – notice of beneficial interest(s) / unitholdings & PPR*

- Key point of reference is clause 13 of the Bill, to include in the Act proposed sections 12 & 13 (pages 12-15 of the Bill).
- There are provisions for unit and fixed trusts to voluntarily provide a notice of beneficial interest(s) / unitholdings (a notice). Where a notice is in place, the trustee will not be liable for surcharge rates of land tax.
- This is an optional provision, and where a notice is in place, a beneficiary's interest in the trust land will be aggregated with any other interests in land that they hold as an individual. In other words, it will be treated like any other land held individually.
- To avoid double taxation, a deduction will be made on the beneficiary's individual land tax liability.
- Trust land will only be aggregated with other interests in land held as an individual if a notice of beneficial interest(s) / unitholdings is in place.
- If the land held in trust constitutes the principal place of residence for all the notified beneficiaries of the trust per the notice, they will be eligible for the PPR exemption and will not pay land tax on that property.
- Where there is no notice in place, the current arrangements for a PPR exemption for trusts will continue to apply. In these instances, only a trustee who is also a natural person and living at the property will be eligible to claim a PPR exemption.
- Where there is no notice in place, the surcharge rates will apply to all land held in that trust.

### Discretionary Trusts – transitional measure for designated beneficiary & PPR

- Key point of reference is clause 13 of the Bill, to include in the Act proposed section 13A (pages 15–17 of the Bill).
- There is a transitional measure for discretionary trusts to nominate a single designated beneficiary for the purposes of land tax. Where a designated beneficiary is in place, the trustee will not be liable for surcharge rates of land tax.
- This measure is voluntary and will be available for any land held in discretionary trusts prior to the date of introduction of the Bill into Parliament. This is broadly in line with transitional provisions in Victoria when similar arrangements were introduced.
- Trustees will have until 30 June 2020 to make this once-off nomination. A designated beneficiary for land tax purposes must:
  - be a natural person;
  - be a beneficiary at the time the Bill was introduced to Parliament;
  - be over 18 years of age at the time the Bill was introduced to Parliament; and
  - have verified by statutory declaration that the beneficiary consents to being the designated beneficiary of the trust.
- Any discretionary trusts established after the date of introduction of the Bill into Parliament, or any land acquired within an existing trust after this date, will not be able to nominate a designated beneficiary for land tax purposes.
- Once nominated it will not be possible to change the designated beneficiary, except in extenuating circumstances such as death or incapacity.
- Where a trustee has nominated a designated beneficiary, the beneficiary's interest in the trust land will be aggregated with any other interests in land that they hold as an individual. In other words, it will be treated like any other land held individually.
- To avoid double taxation, a deduction will be made on the beneficiary's individual land tax liability.
- Trust land will only be aggregated with other interest in land held as an individual if a designated beneficiary has been nominated.

- Where a beneficiary of a discretionary trust is the designated beneficiary for land tax purposes, and is currently living at the property, they will be eligible for the PPR exemption and will not be charged land tax on that property. At present, only beneficiaries who are also the trustee and reside in an eligible trust-held property are able to claim a PPR exemption.
- Going forward, for all new trusts as well as existing trusts that do not nominate a designated beneficiary by 30 June 2020, the current arrangements for a PPR exemption for trusts will apply. In these instances, only a trustee who is also a natural person and living at the property will be eligible to claim a PPR exemption.
- For worked examples on the application of the land tax surcharge rates, refer to examples 5 and 6.

### **Related corporations**

- Key point of reference is clause 13 of the Bill, to include in the Act proposed sections 13H-K (pages 21-23 of the Bill).
- Grouping of related corporations is broadly consistent with the grouping arrangements in New South Wales and Victoria.
- Related corporations that own land are to be jointly assessed for land tax on the land as if it were owned by a single corporation.
- The different ways in which corporations can be related are as follows:
  1. Control exercised by a corporation over other corporations  
Two corporations are related where one controls the composition of the other's board of directors, can cast or control more than 50 per cent of votes at a general meeting, or holds greater than 50 per cent of the issued share capital.
  2. Control is exercised by the same person or persons over 2 or more corporations  
Corporations are related if a person, or the same people, can control the composition of the board of directors, can cast or control more than 50 per cent of votes at a general meeting, or holds greater than 50 per cent of the issued share capital.
  3. Control exercised jointly by a company together with its shareholders (where more than 50 per cent of the issued share capital is held)

- Where two corporations are related by any of the above reasons, a third company will also be grouped with those two companies if it is also related to at least one of them (not necessarily both). For example, Company A is related to Company B, Company A is also related to Company C. Company A, B and C are therefore all taken to be related and grouped for land tax purposes (refer example 7).
- Corporations may be related to each other even if one or more of those corporations does not own land in South Australia. Therefore, two corporations that own land in South Australia are grouped with each other if they are related to a third corporation that does not own land in South Australia.
- For worked examples of the grouping of related corporations, refer to examples 7 and 8.

## Land tax examples<sup>1</sup>

### Example 1 (Aggregation)

Mr & Mrs Jones jointly own land with a site value of \$750,000 with a 50-50 share (land A). Mrs Jones also owns a number of properties individually, combined site value of \$2,000,000 (land B).

Together they also own their family home, which they live in. This is the Jones' principal place of residence, and therefore exempt from land tax.

In 2019-20:

Joint ownership - Mr and Mrs Jones paid **\$2,186** in land tax on land A.

Mrs Jones - Mrs Jones paid **\$39,070** in land tax on land B. Mrs Jones was already paying land tax on an aggregated basis for land B.

As a couple, they had an overall land tax liability of **\$41,256** in 2019-20.

Under the reforms from 1 July 2020:

Mr and Mrs Jones will be assessed for any land they own as an individual, as well as an assessment on the joint ownership for which they are jointly liable. Their principal place of residence will continue to be exempt from land tax.

Joint ownership - Mrs & Mrs Jones will be jointly liable for the land tax on land A.  
The estimated land tax liability on land A is **\$1,500**.

Mrs Jones - The total value of assessable land for Mrs Jones' individual liability is \$2,375,000 (50% of land A + land B).

The estimated land tax liability on the \$2,375,000 is \$37,832.5.

As Mrs Jones has 50% interest in land A, she will receive a deduction of \$750 (\$1,500 x 50%).

Mrs Jones' estimated individual land tax liability is therefore **\$37,082.50** (\$37,832.5 - \$750).

Mr Jones - As Mr Jones does not own any land in his own right, the joint ownership deduction would be equivalent to his individual liability. He will therefore not be issued a land tax bill in his individual capacity.

As a couple, they will have an estimated land tax liability of **\$38,582.50** in 2020-21.

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<sup>1</sup> To allow for a direct comparison, the examples assume no growth in site value.

## Example 2 (Aggregation)

Mr & Mrs Smith jointly own land with a site value of \$1,000,000 (land A), where Mrs Smith owns 25% and Mr Smith owns 75%. Mrs Smith also owns a property individually, with a site value of \$250,000 (land B).

Together they also own their family home, which they live in. This is the Smith's principal place of residence, and therefore exempt from land tax.

In 2019-20:

Joint ownership - Mr and Mrs Smith paid **\$6,311** in land tax on land A.

Mrs Smith - Mrs Smith paid **\$0** in land tax on land B as it was below the tax free threshold.

As a couple, they had an overall land tax liability of **\$6,311** in 2019-20.

Under the reforms from 1 July 2020:

Mr and Mrs Smith will be assessed for any land they own as an individual, as well as an assessment on the joint ownership for which they are jointly liable. Their principal place of residence will continue to be exempt from land tax.

Joint ownership - Mrs & Mrs Smith will be jointly liable for the land tax on land A.

The estimated land tax liability on land A is **\$5,567.50**.

Mrs Smith - The total value of assessable land for Mrs Smith's individual liability is \$500,000 (25% of land A + land B).

The estimated land tax liability on the \$500,000 is \$250.

As Mrs Smith has 25% interest in land A, she will receive a deduction of \$1,391.88 ( $\$5,567.50 \times 25\%$ ).

As the deduction is greater than the land tax liability on her total value of assessable land ( $\$1,391.88 > \$250$ ), Mrs Smith's estimated individual land tax liability is therefore **\$0**.

Mr Smith - As Mr Smith does not own any land in his own right, the joint ownership deduction would be equivalent to his individual liability. He will therefore not be issued a land tax bill in his individual capacity.

As a couple, they will have an estimated land tax liability of **\$5,567.50** in 2020-21.

### Example 3 (Aggregation)

Mr & Mrs Taylor jointly own land with a site value of \$750,000 with a 50-50 share (land A). Mrs Taylor also owns land individually, with a site value of \$500,000 (land B).

Together they also own their family home, which they live in. This is the Taylor's principal place of residence, and therefore exempt from land tax.

In 2019-20:

Joint ownership - Mr and Mrs Taylor paid **\$2,186** in land tax on land A.

Mrs Taylor - Mrs Taylor paid **\$545** in land tax on land B.

As a couple, they had an overall land tax liability of **\$2,731** in 2019-20.

Under the reforms from 1 July 2020:

Mr and Mrs Taylor will be assessed for any land they own as an individual, as well as an assessment on the joint ownership for which they are jointly liable. Their principal place of residence will continue to be exempt from land tax.

Joint ownership – Mr & Mrs Taylor will be jointly liable for the land tax on land A.

The estimated land tax liability on land A is **\$1,500**.

Mrs Taylor – The total value of assessable land for Mrs Taylor's individual liability is \$875,000 (50% of land A + land B).

The estimated land tax liability on the \$875,000 is \$3,505.

As Mrs Taylor has 50% interest in land A, she will receive a deduction of \$750 ( $\$1,500 \times 50\%$ ).

Mrs Taylor's estimated individual land tax liability is therefore **\$2,755** ( $\$3,505 - \$750$ ).

Mr Taylor – As Mr Taylor does not own any land in his own right, the joint ownership deduction would be equivalent to his individual liability. He will therefore not be issued a land tax bill in his individual capacity.

As a couple, they will have an estimated land tax liability of **\$4,255** in 2020-21

#### Example 4 (Aggregation)

Sally and John jointly own their principal place of residence, which is exempt from land tax, and also own an investment property each in their own name. Sally's investment property has a site value of \$650,000. John's investment property has a site value of \$1,400,000.

In 2019-20:

Sally paid **\$1,295** in land tax on her investment property.

John paid **\$16,870** in land tax on his investment property.

Under the reforms from 1 July 2020:

Sally and John's principal place of residence will continue to be exempt from land tax.

The investment properties owned by Sally and John will not be aggregated under the reforms.

Sally is estimated to be liable for **\$1,000** in land tax.

John is estimated to be liable for **\$14,432.50** in land tax.

### Example 5 (Trust)

George is the trustee of five separate discretionary trusts. Each trust holds a single property with a site value of \$400,000 (combined \$2 million in site value). The trusts have beneficiaries in common, but are not identical.

In 2019-20:

George as trustee paid **\$45** in land tax on each trust. Overall, the combined liability of the five trusts was **\$225** (\$45 x 5).

Under the reforms from 1 July 2020:

The trustee will be liable for the land tax surcharge rates on each trust unless a designated beneficiary is in place

George as trustee will be liable for **\$2,000** in land tax on each trust, reflecting the impact of the trust surcharge. Overall, the combined liability of the five trusts is estimated at **\$10,000** (\$2,000 x 5).

Alternatively, George has the option of nominating a designated beneficiary for each trust. Where a beneficiary is nominated, the trust with the nomination in place will be liable for land tax at the general rates rather than the land tax surcharge rates. The nominated beneficiary will have the value of land held in trust aggregated with any other land they hold individually. There will be a deduction on the individual liability to avoid double taxation.

### Example 6 (Trust)

MaxCo Pty Ltd (MaxCo) owns investment properties as trustee of a discretionary trust. Tony is a beneficiary of the trust and has no other interests in property. The trust holds properties with a total site value of \$1,500,000.

In 2019-20:

MaxCo paid **\$20,570** in land tax in 2019-20.

Under the reforms from 1 July 2020:

MaxCo will be liable for the higher land tax surcharge rates and pay an estimated **\$22,322.50** in land tax (including the maximum trust surcharge of \$5,490).

Alternatively, MaxCo will have until 30 June 2020 to nominate a beneficiary. If MaxCo nominates Tony as the beneficiary for land tax purposes instead of paying the surcharge, MaxCo will pay an estimated **\$16,832.50** in land tax based on the general rates.<sup>2</sup>

Tony will not receive a land tax bill as he does not own any other land liable for land tax and the deduction for the amount of tax paid by the trustee will be equal to his individual land tax liability.

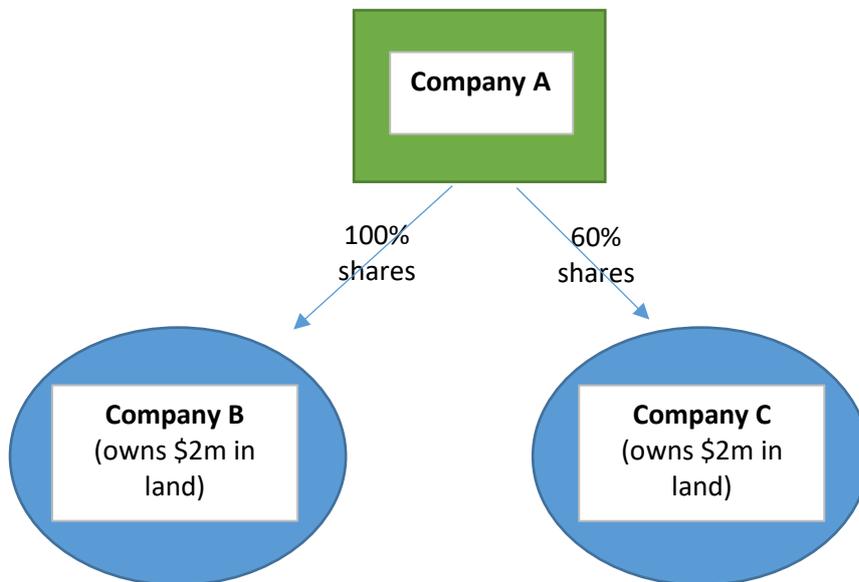
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<sup>2</sup> Even though a designated beneficiary has been nominated for land tax purposes, the trustee will still be liable for land tax, but at the general land tax rates.

### Example 7 (Company grouping)

Company A is a holding company, who owns 100% of the shares in company B. Company B owns \$2 million in land.

Company A also owns 60% of the shares in Company C. Company C owns \$2 million in land.



In 2019-20:

Company B paid **\$39,070** in land tax.

Company C also paid **\$39,070** in land tax.

Total combined land tax payable by each company was **\$78,140**.

Under the reforms from 1 July 2020:

Company A, B and C are related companies and grouped for land tax purposes. They will be jointly assessed on the aggregated site value of \$4 million.

The estimated land tax liability for this group of related companies is **\$76,832.5**.

### Example 8 (Company grouping)

Company A is a holding company, which owns 100% of four other companies. These other four companies each own a single property with a site value of \$350,000 (combined site value of \$1.4 million).

Company B is a company which owns \$1.4 million in landholdings, all contained in a single ownership. Company B does not have an interest in any other companies.

In 2019-20:

Company A and its subsidiaries paid **\$0** in land tax. Each company is treated as an individual ownership for land tax purposes, and as the value of the land held was below the tax-free threshold, the companies were not required to pay land tax.

Company B paid **\$16,870** in land tax. Company B could only claim the tax-free threshold once.

Under the reforms from 1 July 2020:

Companies A and B will face the same land tax liability – estimated at **\$14,432.50** each.

Company A and its subsidiaries will be treated as related companies and will be grouped for land tax purposes. They will be jointly assessed for land tax on the aggregated site value of landholdings (\$1.4 million).

Company B will not be impacted by the related company provisions, and will see a decrease in its land tax liability as a result of the reforms.