

SA Land Tax: are you ready for an increase in the amount you pay?

By Phil Shepherd

In the recent Budget, the State Government announced that from 1 July 2020 the South Australian Land Tax aggregation rules would be broadened and a surcharge imposed on certain trusts.

While there are existing aggregation rules that aim to ensure owners of land pay equivalent Land Tax rates on the total value of land held, the State Government believes that the current aggregation rules merely create an incentive for land owners to set up complex structures designed to avoid aggregation and minimise Land Tax.

The State Government has thus decided that an improved approach to the aggregation of land for Land Tax purposes "will be introduced in South Australia to look through separate legal structures to determine the true owner of land, levelling the playing field for all taxpayers."

This new approach will undoubtedly lead to more Land Tax being paid - are you ready for an increase in the amount of Land Tax you pay in South Australia?

Further details

Two examples were provided by the State Government of current arrangements to minimise Land Tax that it sees as 'abusive':

- A taxpayer who ultimately controls 10 taxable land parcels across 10 trusts (with each trust having a slightly different composition of beneficiaries) could be subject to land tax on the individual value of each parcel rather than on the aggregated value of all parcels notwithstanding that they are all controlled by the same taxpayer; or
- A taxpayer may set up multiple companies to each own a taxable land parcel. These companies will then be subject to land tax on the value of the land owned by each company independently (a single parcel), rather than the aggregated value of the land owned by all the companies, notwithstanding that they are controlled by the same taxpayer.

In an attempt to ensure there is equity between taxpayers therefore, the State Government has announced that legislation will be introduced in South Australia with effect from 1 July 2020 to look through separate legal structures to determine the true owner of land.

According to the State Government, the approach will be similar to that used in Victoria and New South Wales and include:

- A shift to aggregating based on an owner's interest in every piece of land - i.e. rather than only aggregating properties held in the same ownership structure;
- Provisions to allow two or more related companies to be grouped for Land Tax purposes; and
- A surcharge on land owned in trusts in cases where the interests in land held by trust beneficiaries are either not disclosed or cannot be identified.

While the final details of the new arrangements will be subject to consultation prior to implementation, if the proposed measures follow their counterparts in Victoria and New South Wales then some of the issues that owners of land in South Australia can expect to encounter are as follows:

- Both the Victoria and New South Wales legislation state that companies will be related if (inter alia) the same persons 'acting together' have a controlling interest in the companies. No criteria are set out however, in either the Victoria or New South Wales legislation for deciding when (or whether) two or more persons will be regarded as 'acting together'. Therefore, if the South Australian legislation follows its counterparts in Victoria and New South Wales, it will be a question of fact to be determined by Revenue SA and the Courts, on a case by case basis.
- In determining whether a 'controlling interest' exists in a company, both the Victorian and New South Wales legislation state (inter alia) that a 'controlling interest' will exist if a person (or two or more persons 'acting together', as per the previous point) can control the composition of the board of directors of the company. In considering whether a person (or persons) can exercise such control however, the legislation in Victoria and New South Wales takes care not to limit the circumstances in which the composition of a corporation's board is to be taken to be controlled by a person (or persons). Therefore, it will be a matter for RevenueSA and the Courts to decide what circumstances will (or will not be) taken into account.
- If the South Australian provisions for grouping related companies follow the Victorian legislation, RevenueSA will be given a discretion to treat two or more related corporations as if they were a single corporation. This raises the question as to what factors will RevenueSA take into account in exercising this discretion to group related corporations?

The Victorian revenue ruling covering this area (LTA-008) lists several factors that will be taken into account and states that none of the factors "on its own is a determining factor for the Commissioner to exercise his discretion to group. The Commissioner will apply the factors set out in this ruling to the particular ownership structure and circumstances of the relevant related corporations on a case by case basis."

In addition, LTA-008 states that the factors set out in the ruling "are not exhaustive and the Commissioner may have regard to other relevant factors that will support his determination to group in any given case."

- If the South Australian provisions for grouping related companies follow the New South Wales legislation, RevenueSA may assess: (i) all those companies separately; (ii) all those companies jointly, or (iii) any 2 or more of those companies jointly and the remainder separately.

Like the Victorian legislation, no criteria are set out in the New South Wales legislation which the New South Wales Chief Commissioner must take into account in deciding how to assess related companies (but unlike Victoria though, there is no New South Wales revenue ruling covering the factors that will be taken into account).

How Pitcher Partners can help

We will be closely monitoring the consultation process for the proposed changes to the South Australian Land Tax rules and we will issue further Alerts as developments unfold. We will also make a submission on the draft legislation if it does not provide sufficient certainty for our clients.

Please let us know, however, if there are any issues that you believe we should raise as part of the consultation process.