

Overview

The *Land Tax (Miscellaneous) Amendment Act 2019* (the “Amending Act”), was passed by both houses of Parliament on 28 November 2019, which together with the amendments contained in the *Statutes Amendment and Repeal (Budget Measures) Act 2018*, introduced a number of changes to the *Land Tax Act 1936* (the “Land Tax Act”) between midnight 30 June 2020 and 1 July 2022, including:

- an increase in the tax-free threshold to \$450 000 (subject to annual indexation);
- a reduction in the top land tax rate from 3.7% to 2.4% and a top threshold of \$1.35 million, increasing to \$2 million (subject to annual indexation);
- a reduction in the 1.65% marginal land tax rate to 1.25%, then 1.00%;
- the introduction of a 2.00% marginal land tax rate below the top threshold; and
- the introduction of revised aggregation of ownership provisions for land tax purposes and higher rates of tax on land held in certain trusts.

This document is intended to provide a summary of the key policy measures included in the Amending Act. This document should not be read in isolation to the Land Tax Act and does not in any way override the Amending Act.

The main changes made by the Amending Act are outlined below.

What were the changes?

Reduction in land tax rates and revised thresholds

From 1 July 2020:

- The top land tax rate was reduced to 2.4%, from 3.7%;
- The top land tax threshold was set at \$1 350 000;
- The land tax rate which applied between the site values of \$723 000 and \$1 052 000 was reduced to 1.25%, from 1.65%; and
- The land tax rate between \$1 052 000 and the top threshold was reduced to 2.0%, from 2.4%.

From 1 July 2022:

- The top land tax threshold was further increased to \$2 million; and
- The land tax rate between estimated site values of \$858 000 and \$1 249 000 was reduced to 1.00%, from 1.25%.

Aggregation

The Amending Act included a revised approach to aggregating property for land tax purposes.

Landholders’ interests are aggregated across joint and individual ownerships. Joint ownerships receive a land tax assessment as they did prior to the reforms, but if the joint owners own other properties in their own right (or as nominated beneficiaries of a trust) they receive a separate assessment for their total landholdings (including their share of the joint ownership). However, excluded trusts (discussed further below) that are joint owners do not receive a separate assessment for their total landholdings.

To avoid double taxation, a deduction is 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 deduction is 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 who personally own land in their own right (i.e. not in a joint ownership) do not have their properties aggregated with their domestic partner who similarly owns other land in their own right.

Individuals who already paid land tax on an aggregated basis (i.e. all their landholdings were contained in a single ownership) were not affected by the changes to aggregation, but benefited from the increase in the tax free threshold, and may have benefited from reductions in tax rates.

Trusts

Different arrangements apply for land held in trust.

Trustees must notify RevenueSA within one month of a trust acquiring land.

Each trust is separately assessed for land tax purposes, but all land owned by the same trustee for the same trust is aggregated together.

Higher land tax rates apply (other than for certain trusts discussed further below) for land held on trust 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 higher trust rates incorporate a maximum 0.5% surcharge on the general land tax rates for land holdings valued below the top marginal tax threshold. The total rate including the surcharge amount is capped at the top marginal tax rate of 2.4%.

Where the surcharge is applied, it is levied on the full value of the land, with there being no surcharge-free threshold. The value of the surcharge is capped for land exceeding the top marginal tax threshold.

All trusts are liable for the trust 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 trust where the beneficiary(ies) is an association otherwise exempt from land tax pursuant to 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.

In addition, public unit trust schemes and implied, constructive or resulting trusts are not liable to land tax at the trust rates.

Corporations acting as trustee that are subject to aggregation and assessed under the related corporations provisions will also not be liable for the trust rates.

An exclusion from the higher trust rates does not exempt land from land tax. Land tax remains payable at the general rates.

There is also an option to lodge with the Commissioner of State Taxation a notice of beneficial interest(s) / unit holdings 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 higher trust rates.

All existing land tax exemptions were retained, including the principal place of residence (PPR) exemption. The PPR exemption for nominated trust beneficiaries / unit holders was expanded to include the land that constitutes their PPR. The PPR exemptions for fixed, unit, and discretionary trusts differ, given the different trust arrangements, which is summarised further below.

Unit & Fixed Trusts

There are provisions for unit and fixed trusts to voluntarily provide a notice of beneficial interest(s) / unit holdings (a notice). Where a notice is in place, the trustee is not liable for the higher trust rates of land tax.

This is an optional provision, and where a notice is in place, a beneficiary's interest in the trust land is aggregated with any other interests in land that they hold. In other words, it is treated like any other land they own individually.

To avoid double taxation, a deduction is made on the beneficiary's individual land tax liability.

Trust land is only aggregated with other interests in land held as an individual if a notice of beneficial interest(s) / unit holdings is in place.

If the land held in trust constitutes the principal place of residence for all the notified beneficiaries / unit holders of the trust, the beneficiaries are eligible for the principal place of residence (PPR) exemption and do not pay land tax on that property.

Where there is no notice in place, the previous arrangements for a PPR exemption for trusts continue to apply. In these instances, only a trustee who is also a natural person and living at the property is eligible to claim a PPR exemption.

Where there is no notice in place, the trust rates apply to all land held in that trust.

If a nominated beneficiary of a fixed or unit trust is the trustee of another trust, it is similarly considered to be an owner of the land for land tax purposes and is liable to the higher trust land tax rates unless the trustee in turn also notifies of the beneficial interest(s) / unit holding(s).

A notice may be withdrawn, but once withdrawn the trustee is not able to lodge a new notice. A change in unit holdings does not constitute a withdrawal of a notice.

Discretionary Trusts

There was 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 is not be liable for higher trust rates of land tax.

This measure was voluntary and was available for any land held in discretionary trusts prior to midnight 16 October 2019¹.

Trustees had until 31 December 2021 to make this once-off nomination. A designated beneficiary for land tax purposes must:

- be a natural person;
- be a beneficiary as at midnight 16 October 2019;
- be over 18 years of age; and
- have verified by statutory declaration that the beneficiary consents to being the designated beneficiary of the trust.

If all the beneficiaries of the trust are under 18 years of age, the trustee is able to be the designated beneficiary provided they are a natural person.

Discretionary trusts were only able to nominate a designated beneficiary for land tax purposes for land they owned as at 16 October 2019, with the land being assessed at the general land tax rates. Any land that becomes subject to any trust after 16 October 2019 is assessed at the higher trust rates.

Once nominated it is not possible to change the designated beneficiary, except where the beneficiary dies or is incapacitated, due to a relationship breakdown, or in circumstances prescribed by the regulations.

Where a trustee has nominated a designated beneficiary, the beneficiary's interest in the trust land is aggregated with any other interests in land that they hold. In other words, it is treated like any other land they own individually.

To avoid double taxation, a deduction is made on the beneficiary's individual land tax liability.

Trust land is only aggregated with other interests 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 are eligible to claim a PPR exemption and are not charged land tax on that property. For trusts that did not nominate a designated beneficiary by 31 December 2021, only a trustee who is also a natural person and living at the property is eligible to claim a PPR exemption.

Related corporations

Related corporations that own land are 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 16 October 2019 was the date at which the *Land Tax (Miscellaneous) Amendment Bill 2019* was first introduced to Parliament.

- 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% of votes at a general meeting, or holds greater than 50% of the issued share capital.
- 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% of votes at a general meeting, or holds greater than 50% of the issued share capital.
- Control exercised jointly by a corporation together with its shareholders (where more than 50% of the issued share capital is held).
- Corporation is trustee of a fixed or unit trust where the majority beneficiary(s) or unit holder(s) of the trust is another corporation. Corporations are related if one of the corporations is the trustee of a fixed or unit trust and another corporation, or other related corporations between them, own more than 50% of the beneficial interests in land subject to the trust.

Where two corporations are related by any of the above reasons, a third corporation is also grouped with those two corporations if it is also related to at least one of them (not necessarily both). For example, Company A is related to Company B, with Company A also being related to Company C. Company A, B and C are therefore all taken to be related and grouped for land tax purposes.

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.

Corporations are able to apply to be de-grouped where they hold land for the purposes of a residential development of more than 10 allotments or lots. This will apply for a period based on the expected development period, but will not exceed an initial period of more than 5 years. The development must also commence within 2 years of the grant of the application, or a longer period determined by the Commissioner of State Taxation.