

5 Most Asked Questions




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5 Most Asked Questions



Question 1
Can I claim losses incurred in previous years?





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Claiming Tax losses

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Individuals and Partners

- losses from business can be claimed against other income subject to non commercial loss provisions
- Adjusted income < \$250,000
- Pass one of 4 tests
 - Assessable income at least \$20,000
 - Profit made in at least 3 of the last 5 years
 - Real property cost base/market value at least \$500,000
 - Other assets used in business- value over \$100,000



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Claiming Tax losses

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Trustee

- Any loss may only be carried forward if:
 - 50% stake fixed & discretionary trust
 - income injection fixed & discretionary trust
 - start to control discretionary trust
 - pattern of distributions discretionary trust
- Family Trust - only modified income injection test

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Claiming Tax losses

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Company

- Continuity of ownership
 - From the start of the loss year until fully recouped
 - Same persons have rights to
 - >50% voting power
 - >50% any dividend paid
 - >50% capital distributions

NB: cumulative not disjunctive



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Claiming Tax losses

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Company

- Same business
 - Only if fail to meet continuity of ownership
 - From date failed continuity of ownership
 - Until fully recouped
 - Carries on the same business
 - No income from new business type
 - No new type of transactions
- TR 1999/9

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Claiming Tax losses

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Company

- Similar business – 1 July 2015
 - Same assets – especially same goodwill
 - Same activities and operations
 - Identity of business remains the same
 - Changes can be shown to be
 - development /commercialisation of same assets, products, processes, services, marketing, etc



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Question 2

What are the issues around shareholder loans and unpaid present entitlements?



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Shareholder loans

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Private company

- Payment
 - Use of asset
 - Loan
 - Provision of credit or other financial accommodation
 - Forgiveness of debt
 - To a shareholder or associate of shareholder
- Need not be a resident private company
➤ Company must have distributable surplus



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Shareholder loans

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- Associate includes
 - relative, spouse, child
 - business partner
 - trustee of trust under which shareholder or associate benefits
 - company under the control of shareholder or associate
 - associated company



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Shareholder loans

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- Treated as taxable dividend
- No franking credit available

- Unless
 - Complying loan terms
 - 7 years or if secured 25 years
 - At rate of interest published annually by ATO
- Repaid in full on or by earlier of
 - date of lodgement of company tax return
 - due date for lodgement of company tax return



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Shareholder loans

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- Loans to which this does not apply
 - Loans prior to 27 December 1997 can be frozen
 - Loans to another company
 - By a liquidator in a winding up
 - To buy shares under an employee share scheme
- Commissioner's discretion 109RB



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Shareholder loans

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If company is a beneficiary of a trust

- Unpaid Present Entitlement is not a loan
- Mark Konza 16 December 2009 - 'financial accommodation'
- TR 2010/3 and PSLA 2010/4
- Ledger headings in accounts
- Uncertainty




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Shareholder loans

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Board of Tax discussion papers
Consultation Paper October 2018

- All loans on ten year terms
- Staged repayment requirements
- UPE included by legislation
- Self assessment correction mechanism
- Safe harbour rules for the use of assets




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Question 3

What tax risks do I take on when I become a director?




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Director at risk

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- Director Penalty Notice
 - PAYGW
 - SGC
 - GST - *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019* - before senate committee
- 21 days to respond to notice
- PAYG >3 months after due date – lockdown notice
- SGC >28 days after end of quarter – lockdown notice




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Director at risk

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Director Penalty Notice

- After 21 days
 - Garnishee notices;
 - Offsetting director's tax credits against director penalties;
 - Instituting legal proceedings to recover the director penalty
- Director's own PAYG W may be disallowed
- Payment by director not deductible




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Director at risk

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- Defences
 - Company pays
 - Other director pays
 - Illness – only if prevents involvement
 - All reasonable steps
 - Administration commenced within 3 months
- Lack of involvement is not a defence




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Director at risk

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- Includes
 - Acting alternate director
 - Shadow director
 - De facto director
- New directors
 - After 30 days can receive DPN
 - Can apply to obligations before and after became director
- Resignation irrelevant if shortfall occurred prior




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Question 4

Do I have a GST adjustment and why?




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GST Adjustments

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- Includes
 - Changes in creditable purpose
 - GST deregistration
 - GST registration
 - Company mergers
 - etc




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GST Adjustments

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- Adjustment Periods
 - Starts at least 12 months after period you claimed credit
 - Ends 30 June (if entity uses 30 June year end)
 - Maximum relevant periods:

Value of Item (GST Exclusive)	Number of periods
Under \$1,000.00	Nil
\$1,001.00 to \$5,000.00	2
\$5,001.00 to \$499,999.00	5
\$500,000.00 and over	10




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GST Adjustments

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- Changes in creditable purpose
 - March 2019 purchased laptop for business cost \$2200
 - Claimed \$200 GST credit in BAS for period end 31 March
 - First adjustment period will be 1 April to 30 June 2020
 - Actually used 25% private use
 - Required to make an increasing adjustment
 - $\$200 \times 25\% = \50 in BAS to 30 June 2020
 - Second adjustment period will be 1 April to 30 June 2021
 - Actually used 50% business use
 - Further adjustment $200 \times 25\% = \$50$




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GST Adjustments


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- Deregistration
 - All assets retained on which GST input tax credits claimed should be reviewed for adjustment
 - Final BAS may require cash
- Registration
 - When business first registers may be decreasing adjustment on stock held




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Question 5
How will Land Tax affect my business?




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Land Tax Bill




- Land Tax (Miscellaneous) Amendment Bill 2019
 - Introduced into state parliament 16 October 2019
 - Amends Land Tax Act 1936
 - assessment of land held by more than one entity
 - assessment of land held by a trustee
 - grouping of land holding companies
- Business land usually held by trustee or corporate




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Land Tax Bill




- Tax applied on one of two schedules
- Not trustee

Taxable Value of land	Amount of tax
Not exceeding \$450,000	Nil
Exceeding \$450,000 but not exceeding Threshold B	\$0.50 for every \$100 or fractional part of \$100 over \$450,000
Exceeding Threshold B but not exceeding Threshold B2	LT (TB) plus \$1.65 for every \$100 or fractional part of \$100 over Threshold B
Exceeding Threshold B2 but not exceeding Threshold C	LT (TB2) plus \$2 for every \$100 or fractional part of \$100 over Threshold B2
Exceeding Threshold C	LT (TC) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold C




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Land Tax Bill




- Land is owned by a person as Trustee

Taxable value of land	Amount of tax
Not exceeding \$25 000	Nil
Exceeding \$25 000 but not exceeding \$450,000	\$125 plus \$0.50 for every \$100 or fractional part of \$100 over \$25 000
Exceeding \$450,000 but not exceeding Threshold B	LT (TA) plus \$1.00 for every \$100 or fractional part of \$100 over \$450,000
Exceeding Threshold B but not exceeding Threshold B2	LT (TB) plus \$2.15 for every \$100 or fractional part of \$100 over Threshold B
Exceeding Threshold B2 but not exceeding Threshold C	LT (TB2) plus \$2.50 for every \$100 or fractional part of \$100 over Threshold B2
Exceeding Threshold C	LT (TC) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold C




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Land Tax Bill




- Trusts
 - Excluded Trust
 - charitable
 - concessional
 - sole beneficiary is government, non profit, etc
 - superannuation trust
 - custodian trust arrangement for superannuation
 - trust that holds child maintenance land
 - administration trust




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Land Tax Bill



- Trusts
 - Unit Trust Scheme/ fixed trust
 - Notice can be given of unit holdings/ fixed entitlements
 - No time limit
 - Remains in force until withdrawn by trustee
 - If withdrawn no further notice can be lodged
 - Unitholder/ Beneficiary deemed holder of land in proportion to holding of interest in trust



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Land Tax Bill

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- Trusts
 - Discretionary Trust
 - Notice can be given by 30 June 2020
 - Designated person must be
 - Natural person
 - Beneficiary at prescribed time
 - Over 18
 - Verified consent by statutory declaration
 - No beneficiary over 18 – may designate trustee



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Land Tax Bill

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- Company
 - Grouped with related companies
 - Variety of tests for related
 - Limited concession for property developers
 - Not all companies in a group need own land



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Land Tax Bill

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- Company A and company B are related if:
 - A controls the composition of the board of B
 - A can cast or control >50% of votes at a general meeting of B
 - A holds >50% issued share capital of B
 - same person(s) have a controlling interest in A and B
 - A & A's shareholders hold >50% issued share capital of B
 - and shareholders of B hold sufficient shares in A



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Land Tax Bill

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- Company A and company B are related if:
 - A is trustee of a unit or fixed trust and B holds >50% beneficial interests or units
 - both are related to company C
 - Not related if trustee holds a controlling interest in both on different trusts



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Land Tax Bill

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- Jointly assessed for land tax
 - Joint and several liability
 - Commissioner can issue notice to any one or more
 - Up to companies to seek contribution
- Not related because same trustee holds a controlling interest in both if on different trusts



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Land Tax Bill

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- Property development
 - If relationship: A is trustee of a unit or fixed trust and B or B & associates hold >50% beneficial interests or units
 - Apply to Commissioner
 - Land held solely for development
 - Residential 10 allotments or more
 - Commercial or industrial
 - Exemption from grouping for limited term - up to 5 years
 - Will cease on completion of development



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Questions

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