

# Land Tax 2020 Deceased Estates



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## Land Tax Amendments

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## Land Tax Amendments

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- Land Tax (Miscellaneous) Amendment Act 2019
  - Introduced into state parliament 16 October 2019
  - Passed by both houses 28 November 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
    - creation of notice requirements




## Land Tax Amendments

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### Amendments to be reviewed 2023

- Tax applied on one of two schedules
  - Trustee rate – applies to some but not all trustees
  - General rate – applies to everyone else
  - Rates for 2020/21 and 2021/22
  - New Rates for 2022/23 onwards




## Land Tax Amendments

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### Valuer General


- New values published around May/June
  - last year increased site values 6.16% on average
- (Estimated) differential if taxed as trustee
  - 2020/21 and 2021/22 – about \$6500
  - 2022/23 – about \$9150
- Revaluation project in progress
  - completion due 2021/22



## Land Tax Amendments

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- More than one owner
  - Jointly assessed as if single owner
  - Each owner then separately assessed on:
    - Owner's proportion of that land
    - Other land held by that owner
    - Owner's interests in other land
      - Via trust or other joint ownership



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- More than one owner
  - Does not include land in an excluded trust
    - Only assessed at joint ownership level
  - Credit granted to avoid double tax
  - Credit equal to owner's proportion of tax assessed to joint ownership



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- More than one owner
  - Scott and Jenny hold \$1m property as tenants in common
    - Scott as to 40%
    - Jenny as to 60%
  - Land tax assessed to them jointly and severally c \$4,590
    - Scott owns property in own name \$800,000
    - Scott assessed on \$800,000 + (\$1m x 40%) = \$1.2m
    - Land tax assessed to Scott c \$7,853
    - Credit for tax paid \$4,590 x 40% = c \$1,836
    - Payable c \$6,017



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- More than one owner
  - Scott and Jenny hold \$1m property jointly
    - Scott as to 40%
    - Jenny as to 60%
  - Land tax assessed to them jointly and severally c \$4,590
    - Jenny owns no property in her own name
    - Jenny assessed on \$1m x 60% = \$600,000
    - Land tax assessed to Jenny c \$750
    - Credit for tax paid \$4,590 x 60% = c \$2,754
    - Payable Nil –No refunds!



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- Implied, constructive or resulting trust
  - Land tax at general rates
  - Trustee assessed separately from beneficially held land
  - Trustee right to reimbursement for land tax paid legislated



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- Trusts
  - Fixed Trust
    - a trust that is not
      - an excluded trust
      - a discretionary trust
    - a trust to which a unit trust scheme relates



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## Land Tax Amendments

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- Trusts
  - Fixed Trust
    - Trustee can give notice of beneficial interests
    - No time limit
    - Remains in force until withdrawn by trustee
    - If withdrawn no further notice can be lodged
  - Beneficiary deemed holder of land in proportion to interest in trust



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- 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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- Trusts
    - Excluded Trust  
Taxed at general rates not trustee rates
- NB: A testamentary trust is not an excluded trust



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## Land Tax Amendments

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- Trusts
  - Unit Trust Scheme
    - an arrangement made for the purpose, or having the effect, of providing facilities for participation by a person, as a beneficiary under a trust, in any profit or income arising from the acquisition, holding, management or disposal of property under the trust, but does not include an excluded trust
  - Unit
    - Right or interest entitling holder to proportionate distribution on vesting



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## Land Tax Amendments

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



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- Trusts
  - Discretionary Trust
    - Either
      - who takes; or
      - how much trust property is taken is determined by the trustee (or any other person), or will occur if a discretion is not exercised
  - Beneficiary
    - One who may benefit if discretion exercised or not exercised



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- Trusts
  - Discretionary Trust
    - Notice can be given by 30 June 2021 to designate a beneficiary
    - At prescribed time
      - Trust must exist
      - Trustee must own land
      - Beneficiary must be within class
    - Designated person must be
      - Natural person
      - Over 18
      - Verified consent by statutory declaration
    - No beneficiary over 18 – may designate trustee



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- Many 'unit trusts' can meet both definitions
  - Unit trust scheme and a discretion
- Which notice?
- Commissioner has the choice
- Procedural fairness



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### Notices



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## Land Tax Amendments

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- Notices
  - Trustee must lodge a written notice within 1 month of:
    - commencing to hold land
    - commencing to hold more land
    - 30 June 2020 unless Commissioner previously notified or holds only exempt land
    - land which was exempt ceasing to be so
    - disposing of land if no change in legal owner

Notice in form etc determined by the Commissioner



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- Notices
  - Trustee must lodge a written notice within 1 month of:
    - trust becoming a different category of trust
    - if notice in place a change in beneficial interests of a fixed trust
    - if notice in place a change in unit holdings in a unit trust scheme
    - a corporate trustee of fixed or unit trust if other corporation(s) become owner of more than 50% of interests in the land

Notice in form etc determined by the Commissioner



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- Notices
  - LPR must lodge a written notice within 1 month of:
    - Obtaining probate/letters
  - Completion of administration of deceased estate, or
  - 3 years from date of death unless the deceased estate is granted Commissioner's discretion to remain deceased estate for longer

Notice in form etc determined by the Commissioner



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- Principal Place of Residence
  - Can apply to owner whether or not sole owner
  - New rules disregard minor ownership (5% or less)
  - Commissioner may disregard ownership between 5% and <50% if created to reduce land tax
  - Land becomes exempt not owner so any other owner(s) are holding exempt land



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- Principal Place of Residence
  - Fixed trusts - if beneficial interests notified and all beneficiaries reside
  - Unit trusts – if unit holdings notified to the Commissioner and all unit holders reside
  - Discretionary trust - if designated beneficiary notified to the Commissioner and resides on pre-existing trust land



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- Deceased estate is a trust
  - Administration Trust until earlier of:
    - fully administered
    - 3 years from date of death
    - longer period if discretion granted
- Executor or administrator is a trustee
- Beneficial Life Interest
- LT001 ex gratia relief



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- (1a)
 

For the purposes of paragraph (b) of the definition of **administration trust** in subsection (1), the Commissioner may approve a further period in any particular case

  - No indication of criteria for approval
  - No indication of extent of further period
  - Revenue Rulings / circulars / website



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- Company Owners
  - Grouped with related companies
    - Variety of tests for 'related'
    - Limited concession for property developers
  - Not all companies in a group need own land
  - Joint and several liability
  - Commissioner can issue notice to any one or more
  - Up to companies to seek contribution



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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
  - A is trustee of a unit or fixed trust and B holds >50% beneficial interests or units
  - both are related to company C



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- Ex Gratia relief
  - increase in land tax assessment in relevant year
  - as a result of the changes
  - land owned as at 16 October 2019
  - No relief on higher rates of land tax payable by trustees
  - Relief calculated on the difference
    - land tax payable on relevant properties in current year
    - land tax that would have been payable on relevant properties under law applying in 2019-20 year



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- Ex Gratia relief
  - Transitional relief
  - Increase in the land tax must be above \$2500
  - Relief
    - 50% of the increase above \$2500 in 2020-21 up to \$50,000
    - 30% of the increase above \$2500 in 2021-22 up to \$30,000
    - 15% of the increase above \$2500 in 2022-23 up to \$15,000
- Applications to RevenueSA by 31 March each year
- Taxpayers must be up to date with land tax payments



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- Advising on the administration of an estate
  - lodge a written notice
    - on date Amendments becomes law if no notification has previously been lodged
    - within one month of the grant of probate /letters
    - within one month of the completion of administration
    - If deceased held units/ interests in fixed trust notify trustee
    - If deceased was a designated person notify trustee



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## Questions

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