

LAND TAX - WHAT IS IT ALL ABOUT?

1. Land Tax - What is it and why?

In 1877 Land Tax was first introduced, in Victoria, to break up large holdings of land so as to encourage large landholders to subdivide their land and sell it to settlers. This was introduced by way of legislation and became law in the Land Tax Act 1877. Many large landholders were wealthy Englishmen who would rarely visit or use their land, thus introducing a land tax was a means to encourage them to sell to settlers, who would use the land more productively. In 1910 a land tax was also introduced by the Commonwealth Government to provide for the defence of the nation and to prepare for a major increase in migration to new Federation.

2. Who is Liable?

Currently, anyone who owns land in Victoria over the value \$175,000 other than their principle place of residence as defined in Part IIA of the Land Tax Act 1958 (PPR) or unless granted an exemption under Section 9 of the Act, will be subject to pay land tax. Who qualifies for the PPR and exemptions will be discussed a later.

In Victoria, Land Tax is assessed on a calendar year basis. The assessment is based upon the aggregate of the unimproved holding of landowners as at 31 December of each year (s8 LTA). The State Revenue Office (SRO) issues assessments during the period March to June each year to landholders.

3. The Land Tax Act (Vic) 1958

The Land Tax Act 1958 imposes an annual tax on the total unimproved value of all land owned in Victoria as at midnight on 31 December of the year preceding the year of assessment.

The unimproved value of land is based on the site value as assessed by the council (see rates notices) multiplied by an index factor (IF). The site value is effectively the unencumbered value of the land alone with out any improvements (i.e. ignoring any buildings or structures on the site). Councils generally undertake a general valuation of the municipality every 2nd year.

4. Main Provisions

Joint Ownership - s45

Where two or more people own land, they will be assessed as joint owners of land. Joint owners of land can be corporations alone or any combination of individual(s) and corporation(s). There is no limit to the number of joint owners of land.

Joint owners of land are to be jointly assessed and liable for tax in respect of the land as if it were owned by a single person, without regard to the separate interest of each joint owner or any other land owned by any joint owner (either alone or jointly with someone else). If you are a joint owner of land you will be assessed as follows:

The joint owners together are called the 'primary taxpayer' and are assessed as if they are one owner. All joint owners are jointly liable for the Land Tax payable by the primary taxpayer.

Each joint owner is called a 'secondary taxpayer' and will be assessed separately for that person's interest in the jointly owned property together with any other land holdings. The other land holdings can be held either as a single holding or as a joint ownership.

If an owner owns other land jointly with different persons, each unique combination of joint owners will be assessed as a separate primary taxpayer. For example, if A owns an item of land jointly with B and A owns a separate item of land jointly with C, there are two primary taxpayers who will each be assessed separately (A with B and A with C).

The interest in any land that is granted a principal place of residence exemption in the primary taxpayer's assessment will be included in the secondary taxpayer's assessment if that owner is not a natural person, or does not reside at the property.

To prevent double taxation on land included in assessments for both a primary taxpayer and a secondary taxpayer, a secondary taxpayer is entitled to a deduction which relates to the taxpayer's interest in the jointly owned land. This deduction is the lesser of the following two amounts:

$A \times B$ or $C \times E$ where:
D

A is the proportion (%) of the taxpayer's share of the jointly owned land

B is the Land Tax on the jointly owned land (\$)

C is the taxpayer's share of the jointly owned land (\$)

D is the taxpayer's total land holdings (\$)

E is the Land Tax on the taxpayer's total land holdings (\$)

If you, as a secondary taxpayer, are still liable for Land Tax after the deduction has been made, a Land Tax assessment will be issued. You may therefore be liable for Land Tax both as a primary taxpayer and also a secondary taxpayer.

Grouping of Corporations - s44

Corporations will be treated as related and will be grouped for land tax purposes in certain circumstances as defined by s44 of the LTA. In effect, the act defines "related" where 2 or more corporations are in essence controlled, where one corporation controls the composition of the board of the other corporation. Further where one corporation is able to cast or control more than 50% of the votes, or where one corporation holds more than 50% of the issued share capital of where a person(s) together have a controlling interest in each corporation, they will be deemed to be related and be assessed as a group.

The implication of this is that where several corporations have been set up in order to avoid the grouping of assets (of the unimproved land value), by s44 they will be caught and thus the members of the group will be assessed as a single corporation and will become jointly liable for the land tax payable by the group. Note of particular interest is the SRO will group corporations, even though they do not own land in Victoria.

This needs to be taken into consideration when providing advice to clients on asset planning and "tax minimization"

Exemptions

Part IIA

Several exemptions exist where land tax is not payable. In main the Primary Place of Residence (PPR) for a natural person* has been exempt from land tax since 1998. Note that where a substantial business activity is conducted on the PPR, land tax is imposed on the that portion.

The PPR exemption also extends to trustees of certain trusts BUT excludes discretionary and unit trusts as well as a liquidator. See s13AA for definition of "trustee". Some examples of where a trustee may be eligible for land tax exemption is:

- Property held in trust for an incapacitated person who resides at the property
- Property transferred under a will to an executor who uses the property as a PPR and holds property on trust for themselves and others under terms of the will
- Property held by a trustee appointed under a will on trust for all beneficiaries who reside in the property as their PPR
- The property under the will is vested in a trustee on trust for a life tenant who uses the property as a PPR
- Where property is occupied by a natural person(s) with the right of residence granted under a will
- The property is owned by a trustee of a fixed trust to the extent that a beneficiary under the trust occupies the property as their PPR.

* natural person does not include a company or artificial person

S9 of the LTA

Section 9 deals with particular land ownership or for a specific purpose. Typical examples where land tax is not applicable is:

- Land owned by the State of Victoria
- Mines
- Retirement villages
- Public statutory authorities
- Municipalities

- Charities
- Ex-servicemen's associations
- Bodies which promote outdoor sporting, recreation or cultural activities
- Friendly societies
- Agricultural shows
- Caravan Parks

Note that partial exemptions may also be applicable depending upon purpose, but must not be for profit or gain. See s13 of the LTA

Further, land which ceases to be exempt from land tax, specifically Mines, Public statutory authorities, Bodies which promote outdoor sporting, recreation or cultural activities and Caravan parks, will become liable for a Special Land Tax. Special Land Tax is a one off charge levied at 5cents for each dollar of the unimproved value of the land.

Valuations and Index Factors

As described earlier Land Tax is calculated on the unimproved value of land, which is based on the site value as assessed by the municipality (see rates notices) multiplied by an index factor (IF) to adjust the value in line with expected property values as determined by the Valuer-General. The Land tax is then determined by the scale of tax rates given in schedule 1 of the LTA. See Appendix A for 2005 rates.

The unimproved value of the land is determined by the respective municipality where the land is located. As in the past municipalities conducted valuations every 4-6 years, as of 1 January 2000, it is now common that municipalities conduct valuations of properties every two years. So for the 2004 assessment, site valuations based on 2002 valuations were used. These values appear on each years' rate notice from the municipality where the land is located.

The index factors are determined by the Valuer-General which reflect, in his opinion, half the aggregate movement in the aggregate site value of taxable land, between the general valuation which is in use for land tax, and the next general valuation returned by the municipality. For example, for land tax in 2003, the 2000 valuations have been adjusted to reflect half the average movement in property values for taxable properties between the 2000 general evaluation and the valuation returned by the municipalities in 2002. The index factors are released every 2nd year through the Land Tax (Indexation Factors) Regulations 2004. Refer to Appendix B for values to be used for assessing land tax for the year commencing 1 January 2005.

Objections to assessments

In general objections under the LTA must be made to the commissioner within 60 days after the service of the notice of assessment. There are several reasons for why one would want to object to a land tax assessment by the SRO.

The first is that a land owner may wish to object to a municipal valuation. The Commissioner of the State Revenue Office cannot consider this objection as the valuations are governed by the Valuation of Land Act 1960 (VLA). Part III, Division 3 of the Act states who may object, the ground(s) for the objection(s) and time by which an objection must be made and to whom. Of importance to note, as will be shown, that the time allowed for objection of a (municipal) valuation is 60 days from that notice.

Currently there is some uncertainty as to the time at which a taxpayer can object to the unimproved value determined by a rating authority when applied to land tax. In a recent case of Port of Melbourne Corporation v MCC and Valuer-General of Victoria, in the Victorian Civil and Administrative Tribunal, the Tribunal determined that an objection could only be made after the unimproved value was used in an assessment. In many cases, this is when the first valuation is first used to assess land tax, which may be 2 years after the valuation is first notified in the rates notice! Currently the decision is being appealed, and if overturned, tax payers may not be able to object to the valuations used on such basis that they will be out of time.

The second reason why one may wish to object the assessment is that you may believe the index factors applied to your land is too high. Unfortunately, there is no provision within the LTA or regulations where an objection can be made disputing the Valuer-General's determination of Land Tax.

As the index factors are indiscriminate and do not take into account features affecting the value of individual parcels of land (i.e. zoning), but rather they attempt to "approximate" the assumed increase in value of the land in a general manner across the entire municipality. Depending upon the type and use of land, the increase (or decrease!) of land value may vary considerable at any given time in the future. As there is no distinction in the index factors between say domestic and industrial land within a given municipality, in many cases one could predict that small business, may face an ever escalating land tax bill, which is tied to the level of increase in value of domestic properties, which bear no direct relationship to value of goods/services produced.

Other common reasons for objecting is that an exemption may exist where the SRO may not have taken the circumstances into account. These are typically where the SRO has not been notified or taken into account the use (i.e. primary production, etc) or that ownership has changed.

5. Hardship Relief - s91B & s91C of the LTA

Hardship relief is available in Victoria where it can be shown that serious hardship will be experienced as a result of paying land tax. Relief is available in the form of postponing or waiver of the outstanding amount of land tax.

What defines hardship?

There are three situations where the hardship provisions apply:

- (a) The taxpayer would suffer serious hardship;
- (b) The dependants of a taxpayer who has died would suffer serious hardship;
- or
- (c) The holders of more than 60 per cent of the issued ordinary share capital of a private company liable for land tax would suffer serious hardship

You must be shown to be in detrimental circumstances (financial, personal or otherwise) such that further hardship would be incurred if payment of land tax were enforced.

Who determines whether relief is granted?

There exists two circumstances for application for relief.

Where the application for relief of hardship concerns land tax amounts less than \$1,000 a year, the Commissioner of the State Revenue Office can decide. With the approval of the Treasurer, all or part of the liability can be waived.

Where the application for relief of hardship concerns land tax amounts greater than \$1,000 a year, the Land Tax Hardship Board can decide to either waive all or part of the land tax or postpone payment as it deems necessary.

Procedure for application

An application must be made to the SRO within one month of the date of service of the land tax assessment, as the Commissioner or the Land Tax Hardship Board may allow. Applications must be made in writing on the prescribed form.

To be noted that where the application for relief has been unsuccessful, interest may be charged from the date of assessment.

6. Conclusion

As I now hope, will now be obvious, Land Tax has is an important issue which needs careful consideration during purchase to be able to minimize the tax liability. The decision on how best to arrange personal and company structures together with any exemptions which may be available, needs again careful consideration before any advice is given to clients.

Although not discussed in any depth here, an important consideration when giving advice is how the SRO will assess relationship, if any, companies and the tax implications. The SRO will group companies where it can be shown that one company is able to exert control over the other. To determine control, the SRO will look at such matters as composition of the board, voting distribution and the holding of issued share capital.

Should you require any help or advice, contact our office on 9874 7377.