

STATE BUDGET 2007-2008

BACKGROUND

In the State Budget handed down on 7 June 2007, the Government, *inter alia*, announced changes to the *Land Tax Act 1936* ("the Act") to introduce anti-avoidance provisions to address the practice where owners of more than one piece of land avoid paying higher marginal rates of land tax by structuring their ownerships so that another party (or parties) hold a small minor interest in an individual piece of land thereby creating different legal ownerships.

The legislative amendments to implement this measure are contained in the *Statutes Amendment (Budget 2007) Bill 2007* which was tabled on 7 June 2007, and will come into operation at midnight on 30 June 2008.

The information set out below is intended as a guide, however the precise nature and scope of the changes should be taken from a reading of the amendments.

INTERESTS IN LAND OF LESS THAN FIVE PER CENT

In cases where land is owned by two or more persons and one or more of those persons hold an interest in the land of 5 per cent or less ("the Minor Interest"), the person or persons holding the Minor Interest will be taken **not** to be an owner of the land for the purposes of the Act.

In such cases, the land tax payable in respect of the relevant land will be assessed, and is payable, as if the land were wholly owned by the owner or owners of the land who do not hold the Minor Interest ("the Owner").

The relevant land will therefore be aggregated with any other land owned by the Owner for the purposes of assessing land tax.

Where a Minor Interest was not created For Purpose Of Reducing Land Tax

The Owner may apply to the Commissioner of State Taxation ("the Commissioner") in writing, to request that the Minor Interest not be disregarded for the purposes of the Act, on the basis that the Minor Interest was created solely for a purpose, or entirely for purposes, unrelated to reducing the amount of land tax payable in respect of any land.

Where an application is made and the Commissioner is satisfied that there is no doubt that the Minor Interest was created solely for a purpose, or entirely for purposes, unrelated to

reducing the amount of land tax payable in respect of any land, the Minor Interest will not be disregarded by the Commissioner for the purposes of assessing land tax.

INTERESTS IN LAND OF GREATER THAN 5 PER CENT BUT LESS THAN 50 PER CENT

Where a person or persons hold an interest in land of greater than 5 per cent but less than 50 per cent the interest will be disregarded for the purposes of assessing land tax only if the Commissioner forms the opinion that the purpose or one of the purposes for the creation of the interest was to reduce the amount of land tax payable in respect of any land.

In this situation, the onus is on the Commissioner.

RELEVANT FACTORS THE COMMISSIONER MAY TAKE INTO ACCOUNT

The Commissioner may have regard to the following criteria for the purposes of assessing an application by an Owner in relation to whether a minor interest of 5 per cent or less should not be disregarded for the purposes of the Act:

1. the nature of any relationships between the owners of the relevant land, or between the owners of two or more pieces of land; and
2. the lack of consideration, or the amount, value or source of the consideration, provided in association with the creation of the interest; and
3. the form and substance of any transaction associated with the creation or operation of the interest, including the legal and economic obligations of the parties and the economic and commercial substance of any such transaction; and
4. the way in which any transaction associated with the creation or operation of the interest was entered into or carried out; and
5. any other matter the Commissioner considers relevant.

If the Commissioner rejects the application by the Owner, the Commissioner will give notice of the decision to the Owner stating the grounds on which the decision is based.

The Commissioner may also have regard to the criteria outlined above when forming an opinion as to whether an interest of greater than 5 per cent but less than 50 per cent should be disregarded for the purposes of the Act.

Where the Commissioner forms the opinion that an interest of greater than 5 per cent but less than 50 per cent is to be disregarded for the purposes of the Act, the Commissioner will give notice of that fact to each owner of the land. The notice will state the grounds on which the opinion is based and set out the effect of the interest being disregarded.

APPLICATION OF ANTI-AVOIDANCE PROVISIONS - EXAMPLES

The proposed section 13A will apply in the following circumstances:

Example 1

Owner A owns 99% and Owner B owns 1% of Property 1.

Owner A also owns 100% of Property 2.

Owner B's minor interest will be disregarded and Property 1 and Property 2 will be aggregated under Owner A's ownership unless Owner A can satisfy the Commissioner that there is no doubt that Owner B's interest in Property 1 was created solely for a purpose, or entirely for purposes, unrelated to reducing the amount of land tax payable in respect of any land.

Example 2

Owner A owns 96% and Owner B owns 4% of Property 1.

Owner A owns 97% and Owner C owns 3% of Property 2.

Owner A owns 100% of Property 3.

Owner B's minor interest in Property 1 will be disregarded unless Owner A can satisfy the Commissioner that there is no doubt that Owner B's interest in Property 1 was created solely for a purpose, or entirely for purposes, unrelated to reducing the amount of land tax payable in respect of any land.

Owner C's minor interest in Property 2 will be disregarded unless Owner A can satisfy the Commissioner that there is no doubt that Owner C's interest in Property 2 was created solely for a purpose, or entirely for purposes, unrelated to reducing the amount of land tax payable in respect of any land.

Where both minor interests are disregarded, Property 1, Property 2 and Property 3 will be aggregated under Owner A's ownership.

Example 3

Owner A owns 99% and Owner B owns 1% of Property 1.

Owner A also owns 100% of Property 2.

At a subsequent date, Owner A transfers a further 4.1% of Property 1 to Owner B so that Owner B now owns 5.1% of Property 1.

Owner B's minor interest in Property 1 will be disregarded and Property 1 and Property 2 will be aggregated under Owner A's ownership if the Commissioner forms the opinion that the purpose or one of the purposes for the creation of the interest was to reduce the amount of land tax payable in respect of any land.

The proposed provisions will not apply in the following circumstances:

Example 1

Mr A owns 100% of Property 1.

Mr and Mrs A each own 50% of Property 2.

Property 1 and Property 2 will not be aggregated and will continue to be assessed for land tax under separate ownerships.

Example 2

Mr A owns 100% of Property 1.

Mrs A owns 100% of Property 2.

Mr and Mrs A each own 50% of Property 3.

Property 1 Property 2 and Property 3 will not be aggregated and will continue to be assessed for land tax under separate ownerships.

MISCELLANEOUS

An interest in land will not be disregarded if the effect of disregarding the interest is to decrease the amount of land tax payable in respect of any land.

An interest may be disregarded by the Commissioner regardless of whether it was created before or after the commencement of the provisions.

A person who is dissatisfied with a decision of the Commissioner may lodge a written notice of objection with the Treasurer.

NOTIFICATION OF MINOR INTERESTS

Prior to the issuing of land tax assessments in the 2008-2009 financial year, RevenueSA, will be writing to Owners where a minor ownership of 5 per cent or less is identified.

This will provide an Owner (prior to the issuing of the 2008-2009 land tax assessments), with the opportunity to apply to the Commissioner to satisfy the Commissioner that the Minor Interest in the relevant land was created solely for a purpose, or entirely for purposes, unrelated to reducing the amount of land tax payable in respect of any land.

DATE OF OPERATION

The changes will take effect from the 2008-2009 land tax assessment year.

Further information regarding this change can be obtained from RevenueSA.

Location

RevenueSA
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

Postal

Commissioner of State Taxation
RevenueSA
GPO Box 1353
ADELAIDE SA 5001

Telephone

(08) 8204 9870

Facsimile

(08) 8207 2100

Website

<http://www.revenuesa.sa.gov.au>

E-mail

landtax@saugov.sa.gov.au