

Land Tax Guide to Legislation 2013-14

This is a general guide to the provisions of the *Land Tax Act 1936* and the *Land Tax Regulations 2010*.

Land Tax Act 1936 *Land Tax Regulations 2010*



**Government of
South Australia**

Authorised copies of the Act can be purchased from the Service SA Government Legislation Outlet, Ground Floor, 101 Grenfell Street, Adelaide.

Online versions of state legislation are available at the South Australian legislation website:

www.legislation.sa.gov.au

For further details on any matters relating to the Acts mentioned in this Guide to Legislation, please contact RevenueSA on (08) 8204 9870.

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The purpose of this Guide to Legislation (“Guide”) is to provide a general guide to the provisions of the *Land Tax Act 1936* and the *Land Tax Regulations 2010*.

It deals with:

- ▶ calculation of tax payable;
- ▶ payment of tax, interest and penalty tax;
- ▶ exemptions available to a taxpayer;
- ▶ obligations of a taxpayer;
- ▶ taxpayers’ rights of objection in respect of land tax; and
- ▶ important information for purchasers of land.

The contents of this Guide are current at the time of printing but may be subject to change in the future.

We hope you find this publication to be worthwhile and we would certainly welcome any comments or suggestions that would help us to improve it.

For further details on any matters relating to the Acts or Regulations mentioned in this Guide, please feel free to contact RevenueSA on (08) 8204 9870.

Mike Walker
COMMISSIONER OF STATE TAXATION
22 July 2013

What is land tax?

Land tax is a state tax, and in South Australia is levied under the *Land Tax Act 1936* (the “Act”) and the *Land Tax Regulations 2010* (the “Regulations”). It operates in conjunction with the *Taxation Administration Act 1996*, which contains administrative provisions relating to such matters as objections and appeals, the charging of interest and penalties, etc.

Land tax forms part of the general revenue of the state and is applied towards financing the costs of the government including the provision of health services, education, police, community welfare services and other services for which no direct charges are made.

Introduction

- ▶ Land tax is levied each financial year and can be paid by quarterly instalments. Land tax is calculated as at midnight on 30 June immediately preceding the financial year for which the tax is levied, i.e. the owner of the land at midnight on 30 June 2013 is liable for the tax for the year 1 July 2013 to 30 June 2014 (2013-14 financial year).
- ▶ Land tax is based on the site value of the land as determined by the Valuer-General pursuant to the *Valuation of Land Act 1971*. Broadly, the site value is the value of the land excluding buildings or other improvements.
- ▶ Land tax is calculated by applying a progressive rate structure to the aggregated site value of land held by an owner at midnight on 30 June.
- ▶ Some exemptions apply to certain categories of land.
- ▶ The owner of the land as at midnight on 30 June is initially liable to pay the tax calculated. Should the land be sold during the financial year, arrangements should be made at settlement for full payment of the current year’s tax and any other arrears, even if the vendor has chosen to pay by instalments.
- ▶ Land tax is a first charge on the land. The tax will follow the land into a purchaser’s ownership unless a certificate is obtained for settlement purposes and the tax value stated is paid in full. If the amount stated on the certificate is paid within 90 days of the certificate being obtained, the purchaser will be indemnified against further tax liabilities for the land accrued to the relevant date nominated in the certificate.
- ▶ Taxpayers must notify the Commissioner of State Taxation (the “Commissioner”) of changes of address for the service of notices.
- ▶ Land tax is not subject to the Goods and Services Tax (GST).

Summary of land tax

Who is liable for land tax?

Definition of ‘Owner’ The liability for the payment of land tax falls initially upon the **owner** of the land as at midnight on 30 June immediately preceding the financial year for which the tax is levied. The term **owner** is generally taken to be the person whose name appears on the Certificate of Title at the Lands Titles Office. However, there are several exceptions to this rule, which are described in detail below.

Freehold land

The owner, in respect of freehold land, will be taken to be either the registered owner or any person who is entitled to the legal or equitable ownership of the land at midnight on 30 June immediately preceding the financial year for which the tax is levied. This extends to a person who is entitled to purchase or acquire the legal or equitable ownership of the land. In the absence of evidence to the contrary, the registered owner is taken to be the taxpayer.

Crown land – perpetual leases/agreement for sale or right of purchase

Where Crown land is held under a perpetual lease or if it is subject to an agreement for sale or right of purchase, the holder of such a lease or agreement is deemed to be the owner of that land for the purposes of land tax.

Note: Perpetual leases mean registered Crown leases issued by the Minister for Sustainability, Environment and Conservation on behalf of the Crown in perpetuity.

Home unit companies

The shareholder in a home unit company will be treated as the owner for land tax purposes. This means that the value of the unit that the shareholder is entitled to occupy will be included in the ownership of the shareholder and not be assessed against the registered proprietor of the land, i.e. the home unit company.

Shack sites

Shack site lessees of privately owned land are deemed to be the owner where:

- ▶ the shack site is situated on or adjacent to the banks of the River Murray, a tributary of the River Murray, or a lake or lagoon connected with the River Murray or a tributary of the River Murray;
- ▶ a registered lease existed as at midnight 30 June 1989 over the land; and
- ▶ the term of the lease is at least 40 years.

Further, the occupier of land in a defined shack site area is similarly deemed to be the owner for land tax purposes.

Tenancies in common (moiety ownership)

Where:

- ▶ land is held under a tenancy in common;
- ▶ the land is divided into separate portions; and
- ▶ the owner of each undivided share in the land is entitled under a lease registered over the title to the land, to occupy a particular portion of the land;

each owner of an undivided share in the land will be regarded as the owner of the portion of the land that the owner is entitled to occupy under the lease.

Land held in a representative capacity (trusts)

Land held by a taxpayer in a representative capacity may be taxed separately from other land held by the taxpayer in his or her individual right.

See [Trusts](#) for more details

Any one of the joint owners of land may be held liable for the payment of the whole amount of tax. However, it is the general practice of RevenueSA to issue a **Notice of Land Tax Assessment** to the first-named joint owner for payment of land tax. Other registered owners will be noted as either ANR ('another person' - where there is one additional owner) or ORS ('other persons' - where there are two or more additional owners). The person who is issued with the assessment may then recover a proportion from other joint owners.

**Liability where
land is held in joint
ownership**

How is land tax calculated?

Land tax is calculated by applying a progressive rate structure to the aggregated site value of land held by an owner at the relevant date of assessment.

The components of this principle are explained in further detail below.

Relevant date of assessment

Land tax is levied each financial year with liability for the payment falling upon initially the owner of the land as at midnight on 30 June immediately preceding the financial year for which the tax is levied.

Valuations of land

The site value for land tax purposes is as determined by the Valuer-General under the *Valuation of Land Act 1971*. For the purpose of calculating the amount of tax to be levied, the value in force at midnight on 30 June immediately preceding the financial year for which the tax is levied, is applied.

The meaning of **site value** is defined in the *Valuation of Land Act 1971*. In broad terms, it means the market value of the land disregarding the value of any buildings or other improvements thereon.

Under the *Valuation of Land Act 1971* the Valuer-General may make a separate valuation of any portion of any land or may value a number of portions of land as one. This does not mean, however, that the parcel of land to which a valuation is attached will necessarily be recognised as a legal parcel of land for land tax purposes.

A person who has any queries in relation to the valuation of their land must contact the State Valuation Office by telephoning 1300 653 346.

See [Objections](#) for more details

Any taxpayer who disagrees with the valuation attributed to their property has the right to formally object to the Valuer-General.

Aggregation of site value

General principle

The Act requires that where a person or persons own more than one piece of land, the taxable value of all land owned by the same owner(s) is aggregated (totalled) for the calculation of land tax.

Note: (1) Land will only be aggregated in cases of joint ownership where the owners of separate pieces of land are the same.

(2) If joint owners hold a piece of land in different capacities, all of the owners may be treated in one particular capacity.

Example

A taxpayer who owns three separate parcels of land valued at \$80 000, \$100 000 and \$420 000 as at midnight on 30 June, would pay land tax for the following financial year based on the aggregate (or total) value.

| | |
|--------------------------|-----------|
| Total Taxable Site Value | \$80 000 |
| | \$100 000 |
| | \$420 000 |
| | <hr/> |
| | \$600 000 |

The corresponding Total Land Tax (calculated using the rates applying for the 2013-14 financial year) = \$1661.50

The Total Land Tax is apportioned to each property in the ratio of its Taxable Site Value to the Total Taxable Site Value of the ownership, as follows:

Land tax apportioned to:

| | | | | |
|---------------------------|---------------------------------|--------------|----------|------------------|
| \$80 000 property | $\frac{\$80\,000}{\$600\,000}$ | x \$1661.50 | = | \$ 221.53 |
| \$100 000 property | $\frac{\$100\,000}{\$600\,000}$ | x \$1661.50 | = | \$ 276.92 |
| \$420 000 property | $\frac{\$420\,000}{\$600\,000}$ | x \$1661.50 | = | \$ 1163.05 |
| | | | | \$ 1661.50 |
| | | Total | = | \$1661.50 |

Minor interest in land

Minor interest provisions were introduced into the Act with effect from midnight 30 June 2008, 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) holds a minor interest in an individual piece of land thereby creating different legal ownerships.

Minor interest of 5% or less:

Where land is owned by two or more persons and one or more of those persons has an interest in the land of 5% 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.

The Owner may apply to 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.

Minor interest more than 5% but less than 50%:

Where a person or persons hold an interest in land of greater than 5% but less than 50% 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.

Additional minor interest information:

In determining whether a Minor Interest should or should not be disregarded for the purposes of the Act the Commissioner may have regard to the following criteria:

1. The nature of any relationships between the owners of the relevant land, or between the owners of two or more pieces of land.
2. The lack of consideration, or the amount, value or source of the consideration, provided in association with the creation of the interest.
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.
4. The way in which any transaction associated with the creation or operation of the interest was entered into or carried out.
5. Any other matter the Commissioner considers relevant.

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.

Effective from the 2008-09 financial year, where a Minor Interest in land has been disregarded under the Act, the holder of the disregarded interest is not eligible for a principal place of residence exemption, or waiver from land tax.

Examples - Where the minor interest provisions apply

Scenario One

| Property | Ownership | |
|----------|-----------|---------|
| | Owner A | Owner B |
| Lot 1 | 99% | 1% |
| Lot 2 | 100% | |

Owner B's minor interest will be disregarded and Lot 1 and Lot 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 Lot 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.

Scenario Two

| Property | Ownership | | |
|----------|-----------|---------|---------|
| | Owner A | Owner B | Owner C |
| Lot 1 | 96% | 4% | |
| Lot 2 | 97% | | 3% |
| Lot 3 | 100% | | |

Owner B's minor interest in Lot 1 will be disregarded unless Owner A can satisfy the Commissioner that there is no doubt that Owner B's interest in Lot 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 Lot 2 will be disregarded unless Owner A can satisfy the Commissioner that there is no doubt that Owner C's interest in Lot 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, Lot 1, Lot 2 and Lot 3 will be aggregated under Owner A's ownership.

Scenario Three

| Property | Ownership | |
|----------|-----------|---------|
| | Owner A | Owner B |
| Lot 1 | 99% | 1% |
| Lot 2 | 100% | |

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

Owner B's minor interest in Lot 1 will be disregarded and Lot 1 and Lot 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.

Examples - Where the minor interest provisions WILL NOT apply

Scenario One

| Property | Ownership | |
|----------|-----------|---------|
| | Owner A | Owner B |
| Lot 1 | 100% | |
| Lot 2 | 50% | 50% |

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

Scenario Two

| Property | Ownership | |
|----------|-----------|---------|
| | Owner A | Owner B |
| Lot 1 | 100% | |
| Lot 2 | | 100% |
| Lot 3 | 50% | 50% |

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

Trusts - aggregation exception

The Act and the Regulations provide an exception to the general aggregation principle in the case of land held on trust. This exception is subject to the following conditions:

- ▶ the land is held on trust (other than a trust arising because of a contract to purchase or acquire an estate or interest in the land);
- ▶ notice of the trust is given (see next section); and
- ▶ the trustee of the trust is the **owner** of the land.

Where these conditions are met in relation to a piece of land, the taxable value of the land will not be aggregated with the taxable value of other land owned by the same taxpayer, unless the other land is held in trust for the same beneficiary.

Note: If two or more portions of land comprising the whole or a part of a certificate of title are held on trust for two or more beneficiaries, the exception to the aggregation principle mentioned above does not apply and the Commissioner may treat all the land comprising the Certificate of Title as the one piece of land.

In addition, if two or more trustees own land separately, but subject to the same trust, any one of the trustees may be treated as the owner or owners of all the land subject to the trust.

For the purposes of this provision, the various capacities in which a person may be the owner of land are as follows:

- ▶ as legal owner;
- ▶ as equitable owner;
- ▶ as prospective owner (i.e. a person who has entered into a contract to purchase or acquire an estate or interest in the land);
- ▶ as lessee under a perpetual lease or a shack-site lease; or
- ▶ as occupier where the land is in a defined shack-site area.

In order for a trust to be recognised, notice must be provided in writing to the Commissioner, together with any evidence as required by the Commissioner, within the financial year for which the tax is to be calculated. The notice should include all written matter relating to the creation of the trust, and any variation of the trust after its creation.

In the first instance, it is recommended that the following information be provided:

- ▶ a completed [Notification of Land Held on Trust Form](#) or a letter advising of the details of the property owned on behalf of the trust;
- ▶ a copy of the fully executed relevant trust deed in its entirety; and
- ▶ evidence to show that the property was purchased on behalf of the trust.

The trust will be recognised if the applicant can provide either one of the following:

- ▶ the stamped Transfer document showing the consideration was paid by the trust; or
- ▶ the completed and lodged Tax Return for the trust showing the property as an asset of the Trust.

If neither of the above documents can be provided, the applicant will need to provide a minimum of two other forms of evidence in order to satisfy the Commissioner.

The types of evidence which may be considered include:

- ▶ the stamped Transfer document showing 'with no survivorship' or 'WNS';
- ▶ the Certificate of Title showing 'with no survivorship' or 'WNS';
- ▶ the signed minutes of the meeting of the Trust that evidence the purchase of the property on behalf of the Trust;
- ▶ the balance sheets of the Trust clearly showing the property as an asset of the Trust;
- ▶ the Settlement Statement showing the purchaser as trustee of the Trust;
- ▶ the signed Contract of Sale showing the purchaser as trustee of the Trust.

If any changes are made to the Trust or the property held on behalf of the Trust, the Commissioner must be notified.

Rates of tax Once the aggregated value is determined for an owner, land tax is calculated using a progressive rate structure. The rates of land tax effective as at midnight on 30 June 2013 for the 2013-14 financial year are as follows:

| Taxable Value of Land Subject to Tax | Amount of Tax |
|---|--|
| Below \$316 000 | Nil |
| \$316 001 to \$579 000 | \$0.50 for every \$100 or part of \$100 above \$316 000 |
| \$579 001 to \$842 000 | \$1315 plus \$1.65 for every \$100 or part of \$100 above \$579 000 |
| \$842 001 to \$1 052 000 | \$5654.50 plus \$2.40 for every \$100 or part of \$100 above \$842 000 |
| Over \$1 052 000 | \$10 694.50 plus \$3.70 for every \$100 or part of \$100 above \$1 052 000 |

Exemptions & Concessions

A general exemption from land tax applies if the total amount of tax which would otherwise be payable in any financial year is less than \$20. At the rates of land tax applying for the 2013-14 financial year, the effect of this is that no land tax is payable if the total taxable value of all land owned is \$319 900 or less.

General exemption from land tax

Where the general exemption does not apply, subject to conditions, the land may qualify for one of a number of specific exemptions including:

Specific exemptions

- ▶ land used for owner's principal place of residence (land may be partially or wholly exempt from land tax in this instance);
- ▶ land used for primary production;
- ▶ retirement villages occupied by residents as their principal place of residence;
- ▶ caravan parks;
- ▶ residential parks;
- ▶ supported residential facilities;
- ▶ land used for religious purposes, a hospital subsidised by the State Government, or a library administered by the Libraries Board of South Australia;
- ▶ land owned, let to or occupied by an association whose objects are/include supplying assistance to helpless persons;
- ▶ land owned, let to or occupied by an association which receives an annual grant or subsidy from money voted by Parliament;
- ▶ land owned by an association whose object(s) is/include the conservation of native fauna or flora;
- ▶ land owned or occupied without payment by a person or association carrying on an educational institution not for profit;
- ▶ land owned by an association established for a charitable, educational, benevolent, religious, or philanthropic purpose;
- ▶ land owned by:
 - sporting or racing associations;
 - an ex-servicemen (or their dependents) association;
 - an employer or employee industrial association;
 - an association for the recreation of the local community;
 - an association for the hosting of agricultural shows or similar exhibitions;
 - or
 - an association for the preserving of buildings or objects of historical value on the land;
- ▶ land used for the provision of residential care by an approved provider;
- ▶ land that is owned by a prescribed association or an association of a prescribed kind; and
- ▶ land owned by a prescribed body and used for the benefit of the Aboriginal people.

Details of these exemption provisions are described in detail below.

Land Used as Owner's Principal Place of Residence

The Act provides that an exemption from land tax may be granted where the Commissioner is satisfied that land owned and occupied by a natural person constitutes the owner's principal place of residence.

Land may be partially or wholly exempt from land tax.

Availability of the exemption

An exemption from land tax may be available in either of the following scenarios:

- ▶ Where the land constitutes the owner's principal place of residence.

Note: In this circumstance, a refund of overpaid land tax can only be for a maximum of five years

- ▶ Where the land becomes the owner's principal place of residence during the financial year for which the exemption is sought, an exemption may be available.

Note: In this circumstance, a waiver or refund of land tax must be sought on or before 30 September following the end of the financial year for which the waiver or refund is sought.

Conditions which must be satisfied for a full exemption to apply

In order to be eligible for a full exemption the following criteria must be satisfied:

1. The land must be owned by a natural person and constitute their principal place of residence. Where a property is owned by two or more persons, only one person is required to meet this eligibility criteria;

Note: For the purpose of these criteria, the term **owner** can also include: a shareholder in a home unit company; the holder of a life interest (not being a lessee) or a beneficial owner entitled to ownership of the land pursuant to a will. The term **owner** does not include the directors of a company, which owns the land or where a minor interest has been disregarded by the Commissioner.

2. The buildings on the land must have a predominantly residential character; and

Note: Residential character of the buildings is determined having regard to their design and functionality. Caravans or tents are not regarded as buildings for the purpose of these criteria.

3. Less than 25% of total floor area of all buildings on the land may be used for a business or commercial purpose (other than the business of primary production).

Conditions which must be satisfied for a **partial** exemption to apply

A partial exemption from land tax may apply where between 25% and 75% of the total floor area of all buildings on the land are used for a business or commercial purpose (other than the business of primary production). In order for the exemption to apply, the first two criteria for the full exemption must be met.

Where a part of the total floor area of the buildings on the land is used for a business or commercial purpose (other than the business of primary production), the land may be partially exempt in accordance with the following scale:

| Area used for business or commercial purposes expressed as a percentage of the total floor area of all buildings on the land | Percentage reduction in taxable value of land |
|--|---|
| More than 75% | Nil (no exemption) |
| 75% | 25% |
| 70% or more but less than 75% | 30% |
| 65% or more but less than 70% | 35% |
| 60% or more but less than 65% | 40% |
| 55% or more but less than 60% | 45% |
| 50% or more but less than 55% | 50% |
| 45% or more but less than 50% | 55% |
| 40% or more but less than 45% | 60% |
| 35% or more but less than 40% | 65% |
| 30% or more but less than 35% | 70% |
| 25% or more but less than 30% | 75% |
| less than 25% | 100% (full exemption) |

Motels, Hotels, Serviced Apartments and other similar accommodation

From 2010-11 the exemption, or partial exemption, extends to motels, hotels, serviced apartments and other similar accommodation. The area used for the hotel, motel, set of serviced holiday apartments or other similar accommodation will be taken to be the area used for a business or commercial purposes.

Land tax relief where occupation commences during the financial year

Where the land becomes the owner's principal place of residence during the financial year for which the exemption is sought, a refund or waiver may be granted in any of the following circumstances:

- ▶ where at 30 June a person owns land on which a home is either to be constructed or is in the process of being constructed for owner occupation in the following financial year. In the absence of relief, a land tax liability would arise because at 30 June the land was not being used as the principal place of residence. If you have recently completed building your home, RevenueSA requests a builder's Schedule 19A or Certificate of Practical Completion;
- ▶ where a person is in the process of selling a home and as a result owns two properties at 30 June, one of which is the current principal place of residence (and eligible for exemption) and the other is the intended but not yet occupied principal place of residence (and liable for land tax). Land tax relief will be made available on both properties provided no rental income is received from either property (when not occupied by applicant) during the period that the homes are owned concurrently and the former residence is sold prior to the end of the financial year in which the exemption on the new residence is sought; or
- ▶ where a person purchases a property as their principal place of residence which was taxable in the ownership of the vendor and in accordance with standard contractual arrangements, the land tax payable on the property is apportioned between the buyer and seller.

See [Refunds of Overpaid Tax](#) for additional information relating to any applicable refund.

Land tax relief where a person has ceased to occupy their principal place of residence because it has been destroyed or rendered uninhabitable by an occurrence for which they were not responsible

From the 2010-11 financial year, land may be exempted from land tax if the Commissioner is satisfied:

- a) that the person has ceased to occupy any building on the land of a predominantly residential character because it has been destroyed or rendered uninhabitable by an occurrence for which the person is not responsible (whether directly or indirectly) or which resulted from an accident;
- b) that any such building constituted the person's principal place of residence immediately before the date on which the building was destroyed or rendered uninhabitable;
- c) that the person intends to repair or rebuild the building within a period of three years from the date on which the building was destroyed or rendered uninhabitable;
- d) that the buildings on the land will, after the completion of building work, have a predominantly residential character;

- e) that the person intends to occupy the land as their principal place of residence after the completion of the building work; and
- f) the person is not receiving an exemption from land tax under another provision of this subsection in relation to other land that constitutes the person's principal place of residence.

The land will not be exempted from land tax for a period that exceeds three years.

A person is not eligible for a waiver or refund of land tax for a financial year that immediately follows a period of three financial years for which the person has had the benefit of above mentioned exemption in respect of the same land.

The Act provides that an exemption from land tax may be granted where the Commissioner is satisfied that land is used for the business of primary production.

Land used for Primary Production

Conditions which must be satisfied for exemption to apply

The criteria used in assessing a primary production exemption vary depending on whether or not the land is situated in the **defined rural area** of the state.

The **defined rural area** consists predominantly of the greater metropolitan areas of Adelaide and Mount Gambier. Metropolitan Adelaide covers an area approximately from Willunga, south of Adelaide, to Gawler, north of Adelaide, and from the coastline in the west to the inner Mt Lofty Ranges in the east. Metropolitan Mt Gambier covers the majority of the City of Mount Gambier council area.

There are general conditions, which apply irrespective of where the land is situated, as follows:

- ▶ the land must be 0.8 hectare or greater in area; and
- ▶ the Commissioner must be satisfied that the land is used wholly or mainly for the business of primary production.

Please contact RevenueSA on (08) 8204 9870 if you are unsure whether your property lies inside or outside of the **defined rural area**.

Note: For the purpose of these criteria, the following definitions apply:

“business of primary production” means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms and including the intensive agistment of declared livestock.

“declared livestock” means cattle, sheep, pigs or poultry.

Land outside the **defined rural area**, i.e. land outside metropolitan areas

Only the general conditions above need to be satisfied in order to gain a primary production exemption from land tax where the land is situated outside the defined rural area.

Where the Valuer-General has applied an eligible land use code to the land, which satisfies these general conditions, the land receives an automatic exemption from land tax.

Land inside the **defined rural area**, i.e. land inside metropolitan areas

In addition to the general conditions above, any one of the following additional conditions must be met in order to gain a primary production exemption from land tax for land within the **defined rural area**:

- ▶ the sole owner is a natural person who is engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business;
- ▶ the land is owned jointly or in common by two or more natural persons at least one of whom is engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business and any other owner who is not so engaged is a relative of an owner so engaged;
- ▶ the land is owned solely, jointly or in common by a retired person and the following conditions are satisfied:
 - the retired person was, prior to their retirement, engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business;
 - the co-owner or co-owners of the land (if any) are relatives of the retired person; and
 - a close relative of the retired person is currently engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business;
- ▶ the land is owned solely or by tenancy in common by the executor of the will, or the administrator of the estate, of a deceased person and the following conditions are satisfied:
 - the deceased person was, prior to their death, engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business;
 - the co-owner or co-owners of the land (if any) are relatives of the deceased person; and
 - a close relative of the deceased person is currently engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business;

- ▶ the land is owned by a company, or by two or more companies, or by a company or companies and one or more natural persons, and the main business of each owner is a relevant business; or
- ▶ the land is owned by a company and one of the following conditions is satisfied:
 - a natural person owns a majority of the issued shares of the company and is engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business;
 - two or more natural persons own in aggregate a majority of the issued shares of the company and each of them is engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business; or
 - two or more natural persons who are relatives own in aggregate a majority of the issued shares of the company and at least one of them is engaged on a substantially full-time basis (either on their own behalf or as an employee) in a relevant business.

Note: For the purpose of the criteria above, the following definitions apply:

“**relevant business**” - a business is a relevant business in relation to land used for primary production if:

- (a) the business is a business of primary production of the type for which the land is used or a business of processing or marketing primary produce; and
- (b) the land or produce of the land is used to a significant extent for the purpose of that business;

“**close relative**” - a person is a close relative of another if:

- (a) they are spouses or domestic partners; or
- (b) one is a parent or child of the other; or
- (c) one is a brother or sister of the other;

“**relative**” - a person is a relative of another if:

- (a) they are spouses or domestic partners; or
- (b) one is an ascendant or descendant of the other, or of the other’s spouse; or
- (c) one is a brother or sister of the other or a brother or sister of the other’s spouse; or
- (d) one is an ascendant or descendant of a brother or sister of the other or of the other’s spouse.

“**domestic partners**” – a person is the domestic partner of a person if he or she lives with the person in a close personal relationship.

Retirement villages occupied by residents as their principal place of residence

Enquiries may be made to RevenueSA regarding qualifications for entitlement and the method of making application for exemption.

Land held within a retirement village may be exempted from land tax if the land constitutes a residential unit and is:

- a) occupied on 30 June, under a residence contract, by a natural person as their principal place of residence; or
- b) available for occupation, under a residence contract, by a natural person as their principal place of residence and likely to be so occupied at some time during the twelve months following 30 June.

In addition to the above, land that is a facility provided under the retirement village scheme for the exclusive use of residents (and their guests) may also fall within the exemption entitlement.

Caravan parks

Land may be wholly exempted from land tax if the land constitutes a caravan park.

Residential parks

Retired persons' relocatable home parks are eligible for exemption where the relevant land is used for the purpose of establishing two or more relocatable homes, over which rights of occupation for that purpose are granted by lease or licence, predominantly to persons who are over the age of fifty-five years and have retired from full-time employment.

A particular site within a residential park will be exempt in circumstances where there is a relocatable home on the site owned by a natural person and occupied by that person as their principal place of residence.

An exemption will also apply if it is likely that, within the ensuing twelve months, there will be a relocatable home on the site owned by a natural person and occupied by the natural person as their principal place of residence.

Supported residential facilities

An exemption applies to land used for Supported Residential Facilities that are licensed under the *Supported Residential Facilities Act 1992*.

Land used for conservation or historical preservation

An exemption applies to land owned by an association whose objects include the conservation of native flora or fauna. The land has to be used mainly or solely as a reserve for the conservation of native flora or fauna.

An exemption will also apply to land held by an association for the purpose of preserving buildings or objects of historical value on the land.

Public land

Land of the Crown is exempt from land tax unless the Crown instrumentality is a Public Corporation and is required to pay land tax pursuant to the *Public Corporations Act 1993*, its own enabling legislation or by ministerial direction.

Parkland, public roads, public cemeteries, and other public reserves are also exempt.

An exemption is available in respect of any land owned by either a council, a controlling authority (established under Part 19 of the *Local Government Act 1934*) or the Renmark Irrigation Trust.

An exemption is also available where the land is used solely for the purposes of a hospital, which is subsidised by the State Government, or used by any library or other institution, which is administered by the Libraries Board of South Australia.

Land owned by an association established for a charitable, educational, benevolent, religious or philanthropic purpose may be exempt. It will be necessary for the association to prove that it is established for one of these purposes. This is determined by considering the objects of the constitution (if an association or company limited by guarantee) or the trust purpose of the trust deed, if dealing with a trust (a trust can be considered as an association for this purpose).

In addition, an exemption will be provided where land owned or occupied by an association is providing various forms of assistance that is needed by necessitous or helpless persons. The land must be used mainly or solely for the purpose of supplying this assistance. If the association does not own the land, it must be occupying the land either rent-free or be paying a rental sum (monetary or otherwise) that is considerably lower than market value. Also, those people receiving the assistance must be provided that assistance at either no cost or at a cost (monetary or otherwise) which (in the opinion of the Commissioner) is substantially less than the value of the assistance.

An exemption will also apply if the land is used solely or mainly as an educational institution. The land must be owned or occupied by a person or association. If the person or association does not own the land, they must be occupying it rent-free. If the land is held by a landlord as an investment, an exemption cannot apply. The educational institution must be run on a not-for-profit basis.

Where a property is used wholly for a religious purpose, an exemption may apply.

An association must own the land. The land must be used mainly or wholly for the following sports:

- ▶ cricket, football (all codes, e.g. Australian rules, rugby league, rugby union, soccer), tennis, golf, bowling or other athletic sports or exercises; or
- ▶ horse racing, trotting, dog racing, motor racing or other similar contests.

An association must own the land. The land must be used for social or recreation of the association members. The association must be made up of either former members of the armed forces or their dependants, the common example of which would be any Returned Services League (RSL) club.

Charitable, educational, benevolent, religious or philanthropic associations

Land used for sporting or racing (specific types)

Ex-servicemen (and dependants) associations

Employer or employee industrial associations

An association must own the land. The association's members must be employers or employees, usually relating to a particular industry. The association must be registered under a Commonwealth or state law relating to industrial conciliation or arbitration. The land must be used for the purpose of the association.

Community recreation

An association must own the land. The objects of the association must be to provide the land for the recreation of the local community. The term 'local community' refers to residents of a specified geographical locality, i.e. in the general vicinity of the land.

Agricultural show grounds and exhibition venues

An association must own the land. The land must be used for the purpose of hosting agricultural shows and other similar exhibitions.

An association of a prescribed kind

An association is of a prescribed kind if it holds land wholly or mainly for the purpose of providing services or support to the community, or a sector of the community, in relation to literature, science, language, the arts, the preservation of historical, traditional or cultural heritage, or for a similar purpose.

Aged Care

Land may be wholly exempted from land tax if the whole of the land is used for the provision of residential care by an approved provider.

Land may be partially exempted from land tax if part of the land is used for the provision of residential care by an approved provider by reducing its taxable value by an amount equal to the value of that part of the land after applying any principle determined by the Commissioner.

“*approved provider*” and “*residential care*” have the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

Application for Exemption

The owner of land may apply for an exemption or partial exemption of the land through RevenueSA.

It is not necessary to apply for the general exemption in relation to the tax-free threshold.

All application forms are available on:

www.revenuesa.sa.gov.au

and should be submitted along with supporting documentation, such as a Constitution or Certificate of endorsement from the Australian Taxation Office.

Notice of Exemption

Where the Commissioner exempts land (wholly or partially), notice will be given to an owner stating the day from which the exemption applies, the extent of the exemption and the grounds on which the exemption is granted. Owners have 21 days to notify the Commissioner of any inaccuracy.

Refunds of overpaid tax

Where the owner or purchaser of land has paid land tax in relation to the financial year for which the exemption is sought, they may be eligible for a refund, detailed in the following manner:

- ▶ Where the taxpayer owned land at midnight on 30 June immediately preceding the financial year for which the exemption is granted, the refund will be the amount by which the taxpayer's assessment would have been reduced if the land were exempt or partially exempt from land tax.

Note: The amount of refund does not alter irrespective of whether the taxpayer commenced occupation before or during that financial year. Land may be partially exempt if the land is the owner's principal place of residence and is used partially for a business or commercial purpose – see earlier exemption section for more detail.

- ▶ Where a refund of land tax is sought by a purchaser of land (where the land is acquired during the financial year for the purpose of being the owner's principal place of residence), the amount to be refunded will be the lesser of either:
 - the amount paid to the vendor by the purchaser as an adjustment of land tax; or
 - a proportion of the land tax that would be payable on the land if the purchaser had owned the land, taking into account the number of days out of 365 for which they have owned the land.

Note: If the land is used partially for a business or commercial purpose, the amount of refund will also take into consideration the proportion of the floor area used for this non-residential purpose. RevenueSA can provide further information if applicable.

Obligations of owners of exempted land

An owner of land has certain responsibilities in relation to a benefit they have received in the form of an exemption or partial exemption from land tax, as follows:

- ▶ the owner must not make a false or misleading statement in an application;
- ▶ the owner must notify the Commissioner if a notice of exemption is inaccurate; and
- ▶ the owner must notify the Commissioner where the grounds for exemption have ceased to exist or continue to exist but to a lesser exemption than the one actually given, as a result of a change of circumstance (e.g. owner moves residence, business use increases).

Where an owner of land does not comply with these requirements, penalties may apply and the Commissioner may revoke the exemption, resulting in a further land tax liability.

Frequency of notices & payment of land tax

Frequency of notices

Notices of Land Tax Assessment are usually issued between October and November of the financial year for which the tax is levied. The taxpayer may elect to pay their land tax liability by quarterly instalments or in full, by the date that the first quarterly notice is due. Once taxpayers have elected to pay by quarterly instalments, they will still have the option of paying the full remaining liability when issued with any subsequent quarterly instalment advice.

Property owners who take up the instalment option will receive further notices to pay the relevant quarterly instalment approximately thirty days prior to the due date of that instalment.

The first **Notice of Land Tax Assessment** for payment describes the land being taxed in terms of its ownership, description, site valuation and proportionate liability.

Methods of payment

Refer to the reverse side of your **Notice of Land Tax Assessment** for payment options.

Payment of your **Notice of Land Tax Assessment** can be made in full as per the Total Amount Due on your notice or by quarterly instalments.

Payment options include:

- ▶ BPAY (telephone or Internet);
- ▶ payment in person at any outlet of the organisations listed on the reverse of the **Notice of Land Tax Assessment**;
- ▶ payment by cheque, money order or cash at RevenueSA;
- ▶ payment by telephone via an Interactive Voice Response System on 1300 669 344; and
- ▶ payment by mail to GPO Box 1647, ADELAIDE SA 5001.

Note: A credit card limit of \$2000 per *Payment Remittance Advice* applies.

Interest and penalties for late payments

A default in the payment of land tax, i.e. payment not made by the due date or payment of only a portion of the amount due, will result in the full annual amount including arrears outstanding becoming immediately due and payable.

This includes a default in the payment of any of the four instalments, e.g. if the second instalment is not paid by the due date, or only portion of the second instalment is paid, this will result in the second instalment, the third instalment and the fourth instalment becoming immediately due and payable.

Property owners in default will be issued a Final Notice Reassessment for the full annual amount including arrears outstanding, which will include penalty tax and interest payable on the amount outstanding.

Please refer to Information Circulars [TAA01](#) and [LT002](#) for further information on the application of interest and penalties.

Objections

If you are dissatisfied with an assessment you may wish to contact RevenueSA on the telephone number that appears on the **Notice of Land Tax Assessment** in the first instance.

If you require an independent review of a tax assessment, you may lodge a written objection within 60 days of the date of the assessment or decision with:

The Minister for Finance
GPO Box 668
Adelaide SA 5001

The grounds of the objection must be stated fully and in detail in the notice of objection.

Unsuccessful objections to a tax assessment may be appealed to the Supreme Court within 60 days of the Minister's determination of the objection, or if the objection has not been determined, within 90 days of its lodgement.

An objection to a valuation must be in writing and contain a full and detailed statement of the grounds on which the objection is based. Valuation objections should be directed to:

State Valuation Office
GPO Box 1354
ADELAIDE SA 5001

Email: LSGObjections@sa.gov.au

Objection to Valuation Enquiries - Phone: 1300 653 345

Note: (a) If you believe the site value of your property is incorrect you should, within 60 days of the receipt of the first rates notice from any statutory authority that advises of your site value (Council, RevenueSA or SA Water) send an objection in writing to the State Valuation Office.

(b) You may not object to the valuation if the Valuer-General has already considered an objection by you to the valuation, lodged in response to another rating authority invoice for each particular financial year.

Any objection to an assessment or valuation does not mean payment of land tax can be withheld pending the outcome of the objection. Taxpayers are reminded that land tax is due and payable by the due date and the tax may be recovered as if no objection were pending, including penalty tax and interest accruing.

Objection to Commissioner's assessment or decision

Objection to valuations

Payment of land tax pending an objection

Buying or selling a property:

your rights and obligations in respect of land tax

Certificates of land tax payable **General Information**

Under the provisions of the *Land and Business (Sale and Conveyancing) Act 1994*, a **Certificate of Land Tax Payable** ("Certificate") may be obtained from RevenueSA showing the amount of land tax (if any) that will be payable in relation to the financial year in which it is requested (including any arrears).

The issuing of a Certificate is subject to payment of a prescribed administration fee. The fee prescribed for 2013-14 is \$29.75.

Where settlements are occurring in the next financial year, the applicant should ask that the Certificate be issued after 30 June to include any liability for the next financial year.

If the land subject to the Certificate request is only part of the land (i.e. the land has been subdivided), the Certificate will relate to the whole of that land prior to the subdivision.

Where the Commissioner is unable to calculate the exact amount of land tax payable, an estimate may be provided.

It is an industry-based convention for a real estate contract to provide for land tax to be apportioned (based on a single holding basis) between the purchaser and vendor of land. Single holding basis means that the land tax is calculated as if it were the only property owned by the person. This practice is adopted to ensure that the purchaser of land is not disadvantaged as a result of a vendor's wider property holdings (if any).

Note: This process is usually undertaken by the conveyancer pursuant to the standard real estate contract signed by the vendor and the purchaser and is not the responsibility of RevenueSA.

RevenueSA issues land tax notices for the full financial year to the owner of the land as at 30 June immediately preceding the applicable financial year.

Requesting certificates

Certificates may be ordered either individually from RevenueSA, or as part of a **Property Interest Report** from the Lands Titles Office.

A **Property Interest Report**, issued pursuant to Section 7 of the *Land and Business (Sale and Conveyancing) Act 1994* lists any interest the South Australian Government, or one of its agencies, may have in a property.

Individual Certificates or a Property Interest Report may be ordered either online or over the counter, as set out below:

Individual Certificates - RevenueSA

Land tax Certificates may be requested **online** by registered users of RevNet, an Internet-based system that allows an easy, flexible and more effective way for people to do business with RevenueSA.

A Certificate requested via RevNet is normally issued immediately and may be printed by the user.

Further information is available on the RevNet website at www.revnet.sa.gov.au

Certificates may also be requested **over the counter** from RevenueSA at:

Ground Floor
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

RevenueSA will endeavour to provide a Certificate within twenty-four hours. As specified by the applicant, the Certificate will be held for collection, posted, faxed or left in the applicant's **RevenueSA delivery box** (located at the above address).

Property Interest Report – Lands Titles Office

A Property Interest Report may be obtained **online** by registered users of PropertyAssist, an Internet-based system that allows an easy, flexible and more effective way for people to do business with the Lands Titles Office.

A Property Interest Report may also be requested **over the counter** from the Lands Titles Office at:

Ground Floor
101 Grenfell Street
ADELAIDE SA 5000

The statement, once compiled, will be held for collection, posted, or left in the applicant's **LTO delivery box** at the Lands Titles Office.

Certificate updates may be requested via RevNet (whether ordered individually or as part of a Property Interest Report) or direct from RevenueSA (contact details below). Where the Certificate is still current, there is no charge for this service.

Payments of outstanding land tax liability stated in a Certificate may be submitted by various means, as set out below:

Online

Payment may be made online by registered RevNet users at:

www.revnet.sa.gov.au

By mail

Payment by cheque or money order, accompanied by a copy of the Certificate, may be sent to:

GPO Box 1647
ADELAIDE SA 5001

Over the counter

Payment, accompanied by copy of the Certificate, may be made in person at:

Ground Floor
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

Further information
is available from
www.propertyassist.sa.gov.au

Requesting updates
of certificates

Payment of
outstanding liability
shown on a certificate

Indemnity offered to purchaser of land (important note for purchasers)

Where the amount of land tax stated in a Certificate is paid within a specified period (currently 90 days after the issue date of the Certificate) or the Certificate indicates that no amount is, or will, be payable, the purchaser (and their successors in title) are released from any liability to land tax that may later arise in relation to any financial year commencing prior to the issue of the Certificate (e.g. as a result of an increase in valuation of the land).

If such a liability does arise and the purchaser is indemnified as a result of the provision mentioned above, the Commissioner may recover that further tax amount (including penalties and interest, if any) from the recognised owner as at the last 30 June prior to the change in ownership. However, if the purchaser is not indemnified as a result of the provision mentioned above, the Commissioner may, at his discretion, recover the unpaid tax (including penalties and interest, if any) either from the purchaser (or his or her successors in title) or from the recognised owner as at the last 30 June prior to the change in ownership.

To provide notice to prospective purchasers/transferees of the existence of a land tax debt (which, pursuant to the Act, constitutes a first charge over the land to which the tax relates), the Commissioner may, in certain limited circumstances, effect registration of a permissive caveat over a relevant title or titles.

Caveats registered for this purpose will be removed immediately upon payment of the fee and full discharge of the outstanding land tax debt in respect of the relevant land.

Where such a caveat appears on a title, the purchaser/transferee or their broker etc, is encouraged to contact the **Principal Compliance Officer, Debt Management Services** on **(08) 8226 3116** for further information.

Advising change of ownership

Where a transfer of land has been settled but not registered at the Lands Titles Office with effect from 30 June of the financial year in which the change in ownership occurred, the taxpayer should notify the Commissioner in writing of the details of the change in ownership and provide evidence that settlement occurred on or before 30 June.

Note: Generally the lodgement date will be recognised as the date of change of ownership unless relevant evidence, such as the date when the documents were duly stamped, can be produced to prove otherwise.

Miscellaneous

Taxpayers are required to notify RevenueSA of any change in their postal address within one month of any such change. Taxpayers failing to do so are liable to a fine not exceeding \$125.

Advising change
of address

Land tax is included in the Federal Treasurer's determination under *A New Tax System (Goods and Services Tax) Act 1999* and is NOT subject to GST.

GST

Further Information

Further information 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 1647 ADELAIDE SA 5001 |
| Telephone | (08) 8204 9870 |
| Facsimile | (08) 8207 2100 |
| Email | landtax@sa.gov.au |
| Website | www.revenuesa.sa.gov.au |