

SOUTH AUSTRALIA



STATE TAXATION OFFICE

**Land Tax**

**Circular No. 75**

## **LAND TAX ACT 1936**

### **RECOVERY OF UNPAID LAND TAX ACCRUED PRIOR TO A CHANGE IN OWNERSHIP OF LAND**

#### **1. BACKGROUND**

There have been significant instances, most commonly involving sales of parcels of sub-divided land, where land brokers, land agents or legal practitioners have omitted to ensure that at settlement between the parties effective arrangements have been made for the discharge of all land tax liabilities accruing prior to the change in ownership.

As a result difficulties have arisen for both vendors and purchasers when the Commissioner of Land Tax has sought to recover assessed tax.

Purchasers and conveyancers need to be aware that, in certain circumstances, recovery action may be taken against purchasers where a land tax debt has not been fully discharged in respect of any portion of sub-divided land. The relevant provisions of the Land Tax Act include:

- land tax constitutes a first charge over the land which is subject to the tax;  
**[Section 66]**
- a person is not relieved of any liability for land tax because of a change in ownership occurring after the commencement of a particular financial year for which tax is assessed or will be assessed;  
**[Section 32(1)]**

- the Commissioner may refuse to recognise any change in the ownership of any land until the amount of the tax on that land, together with any fines and interest (if any), has been paid;  
**[Section 32(2)]**
- a purchaser of land and his or her successors in title are released from any further liability for land tax which may subsequently accrue on the land for financial years commencing prior to the date of issue of the certificate in respect of land for which a certificate of liability to land tax is obtained and the amount of tax (if any) accrued prior to its issue is paid within the specified time.  
**[Section 66a\*].**

\*Full details relating to the issue of Section 66a certificates are set out in Land Tax Circular No. 4.

## **2. RECOVERY OF UNPAID LAND TAX UPON CHANGE IN OWNERSHIP**

The practice of the Commissioner in respect of the recovery of unpaid land tax where a change in ownership occurs after the relevant tax liability is accrued, or will accrue, is as follows:-

### **2.1 ~~Purchaser and successors in title indemnified pursuant to Section 66a of the Act~~**

An indemnity applies in respect of the purchaser and his or her successors where the full amount of unpaid tax, as specified in a certificate issued pursuant to Section 66a of the Act, is paid within 90 days of the issue of the certificate. The purchaser and his or her successors are similarly indemnified against any further liability that may arise (eg. as a result of an increase in valuation of the land or in the rates of tax) for any financial year commencing prior to the change in ownership.

If an increase in land tax does accrue for any prior financial year the Commissioner may recover that further tax amount (including fines and interest, if any) from the recognised owner as at the last 30 June prior to the change in ownership.

### **2.2 ~~Indemnity not obtained~~**

Where (for any reason) the indemnity obtainable under section 66a does not apply and land tax remains unpaid for any financial year commencing prior to a change in ownership of land, the Commissioner may at his discretion recover the unpaid tax (including fines and interest, if any) from ~~either~~ the recognised owner as at the last 30 June prior to the change in ownership or from the purchaser or his or her successors in title.

Action to recover a particular debt arising in these circumstances will be withdrawn immediately upon full satisfaction of the debt by either party.

### **3. REGISTRATION OF CAVEATS ON TITLES**

To provide notice to prospective purchasers/transferees of the existence of a land tax debt (a first charge over the land), 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 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 his or her broker etc., is encouraged to contact Carlo Mancini, Manager, Recovery on telephone number 226 3781 for further information.

June, 1993

COMMISSIONER OF LAND TAX

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