

2021-22 Guide to Legislation

Land Tax: Joint Owners

This is a general guide to the *Land Tax Act 1936* for joint owners.

This document should not be read in isolation to the legislation and does not in any way override the *Land Tax Act 1936*.

In this Guide:

- all references made to Sections, Parts or Divisions relate to the *Land Tax Act 1936* unless otherwise specified.
- a reference to the Commissioner is a reference to the Commissioner of State Taxation.

We hope you find this Guide to be helpful 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 mentioned in this Guide, please feel free to contact RevenueSA on (08) 8226 3750 (select option 2).

COMMISSIONER OF STATE TAXATION

9 July 2021

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Introduction

Amongst other things, the *Land Tax Act 1936* contains provisions which set out how land owners' interests will be aggregated across joint and sole ownerships for the purposes of assessing land tax.

Pursuant to Section 9(4), owners of land that is jointly owned by more than one owner will receive a land tax assessment for the jointly owned land where the value of the jointly owned land is above the taxable threshold.

Pursuant to Section 9(6), if an owner of jointly owned land also owns (or is deemed to own, for example, they are a notified beneficiary/unit holder/designated beneficiary of a trust) other parcels of land in their own right, they may receive a separate assessment for their total landholdings that will include their share of the jointly owned land.

Pursuant to Section 9(7), Section 9(6) does not apply to land that is held as trustee of an excluded trust (for further information regarding excluded trusts, please refer to the land held on trust information).

Pursuant to Section 9(8), to avoid double taxation a deduction will be made on an individual's liability equivalent to their share of the land tax assessed on any jointly owned land (proportional to their ownership share of the jointly owned land).

This deduction will be taken off the individual's entire liability, even if the liability includes land tax payable on land held by the individual separately or in other joint ownerships. Pursuant to Section 9(9), where the deduction for jointly owned land is greater than the individual's land tax liability, the individual's liability is set at zero. The deduction will thereby not reduce the individual's liability below zero, such that there is no refund of the amount of the deduction which exceeds the tax payable.

Land that is excepted or exempted from land tax

Land that is excepted or exempt (see Sections 4 and 5 respectively) (hereafter both are referred to as "exempt") in full from land tax under the *Land Tax Act 1936* is not liable to land tax. Accordingly, land that is exempted from land tax will not be included in the taxable value of land in an assessment of a land tax liability.

The following discussion therefore proceeds on the basis that any land fully exempted from land tax will not be included in any assessment of a land tax liability.

Joint owners

Pursuant to Section 9, if 2 or more owners own land, they are joint owners of that land. An owner that owns interests in land (i) in their own right and as trustee of a trust(s) or (ii) as trustee of multiple trusts, is a separate joint owner of each interest in the land.

As a joint owner:

- each unique combination of owners is considered a unique joint ownership. For example, where A Smith owns land jointly with B Jones and owns different land jointly with B Jones and C Williams, this would be considered 2 different joint ownerships;
- each unique joint ownership will receive an assessment of land tax when the total site value of the taxable land it owns is equal to or exceeds the minimum land tax threshold (\$482,000) (note that pursuant to Section 6, where the total amount of land tax payable by any taxpayer in respect of any year would be less than \$20, no land tax is payable by the taxpayer); and
- each member of that joint ownership is also assessed separately for land tax on their portion of the jointly held land (other than where the joint owner is trustee of an excluded trust).

An owner will only receive one individual assessment for all of the land in which they are an owner, or part owner. If you receive more than one individual assessment for the land in which you are an owner (as opposed to receiving assessments on behalf of a joint ownership or as trustee of a trust), please notify RevenueSA by email at landtax@sa.gov.au.

Assessing joint owners

Pursuant to Section 9, land held by more than one owner is assessed for land tax in 2 stages.

Stage 1 - Assessing the owners together — joint assessment

First, pursuant to Section 9(4), each unique joint ownership is assessed on all the taxable land owned by that combination of owners as though they were one person.

If a unique joint ownership only owns exempt land, or the total taxable value of the jointly owned land is below the threshold, an assessment will not be issued.

The joint ownership assessment is only sent to one of the joint owners. A member of that joint ownership can advise RevenueSA as to whom the assessment will be

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issued to. Otherwise, RevenueSA will select one of the owners to send the assessment to.

Pursuant to Section 16, all members of a joint ownership are jointly and severally liable for the land tax assessed against the joint ownership. This means that RevenueSA can recover any land tax outstanding against jointly owned land from any one or more of the joint owners.

Stage 2 - Assessing each joint owner — separate assessment

Pursuant to Section 9(6), each member of a joint ownership is separately assessed on:

- the owner's interest in the jointly owned land (as if the joint owner were the owner of a part of the land in proportion to that interest); and
- any other land owned by the owner solely; and
- the owner's interest in any other jointly owned land.

An owner's share in jointly owned land is determined having regard to the following:

- joint owners owning land as tenants in common own a particular share in the land, so each owner is assessed on their particular share in the land; and
- joint owners owning land as joint tenants equally share in the land. As such, the land, or the portion of the land, that is held as joint tenants is divided by the number of joint tenants to get each owner's share.

Pursuant to Section 9(8), to avoid double taxation, a formula provides for a deduction to be made on the owner's individual assessment, equivalent to their share of the land tax assessed on any jointly owned land that they are an owner of (proportional to the ownership share), with the deduction formula being:

$$A * B$$

where-

A is the proportion of the owner's interest in the land to the total interests in that land, and

B is the total amount of land tax assessed on the land under the joint ownership.

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For example, Sam and Alex each hold a 50% interest in Property Z.

The land tax assessed against Property Z under the joint ownership of Sam and Alex is \$500. Sam and Alex will receive a notice of assessment for the land tax assessed against them as a joint ownership (\$500).

50% of the value of Property Z is also included in Alex's individual land tax assessment. To avoid double taxation, Alex will receive a deduction of up to \$250 (being 50% of the land tax assessed against Property Z under the joint ownership) in his individual land tax assessment.

50% of the value of Property Z will likewise be included in Sam's individual land tax assessment. To avoid double taxation, Sam will likewise receive a deduction of up to \$250 (being 50% of the land tax assessed against Property Z under the joint ownership) in his individual land tax assessment.

This deduction will be taken off the owner's entire liability, even if the liability includes land tax payable on land that they own solely, land from other joint ownerships and land that they are deemed to own as a result of nominations of beneficiaries/unitholders.

Pursuant to Section 9(9), where the deduction for jointly owned land is greater than the owner's land tax liability, the owner's liability is set at zero. The deduction will not reduce the owner's liability below zero, such that there is no credit or refund of the amount of the deduction which exceeds the tax payable.

An owner will only receive a deduction in their individual assessment if there is land tax assessed against the jointly owned land in the joint ownership.

Where land is held jointly, a joint owner of that land may receive more than one notice of assessment that includes that land. This may include:

- the notice of assessment for the joint ownership; and
- the notice of assessment for their share of the land.

An individual's notice of assessment will list all the land they own, in full or in part, and their deduction (if any).

Where the land tax assessed against a joint ownership is reassessed for any reason, the deduction calculated and apportioned to the members of that joint ownership will also be recalculated.

Example 1 - for the 2021-22 financial year

Mary and Morgan jointly own land with a site value of \$900,000 with a 50-50 share (land A).

Mary also owns land solely with a site value of \$500,000 (land B).

Morgan also owns land solely with a site value of \$300,000 (land C).

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Mary and Morgan will be assessed for any land they own solely, as well as being assessed on the joint ownership for which they are jointly liable.

Joint ownership

Mary and Morgan will be jointly liable for the land tax on land A. Land tax will be calculated against the full value of land A, that is, \$900,000.

The land tax for the 2021-22 financial year is \$3,035.

Mary's ownership

The total value of assessable land for Mary's individual liability is \$950,000 (50% of land A + 100% of land B). Before the deduction, the land tax for the 2021-22 financial year is \$3,660.

Mary will receive a deduction of 50% of the land tax assessed under the joint ownership. The deduction is \$1,517.50 (50% x \$3,035).

Mary's land tax liability will be \$2,142.50 (\$3,660 - \$1,517.50).

Morgan's ownership

The total value of assessable land for Morgan's individual liability is \$750,000 (50% of land A + 100% of land C). The land tax for the 2021-22 financial year is \$1,340.

Morgan will receive a deduction of 50% of the land tax assessed under the joint ownership. The deduction is \$1,517.50 (50% x \$3,035).

Morgan's land tax liability will therefore be the land tax payable on \$750,000 (\$1,340) less a deduction of 50% of the land tax payable on \$900,000 (\$1,517.50).

As the deduction (\$1,517.50) is greater than the land tax liability on the total value of assessable land (\$1,340), Morgan's land tax liability would be \$0 and he would not receive an assessment or a refund of that excess.

Exempt jointly owned land

Land that is exempt from land tax (see Sections 4 and 5) will not be included in the land tax calculations for either the joint owners assessment (Stage 1 above) or the individual's assessments (Stage 2 above).

If an owner only owns land that is exempt from land tax, regardless of whether that land is held only by themselves or as a joint owner, they will not receive an assessment.

If an individual jointly owns land that is exempt from land tax due to it being used as an owner's principal place of residence (PPR) and receives an individual assessment

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because they own other taxable land, the assessment will reflect the principal place of residence exemption.

Example 2 - a jointly owned home

Sam owns several investment properties by herself. She also owns with her father, Dave, in equal shares, the land which Dave uses as his principal place of residence. It is the only parcel of land Sam and Dave own together. Dave owns no other land.

As Dave uses the land as his principal place of residence, the land is exempt from land tax and a joint assessment will not be issued. As Dave only owns land that is exempt, he will not receive an individual assessment.

Sam will receive an individual assessment which will include her investment properties and her interest in the land she owns with Dave (that is, his principal place of residence), however, the assessment will show that Dave's principal place of residence is fully exempt from land tax, such that Sam will also not pay land tax on her interest in the jointly held land.

Under the taxable threshold

Pursuant to Section 8A, an assessment is not issued if the total site value of all land is below the taxable threshold (\$25,000 for trust held land and \$482,000 for all other taxable land for the 2021-22 financial year) (note that pursuant to Section 6, where the total amount of land tax payable by any taxpayer in respect of any year would be less than \$20, no land tax is payable by the tax payer).

There can be situations where a person owns land jointly with another person and that land is below the taxable threshold, resulting in there being no land tax assessed against that land in the joint ownership.

However, an owner may still receive an individual assessment that includes the jointly owned land if the total taxable value of all of the land they own, including their interest in the jointly owned land, is over the threshold.

In this case, they will not get a joint ownership deduction for the jointly owned land because no land tax was assessed against the joint ownership and their individual assessment will be the only land tax assessment.

Example 3 - jointly owned land under the taxable threshold

Jim owns 25% and Sarah owns 75% of an investment property with a taxable value of \$450,000 (land A).

Sarah also owns one other property solely with a taxable value of \$400,000 (land B).

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Joint assessment

As the taxable value of land A is under the taxable threshold, Jim and Sarah do not receive a joint assessment for land A.

Separate assessment of Jim

The only land that Jim owns is land A. Because Jim's total taxable landholdings (25% of \$450,000 = \$112,500) is under the taxable threshold, he does not receive an individual assessment.

Separate assessment of Sarah

Sarah receives an individual assessment for all of the taxable land she owns, which is 75% of land A and 100% of land B, because the total value of all the taxable land she owns is over the taxable threshold of \$482,000.

Sarah is assessed for land tax on all of the land she owns by calculating

1. the total value of her taxable land holdings and
2. the tax payable on her total land holdings.

Calculating the total taxable value of Sarah's land holdings

The value of Sarah's interest in land A, which she owns with Jim in a joint ownership is \$337,500, being 75% of \$450,000.

Accordingly, the total value of Sarah's taxable land holdings is \$737,500 (\$337,500 + \$400,000).

She does not receive a joint ownership deduction for land A because the joint ownership was not assessed for land tax on this parcel of land.

Trust rates only payable on a separate assessment, not on a joint assessment

Pursuant to Section 9(10), if an owner of land is a trustee of a trust to which the land is subject:

1. no regard is to be had to the existence of the trust in relation to the assessment of the joint owners of the land (Stage 1) but
2. regard is to be had to the existence of the trust in relation to the individual assessment of each of the joint owners (Stage 2).

Accordingly, the trust rates only apply when land tax is calculated in the individual assessment (Stage 2), and not in the joint assessment (Stage 1).

Guides to Legislation do not have the force of law

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Where 2 or more people own a parcel of land as trustees for the same trust, they will be treated as a single owner.

See the **Guide to Legislation - Land Tax: Land Held on Trust** available on revenuesa.sa.gov.au for more detailed information.

Example 4 - trust rates

Land valued above the taxable threshold is owned in equal shares by (1) Mr Smith in his own right, and (2) Smith Co Pty Ltd as trustee of the Smith Family Trust. Both owners each own other land solely.

The joint owners are assessed together at the general rate of land tax.

Mr Smith will be assessed at the general rate of land tax on his interest in the jointly owned land and the other land he owns. The assessment will also include a joint ownership deduction.

If a notice of beneficial interest(s)/unit holdings or a designated beneficiary is not in place, Smith Co Pty Ltd as trustee of the Smith Family Trust will be assessed at the trust rates on its interest in the jointly owned land and the other land it owns. The assessment will also include a joint ownership deduction.

Comparatively, if a notice of beneficial interest(s)/unit holdings or a designated beneficiary is instead in place:

- Smith Co Pty Ltd as trustee of the Smith Family Trust will be assessed at the general rates of land tax (and not the trust rates of land tax) on its interest in the jointly owned land and the other land it owns, with the assessment to include a joint ownership deduction; and
- the beneficiary(ies)/unitholders will have the interest held on behalf of the trust included in any assessment of their land tax, which will similarly include a deduction (proportionate to their percentage interest in the trust) for the land tax assessed against Smith Co Pty Ltd as trustee of the Smith Family Trust. The deduction is equal to the tax assessed against the trustee before any joint ownership deductions. If the designated beneficiary owns no further land, there is no further tax payable.

If the Smith Family Trust was a discretionary trust, any land not subject to the trust as at midnight on 16 October 2019 would instead be assessed against the trustee at the trust rates and would not be included in any separate assessment of the designated beneficiary's land tax liability for land that was subject to the trust as at midnight on 16 October 2019.

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Further information

Online versions of state legislation are available at the South Australian legislation website at legislation.sa.gov.au.

See the **how is land tax assessed** page on revenuesa.sa.gov.au for more information.
