Land Tax - Structuring

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Queensland land tax legislation

- Land Tax Act 2010 (QLD) (**LTA**)
- Land tax is imposed on the **taxable value** of all **taxable land** owned by an **owner** at <u>30 June each year</u>, for the coming 12 months – section LTA
- So:
  - What is ‘taxable value’?
  - What is ‘taxable land’?
  - Who is an ‘owner’?

Taxable value

- ‘Taxable value is the aggregate of the relevant unimproved value of all land owned less any exemptions or deductions. The relevant unimproved value of land will be the lesser of the:
  - Unimproved value for the financial year;
  - Average of the unimproved value over the current and previous two financial years; and
  - Capped value of the land for the relevant year.

  Section 16 LTA
- Traps:
  - Recent subdivisions

Valuations

- Land is valued once a year by the respective State government
- They will generally notify if there has been an increase
- You have the ability to object to such valuation if you deem it unreasonable

Owner

- Generally the registered owner of the property who appears on the certificate of title and the Land Titles Registry will be taken to be the owner. It is, however, important to note that:
  - Section 10(2) LTA flags that other persons may also be the owner of the property; and
  - Section 11 states that, in the case of an acquisition or sale of the property, the seller will be taken to be the owner of the land until the buyer is in possession of the land, regardless of whether settlement of the conveyance has occurred.
- Note land tax rates differs between owners:
  - Individuals;
  - Companies, trusts and 'absentees'

Land tax rates – individuals

- Individuals:
  - $0 to $599,999 - $0
  - $600,000 to $999,999 - $500 plus 1% for each $1 exceeding $600,000
  - $1,000,000 to $2,999,999 - $4,500 plus 1.65% for each $1 exceeding $1,000,000
  - $3,000,000 to $4,999,999 - $37,500 plus 1.25% for each $1 exceeding $3,000,000
  - $5,000,000 over - $62,500 plus 1.75% for each $1 exceeding $5,000,000

Land tax rates – companies, trusts and absentees

- Companies, trusts and absentees
  - $0 to $349,999 - $0
  - $350,000 to $2,249,999 - $1,450 plus 1.7% for each $1 exceeding $350,000
  - $2,250,000 to $4,999,999 - $33,750 plus 1.5% for each $1 exceeding $2,250,000
  - $5,000,000 over - $75,000 plus 2% for each $1 exceeding $5,000,000
- Note 1.5% surcharge for absentees from 30 June 2017 onwards
- Absentees defined in section 31 LTA (generally, someone absent from Australia)
- Exception under 31(3) LTA

Aggregation and co-ownership

- Taxable land is aggregated – section 19 LTA
- Land held by a trust is separate from being directly owned – section 20 LTA
- Co-owner owns land in proportion to co-owner's interest, to be severally assessed – section 22 LTA
- Note, commissioner may make one assessment if land was owned by one owner, despite having several co-owners – section 22(4) LTA, only if:
  - There are at least 5 co-owners of the land; **and**
  - The commissioner considers the land is used for investment or commercial purposes. Section 22(5) LTA

Real example

- Unit Trust held taxable land with a taxable value of $6,000,000 through four commercial properties
- Estimated land tax bill of $95,000 [$75,000 + (2% of $1,000,000)]
- Commercial properties were valued at:
  - $2,000,000
  - $1,500,000
  - $1,000,000
  - $500,000
- Undertook a restructure

Owner	Property 1 ($2,000,000)	Property 2 ($1,500,000)	Property 3 ($1,000,000)	Property 4 ($500,000)
Original UT	25% ($500,000)			
UT 2	25% ($500,000)			
UT 3	25% ($500,000)			
UT 4	25% ($500,000)			
UT 5		25% ($375,000)		
UT 6		25% ($375,000)		
UT 7		25% ($375,000)		
UT 8		25% ($375,000)		
UT 9			25% ($250,000)	
UT 10			25% ($250,000)	
UT 11			25% ($250,000)	
UT 12			25% ($250,000)	
UT 13				25% ($125,000)
UT 14				25% ($125,000)
UT 15				25% ($125,000)
UT 16				25% ($125,000)

Real example

- Land tax on:
  - $500,000 = $4,000 [$1,450 + 1.7%(150,000)] ($16,000 for four trusts)
  - $375,000 = $1,875 [$1,450 + 1.7%(25,000)] ($6,225 for four trusts)
  - $250,000 = $0 (below $350,000 threshold)
  - $125,000 = $0 (below $350,000 threshold)
- Total land tax paid = $22,225
- Land tax saving = $72,775
- **STOP** – Anti-avoidance? (Part 8 LTA)

Taxable land

- Taxable land is land in Queensland that (section 9 LTA):
  - Has been alienated from the State for an estate in fee simple; and
  - Is not exempt land
- Exempt land:
  - Main residence (Part 6 Division 1 LTA)
  - Owned by or for charitable institutions (Part 6 Division 2 LTA)
  - Aged care facilities (Section 51 LTA)
  - Primary production (Section 53)
  - List continues in Part 6 Division 3 LTA

Main residence

- Section 36 – main residence applies if:
  - Land is used as the home for a period of 6 months ending when a liability for land tax arises (i.e. 6 months before 30 June); or
  - Section 37 or 38 is satisfied; or
  - Commissioner is satisfied the land is used as the PPR for a person whether alone or with another person when the liability for land tax arises (i.e. you didn't stay in the property for a period of 6 months before 30 June, but it is still your home)
- Section 36(2) outlines what the Commissioner considers:
  - Length of time, place of residence of person's family;
  - Whether personal belongings have been moved, the address on the electoral roll;
  - Whether services are connected with the land, and if such services are address to people residing;
  - Is there a common intention to occupy → Paspaley's Case

Main residence

- Also considers special care situations
- Also consider renovations and/or demolitions
- Apportionment if parts are used for non-exempt purposes
- Section 43 states that land held on trust can still be exempt (conditions apply)

Take away tip

- Do any of your clients own real property in a trust?
- If so, do they reside on that property?
- Furthermore, are they paying land tax on that property?
- If not yet, then contemplate submitting a form **today** so when land tax applies, they are exempt
- If they are, then contemplate seeing if you are able to obtain a refund (up to four years previously)

Absentees

- Important if clients are ‘fly-in fly-out’
- For individuals, means a lower tax free threshold
- Absentee is defined to mean (per section 31 LTA)
  - A person who does not ordinarily reside in Australia
  - Includes a person who cannot satisfy they ordinarily reside in Australia and is absent from Australia for more than half of the 12 month period ending when the ownership is decided (i.e. the year before land tax is assessed)
- **But** some carveouts including Commonwealth or State public officers overseas as part of their duty or an individual employed by an employer in Australia for a continuous period of 1 year immediately before the employee’s absence and such absence is in the performance of the employee’s duty for the employer

Take away tip

- Do you have clients who have moved overseas recently?
- Do they own Australian property?
- Will they be considered as an absentee?
- Do you need to give them forewarning, or see if their arrangements fall within the exemptions?

Other bits and pieces

- Do contemplate other exemptions (charities or primary production)
- It is an avenue for savings for your clients (especially if they have already been paying land tax)
- You do need to look at the legislation as the rules differ for each exemption
- I’ve only covered QLD, but you need to consider assets held by other people interstate
- You do get separate thresholds for land in other States/Territories if held by one entity (i.e. individual buys land in QLD, NSW and VIC)

Personal structuring

- Queensland does allow a main residence exemption from land tax for land held in a trust used as your main residence
- Consider other issues:
  - CGT
  - Asset protection

Contact

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