



Chat Legal Pty Ltd
ABN 64 621 391 553
letschat@chatlegal.com.au
GPO Box 989, Brisbane, QLD 4001
Level 16, 97 Creek Street, Brisbane, QLD 4000
<https://chatlegal.com.au>

Let's chat

QLD Land tax – Overview following changes and future considerations? –
August 2022

With:

Darius Hii – Tax and estate planning lawyer; Chartered Tax Advisor; and Director at Chat Legal

Information provided is general in nature; precise application depends on specific circumstances



Outline

- Outline of QLD land tax rules
 - Changes coming for land owned 30 June 2023
 - Waiting on updated land tax legislation to reflect interstate asset changes (not until January 2023)
- What could be next?
 - Looking at other States
- The end of land tax structuring in Queensland?
- As at 31 July 2022
- Legislation referred to QLD LTA – *Land Tax Act 2010* (Qld)



Imposition of land tax

- *This Act [QLD LTA] imposes land tax for **each financial year** on all taxable land.* – Section 6(1) QLD LTA
- *The **amount of land tax imposed** on the taxable land owned by a taxpayer is based on the **Queensland proportion of the total value of the Australian land** owned by the taxpayer.* – Section 6(2) QLD LTA
- To consider:
 - Land tax imposed **each** financial year.
 - Land tax imposed on all taxable land.
 - What is the Queensland proportion of total value of the Australian land (which land tax is imposed)?
 - Amount of land tax imposed?

Total value of the Australian land



Chat Legal Pty Ltd
Let's have a chat

- **Australian land** – taxable land or relevant interstate land
 - **Taxable land** – land in Queensland that has been alienated from the State for an estate in fee simple and is not exempt land
 - **Relevant interstate land** – is interstate land if a valuation of the land is in effect (or is required to be made) and the land is not excluded interstate land
 - **Interstate land** – is land in another State (other than the ACT) that has been alienated from the State for an estate in fee simple **or** land in the ACT that is under a crown lease or is a grant of freehold

(see sections 8A, 9 and 9A QLD LTA)
- **Total value of Australian land** –the total value of the Australian land owned by a person, for a financial year, is the sum of:
 - the **taxable value** of the person's taxable land for the financial year; and
 - The **statutory value** of the person's relevant interstate land for the financial year

Exempt land and excluded interstate land



Chat Legal Pty Ltd

Let's have a chat

- **Exempt land**
 - Part 6 QLD LTA outlines types of exempt land
 - Part 6 only applies to land in Queensland
 - Includes land used as the home of a person, land owned by or for charitable institution and other exemptions (including but not limited to aged care facilities, supported accommodation, Government land, land used for primary production and moveable dwelling parks)
- **Excluded interstate land**
 - Part 6A QLD LTA outlines types of excluded interstate land
 - Part 6A only applies to interstate land
 - Includes similar to those in Part 6 above

Taxable value and statutory value



Chat Legal Pty Ltd
Let's have a chat

- **Taxable value** means the taxable value of taxable land is the lesser of:
 - the Land Valuation Act value of the land for the financial year; or
 - the averaged value of the land for the financial year*
(section 16 QLD LTA)
- **Statutory value** is interstate land is the land's relevant interstate value when the liability for the land tax arises for the financial year.
 - **Relevant interstate value** is based on the land value of the various different States
 - Commissioner has the power under section 80A to determine an amount is the interstate value.
(section 18A QLD LTA)



Queensland proportion

- **Queensland proportion** - means the proportion that relates to the taxable value of the taxable land (section 6(3) QLD LTA)
- Remember:
 - taxable value = value of Queensland land
 - taxable land = Queensland land



Recap

- Land tax payable on 'taxable value' of Queensland land of the total value of Australian land
 - Does not include exempt land and excluded interstate land
 - Value based on relevant valuation method for the land noting interstate land does not have an averaging mechanism



Land tax calculation

- $\text{Tax} = G * (\text{TL}/\text{AL})$ (section 32 QLD LTA)
- Where:
 - G = Gross amount worked under section 32(2) QLD LTA
 - TL = Total taxable value of taxable land owned by the taxpayer
 - AL = Total value of the Australian land owned by the taxpayer
- G = Gross amount on the total value of the Australian land owned by the taxpayer multiplied by the land tax rate summarised as follows:
 - For individuals other than absentees and trustees:
 - $< \$600,000 = \text{nil}$
 - $\$600,000 \text{ to } \$999,999 = \$500 \text{ plus } 1\text{c for each } \$1 \text{ more than } \$600,000$
 - $\$1,000,000 \text{ to } \$2,999,999 = \$4,500 \text{ plus } 1.65\text{c for each } \$1 \text{ more than } \$1,000,000$
 - For companies and trustees
 - $< \$350,000 = \text{nil}$
 - $\$350,000 \text{ to } \$2,249,999 = \$1,450 \text{ plus } 1.7\text{c for each } \$1 \text{ more than } \$350,000$
 - $\$2,500,000 \text{ to } \$4,999,999 = \$33,750 \text{ plus } 1.5\text{c for each } \$1 \text{ more than } \$2,250,000$



Land tax calculation

- 3-step process
- First, calculate the 'Total value of Australian land'
- Then, multiply based on the rates in Schedule 1 (individuals), Schedule 2 (companies and trustees) and Schedule 3 (absentees)
 - Note the surcharge of 2c for each \$1 more than the tax-free threshold
- Finally, apportion the 'Total gross tax amount' based on how much of the Total value of Australian land is Queensland land



Land tax calculation - example

- Individual owns the following property with the relevant land values:
 - Queensland home - \$610,000
 - Queensland investment property - \$450,000
 - Victoria investment property - \$300,000
 - New South Wales investment property - \$500,000
- Under old rules:
 - No land tax payable as:
 - Home is exempt land
 - Each other land value falls under the land tax threshold of QLD, NSW and VIC
- Under new rules:
 - Total value of Australian land is \$1,250,000 (Qld home not included)
 - Total gross tax amount = \$4,500 plus 1.65c for each \$1 more than \$1,000,000 = **\$8,625**
 - Apportion for Qld proportion = $\$8,625 * (450,000/1,250,000) = \mathbf{\$3,105}$

Interstate land notification requirements



Chat Legal Pty Ltd

Let's have a chat

- Notification requirement to notify QRO of property description, taxpayer's interest and statutory value (section 78A QLD LTA)
- Notice must be given generally on or before 31 October or within 30 days of the Commissioner issuing an assessment notice (if the assessment notice is received before 30 September) (section 78A(6) QLD LTA)
- Once notice provided, no need to provide notice unless there has been a change to the interstate land and/or statutory value (section 78A(7) QLD LTA)
- Note: QRO has ability to make a determination in relation to interstate value of interstate land (section 80A QLD LTA)



Other things unchanged

- Land tax liability arises at midnight on 30 June preceding the financial year (section 7 QLD LTA)
- Owner of taxable land when liability arises is liable to pay the tax (section 8 QLD LTA)
- Owner of land includes person who has freehold title (section 10 QLD LTA) noting a taxpayer who is a trustee of a trust is separately assessed on the Australian land subject to the trust (section 20(1) QLD LTA)
- Separate assessment of trust land does not apply if taxpayer is trustee of more than 1 trust **and** the interest of the beneficiaries of 2 or more of the trusts are the same (section 20(2) QLD LTA)
- Co-owner of land rules remain unchanged that deems at least 5-co-owners of land as assessed under 1 threshold (section 22 QLD LTA)



Other things unchanged

- Land owned by 2 or more trustees of the same trust may be assessed as if the land were owned by 1 person (section 22A QLD LTA)
- Absentee continues not to include an Australian citizen or the holder of a permanent visa under *Migration Act 1958* (Cth) (section 31 QLD LTA)
- Exempt land provisions largely remain the same (Division 6 QLD LTA)
- Foreign company, foreign trust and absentee concepts remain the same (Division 4 QLD LTA) with 2c surcharge per \$1 above tax-free threshold



Things to note

- Existing QLD LTA exemptions will generally be available to interstate land in the same way as Queensland land (subject to some exceptions)
 - Exemption met in relevant interstate LTA does not mean QLD LTA exemption met
- No averaging of value for sudden increases in statutory value of interstate land
- ACT does not provide freehold land, but rather crown leasehold land which is still subject to QLD LTA provisions

Options to broaden land tax scope



Chat Legal Pty Ltd
Let's have a chat

- QLD LTA allows for multiple taxpayers with separate tax-free thresholds **as well as** multiple co-owners of a single lot claiming separate tax-free thresholds
- 'Aggregation' rules where establishment of multiple trusts treated as a single taxpayer (e.g. SA recently and VIC since mid 2000s)
- Victoria had 'trust nomination' rules since mid 2000s
- Grouping of company rules (e.g. NSW, VIC and SA)
- New South Wales 'property tax'



Grouping of companies

- Section 29 *Land Tax Management Act 1956* (NSW):
 - The NSW Chief Commissioner may assess land tax payable by companies that are related to each other and that own land in NSW:
 - Separately;
 - Jointly; or
 - Any 2 or more of those companies jointly and the remainder separately.
- Similar provision section 13J *Land Tax Act* (SA) and section 50 *Land Tax Act 2005* (VIC) (although VIC legislation may force joint assessment if related companies treated as 1)
- Grouping by 'control' and 'share' tests



Trust ownership penalties

- Certain trusts holding land in NSW do not have any land tax free threshold (i.e. tax is paid immediately at 1.6%)
- Trusts in South Australia and Victoria have higher taxing rates if a person is not 'designated' or 'nominated'
- If a beneficiary is 'designated' or 'nominated', then the beneficiary is treated as 'owning the land' in terms of calculating land tax payable for that beneficiary
- Note that Victoria has apportionment rules based on when the land was acquired by the trust (using 2006 as the dividing point) to grandfather acquisitions prior to the introduction of the 'nominated beneficiary' rules
- South Australia has similar apportionment rules



Same same but mostly same

The nominated beneficiary is deemed, for the purposes of this Act (other than Division 1 of Part 4) but for no other purpose, to be the owner (but not to the exclusion of the trustee) of the pre-2006 land subject to the trust, other than land for which a nomination under section 46H is in force, and is to be assessed for land tax on that land accordingly, together with any other taxable land owned by the nominated beneficiary.

The trustee of the trust is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee—

- (a) in respect of any pre-2006 land, other than land for which a nomination under section 46H is in force—at the applicable rate set out in Part 1 of Schedule 1; and

the designated beneficiary of the trust is deemed, for the purposes of this Act (other than a residential land exemption), to be the owner (but not to the exclusion of the trustee) of land that was subject to the trust at the prescribed time (*pre-existing trust land*) and is liable for land tax on that land accordingly, together with any other land owned by the beneficiary, assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2;

the trustee for the trust is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee—

- (i) in the case of pre-existing trust land—in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2; or



Same same but same

$$L = \left[(R_1 \times T) \times \left(\frac{A}{T} \right) \right] + \left[(R_2 \times T) \times \left(\frac{B}{T} \right) \right]$$

where—

- L** is the land tax assessed for the trustee;
- R₁** is the applicable rate of land tax set out in Part 1 of Schedule 1;
- R₂** is the applicable rate of land tax set out in Part 3 of Schedule 1;
- T** is the total taxable value of all taxable land subject to the trust, other than land for which a nomination under section 46H is in force;
- A** is the total taxable value of the pre-2006 land subject to the trust, other than land for which a nomination under section 46H is in force;
- B** is the total taxable value of the post-2006 land subject to the trust, other than land for which a nomination under section 46H is in force.

in the case where land subject to the trust consists of both pre-existing trust land and subsequent trust land—in accordance with the following formula:

$$L = \left[(R_1 \times T) \times \left(\frac{A}{T} \right) \right] + \left[(R_2 \times T) \times \left(\frac{B}{T} \right) \right]$$

Where—

- L** is the land tax assessed for the trustee
- R₁** is the applicable rate of land tax set out in Schedule 1 Part 2
- R₂** is the applicable rate of land tax set out in Schedule 1 Part 3
- T** is the total taxable value of all taxable land subject to the trust
- A** is the total taxable value of the pre-existing trust land subject to the trust
- B** is the total taxable value of the subsequent trust land subject to the trust.

NSW land tax rates (as at July 2022)



Chat Legal Pty Ltd
Let's have a chat

- General land tax rate
 - \$0-\$822,000 – \$100
 - \$822,001-\$5,026,000 – \$100 plus 1.6% of excess
 - \$5,026,001+ – \$67,364 plus 2% of excess
- ‘Special trusts’ do not have tax free threshold and pay 1.6% immediately up until the higher rate and include:
 - Discretionary trust
 - Family trust
 - Unit trusts
- Following trusts are not ‘special trusts’:
 - Fixed trusts
 - Superannuation trusts
 - Sometimes trust created by a Will (other than a testamentary trust), concessional trusts, family unit trusts and charitable trusts

SA land tax rates (as at July 2022)



Chat Legal Pty Ltd
Let's have a chat

- General rates
 - \$0-\$534,000 – Nil
 - \$534,001-\$858,000 – 0.5% of excess
 - \$858,001-\$1,249,000 – \$1,620 plus 1% of excess
 - \$1,249,001-\$2,000,000 – \$5,530 plus 2% of excess
 - \$2,000,001+ – \$20,550 plus 2.4% of excess
- Trust rates (where no designated beneficiary)
 - \$0-\$25,000 – Nil
 - \$25,001-\$534,000 – \$125 plus 0.5% of excess
 - \$534,001-\$858,000 – \$2,670 plus 1% of excess
 - \$858,001-\$1,249,000 – \$5,910 plus 1.5% of excess
 - \$1,249,001-\$2,000,000 – \$11,775 plus 2.4% of excess
 - \$2,000,001+ – \$29,799 plus 2.4% of excess

VIC land tax rates (as at July 2022)



Chat Legal Pty Ltd
Let's have a chat

- General rates
 - \$0-\$300,000 – Nil
 - \$300,001-\$600,000 – \$375 plus 0.2% of excess
 - \$600,001-\$1,000,000 – \$975 plus 0.5% of excess
 - \$1,000,001-\$1,800,000 – \$2,975 plus 0.8% of excess
 - \$1,800,001-\$3,000,000 – \$9,375 plus 1.55% of excess
 - \$3,000,001+ – \$27,975 plus 2.55% of excess
- Trust rates (where no nominated beneficiary)
 - \$0-\$25,000 – Nil
 - \$25,001-\$250,000 – \$82 plus 0.375% of excess
 - \$250,001-\$600,000 – \$926 plus 0.575% of excess
 - \$600,001-\$1,000,000 – \$2,938 plus 0.875% of excess
 - \$1,000,001-\$1,800,000 – \$6,438 plus 1.175% of excess
 - \$1,800,001-\$3,000,000 – \$15,838 plus 1.0114% of excess
 - \$3,000,001+ – \$27,975 plus 2.55% of excess

ACT land tax rates (as at July 2022)



Chat Legal Pty Ltd
Let's have a chat

- Residential property
 - \$0-\$150,000 – 0.54%
 - \$150,001-\$275,000 – \$810 plus 0.64% of the excess
 - \$275,001-\$2,000,000 – \$1,610 plus 1.12% of the excess
 - \$2,000,001+ – \$20,930 plus 1.14% of the excess
- Commercial property
 - N/A

NT land tax rates (as at July 2022)

- Nil



Chat Legal Pty Ltd
Let's have a chat

TAS land tax rates (as at July 2022)



Chat Legal Pty Ltd
Let's have a chat

- General rates
 - \$0-\$99,999.99 – Nil
 - \$100,000-\$499,999.99 – \$50 plus 0.45% of excess
 - \$500,000+ – \$1,850 plus 1.5% of excess

WA land tax rates (as at July 2022)



Chat Legal Pty Ltd
Let's have a chat

- General rates
 - \$0-\$300,000 – Nil
 - \$300,001-\$420,000 – \$300
 - \$420,001-\$1,000,000 – \$300 plus 0.25% of excess
 - \$1,000,001-\$1,800,000 – \$1,750 plus 0.9% of excess
 - \$1,800,001-\$5,000,000 – \$8,950 plus 1.80% of excess
 - \$5,000,001-\$11,000,000 – \$66,550 plus 2% of excess
 - \$11,000,001+ – \$186,550 plus 2.67% of excess



Land tax structuring dead?

- Structuring shouldn't be driven solely by tax
 - Structuring only takes into account laws at the time of structuring and not future changes
 - Anti-avoidance scheme and provisions
- Other key factors:
 - Asset protection
 - Segregation of tenant risk
 - Succession planning



QLD foreign surcharge

- 2% tax for foreign trust, company and absentees (per relevant schedules)
- Absentee is a person who does not ordinarily reside in Australia (section 31(1) QLD LTA)
 - Includes a person who cannot satisfy QRO they ordinarily reside in Australia **and** has been absent from Australia for more than half of the 12 month period before the ownership is decided (section 31(2) QLD LTA)
 - **Does not** include:
 - public officer of the Commonwealth or of a State who is absent in the performance of their duty;
 - an individual employed by an employer in Australia for a continuous period of 1 year before that person's absence if the QRO is satisfied they are absent in the performance of their duty to their employer and their absence will not be longer than 5 years;
 - an Australian citizen; or
 - the holder of a permanent visa under the *Migration Act 1958* (Cth), section 30(1)



QLD foreign surcharge

- Foreign company:
 - a corporation incorporated outside Australia; **or**
 - a corporation in which foreign persons have a controlling interest.

Where controlling interests means 1 or more persons who are foreign persons or related persons of foreign persons who are in a position to control at least 50% of the voting or potential voting power, or at least 50% of the issued shares in the corporation. (section 18B QLD LTA)

- Foreign person means each of the following (section 18D QLD LTA):
 - an individual who is not an Australian citizen or permanent resident;
 - a foreign company;
 - the trustee of a foreign trust.



QLD foreign surcharge

- Related person of another person includes (section 18E QLD LTA):
 - for individuals – they are members of the same family;
 - for individuals and a corporation – the person or a member of the person's family is a majority shareholder, director or secretary of the corporation or related body;
 - for individuals and a trustee – the person or a related person under another provision of this section is a beneficiary of the trust;
 - for corporations – they are related bodies corporate;
 - etc.

Effectively seeks to prevent foreign people from not technically controlling the company through use of other entities/family members.

Noted that not related if QRO satisfied interests dealt with independently.



QLD foreign surcharge

- Foreign trust (section 18C QLD LTA) means a trust where at least 50% of the trust interests in the trust are foreign interests where:
 - Trust interest for a discretionary trust means the taker in default of an appointment (section 18F(2) QLD LTA)
 - Life interests not taken to be a trust interest (section 18F(1) QLD LTA)
 - Members of SMSFs are taken to have a trust interest (section 18F(3) QLD LTA)
- Foreign interests means a trust interest of:
 - an individual who is not an Australian citizen or permanent resident;
 - a foreign company;
 - a trustee of a foreign trust; or
 - a related person of a person mentioned in any of the above



QLD foreign surcharge

- Reminder that foreign trust for QLD land tax \neq foreign trust for FIRB or other State surcharges
- Foreign trust for QLD land tax does align with QLD stamp duty concept
- Generally:
 - If not foreign trust for FIRB, not foreign trust for QLD land tax
 - If not foreign trust for QLD land tax, *could* still be foreign trust for FIRB



Passing land tax onto tenants?

- Residential lease – No:
 - Lessor must pay all charges, levies, premiums, rates or taxes payable for the premises (section 163 *Residential Tenancies and Rooming Accommodation Act 2008*)
- Retail shop leases –No:
 - Lessor outgoings **does not include** land tax payable on the land on which the centre or building is situated (section 7(3) *Retail Shop Leases Act 1994*)
 - “*Example of subsections (1) and (2)— A provision of a retail shop lease requiring a lessee to pay the lessor’s land tax or to reimburse the lessor for land tax (regardless of by whom, or to whom, the payment is to be made) is void under section 17.*” (section 24(2) *Retail Shop Leases Act 1994*)



Passing land tax onto tenants?

- Commercial leases – It depends:
 - A provision in the lease requiring a lessee to pay land tax, or reimburse the lessor for land tax, is unenforceable (section 83A(2) QLD LTA).
 - Recent legislation confirms that ‘to remove any doubt...[the section] is a reference to a lease of land in Queensland (section 83A(3) QLD LTA)
 - The section only applies to ‘pre-existing leases’ which are defined to mean:
 - A lease entered between 1 January 1992 and 30 June 2009 (or arose under an option to renew from that lease); and
 - Does not include a lease that arises from a renewal under an option to renew contained in a lease entered into on or before 1 January 1992

Short answer:

- If lease between 1 January 1992 and 30 June 2009 – land tax not recoverable
- If lease entered into on or after 1 July 2009 – land tax may be recoverable if provided for in the lease

Contact details

Darius Hii

Tax and estate planning lawyer; Chartered Tax Advisor; and Director at
Chat Legal Pty Ltd

darius@chatlegal.com.au

0403923374