

House of Assembly (2019-10-16)

Classification: Bills

Bills

LAND TAX (MISCELLANEOUS) AMENDMENT BILL

Introduction and First Reading

The Hon. S.S. MARSHALL (Dunstan—Premier) (15:41): Obtained leave and introduced a bill for an act to amend the Land Tax Act 1936. Read a first time.

Second Reading

The Hon. S.S. MARSHALL (Dunstan—Premier) (15:41): I move:

That this bill be now read a second time.

With this bill, my government continues to honour its commitment to the people of South Australia—our commitment to lower taxes and other costs. The government has already abolished payroll tax for all small businesses. We have delivered reductions in emergency services levy bills for households and for businesses. We remain committed to capping council rates, to reducing electricity prices and to cutting water bills.

Unlike members opposite, we believe that people who work hard to earn money deserve to be able to spend it without the threat of big government confiscating it ever more on an ongoing basis, so we now introduce our legislation to reduce revenue collected from land tax. This bill is part of a reform package that will reduce the net amount of land tax payable by South Australians by \$70 million over three years. For far too long South Australia has been in the unenviable position of having the nation's highest top marginal rate of land tax. This turns away investment. It stifles economic growth.

For years investors have preferred to place their money in other states because of our 3.7 per cent top tax rate. The government's land tax reform package will release this handbrake on investment attraction. It will boost business and consumer confidence. It will create jobs and put more money back into the pockets of hardworking South Australians.

Through this legislation we will reduce total revenue collected and implement a fairer, more competitive land tax system. The vast majority of mum-and-dad investors and company groups who currently pay land tax will be financially better off. We know that because we have consulted widely about the detail of this reform before proceeding to introduce it. We have listened and developed our land tax package accordingly.

The package we are now proceeding with has three essential elements. The first has already been legislated. This will increase the tax-free threshold, from \$391,000 in 2019-20 to \$450,000 from 1 July 2020.

Members interjecting:

The DEPUTY SPEAKER: Order!

The Hon. S.S. MARSHALL: This measure provides relief to all taxpayers—

Mr Malinauskas interjecting:

The DEPUTY SPEAKER: The Leader of the Opposition is called to order.

The Hon. S.S. MARSHALL: —including an estimated 9,300 taxpayers who will no longer pay any land tax at all.

Mr Malinauskas interjecting:

The DEPUTY SPEAKER: The Leader of the Opposition is called to order. The Premier is speaking to the bill.

Mr Brown: No, he's not.

The DEPUTY SPEAKER: In fact, member for Playford, he is speaking to the bill and he—

Mr Malinauskas interjecting:

The DEPUTY SPEAKER: Premier.

The Hon. S.S. MARSHALL: Secondly, from 1 July 2020, the top tax rate will be reduced from 3.7 per cent to 2.4 per cent for all total site values above \$1.1 million. The new rate of 2.4 per cent is in line with the average rate for all mainland states. Thirdly, we will change aggregation rules so that they are similar to those already applying in New South Wales and Victoria to ensure that South Australia has a fairer system. This will end the opportunity for investors with multiple properties to establish complex legal structures to avoid paying a single dollar in land tax.

Throughout the debate, opponents of the reforms have comprehensively failed to defend the inequity of the current laws that allow this to happen. It is important to note that the government is not introducing aggregation. Aggregation has existed in South Australian land tax law for as long as land tax has been collected. The simple principle behind the proposed amended aggregation rules is that two investors, who each own \$1 million in property, should be taxed equally, even if one investor has one property and another has multiple properties.

While the government always intended to reduce the total net land tax payable, it was originally estimated that the amended aggregation arrangements would generate an additional \$40 million per year; however, one of the purposes of the extended consultation we undertook was to allow greater investigation and clarity on this estimate. As a result, Treasury has now estimated that, at a top tax rate of 2.4 per cent, aggregation changes will raise an extra \$86 million per annum.

Independent accounting firm PricewaterhouseCoopers has reviewed and supported as reasonable Treasury's methodology for constructing this estimate. When reviewing the methodology used by Treasury, PwC did not identify any alternative ways to use the existing datasets to improve the reasonableness of the estimate. It would clearly be inappropriate and unlawful for the government to disclose the confidential details of individual taxpayers who would be affected by the changes; however, the government has made PwC's report on the review of the methodology available to the public.

Over three years, the land tax cuts that we are implementing equate to a net reduction in revenue of about \$70 million. This is made up of an estimated \$19.4 million of relief to taxpayers in 2020-21, \$24 million in 2021-22, and \$26.3 million in 2022-23. The revised reform package will mean that the overwhelming majority of individuals and company groups will pay less land tax. Estimates show that 92 per cent of all individuals, 47,800 people, will pay less tax under the reforms. In the case of company groups, 75 per cent of them, 7,900 in number—

Members interjecting:

The DEPUTY SPEAKER: Premier, I am going to interrupt for a moment. I am going to remind the opposition that the Premier is speaking to the bill. He deserves to be heard with respect and there will be an opportunity to debate the bill in the future, so let's hear what the Premier has to say, members.

Mr Malinauskas interjecting:

The DEPUTY SPEAKER: You may well, but that is all in the future, leader, and I ask that you listen to the Premier's contribution.

Members interjecting:

The DEPUTY SPEAKER: The member for West Torrens and the minister for agriculture will cease the banter. My apologies, Premier. You have the call.

The Hon. S.S. MARSHALL: In the case of company groups, 75 per cent of them, 7,900 in number, will pay less land tax under the reforms. There are about 52,500 ownerships currently paying land tax in South Australia. Of these, some 22,300 ownerships comprise individuals, companies and trusts that own multiple properties and are already paying tax on aggregated site values. In fact, there are 16,600 individual ownerships or mum-and-dad investors having multiple properties either by themselves or jointly with other individuals.

Let me provide an example. Paradise teacher Lyn De Guglielmo and her husband, Dom, own several investment properties. They currently pay—

Members interjecting:

The DEPUTY SPEAKER: Order!

The Hon. A. Koutsantonis: He just told us he can't release individual details, and now he's releasing details.

The DEPUTY SPEAKER: Member for West Torrens, I am asking you—

The Hon. S.S. MARSHALL: This is one which has been in the media.

The DEPUTY SPEAKER: The Premier is speaking to the bill that is before the house.

The Hon. S.S. MARSHALL: They currently pay land tax on an aggregated basis. They have worked hard all their lives. They have used property as their form of superannuation for their retirement. Under the existing laws, they have told us that they have felt penalised because they have had to pay excessive land tax. But in response to our reforms they have said, 'Good on you for looking to do something for the ordinary mum-and-dad investor so that they don't have to rely totally on the pension to support themselves in retirement.'

They have said that they will save thousands of dollars on their land tax bill because of the increased tax-free threshold and the reduction in the top rate, from 3.7 per cent to 2.4 per cent.

Members interjecting:

The DEPUTY SPEAKER: The Leader of the Opposition and the member for West Torrens are called to order.

The Hon. S.S. MARSHALL: This is a clear demonstration that it is not just wealthy individuals with significant property holdings who will benefit from the reduction in the top tax rate. Initial consultation about our aggregation proposals occurred over a 15-week period. We then provided a draft bill for further consultation over a further four-week period yielding 193 submissions.

We have consulted broadly on this bill, and it is now in a state that will deliver the objectives that I have outlined today. It is imperative that this bill is passed swiftly to end any ongoing uncertainty for businesses and property investors associated with the pending changes. I seek leave to have the detailed explanation of the clauses of the legislation inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Some of the transitional provisions will commence on assent to allow certain notifications to be given in the lead-up to commencement of the amendments to the *Land Tax Act 1936*. The amendments to the *Land Tax Act 1936* will however commence on 30 June 2020, immediately after the commencement of amendments to the Land Tax Act that were contained in the *Statutes Amendment and Repeal (Budget Measures) Act 2018*.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Land Tax Act 1936*

4—Insertion of heading

The *Land Tax Act 1936* is currently not divided into Parts. This clause is the first of a number of amendments contained in the measure that insert headings to divide the Act into Parts and Divisions to better assist the reader in finding content in the Act.

5—Amendment of section 2—Interpretation

This clause inserts a number of new definitions for the purposes of the measure.

6—Insertion of headings 7—Insertion of heading

These clauses insert new headings.

8—Insertion of section 5AA

This clause inserts a new section allowing the Commissioner to disregard minor interests in considering the application of the residential land exemptions in section 5.

9—Substitution of section 6

This clause is part of the restructuring of the Act. The current section 6 (which is being relocated to later in the Act to fit the new structure created by the insertion of headings—see new Division 2 inserted by clause 13) is repealed and replaced with what is currently section 11.

10—Insertion of heading 11—Insertion of headings

These clauses insert new headings.

12—Amendment of section 8A—Calculation of land tax

This clause amends section 8A to provide for the application of new rates of land tax specified in the Schedule that is proposed to be inserted by clause 18 of the measure. Section 8A(1) deals with the general land tax rates and (1a) deals with land tax rates for trustees (where the land has a taxable value of more than \$25,000), subject to various exclusions in (1b) and (1c). The new rates will apply from the 2020-21 financial year onwards.

13—Substitution of sections 9 to 13A

This clause contains some measures that are part of the restructuring of the Act as well as substantive changes relating to land tax where there is more than 1 owner of land, land held on trust and grouping of related corporations.

Current sections 9 and 10 are proposed to be repealed because they essentially contain definitional material which is now to be relocated into section 2 of the Act with the other definitions. Similarly, current section 11 is relocated for structural reasons to become section 6.

The current provisions on multiple ownership are repealed and replaced with a new provision as follows:

9—Land tax where more than 1 owner of land

This clause makes provision in relation to land tax where 2 or more persons are the owners of land (whether in the same or in different capacities). Under this provision joint owners are assessed in 2 stages. Firstly, the joint owners are assessed together (and all the joint owners are liable for the land tax together). Secondly, each joint owner is assessed individually on all the lands they own in any capacity that are liable to land tax. To avoid double taxation, an owner may receive a deduction in their individual assessment in accordance with the formula in proposed subsection (8).

New Divisions are also inserted as follows:

Division 2—Land divided by a community or strata plan

10—Assessment of tax against land divided by a community or strata plan

This proposed provision is a relocation of the current section 6.

Division 3—Land held on trust

11—Separate assessment of trust land

This section provides for trust land to be assessed for land tax as if it were the only land owned by the trustee.

12—Land tax for fixed trust if beneficial interests notified to Commissioner

This section allows the trustee of a fixed trust to lodge a notice of the beneficial interests in the land, in which case a beneficiary of the trust is deemed to be the owner of a proportion of the trust land (equivalent to the beneficiary's beneficial interest), and is liable for land tax on that land accordingly. The trustee is still liable for land tax on the whole of the land as if the land were the only land owned by the trustee but this is calculated at the rates applicable to non-trust land. Subsection (5)(b) allows for the application of the principal place of residence exemptions to the land (and if the beneficiaries are exempt from land tax under that paragraph, the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax). Subsection (6) provides for deduction from the land

tax payable by a beneficiary of an amount (if any) necessary to avoid double taxation

13—Land tax for unit trust scheme if unitholdings notified to Commissioner

This section allows the trustee of a unit trust scheme to lodge a notice of the unitholdings in the scheme, in which case a unitholder in the scheme is deemed to be the owner of a proportion of the scheme land (equivalent to the unitholder's unitholding), and is liable for land tax on that land accordingly. The trustee is still liable for land tax on the whole of the land as if the land were the only land owned by the trustee but this is calculated at the rates applicable to non-trust land. Subsection (5)(b) allows for the application of the principal place of residence exemptions to the land (and if the unitholders are exempt from land tax under that paragraph, the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax).

Subsection (6) provides for deduction from the land tax payable by a unitholder of an amount (if any) necessary to avoid double taxation.

13A—Land tax for discretionary trust if beneficiary notified to Commissioner

This section allows the trustee of a discretionary trust to lodge a notice specifying 1 beneficiary of the trust who is to be taken to be the designated beneficiary for the purposes of the section, in which case the designated beneficiary is deemed to be the owner of pre-existing trust land (ie land that was subject to the trust at midnight on the day on which the measure was introduced in the House of Assembly), and is liable for land tax on that land accordingly. The trustee is still liable for land tax, which will be calculated:

- (a) at the non-trust land rates for pre-existing trust land;
- (b) at the trust land rates for subsequent trust land (ie. land that becomes subject to a trust after midnight on the day on which the measure was introduced in the House of Assembly); and
- (c) in accordance with a formula set out in subsection (9) where land subject to the trust consists of both pre-existing trust land and subsequent trust land.

Subsection (9)(b) allows for the application of the principal place of residence exemptions to the land (and if the designated beneficiary is exempt from land tax under that paragraph, the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax).

13B—Land tax for beneficiary/trustees

This section makes provision in respect of someone who is both a nominated beneficiary under section 12 or 13 and a trustee and provides for deduction from the land tax payable by the beneficiary/trustee of an amount (if any) necessary to avoid double taxation.

13C—Land tax for excluded trusts and public unit trust schemes

This section provides for the payment of land tax at the general rates on various categories of trusts that are exempt from the trustee rates applicable under section 8A(1a).

Division 4—Miscellaneous trust land provisions

13D—Requirements for trustees to notify Commissioner

This section sets out various notification requirements for trustees. A failure to notify, as required by the section, that results in a reduced tax assessment (or no tax assessment) will constitute a tax default by the person for the purposes of the *Taxation Administration Act 1996* in accordance with section 19 of the *Land Tax Act 1936* (as amended by the measure).

Division 5—Land held on implied, constructive or resulting trust

13E—Land held on implied, constructive or resulting trust

The other provisions relating to trusts do not apply in relation to an implied, constructive or resulting trust but this proposed provision provides that the owner of land as trustee of an implied, constructive or resulting trust is liable for land tax on the land at the general (non-trust land) rates.

13F—Trustee's right to reimbursement under implied, constructive or resulting trust

A trustee of an implied, constructive or resulting trust is entitled to recoup the amount of any land tax paid by the trustee from

trust property.

Division 6—Grouping of related corporations

13G—What are related corporations?

This section defines what constitutes a 'related corporation'.

13H—What is a controlling interest in a corporation?

This section defines when a person has, or persons have together, a controlling interest in a corporation.

13I—Further provisions for determining whether corporations are related corporations

This section sets out a list of further matters that go to the question of whether corporations are related corporations.

13J—Grouping of related corporations

Related corporations that own land are jointly assessed for land tax as if the land were owned by a single corporation and are jointly and severally liable for the tax so assessed. The section also sets out particular circumstances in which a corporation may apply to the Commissioner for an exemption from this grouping.

14—Insertion of heading

15—Insertion of heading

These clauses insert new headings.

16—Amendment of section 19—Time for payment of tax

This clause makes consequential amendments to section 19.

17—Insertion of heading

This clause inserts a new heading.

18—Insertion of Schedule 1

This clause inserts a new Schedule setting out land tax rates for the 2020-21 financial year and subsequent financial years.

Schedule 1—Transitional provisions etc

The Schedule contains transitional provisions.

Debate adjourned on motion of Mr Brown.