

Land Tax deadline looming for trusts

Changes to Land Tax rules that came into effect on 1st July 2020 included provisions for discretionary trusts to nominate one beneficiary as the 'owner' of the property in order to avoid higher rates of Land Tax. The deadline for making those nominations is 30th June 2021. If you hold property in a trust that is subject to Land Tax, and haven't given consideration to how this will affect you, it's important that you review your situation and act before 30th June.



The [Land Tax reforms implemented from 1st July](#) last year included reduced rates, adjusted thresholds and much broader aggregation measures. For most owners of single properties, the result was a lower Land Tax bill, but for those who owned a number of properties in different entities, the new aggregation requirements likely meant more Land Tax would be payable. This is because properties with the same beneficial ownership, regardless of the legal entity which holds them, will in many cases now be grouped together and taxed as though they are owned by the same individual.

That causes a problem for taxing discretionary trusts. By definition the 'beneficial' owner of any property in a trust is at the discretion of the trustee, which means that it's functionally impossible to aggregate the property of a trust with that held by its related parties. The State Government's solution to this dilemma was to introduce a disincentive to purchase future property in a trust, in the form of higher rates of Land Tax that kick in at a paltry \$25,000. By way of comparison, the Land Tax free threshold for individuals is \$450,000. But what to do with property already held in trusts?

For all property held by a trust as of midnight on 16th October 2019, the option was introduced to nominate one individual as the beneficial owner of all of the property of that trust (for Land Tax purposes only). Doing so would allow the trust to avoid the higher rates of Land Tax, but would then require the individual to aggregate the property of the trust with any held in their own name. Importantly, this nomination can only be made once, and cannot be changed except under extraordinary circumstances (although it can be withdrawn). **This nomination is due before 30th June 2021, or the opportunity is lost forever.**

In a further indication of RevenueSA's stubborn determination to penalise trusts, it has recently announced that any action that results in a new title issuing after 16th October 2019 (e.g.a subdivision) renders the nomination void and closes off the opportunity to make another one.

Still, why not simply make the nomination in all cases? It's not quite that simple. The nomination endures indefinitely (unless withdrawn), which makes it difficult to predict who the best nominee will be for the life of the property holding. For example, nominating an 18 year old dependent child might be the most tax effective solution today, but how will this impact them in 20 years' time when perhaps they hold a rental property themselves but are forced to continue aggregating the property of the trust with their own?

It's also possible that nominating an individual beneficiary could result in more Land tax being payable overall. Taking our example above, let's say to avoid locking in a child as beneficial owner for the rest of their natural life, a person takes the simplest route and nominates themselves. If that person already owns property in their own name (including their percentage of property owned jointly with others, but excluding

their private residence), it's possible that the total additional cost of having to aggregate all these property interests is actually greater than applying the higher rates of Land Tax in the trust. For example if an individual already owns property valued at more than \$1.35 million, the very first dollar of the trust property now taxed in their name will be taxed at \$2.40 per \$100. At least if it remains in the trust, the first \$25,000 will be tax free, and the next rate that will apply is \$0.50 per \$100. This threshold is much lower than the \$450,000 that applies to individuals, and the rates increase at a faster pace, but the result still may be that keeping the property in the trust is the lesser of two evils.

Careful consideration therefore needs to be given as to whether a nomination should be made in the first place, and if it is, who the best person to nominate should be. There's no template and it will be different for everyone.

If you hold property in a trust and haven't addressed this yet, it's imperative that you do so before 30th June 2021. Please [contact us](#) for further information or for any assistance.

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