



SUBMISSION

Land Tax (Miscellaneous) Amendment Bill 2019

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Background

The Real Estate Institute of South Australia (REISA), established in 1919, is the peak professional body representing more than 2,000 real estate professionals in South Australia involved in the marketing, management and consultancy in real estate matters for most people in South Australia.

Consequently, not only do our members supply advice and assist the public in real estate matters but REISA is influential in decision making and strategy concerning real estate assets.

Our members have never had such vociferous feedback and concern by the public by any issue as great as the land tax reform in living memory.

As a result, REISA has initiated the following activities in relation to the new land tax aggregation measures proposed by the Marshall Government in order to fully understand the impact and consequences of the Bill on property owners in this State:

- Member alerts and updates
- Weekly Newsletter articles
- Land Tax Survey sent out to the REISA Membership
- Meetings with parliamentary stakeholders including the Treasurer, Leader of the Opposition, the Shadow Treasurer and Members of Parliament
- Industry body press conference
- Land Tax Forum for REISA Members (the best attended forum ever at REISA with unanimous support against the proposed land tax aggregation changes)

REISA has worked closely with the law firm Commercial and Legal to understand the changes, explain them to our members and to survey our members in order to advocate their views to all Members of Parliament.

Commercial and Legal have completed a submission on the proposed legislation from a policy and legal perspective. REISA encourages the State Government to read the submission from Commercial and Legal in conjunction with ours.

Previous submissions on property tax reform

REISA has made many submissions and issued many press releases on property tax reform over the past few years.

REISA has long advocated the need for broad scale property tax reform with the abolition of State property taxes that have proved to be a cog in the wheel of home ownership.

The introduction of the Goods and Service Tax in 2000 by the Federal Government was intended to assist in the abolition of inefficient and discriminatory property taxes that seemed to be there for the sole purpose of revenue raising rather than improving the circumstances of vendors, purchasers, landlords and tenants. (Indeed the promise was made that there would be no GST on taxes, to be introduced from 2005, but this promise was not kept and home buyers pay GST on Stamp Duty and other property taxes.)

In the past, REISA has advocated for the increasing of the Goods and Service Tax or the imposition of a broad based property tax that would assist in the abolition of Stamp Duty and Land Tax. **The aim of REISA is to have both these wealth taxes abolished and to be replaced by government initiatives that would generate more than the revenue foregone.**

Home ownership (particularly first home ownership since the abolition of the First Home Owners Grant) and property investment generally have continued to be impeded by South Australia's punitive and inequitable property tax regime. It recognises the massive favourable impact by the abolition of Stamp Duty on commercial property sales, and wishes South Australia to be the haven for more substantial investment by the abolition of Land Tax.

REISA recognises and supports the fact that the property sector plays a role in the securing of State Government revenue and the need for it to contribute to the important infrastructure and services that our State offers its community. However, the constant reliance on the property sector to fill in or top up the black holes of reduced GST revenue also leaves the property sector open to discrimination and inequity.

The State Government must examine all alternatives to raising revenue rather than constantly reverting to the already over-taxed property sector for top-ups.

Consultation on Bill

Given our vocal advocacy of property tax reform in the past, REISA expresses its considerable concerns over the lack of consultation prior to the announcement of the land tax reforms on 18 June 2019.

REISA has worked extensively with State Governments in the past to advocate for property reform and to assist the Government of the day in shaping their real estate policy agenda.

REISA has always valued this opportunity and is proud of the work that it has done with Governments in the past. For instance, over the past five years, we have worked extensively with Government on legislative changes to the *Land and Business (Sale and Conveyancing) Act 1994*, the *Residential Tenancies Act 1995*, the *Land Agents Act 1994* and the *Electronic Communications Act 2006*.

We have also worked with Governments on policy initiatives such as Property Management Licensing, E-Conveyancing and all related sales and property management documentation.

In the past, with all these initiatives, REISA has always been consulted on matters relating to real estate prior to any announcement being made to the public. This is essential so that we can provide our feedback, consult with our Members and help the Government be aware of any problems that may arise.

As the peak professional body of real estate in South Australia, it is disappointing that we were not included in any consultation stage or asked for any feedback prior to these land tax reform announcements.

As a direct result, rather than assisting the government in explaining measures to the public, we are being the conduit for considerable anger and frustration that could have been somewhat alleviated.

REISA recommends that:

- **The State Government engages with REISA prior to the release of a property related Bill to better understand and explore the rationale and to suggest practical solutions before the Bill is made public.**

REISA Member Land Tax Survey Results

More than 300 REISA Members responded to REISA's Land Tax Survey.

The results of the Survey were as follows:

Profile of respondent

- 33% were the owner of a real estate agency
- 17% were a real estate sales agent
- 8% were a property manager and/or leasing agent
- 15% were an experienced property developer / investor
- 20% were a 'mum and dad' investor
- 6% were a broader consumer

Ownership

- 77% owned investment properties.
- 41% owned (including part ownership interest) investment properties with combined land site values below \$1.3m.
- 36% owned (including part ownership interest) investment properties with combined land site values above \$3.1m.

Understanding of proposed land tax aggregation laws

- 87% understood how the proposed aggregation laws may operate if approved

Support for proposed land tax aggregation laws

- 93% opposed the proposed land tax aggregation laws

Reasons for not supporting the proposed land tax aggregation laws

- I cannot afford it
- It is unfair
- Companies and trusts should be treated and individual entities and should not be aggregated
- It will affect the potential investment growth and doing business in South Australia
- South Australia is different to New South Wales and Victoria and our property laws do not have to match theirs
- This was not part of the State Government's campaign for the State election and the Marshall Liberal Government promised to lower taxes
- All of the above

Opinions on the impact the proposed new laws will have on the real estate market in South Australia

- My employment or business will be affected and I will be at risk of being unemployed or having to make cost saving decisions
- Landlords and other property owners will start selling off some or all of their impacted property portfolio to avoid the aggregated extra land tax
- Property prices are likely to drop due to increased supply of properties and lack of demand by investors to buy them
- Landlords will raise rents on tenants in order to cover their extra costs
- Property owners will look to invest outside of South Australia or simply not invest at all

Requirement to seek legal advice

- 30% said they would need legal advice
- 22% said their agency would need legal advice
- 26% said that their property managers would need legal advice to assist their landlords to aggregate their properties

Desire for REISA to advocate the profession's voice to Government

- 97% said yes.

Voting intentions if the Bill is passed

- 11% said that they supposed the Liberal State Party, voted for them at the last election and would continue to support them regardless of these new laws
- **67% said that they support the Liberal State Party, voted for them at the last election but would not support them at the next election if the bill was passed**

- 7% said that they were never a supporter of the Liberal State Party.

The REISA Land Tax Member Survey unequivocally expressed almost universal concerns about the proposed land tax aggregation reforms. These concerns must be taken seriously as agents, sales representatives and property managers are at the coalface of the property profession and are constantly liaising with consumers who will be most affected by these changes.

REISA recommends that:

- **The State Government engages with REISA to better understand and explore the level of concern and disquiet among real estate practitioners and their clients in their daily activities.**

Aggregation proposed in the Bill

There are a number of aspects of the Bill that have been championed by the State Government. These include:-

- The reduction of the top tax threshold to \$1,098,001 and above
- The reduction of the top marginal rate of 3.7% down to 2.4%

These are certainly “wins” in the Bill but only in providing considerable assistance to the largest landowners in the State – especially those who already have aggregated properties.

While these measures might put us somewhat more in line with the other States and remove South Australia as the top land tax paying State, it is obvious that the Government – in implementing these wins - needs to “top them up” by receiving the money from alternative sources.

It is clear that the Government will need to increase its revenue to offset the reductions in the top marginal tax rate from the new aggregation laws.

It is simple - individuals and grouped companies will pay substantially higher tax based on aggregation *as well* as a new surcharge land tax of 0.5% for discretionary trusts which do not nominate a designated beneficiary.

REISA believes that the new aggregation tax laws are unfair for the following reasons:-

- **Misdirected Impact**
Small and medium land holders (the traditional mum and dad investors) will be hit for massive increases in land tax. This has many flow-on effects-
 1. The retention of their investment properties will become unviable and they will be forced to sell part or all of their property portfolio.
 2. Many will seek to offset the increase in land tax by passing the costs on to their tenants.

3. These landholders will be forced to seek expensive legal advice on restructuring as well as incur additional and significant costs in stamp and transfer duties.
4. Landowners will be required to, inter alia, identify the type of trusts that they have, consider the new grouping and controlling interest provisions and adhere to the new notification and disclosure requirements.

Mum and Dad investors will certainly be forced down a road that will have significant financial, social and emotional roadblocks and consequences.

- **Inequity**

The largest landowners in South Australia with the most expensive commercial properties will realise hundreds of thousands of dollars in savings from these reforms. They are the biggest winners from this proposed Bill. REISA believes that it is manifestly unfair and inequitable to provide such massive discounts to these large landowners while aggregating the small and medium land holders to offset these discounts. In other words, the regular investor with a small number of residential properties will be paying for the discounts given to the top end in town

- **Retrospectivity**

There is no grandfathering in place which unfairly penalises those landowners who have legally structured their property portfolio according to the legislation of the day. The retrospective application of these laws is entirely unfair and discriminatory and should only happen in rare circumstances and with strong justification. There is no case here for retrospectivity, and we believe it is against the founding principles of Liberal Party taxation policy.

The retrospective application of these laws will dramatically increase the land tax bills of investors with multiple low-value holdings, investors with multiple holdings, investors with multiple joint ownership holdings and mum and dad investors with a small investment portfolio (all of which might not be aggregated). In fact, the only winners from the Bill are those investors who have multiple holdings that are in fact currently aggregated or landowners with the most expensive properties in the State. To face dramatic land tax hikes and be forced to sell (or even cut staff if the landowner is the owner of a small business) when you have created the ownership when it was fully legal to so do – cannot be an equitable outcome.

- **Wealth Tax**

The proposed aggregation laws amount to a wealth tax by another name. It is not a tax on the income earned by wealth – it is a tax directly imposed upon wealth itself. It is an opportunity for revenue raising against those who have worked hard, obeyed the rules and who desire to use their investment portfolio for wealth, superannuation and retirement purposes. It discriminates against South Australians who have elected to use real estate as their main basis for establishing their retirement incomes. It seems incongruous that the State Liberal Government – whose ethos is centred around individual achievement – is proposing these reforms.

- **Over-taxed**

The proposed laws are an attempt to increase Government revenue by an arbitrary and simplistic attack on the property sector which has not taken into account the consequent effects on housing ownership, affordability and rental demand. The continuing reliance of the State Government on returns from property tax (and this is why the regime of the eastern states cannot be compared to South Australia due to their significant capital growth) and the need to generate revenue from property taxes is a major anti-investment impost that will ultimately drive investment from this State and lose the Liberal Party government.

REISA strongly opposes the land tax aggregation reforms and recommends that:

- **The State Government does not proceed with the current proposed aggregation reforms but engages with REISA and other relevant bodies in discussions concerning alternative avenues of property tax reform that could serve a dual purpose of not only securing revenue but also more equitably distributing the property tax burden upon real estate proprietors.**

REISA also recommends that if the Government does continue with the land tax reforms outlined in the Bill, then the following must apply:-

- That the State Government does not make the ruling retrospective, but has a commencement date at least 9 months distant
- That the State Government introduces a 6 month grace period for landowners to restructure their property portfolios without penalty
- That the State Government introduces a stay on stamp duty and any other property taxes that may be incurred by landowners in the restructuring of their property portfolios during this period.

Effect of aggregation on the South Australian real estate market

REISA Members have clearly indicated their concerns with the Bill in that owners will be forced to sell some or all of their impacted property portfolio to either mitigate their land tax bill or avoid it altogether.

REISA staff have received many calls from Members, real estate professionals and members of the public who have clearly stated that they will be forced to sell some, if not all of their property portfolio. Many members of the public have also stated that if these changes come into effect, they will be forced to pass on the costs to their tenants.

The impact of these on the real estate sales market cannot be underestimated. It will be devastating and crippling. The market will be saturated with properties in the inevitable fire sale of properties. This will lead to the unavoidable dropping of prices and an increased time on market as investment and small commercial properties will no longer be a viable option for purchasers to consider.

It will impact these properties because they are likely to be valued at less than the top threshold and if the owner cannot formulate strategies how to structure their holdings, or afford the inevitable legal and stamp duty costs, as well as the additional land tax, then these properties will be placed for sale.

At present the real estate market in South Australia is interesting. We have the lowest number of sales for quite some time, yet the median price remains strong and at near record levels. Suburbs that offer infrastructure and development opportunities continue to do extremely well. The statistics clearly show that South Australians are prepared to pay a premium price for properties that are transparently and affordably priced.

A saturation of the market will reverse this trend. While the volume of sales will increase, the median price will fall dramatically and properties will become considerably devalued over time.

This situation worsens when the impacted property portfolio is tenanted. Investors who have a tenanted property will be forced to wait until the tenancy expires (given that the demand for investment properties will fall). If the demand for investment properties diminishes, then a real crisis emerges for the availability of rental stock throughout South Australia – particularly given the Government's increasing reliance upon private landlords to ensure that vacancy rates across the State remain low and viable.

The other flow on from the land tax reforms will be the inevitable increasing of the rent by landlords to cover their increased land tax bills.

It is sometimes argued that a landlord cannot do this in response to the land tax increases because a tenant has the right to make an application to the South Australian Civil and Administrative Tribunal for an order that the property is now priced at an excessive rent (section 56 of the *Residential Tenancies Act 1995*).

However, the Tribunal will conduct a Comparative Market Analysis to see where the rental property sits in terms of rental price compared to similar properties. While the Tribunal may rule in favour of the tenant at first blush (as the CMA results will show it to be an excessive rent when compared to other properties in the immediate aftermath), this will very quickly dissipate as every landlord increases the rent and all rental properties then become "comparable" to the increased rent.

REISA strongly believes that these land tax reforms will have a negative and crippling effect on the real estate market. The inevitable consequences will be a state-wide devaluing of properties, a considerable increase in time on market which will lead to properties becoming stagnant and unviable, a massive upswing in vendor discounting and the increasing of rents which will put undue financial and social pressure on tenants and renters.

The Revaluation Initiative

The Revaluation Initiative will revalue every commercial and residential property throughout South Australia over time.

There is no doubt that this Initiative will result in large increases in property values across the State. This will consequently lead to substantial increases in council rates, water bills and of course, land tax. This will substantially and detrimentally affect the cost of living in South Australia and make it much more expensive to conduct business in South Australia.

Consequently, significant increases in land tax and other levies due to the Initiative will lead to the forced sale of family owned and small private property businesses or the passing on of these costs to tenants and renters.

REISA believes that the Revaluation Initiative must be substantially completed prior to any new aggregation land tax legislation for the following reasons:

- To determine any revenue gained by the Government under this Initiative
- To inform the debate on land tax especially given that one of the purposes of the land tax aggregation reforms is to secure revenue to the Government
- To prevent landowners being hit with a knockout 2 blow – from hikes in land tax, council rates and water bills – forcing the sale of some if not all properties or the passing on of any increased charges to tenants and renters in the way of rent

REISA recommends that:

- **That the Revaluation Initiative be completed and the extent of revenue ascertained before progressing any land tax aggregation reforms. In the alternative, concrete evidence must be produced of the anticipated tax revenues from the Initiative so that adjustments can be made to the land tax regime to avoid bankruptcies, forced sales and increased costs to tenants and renters.**

Exemptions

There are many exemptions to land tax contained in the *Land Tax Act 1936*.

REISA believes that many of these exemptions should be re-examined as a part of this current reform and subject to public scrutiny so that land tax obligations are distributed more fairly among all landowners. Many exemptions are very old and based to principles that have long since become irrelevant.

Others create a bias that is inequitable and unfair, even with the best intentions in mind when originally nominated.

Dealing with some examples in no particular order:-

- **Land used for Religious Purposes**
Many people feel that land that is owned by religious organisations but not used for religious purposes – mostly vacant land or unoccupied premises – should be subject to land tax – probably at a lower rate (say 25%) – and if vacant for 1 year or longer
- **Land used by Sporting Associations**
Land owned or occupied by a sporting association may be exempt from land tax (section 4(k)(i)). However, it seems incongruous that a sporting club who has a facility for the playing of their sport (as required under the section) yet runs a multimillion dollar commercial enterprise from that land is not subject to land tax. It competes unfairly with those that have abided by zoning and licencing rules but still are taxed
- **Land owned by an association established for Charitable Purposes**
It is contended that persons are establishing a charity, moving personal property into that structure and avoiding paying land tax. This practice should be closely monitored for this kind of abuse that affects all other taxpayers
- **Land that is a Caravan Park**
It is understood and recognised that these parks often provide affordable housing for a part of the community and should be subsidised. However, to have the whole of the park exempt is again a misdirection of resources and some land tax – representing the commercial aspect of the operation – should be paid
- **Retirement Villages and Residential Aged Care Facilities**
Again, we recognise these institutions provide valuable relief for our public hospitals and care agencies but they should not be completely exempt from the land tax, as they are commercial operations just like other businesses in this state. A recent sale of a motel to a retirement village operator removed over \$5m from revenue from which profits are going to be generated tax free

We understand that the State Government needs to secure revenue. However, rather than arbitrarily and indiscriminately penalise mum and dad investors, there can be other ways in which to look at property taxes so that the burden can be more equitably distributed.

REISA strongly believes that the current exemptions must be thoroughly scrutinised and either limited or removed – particularly if organisations and companies are making commercial profit from the use of their land but hiding behind the exemptions in the Act to avoid the imposition of any land tax.

REISA recommends that:

- **The State Government moves towards the abolition of the pseudo- wealth tax called ‘multiple holding tax’, and move towards generating the same revenue from a broader base of taxpayers.**

- **The State Government examines the exemptions contained in the *Land Tax Act 1936* to determine if the legislative intent on the purpose of land tax exemption is being fulfilled by the exempted landowner's primary or dominant purpose of owning the land.**

Conclusion

REISA strongly opposes the land tax aggregation measures proposed in the Land Tax (Miscellaneous) Amendment Bill 2009.

South Australian businesses are already inflicted by the highest utility costs in the country.

Facing the highest rate of land tax is another substantial barrier to being competitive and being an attractive haven for both interstate and overseas customers. South Australia's stagnant population does little to help and often forces local businesses to look beyond the state's borders for opportunity and growth.

For South Australian businesses to compete, remain viable and continue employing local people, it is the Liberal Party's prime function to minimise their costs of doing business and to make South Australians proud of their State.

Summary of Recommendations

- **The State Government to engage with REISA prior to the release of a property related Bill to better understand and explore the rationale and to suggest practical solutions before made public**
- **The State Government to engage with REISA to better understand and explore the level of concern and disquiet among real estate practitioners and their client in their daily activities**
- **The State Government does not proceed with the current proposed aggregation reforms but engages with REISA and other relevant bodies in discussions concerning alternative avenues of property tax reform that could serve a dual purpose of not only securing revenue but also more equitably distributing the property tax burden upon real estate proprietors**
- **The Revaluation Initiative must be completed and the extent of revenue ascertained before progressing any land tax aggregation reforms. In the alternative, concrete evidence must be produced of the anticipated tax revenues from the Initiative so that adjustments can be made to the land tax regime to avoid bankruptcies, forced sales and increased costs to tenants and renters**
- **The State Government to move towards the abolition of the pseudo- wealth tax called ‘multiple holding tax’ and move towards generating the same revenue from a broader base of taxpayers**
- **The State Government to examine the exemptions contained in the *Land Tax Act 1936* to determine if the legislative intent on the purpose of land tax exemption is being fulfilled by the exempted landowner’s primary or dominant purpose of owning the land.**

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