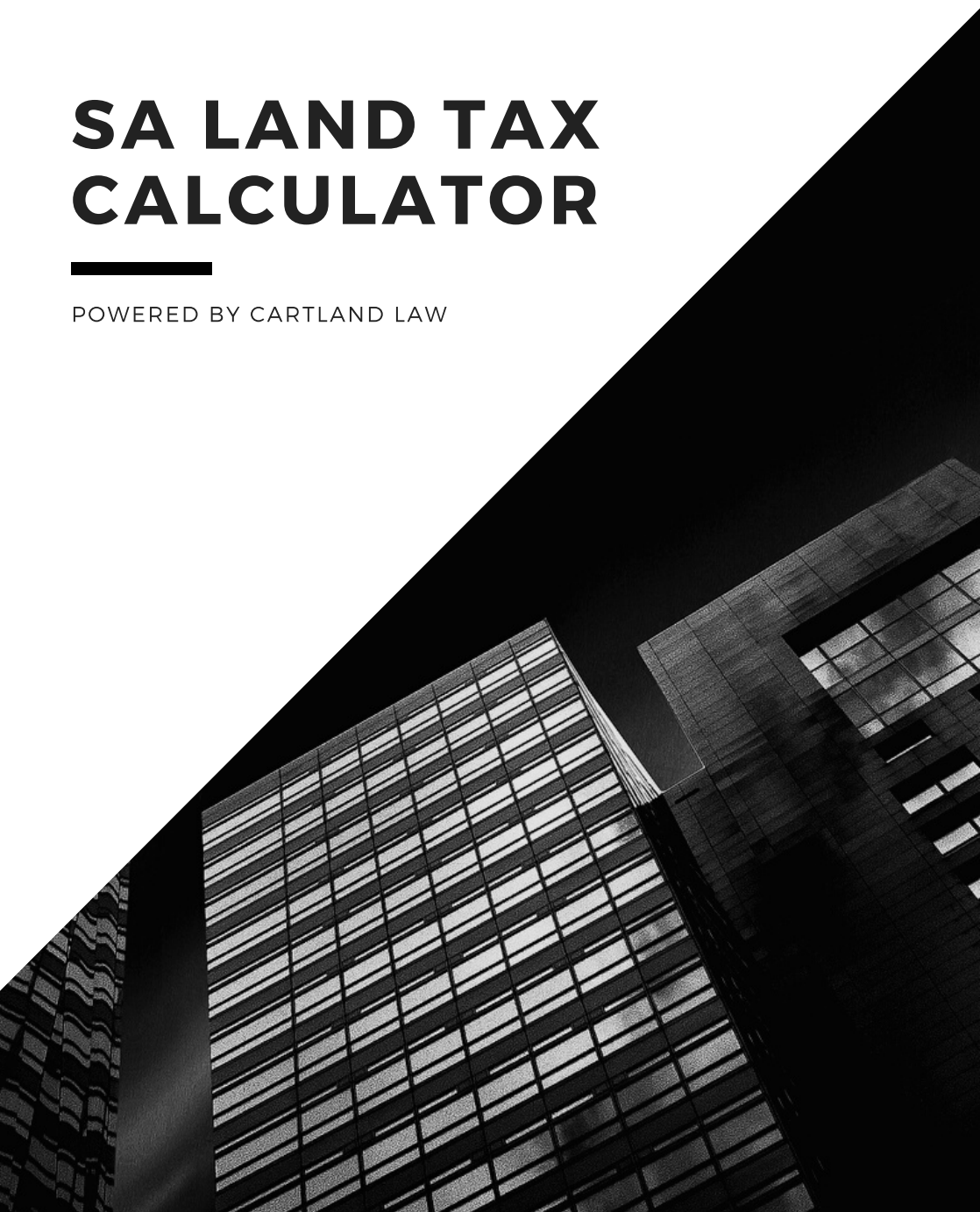


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# SA LAND TAX CALCULATOR

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POWERED BY CARTLAND LAW





CHANGE IS  
COMING.

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This guide will introduce you to these changes and provide some helpful Land Tax structuring tips and tricks.

**Disclaimer:** the material in this document is provided for general information purposes only. It does not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in relation to your particular matters. The contents of this document are current as at the date of writing.

The Land Tax Act 1936 (SA) has recently been amended by the Land Tax (Miscellaneous) Amendment Act 2019 (SA) which has introduced significant changes to:

- **the fees and rates applicable to different landholders; and**
- **the grouping of landholders.**

These changes will apply to the assessment of Land Tax in the 2020-21 year onwards.

This guide will introduce you to these changes and provide some helpful Land Tax structuring tips and tricks.

# SPECIALIST TAX AND COMMERCIAL LAWYERS

Cartland Law specialises in tax law and in the commercial law that relates to tax and businesses. We fix tax problems and resolve tax disputes. We provide advice and documents to lawyers, accountants, advisors and businesses.

We prepare high level tax and commercial documentation for complex structures and transactions as well as dealing with revenue authorities and other parties about those structures and transactions.

We adapt the latest technology in the provision of legal services. This means that we are able to provide commercial services with high efficiency and low cost.



**Adrian Cartland**  
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0403 873 498

Adrian is the Principal of Cartland Law specialising in Tax, Technology and Commercial Advice.

Adrian Cartland, the 2017 Young Lawyer of the Year, has worked as a tax lawyer in top tier law firms as well as boutique tax practices. He has helped people overcome harsh tax laws, advised on and designed tax efficient transactions and structures, and has successfully resolved a number of difficult tax disputes against the ATO and against State Revenue departments. Adrian is known for his innovative advice and ideas and also for his entertaining and insightful professional speeches.

Adrian's key areas of practice include:

- Tax litigation and objections;
- Tax efficient bespoke documents;
- Advising and designing tax efficient transactions and structures; and
- Tax disputes against the ATO and State Revenue departments.



**Henry Davis**  
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Henry is an Associate Solicitor at Cartland Law specialising in Tax and Litigation.

Henry's key areas of practice include:

- Civil Litigation;
- Corporate Insolvency;
- Private Rulings and Objections;
- Division 7A;
- Structuring;
- SMSF;
- GST; and
- Responding to ATO Audits.

Henry is also a Councillor at the City of Burnside and a member of the Burnside Country Fire Service.



**Jessica Stimson**  
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0423 159 515

Jess is an Associate Solicitor at Cartland Law specialising in Tax and Estate Planning. Jess' key areas of practice include:

- Trusts;
- Stamp Duty;
- Land Tax;
- Small Business Restructuring and Concessions;
- Estate Planning; and
- Probate and Administration of Deceased Estates.

In her spare time Jess volunteers with the St Vincent De Paul Society.

# LAND TAX RATES

## Current Land Tax Rates 2019-20

Net Taxable Site Value	2019-20 Rate
\$0 – \$391,000	<i>nil</i>
\$391,001 – \$716,000	0.50%
\$716,001 – \$1,042,000	\$1,625 + 1.65%
\$1,042,001 – \$1,302,000	\$7,004 + 2.4%
\$1,302,0001 – over	\$13,244 + 3.70%

## New Land Tax Rates 2020-21

Net Taxable Site Value	General Rate	Trust Rate
\$0 – \$25,000	<i>nil</i>	<i>nil</i>
\$25,001 – \$450,000	<i>nil</i>	\$125 + 0.50%
\$450,001 – \$755,000	\$0 + 0.50%	\$2,250 + 1.00%
\$755,001 – \$1,098,000	\$1,525 + 1.25%	\$5,300 + 1.75%
\$1,098,001 – \$1,350,000	\$5,812.50 + 2.00%	\$11,302.50 + 2.40%
\$1,350,001 – over	\$10,852.50 + 2.40%	\$17,350.50 + 2.40%

## New Land Tax Rates 2021-22

Net Taxable Site Value	General Rate	Trust Rate
\$0 – \$25,000	<i>nil</i>	<i>nil</i>
\$25,001 – \$464,000	<i>nil</i>	\$125 + 0.50%
\$464,001 – \$778,000	\$0 + 0.50%	\$2,320 + 1.00%
\$778,001 – \$1,131,000	\$1,570 + 1.25%	\$5,460 + 1.75%
\$1,131,001 – \$1,350,000	\$5,982.50 + 2.00%	\$11,637.50 + 2.40%
\$1,350,001 – over	\$10,362.50 + 2.40%	\$16,893.50 + 2.40%

## New Land Tax Rates 2022-22

Net Taxable Site Value	General Rate	Trust Rate
\$0 – \$25,000	<i>nil</i>	<i>nil</i>
\$25,001 – \$477,000	<i>nil</i>	\$125 + 0.50%
\$477,001 – \$801,000	\$0 + 0.50%	\$2,385 + 1.00%
\$801,001 – \$1,165,000	\$1,620 + 1.00%	\$5,625 + 1.50%
\$1,165,001 – \$2,000,000	\$5,260 + 2.00%	\$11,085 + 2.40%
\$2,000,001 – over	\$21,960 + 2.40%	\$31,125 + 2.40%



# SUMMARY OF TAXPAYERS AND RATES

Landholder	Who is assessed?	General Rate	Trust Rate
Individual	Individual	✓	
More than one individual jointly or as tenants in common	The ownership Each individual (with credit)	✓	
Company	Group of related companies	✓	
Excluded trusts including SMSFs, charitable trusts, special disability trusts and administration trusts (deceased estates)	Trust	✓	
Discretionary trust	Trust		✓
Discretionary trust with a <b>designated beneficiary</b>	Trust <b>Designated beneficiary</b> (with credit)	✓	
Unit or fixed trust	Trust		✓
Unit or fixed trust with notification of underlying beneficial interests in the trust / unit holders	Trust The unit holder (with credit)	✓	✓



# EXAMPLE CALCULATIONS

## Example 1:

An individual holds three properties with a net taxable sitevalue of **\$980,000**.

The individual will be assessed at the General Rate.

$$\begin{aligned}\text{Land Tax} &= \$1,525 + 0.0125 \times (980,000 - 755,000) \\ &= \$4,337.50\end{aligned}$$



Individual



\$450,000



\$180,000



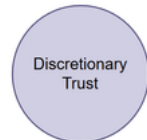
\$350,000

## Example 2:

A discretionary trust holds two properties with a net taxable sitevalue of **\$650,000**.

The trust will be assessed at the Trust Rate.

$$\begin{aligned}\text{Land Tax} &= \$2,250 + 0.01 \times (650,000 - 450,000) \\ &= \$4,250\end{aligned}$$



Discretionary Trust



\$400,000



\$250,000

# CARTLAND LAW SA LAND TAX CALCULATOR

Calculating the potential Land Tax liabilities of you and your related entities is crucial before making the important notifications detailed in the next section.

To help with your Land Tax calculations we've prepared a free Land Tax Calculator. Head to our website at [www.cartlandlaw.com](http://www.cartlandlaw.com) to try it out

If you have any questions or would like further assistance, please contact our team.

## Land tax planning tool

Who are the landholders?

In the case of a trust you may choose to nominate a beneficiary or select none.

<input type="text" value="Name"/>	Type <input type="text" value="v"/>
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+ Add another owner

List all the properties, select the owner and enter the land value (which does not include structures). If this is the Principal Place of Residence please tick the PPR box.

*Note: That if you add multiple owners for the same property, joint ownership will not be assessed as a separate taxpayer from the individuals, nor will it calculate credits available. For joint ownership please contact us or seek advice.*

<input type="text" value="Address or title"/>	Value <input type="text"/>	PPR <input type="checkbox"/>
Owner <input type="text" value="v"/>		

Add owner

+ Add another property

CALCULATE

# How to use the Land Tax Calculator

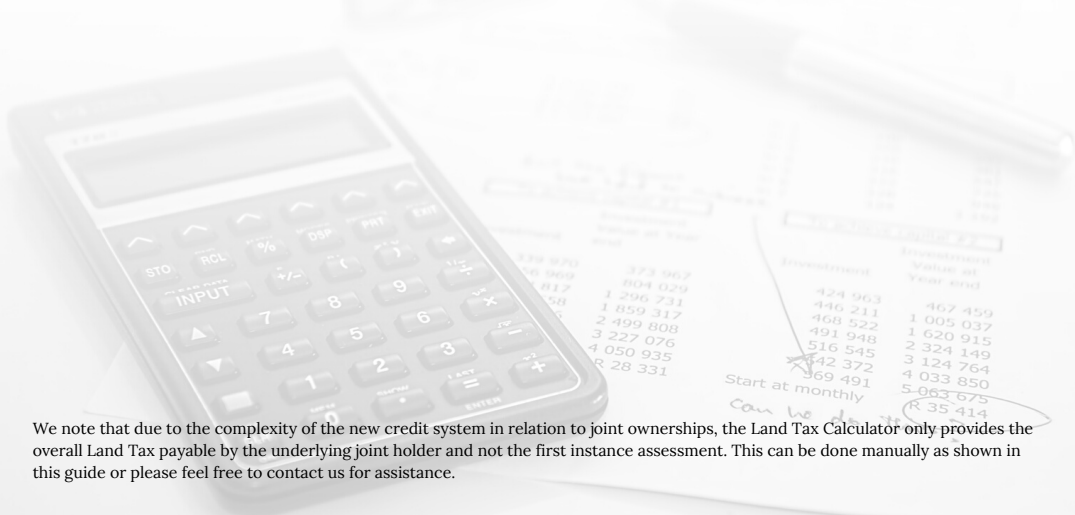
1. Add the details of each land holding entity in your group. For example, this could be individuals such as you and your spouse, your family trust, investment trust and a company.

If the entity is a trust then a box will appear enabling you to select one of the individuals in your group as the nominated beneficiary of that trust.

2. Add the details of each property, its taxable site value and select which entity within your group owns that property (from the drop down menu). If that property is your principal place of residence or otherwise exempt from Land Tax then either tick the box labelled “PPR” or simply don’t enter that property into the Land Tax Calculator.

3. Press “Calculate” and take a look at your possible Land Tax liability for the 2020-21, 2021-22 and 2022-23 years.

You can use the Land Tax Calculator as many times as you like to test out how nominating different beneficiaries will affect your Land Tax.



We note that due to the complexity of the new credit system in relation to joint ownerships, the Land Tax Calculator only provides the overall Land Tax payable by the underlying joint holder and not the first instance assessment. This can be done manually as shown in this guide or please feel free to contact us for assistance.



# IMPORTANT ACTION IS REQUIRED PRIOR TO 30 JUNE 2020

Decisions regarding notification of designated beneficiaries (in the case of discretionary trusts) and beneficial interests (in the case of unit or fixed trusts) must be made by 30 June 2020 to apply in the 2020-21 year.

## TRUST NOTIFICATIONS

### Discretionary Trust Notifications

*s13A of the Act*

A trustee may provide a once off notification to the Commissioner nominating an individual to be the **designated beneficiary** of the trust<sup>1</sup>. If a nomination is made, the land will first be assessed to the trustee at the General Rate and will then be attributed to the individual. A credit for tax paid will be applied to the individual's assessment.

#### Requirements:

1. the land must have been held in the trust prior to **16 October 2019**<sup>2</sup>;
2. notice must be provided by **30 June 2020** (to be effective from the 2020-21 year) or by 30 June 2021 (to be effective from the **2021-22** year)<sup>3</sup>; and
3. the **designated beneficiary** must:
  - 3.1. be a natural person;
  - 3.2. be a beneficiary of the trust as at **16 October 2019**;
  - 3.3. be over **18** years old; and
  - 3.4. have consented by statutory declaration to be the **designated beneficiary**.

1. the nomination is administrative only and in no way effects the interests of persons in the trust property.

2. land which becomes subject to the trust after this date will be assessed to the trustee at the Trust Rate – the relevant calculation is provided in s13A(9)(c) of the Act. Note the requirement for calculations to be made on the net taxable site value of all land held within the trust with apportionment for pre and post date land.

3. A designated beneficiary cannot be nominated after 30 June 2021.

## Discretionary Trust Notifications

### Restrictions:

1. there can only be one **designated beneficiary** of the trust;
2. all eligible land within the trust will be attributed to the **designated beneficiary**;
3. a **designated beneficiary** may be substituted in the event of death, incapacity or the breakdown of a marriage/relationship; and
4. if a **designated beneficiary** withdraws their consent then no new designated beneficiary can be nominated.

## Unit or Fixed Trust Notifications

12, 13, 13D(6)&(7) of the Act

A trustee may provide a voluntary notification to the Commissioner specifying the holders of underlying beneficial interests / unit holders in the trust. If notification is provided, the land will first be assessed to the trustee at the General Rate and will then be attributed to the unit holder/s. A credit for tax paid will be applied to the unit holders' assessments.

### Requirements:

- the notice must specify in which year the notice is to take effect (it may take effect in the tax year in which the notice is lodged or the following year);
- a notice must specify all unit holders in the trust<sup>4</sup>; and
- (if a notice is in place) the Commissioner must be notified within **1 month** of any change to the unit holders in the trust.

**Restrictions:** if the trustee withdraws a notice then no new notice may be made in relation to the trust (a notice re: change in unit holders does not constitute a withdrawal of notice).

4. There is no option to notify in relation to only some of the beneficial interests.

# Credit System

Multiple assessments (where a credit for tax paid under one assessment is applied to another) operates for land held by:

1. multiple landholders;
2. discretionary trusts (with a **designated beneficiary**); and
3. unit or fixed trusts (with notice of beneficial interests / unit holdings).

- Conceptually this is similar to franking credits. Except that there is no refund of excess credits

**Note:**

- the amount of the credit is equal to the landholder's proportionate interest in the land irrespective of who actually paid the first instance assessment;
- a credit cannot reduce a landholders Land Tax liability below zero;
- and any excess credits are extinguished and cannot result in a refund, be applied to a later assessment or be applied to the assessment of another entity.



## MULTIPLE LANDHOLDERS

Land may be held by more than one landholder either:

Jointly: where each owner owns the whole of the land together; or

Tenants in Common: where each owner owns a specific percentage of the land

Where multiple people own land together that land will be aggregated with all other land held by those same people. The land will not be aggregated with land held by the people individually or by the people together with other persons. This appears to be the case regardless of if the land is held jointly or as tenants in common and irrespective of differing percentage ownerships in the land.

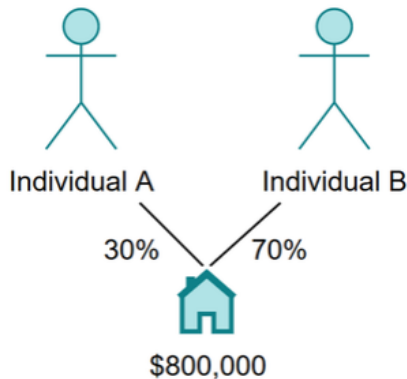
The registered landholders will first be assessed at the General Rate on this basis (ie. as if they were one landholder).<sup>5</sup>

The proportion of the land held by each landholder will then be attributed to them. A credit equal to their proportion of tax paid will be applied to each landholder's assessment.

### Example 3:

Land with a net taxable site value of **\$800,000** is held by two individuals as tenants in common.

- **Ownership Land Tax** =  $\$1,525 + 0.0125 \times (800,000 - 755,000) = \$2,087.50$
- **Individual A's Land Tax** =  $\$0$
- **Individual B's Land Tax** =  $\$0 + 0.005 \times (560,000 - 450,000) = \$550$
- (less credit of  $\$1,461.25$ ) =  $\$0$

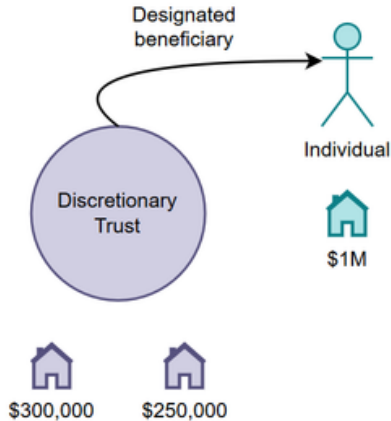


5. Assuming the Commissioner has not exercised discretion under s9 if the Act to treat one or more of the owners as the sole owner and taxpayer for the land. Note that this discretion is exercisable regardless of the capacity in which the land is held, the owners' proportionate holdings and irrespective of the intentions of the landholders, the former requirement that the Commissioner must be satisfied that one of the purposes for the manner of holding was to reduce a holder's Land Tax liability has been removed.

## DISCRETIONARY TRUSTS

The trustee will first be assessed at the General Rate.

The land held in trust will then be attributed to the **designated beneficiary**. A credit equal to the tax paid will be applied to the individual's assessment...



### Example 4:

Land with a net taxable site value of \$550,000 is held by a trust with a designated beneficiary who holds an additional \$1M of land.

$$\text{Trust's Land Tax} = \$0 + 0.005 \times (550,000 - 450,000) = \$500$$

$$\text{Individual's Land Tax} = \$10,852.50 + 0.024 \times (1,550,000 - 1,350,000) = \$15,652.50$$

(less credit of \$500) = \$15,152.50

$$\text{TOTAL} = \underline{\$15,652.50}$$

In this situation less Land Tax would be paid if there were no **designated beneficiary** of the trust.

Land Tax payable if no designated beneficiary:

$$\text{Trust's Land Tax} = \$2,250 + 0.01 \times (550,000 - 450,000) = \$3,250$$

$$\text{Individual's Land Tax} = \$1,525 + 0.0125 \times (1,000,000 - 755,000) = \$4,587.50$$

$$\text{TOTAL} = \underline{\$7,837.50}$$

## UNIT OR FIXED TRUSTS

The trustee will first be assessed at the General Rate.

The proportion of the land held by each unit holder will then be attributed to them. A credit equal to their proportion of tax paid will be applied to each unit holder's assessment.

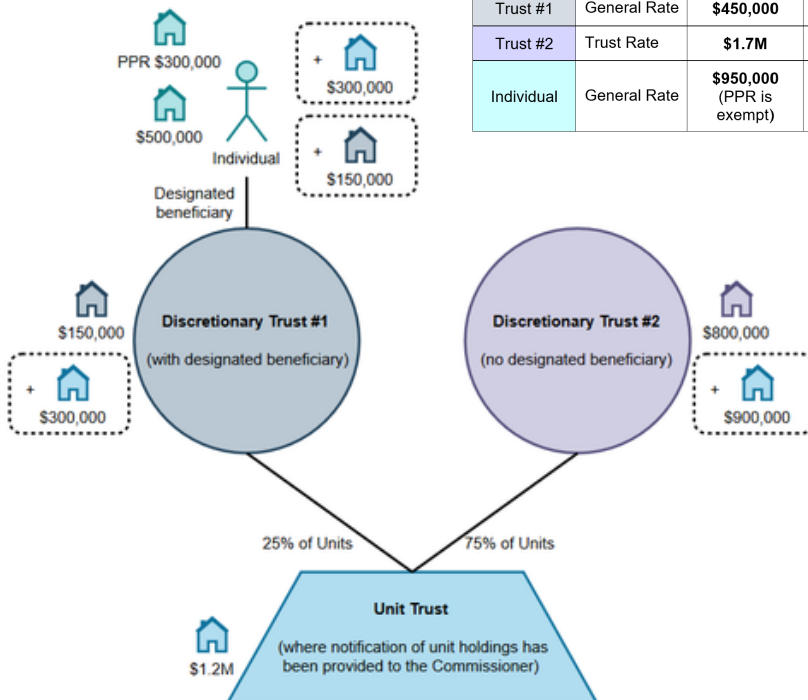
### Example 5.1:

A Unit Trust holds \$1.2M of land. Trust #1 holds 25% of the units in the Unit Trust and \$150,000 of additional land. Trust #2 holds 75% of the units in the Unit Trust and \$800,000 of additional land. The Individual is the designated beneficiary of Trust #1 and holds their principal place of residence and \$500,000 of additional land.

The Land Tax payable across the group of entities has been calculated and a summary is provided in the table below.

**TOTAL = \$29,713**

Landholder	Rate	Net taxable site value	Credit	Land Tax
Unit Trust	General Rate	\$1.2M	n/a	\$7,852.50
Trust #1	General Rate	\$450,000	\$1,963.10	\$0
Trust #2	Trust Rate	\$1.7M	\$5,889.40	\$19,861.10
Individual	General Rate	\$950,000 (PPR is exempt)	\$1,963.10 \$0	\$1,999.40

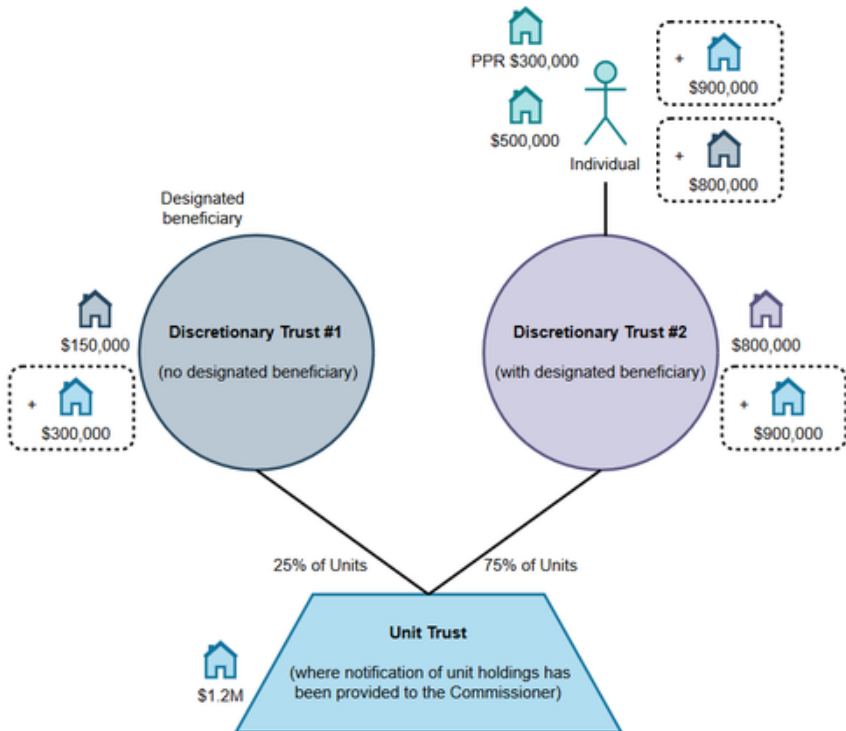


## UNIT OR FIXED TRUSTS

### Example 5.2:

Now consider the Land Tax payable across the group of entities if the Individual had been nominated as the designated beneficiary in relation to Trust #2 instead of Trust #1.

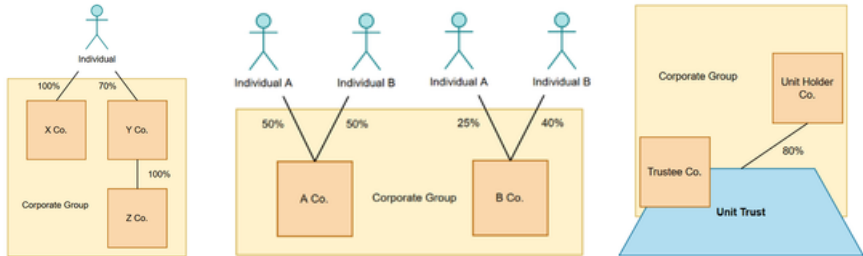
TOTAL = \$33,502.50



## GROUPS OF RELATED COMPANIES

s13G, 13H, 13I, 13J of the Act

Related companies will be jointly assessed at the General Rate for all land held by members of the group of related companies.



### Two companies will be related if:

- one company controls another company;
- the same person (or persons together) have a controlling interest in both companies; one company together with its shareholders controls another company; or
- one company is the trustee of a fixed or unit trust and the other holds more than 50% of the beneficial interests / units in the trust.

### **Where control and controlling interest means:**

- controlling the composition of the board of the company;
- having the ability to cast or control more than 50% of the votes at a general meeting of the company; or
- holding more than 50% of the issued share capital of the company.

### **The group of related companies:**

- if a company is related to any one or more companies within a group of related companies then that company will be included in the group; and
- companies may be related to each other via a company that does not hold land in SA.

**Exception:** A company may apply to the Commissioner to be assessed individually if it holds land for development of more than 10 residential lots.

"controlling the composition of the board" and "cast or control" votes is not defined in the Act. Assume relates to persons acting in different capacities ie. if person in their own capacity and as trustee of a trust could cast more than 50% of votes then they would be "controlling". Assume that consideration of affiliates is not relevant.



## EX GRATIA RELIEF

### Ex gratia relief:

- Land Tax transitional fund: 100% relief up to **\$50,000** (in **2020-21** year) where there is a greater than **\$2,500** increase in a taxpayer's assessment. This does not apply to land subject to trust rates and so is unlikely to be applicable in many instances because the individual rate has decreased. It may be worth considering this further if an individual is the nominated beneficiary in respect of a discretionary trust and thereby assessed to a greater amount of Land Tax.
- Affordable housing concession: relief equal to the difference between their tax liability and the tax they would be liable for if each affordable housing parcel were to be taxed individually.
- Affordable community housing land tax exemption pilot: **5 year** limited scheme for up to **100** properties rented through registered community housing provider.



**IMPORTANT ACTION IS REQUIRED PRIOR TO 30 JUNE 2020**

# LAND TAX PLANNING

TIME TO PLAN

It is crucial that all landholders review their current holdings and make appropriate notifications. It is also important to consider the appropriate landholding entities for your future property purchases.

## **Step 1:**

You can use our Land Tax Calculator at [www.cartlandlaw.com](http://www.cartlandlaw.com) to calculate your potential 2020-21 Land Tax liability under different circumstances (ie. with and without notifications) to determine the best outcome for you.

## **Step 2: Asset Protection:**

Whilst nominations do not presently have any income tax or capital gains tax effect, ensure that when you are making nominations you also consider succession planning, income tax, the eventual distribution of CGT and any asset protection risks. For example, if you intend to ultimately pass control of a trust to one of your children but nominate another child as the designated beneficiary, they will be entangled on an ongoing basis.

Nominations do not create any equitable interest and so should not cause any asset protection problems from the perspectives of bankruptcy or family law. However, family court is often unpredictable and a nomination has the potential to suggest that the trust belongs to the nominated beneficiary. Therefore, we suggest you should consider this if nominating someone who is at risk of matrimonial action.

## **Step 3: Restructures**

In many instances it may be suitable to restructure property holdings to effectively manage your land tax. In certain circumstances it may be viable to transfer property (particularly commercial property) out of a discretionary trust to separate ownerships assessed at the General Rate. I note that Commercial properties can be transferred without stamp duty, but land transfer and conveyancing fees will still be charged.

If property is held in a company is possible to structure it to ensure the capital gain is made in a related trust. This is useful for property which will generate positive revenue, so that it is taxed at the corporate tax rate but CGT is taxed through a related Discretionary Trust. Something like a purchase warrant could achieve this.

## **Step 4: rules of thumb when making new purchases**

- **Utilise the General Rate**

Utilise the General Rate by holding land as individuals, in separate companies (ie. not part of a group of related companies) and in your SMSF where appropriate. When establishing companies, be careful not to accidentally create a group of related companies.

- **Hold Land in Separate Discretionary Trusts**

Try to hold separate parcels of land in separate discretionary trusts where possible; The higher Trust Rate will apply but the land will be disaggregated and may reduce your overall Land Tax.

There does not seem to be any reason why a property could not be separated into 50 different trusts. However, it seems to be the intent of the legislation that no anti avoidance provisions will apply because the trust surcharge would apply instead. Also, the trust aggregation rules have been expressly removed from the Act and so these trusts would not be grouped. Notwithstanding this, we caution against an overly aggressive splitting of properties into different trusts based on our experience dealing with RevenueSA. We expect that in a couple of years such arrangements may come under scrutiny. Ideally ensure there is some reason for splitting titles between discretionary trusts, for example because different titles would later be divided and sold or passed to different children in accordance with succession planning.

### **Example**

Consider 10 properties each with a land value of **\$250,000**

Current tax if aggregated = \$59,479

Current tax if one title per discretionary trust = nil

New tax if all aggregated at the standard rate = \$38,452.50

New tax if all aggregated at trust rate = \$44,950.50

New tax if one title per discretionary trust - no nomination = \$12,500

New tax if two titles per discretionary trust - 5 different nominations = \$1,250

## LAND TAX AND ASSET PROTECTION

The default structuring entity for purchasing land has been a Discretionary Trust because of its ability to stream income, capital gains and offer asset protection in the event of a beneficiary going bankrupt. Because of the Land Tax surcharge there may be many cases where it would be more efficient from a Land Tax perspective if the property is owned by an individual (so as not to incur the trust surcharge). In this instance there are a couple of options:

- create an equitable interest such as a mortgage over the property which is held by a discretionary trust. Interest would accrue on the equitable second mortgage and this would hopefully keep the value of the equitable second mortgage absorbing all of the value in the property as it increases over time. For land tax purposes the equitable second mortgage are ignored and look only to the legal owner.
- hold land a unit trust with income units and capital units held by separate entities. This works because, for Land Tax purposes, the holder of the capital units is deemed to be the owner and the income units are held elsewhere then income can be distributed out to a desired entity. For example, you may have the capital units held by an individual but the income units held by a discretionary trust which can then be distributed across in accordance with your normal tax planning. Another variation, the capital units could have their interest removed or limited in the event or bankruptcy of the individual. In this way asset protection could be achieved.

If you have any questions about Land Tax or would like to talk to one of our team about your specific circumstances then please contact us and we will be pleased to assist.







2020

# LAND TAX CALCULATOR

PREPARED BY



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