

Alert

TAX

Land Tax Reform for Trusts

By John Tucker

In light of the considerable interest shown in our recent article on this subject, we look further into some of the implications of the Treasurer's budget announcement.

An apparent target of the Treasurer appears to be the ownership of properties through multiple trusts.

This can be discerned from the Treasurer's reference to levelling the playing field and the Victorian Land Tax Act¹ provisions by assuming that the use of different trusts for different properties is seen as complex and not productive of a level outcome with those who do not choose to hold property in this way but choose to do so personally.

We note that this will not be because another form of holding is not open to such persons, but because of a choice made from the level of options as open to them as to everyone.

The Victorian provisions take a very discriminatory stance against property held in discretionary trusts by levying a surcharge on land held by trustees.

There is however exemptions from this surcharge, one of which is an exemption from the surcharge if an individual is nominated as the beneficiary of a particular discretionary trust.

The nominated beneficiary, who must be someone eligible under the trust deed for the trust to benefit from its capital, is then treated as the owner of the land held under the trust for determining whether the land in the trust is to be aggregated with any other taxable landholding held by that individual, whether personally or through a trust for which that person is a beneficiary with a fixed share of land under a trust, or is the nominated beneficiary of another discretionary trust.

It can be observed that this process is not effective at levelling the playing field since a family with several individual family members who are eligible beneficiaries and each able to be nominated, for the purposes of these provisions, to different trusts will be better placed than a family with few individual members who are able to be so nominated.

If individual family members personally hold land, other than that which is exempt from land tax, their nomination as a beneficiary of a discretionary trust will result in the aggregation of the land in the trust with that land. Likewise, if they are a nominee for another trust.

There are many good reasons for land to be held in a discretionary trust structure. Indeed it is probably the case that holding through a discretionary trust is currently the most favoured form of investment property ownership.

The reasons for this can include the fact that property can be held by a trustee subject to such a trust without the need to fix interests in the property among the potential objects of the trust until such time as the property might be disposed of.

While the land tax nomination does not mean that the structure of the discretionary trust is altered in fixing any interest for beneficiaries of the property of the trust it has the potential to create expectations.

continued overleaf...

¹ Land Tax Act 2005 (Vic)

The position with respect to a trust with fixed interests, for example a unit trust, is more straightforward if the terms of the trust have fixed the beneficial interest in the property the subject of the trust. Then there will be an opportunity to aggregate interests according to the fixed interests of beneficiaries.

Many trusts in the form of a unit trust are not truly fixed trusts but more in the nature of a hybrid of a fixed and a discretionary trust with, for example, interests in the property of the trust fixed to a class of beneficiaries but not between the members of the class. Such trusts will be liable to the surcharge unless the classes nominate a beneficiary as the putative owner of the class holding.

Administratively and in compliance, the structure has much to be criticised. There is a need for a nomination to be notified to the Commissioner in respect of each trust that seeks not to be subject to the surcharge. The trustee is assessed at the surcharge rate if there is no notification or at the general rate if there is.

If a nomination has been notified then the nominated beneficiary is assessed at the general rate (as applicable to the trust land and their interests in any other land for which they are, or deemed to be, the owner).

To avoid double taxation a deduction is allowed to the beneficiary for the tax charged to the trustee on the trust land.

In the case of a unit trust the unit holders will be assessed on their proportional interests in the trust land at the general rate applicable to this land (aggregated with any other land for which they are or deemed to be the owner) and a proportional deduction given for the tax charged on the trust land.

There are limits on any change of a nomination once made, for a discretionary trust it can be following death or revocation of the existing nomination by the nominated beneficiary but otherwise only if, on a case by case basis, it is considered just and equitable by the Commissioner.

A unitholder nomination notified for a unit trust can be withdrawn but cannot be replaced. Changes in unitholders are to be notified.

In summary, the system carries with it a good deal of 'red tape'.



[MORE INFO](#)

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