

State Taxes Convention

Land tax grouping rules

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1. Introduction

Land tax is imposed by each Australian state and the Australian Capital Territory (**ACT**). In each of those jurisdictions, land tax is imposed on the owner of land at progressive marginal rates, including with a tax-free threshold in each of the states. With the exception of the ACT, these rates are applied to the total value of all taxable land owned by each owner (i.e. the land of each owner is aggregated when assessing land tax). In the ACT, land tax and rates are imposed on a parcel-by-parcel basis (i.e. the land of each owner is not aggregated when assessing land tax). This means that in the states each owner only obtains the benefit of the tax-free threshold and marginal rates once, regardless of the number and value of each parcel of land they own, whereas in the ACT each owner obtains the benefit of the marginal rates on each parcel of land they own.

Assessment of land tax on an aggregated basis for each owner has been described by the Supreme Court of Victoria as a "critical aspect of the land tax regime".¹ In the absence of rules to the contrary, that critical aspect of each state land tax regime would incentivise the ownership of land to be split across various different owners, each of which would obtain the benefit of the tax-free threshold and marginal rates of land tax, thereby lowering the overall effective tax rate on the land as a whole. As the Supreme Court of Tasmania has explained:²

The marginal rate of land tax, as a number of cents for each dollar of the relevant land value, depends on the total value of the land in respect of which land tax is payable. The greater the total value, the higher the marginal rate of land tax.

With the rates of land tax fixed in that way, liabilities for land tax could be minimised if extensive land holdings could be distributed amongst a number of related companies, with each company paying land tax only in respect of the land owned by it.

For this reason, the land tax regimes of the states contain rules that effectively group, or more accurately, aggregate the land of, companies or trusts that are related, which "has the effect that the companies [and trusts] do not have the individual advantage of the no tax threshold. They therefore pay significantly more tax as a group than would have been paid if the companies [and trusts] had been individually assessed."³ Such grouping rules have been described by the Victorian Civil and Administrative Tribunal as being "significant".⁴

¹ *Numo Pty Ltd v Commissioner of State Revenue* (2016) 103 ATR 333, 342.

² *Nekon Pty Ltd v Commissioner of State Revenue* (2010) 19 Tas R 416, 417.

³ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [33] (Vice President Judge Harbison).

⁴ *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [20] (Member Tang).

Despite these rules having the common purpose "to protect the aggregation principle"⁵ and "prevent related companies [and trusts] from evading the progressive nature of land tax",⁶ the rules in each jurisdiction vary in significant ways, including:

1. whether they apply to companies, trusts or both companies and trusts (including the interaction between the rules regarding companies and trusts);
2. whether they are self-executing or the relevant Commissioner must take action to have them apply;
3. the degree of relatedness required between companies or trusts before they will be grouped and their lands aggregated; and
4. whether more general land tax rules can result in effective grouping (e.g. as a result of the dual assessment of trustees and beneficiaries in respect of trust land).

This paper explains the land tax regime generally and the land tax grouping rules in particular of each jurisdiction and then considers the application of those rules to different commercial landholding structures in a series of case studies. In light of the results of those case studies, the paper then briefly considers whether the grouping rules are appropriate and adapted to achieve their purpose.

⁵ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [131] (Vice President Judge Harbison). See also State Revenue Office Victoria, *Grouping of Related Corporations*, LTA-008, 3 April 2018, 1.

⁶ *Numo Pty Ltd v Commissioner of State Revenue* (2016) 103 ATR 333, 349. See also *Nekon Pty Ltd v Commissioner of State Revenue* (2010) 19 Tas R 416, 417; RevenueNSW, *Section 29 of the Land Tax Management Act 1956*, LT 00v2, 23 October 2013, [3].

2. New South Wales

2.1 Imposition of land tax

Land tax is levied in New South Wales by the *Land Tax Act 1956* (NSW) and *Land Tax Management Act 1956* (NSW) for each year on the taxable value of all non-exempt land in New South Wales owned by any person at midnight on 31 December immediately preceding that year.⁷

The owner of land liable to pay land tax is defined to include every person entitled at law or in equity to land for any estate of freehold in possession (i.e. the holder of freehold title, including any trustee)⁸ and any person who is deemed to be an owner.⁹

The taxable value of a parcel of land is generally the average of its land value (i.e. unimproved market value)¹⁰ entered by the Valuer-General in the Register of Land Values for the last three land tax years.¹¹

2.2 Company grouping rules

2.2.1 Grouping of related companies

Section 29(3) of the *Land Tax Management Act 1956* (NSW) provides for the Chief Commissioner of State Revenue (**Chief Commissioner**) to group companies that are related to each other (**related companies**):

The Chief Commissioner, in assessing the land tax payable by companies that are related to each other and that own land in New South Wales –

- (a) may assess –
 - (i) all those companies separately,
 - (ii) all those companies jointly, or
 - (iii) any 2 or more of those companies jointly and the remainder separately, and
- (b) shall classify –
 - (i) 1 of those companies, or, where a joint assessment is made, the companies jointly assessed, as a concessional company, and
 - (ii) the remainder (if any) as non-concessional companies,

and the companies shall be liable accordingly.

⁷ *Land Tax Act 1956* (NSW) s3AL(1); *Land Tax Management Act 1956* (NSW) ss7-9(1).

⁸ See, e.g., *Cooper v Federal Commissioner of Land Tax* (1941) 65 CLR 320, 327 (Starke J), 330 (Williams J).

⁹ *Land Tax Management Act 1956* (NSW) s3(1)(definition of "owner").

¹⁰ *Valuation of Land Act 1916* (NSW) s6A(1).

¹¹ *Land Tax Management Act 1956* (NSW) ss3(1)(definition of "Register"), 9(2)-(5), 9AA.

Two or more companies jointly assessed are deemed to be a single company for the purposes of that assessment.¹² The company or companies classified as a concessional company are taxed at the general rates of land tax (i.e. they obtain the benefit of the tax-free threshold and premium rate threshold).¹³ The company or companies classified as non-concessional companies are taxed at a flat rate of either 1.6%, if the taxable value of all land owned by the group comprised of that company and its related companies does not exceed the premium rate threshold, or at 2% if it does.¹⁴ The effect of this assessment and classification system is that overall the group of related companies only obtains the benefit of the tax-free threshold and premium rate threshold once.¹⁵

Two or more related companies that are liable for land tax (whether assessed jointly or separately) are each jointly and severally liable to pay that tax and related charges (i.e. interest, penalty tax and costs and expenses of recovery).¹⁶ Where such amounts of tax are unpaid, the unpaid amount is a tax debt payable to the Chief Commissioner by each company.¹⁷ The Chief Commissioner may issue a notice of assessment to a related company jointly and severally liable to pay land tax and related charges even if a notice of assessment has already been issued to one of that company's related companies.¹⁸ A related company that pays an amount of land tax for which it is jointly and severally liable has such rights of contribution or indemnity from other persons as are just.¹⁹

2.2.2 Definition of "related companies"

Companies are related to each other if any of the following tests are satisfied:

- a. One of those companies holds a controlling interest in the other company (i.e. parent and subsidiary companies).²⁰ This will be the case if the first company:
 1. can control the composition of the board of directors of the other company (including by exercise of some power to appoint or remove all or a majority of the directors whether with or without the consent or concurrence of any other person);²¹
 2. is in a position to cast or control the casting of more than half the maximum number of votes that might be cast at a general meeting of the company; or
 3. holds more than half of the issued share capital of the other company.²²
- b. The same person holds, or the same persons together hold, a controlling interest in both companies (i.e. companies with common majority ownership).²³ This will be the case if the person or persons acting together:

¹² *Land Tax Management Act 1956* (NSW) s29(4).

¹³ *Land Tax Act 1956* (NSW) s3AL(2)(a), sch13 pt1.

¹⁴ *Ibid* ss3AL(2)(c)-(d), 3AL(3), sch 13 pts3-4; *Land Tax Management Act 1956* (NSW) s29(7).

¹⁵ *Re Edgely Pty Ltd v Chief Commissioner of State Revenue* [2014] NSWCATAD 103 (17 July 2014) 18, *affd* [2015] NSWCATAP 37 (12 March 2015) [3].

¹⁶ *Land Tax Management Act 1956* (NSW) ss29(5)-(6); *Taxation Administration Act 1996* (NSW) s45(2). This appears to mean that joint and several liability is restricted to related companies that own non-exempt land in New South Wales.

¹⁷ *Land Tax Management Act 1956* (NSW) s29(6); *Taxation Administration Act 1996* (NSW) s45(1).

¹⁸ *Taxation Administration Act 1996* (NSW) s45(2A).

¹⁹ *Ibid* s45(3).

²⁰ *Land Tax Management Act 1956* (NSW) s29(1)(a).

²¹ *Ibid* s29(2)(f).

²² *Ibid* ss29(1A), 29(2)(a1).

²³ *Ibid* s29(1)(b).

1. can control the composition of the board of directors of the company (including by exercise of some power to appoint or remove all or a majority of the directors whether with or without the consent or concurrence of any other person);²⁴
2. is or are in a position to case or control the casting of more than half of the maximum number of votes that might be cast at a general meeting of the company; or
3. holds or hold more than half of the issued share capital of the company.²⁵

The form of controlling interest in each related company does not need to be the same (e.g. companies will be related where a person who can cast more than 50% of the votes at a general meeting of the first company and also owns more than 50% of the issued share capital of the other).²⁶

- c. More than half of the issued share capital of one of those companies (**first company**) is held by the other company (**second company**) together with shareholders of the second company and the proportion of the issued share capital of the second company held by shareholders of the first company is more than the difference between half and the proportion of the issued share capital of the first company held by the second company (i.e. companies with split common majority ownership).²⁷
- d. One of those companies is related to a company of which the other or those companies is related (including through multiple applications of this rule) (i.e. chains of related companies).²⁸

The Chief Commissioner considers that "[t]he essential requirement is that the companies must be either controlled or able to be controlled by the same person, or by the same people acting together."²⁹

For these purposes, the issued share capital of a company does not include any part that carries no right to participate beyond a specified amount in a distribution of either profits or capital.³⁰ Any shares held or power exercisable by a person or company as a trustee or a nominee for another person or company are to be treated as held or exercisable by that other person or company if the trust is a fixed trust and as not held or exercisable by the trustee or nominee whether or not the trust is a fixed trust.³¹

Any shares held or power exercisable by a person or a company by virtue of the provisions of any debentures of another company, or of a trust deed for securing any issue of any such debentures, shall be disregarded.³² Any non-debenture shares held or power exercisable by any person or

²⁴ Ibid s29(2)(f).

²⁵ Ibid s29(1A).

²⁶ RevenueNSW, *Section 29 of the Land Tax Management Act 1956*, LT 00v2, 23 October 2013, [10].

²⁷ *Land Tax Management Act 1956* (NSW) s29(1)(c). For a useful example of the application of this rule, see RevenueNSW, *Section 29 of the Land Tax Management Act 1956*, LT 00v2, 23 October 2013, [9] (Example).

²⁸ Ibid s29(1)(d).

²⁹ RevenueNSW, *Section 29 of the Land Tax Management Act 1956*, LT 00v2, 23 October 2013, [5].

³⁰ *Land Tax Management Act 1956* (NSW) s29(2)(b).

³¹ Ibid s29(2)(c). The Chief Commissioner's public ruling appears to incorrectly summarise this provision by stating "shares held by any person or company as trustee for any other person or company are to be treated as if the other person or company as well as the trustee held the shares in their own right": RevenueNSW, *Section 29 of the Land Tax Management Act 1956*, LT 00v2, 23 October 2013, [13]. See also [15]: "If a trustee holds controlling interests in two or more companies on behalf of different trusts, those companies are not related to each other only because of that control." This statement assumes that the trustee would be considered to hold a controlling interest: cf s29(2)(c)(ii). These statements appear not to have been updated following the amendment of s29(2)(c) in 2014: see *State Revenue Legislation Further Amendment Act 2014* (NSW) sch2 item 6; Explanatory Note, *State Revenue Legislation Further Amendment Bill 2014* (NSW) 3.

³² *Land Tax Management Act 1956* (NSW) s29(2)(d).

company, or by their nominee, shall be treated as not held or exercisable by them if the ordinary business of that person or company includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with that person or company (as defined in Division 2 of Part 1.2 of the *Corporations Act 2001* (Cth)).³³

Companies may be related notwithstanding that they do not own land in New South Wales.³⁴

2.2.3 Limited discretion of the Chief Commissioner

Section 29(3) of the *Land Tax Management Act 1956* (NSW) contains both discretionary and mandatory elements. By using the word "may", section 29(3)(a) provides the Chief Commissioner with a discretion to assess related companies separately, jointly or some jointly and the rest separately. By using the word "shall", section 29(3)(b) requires the Chief Commissioner to classify at least one of those companies as a concessional company and any others as non-concessional companies. These decisions impact upon the rate of land tax paid by each of the related companies.

Importantly, however, the Chief Commissioner does not have a discretion to disregard the relationships between related companies and assess them separately at general rates (i.e. with each obtaining the benefit of the tax-free threshold and premium rate threshold).³⁵

To the contrary, it seems possible that the Chief Commissioner could exercise the powers conferred by section 29(3) to assess related companies at an effective rate that is higher than would apply to a single taxpayer. For example, if there was a group of related companies that owned various parcels of land with a total taxable value above the premium rate threshold:

1. if the Chief Commissioner separately assessed a related company that owned the land with a taxable value less than the tax-free threshold and/or the premium rate threshold as the concessional company, it would not obtain the full benefit of the tax-free threshold and/or premium rate threshold; and
2. regardless of whether the Chief Commissioner jointly or separately assessed the other related companies, as non-concessional companies all of their land would be taxed at the premium rate, meaning they might not obtain the benefit of the premium rate threshold, despite the concessional company also not receiving the benefit of that threshold.

Such an outcome would appear to be inconsistent with the statutory intention of section 29, which the Chief Commissioner states in a public ruling is to "prevent the practice of splitting land holdings among two or more commonly owned or controlled companies to obtain the benefit of the tax-free threshold or the premium rate threshold more than once for the group."³⁶

³³ Ibid s29(2)(e).

³⁴ Ibid s29(2)(a).

³⁵ Compare earlier forms of s29, which did provide such a discretion. The Supreme Court upheld the exercise of the Commissioner's discretion to jointly assess a head company and its eleven wholly-owned subsidiaries under such an earlier form of section 29: *Hooker Rex Pty Ltd v Commissioner of Land Tax* [1967] 2 NSW 727, 728-9. It also held that while the fact that related companies carry on different businesses might be a reason that the Chief Commissioner could take into account in exercising the discretion, it is not a circumstance that prevents the exercise of the discretion: *Winbarra Pty Ltd v Commissioner of Land Tax (NSW)* (1977) 96 ATR 97-8.

³⁶ RevenueNSW, *Section 29 of the Land Tax Management Act 1956*, LT 00v2, 23 October 2013, [3].

In addition, when section 29 did confer a complete discretion upon the Chief Commissioner whether to group related companies or assess them separately, the Supreme Court held that in exercising that discretion, the Chief Commissioner must take into account relevant considerations, including the effect of grouping on the application of other provisions, including eligibility for exemptions, and not take into account irrelevant considerations, including seeking to maximise revenue.³⁷ By parity of reasoning, by exercising the powers under section 29(3), the Chief Commissioner would presumably have to take into account the overall tax rate imposed on a group of related companies (including the fact that if all were assessed together as a concessional company, they would obtain the full benefit of the tax-free threshold and premium rate threshold).

2.3 Trust grouping rules

2.3.1 Trusts with same trustee and beneficiaries grouped

Section 24 of the *Land Tax Management Act 1956* (NSW) provides that trustees are liable for land tax in respect of land held on trust as if they are beneficially entitled to land (i.e. all land owned by the trustee is assessed to the trustee) but subject to two provisos, namely, that land tax must be separately assessed in respect of:

1. different lands owned in severalty in trust for different persons, who are not for any reason liable to be jointly assessed; and
2. land owned beneficially by a trustee, unless for any reason the trustee is liable to be jointly assessed for land tax.³⁸

Section 24 provides:

Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he or she were beneficially entitled to the land—

Provided that where he or she is the owner of different lands in severalty, in trust for different persons who are not for any reason liable to be jointly assessed, the land tax so payable by the person shall be separately assessed in respect of each of those lands—

Provided also that when a trustee is also the beneficial owner of other land, he or she shall be separately assessed for that land, and for the land of which he or she is a trustee, unless for any reason he or she is liable to be jointly assessed independently of this section.

Relevantly for present purposes, the first proviso ensures that the land of 'each trust [is] assessed separately.'³⁹ The deemed legal and equitable ownership of the trustee does not cause 'lands, in which the same beneficial ownership does not in fact exist, to be aggregated.'⁴⁰ In essence, this means that land held on the terms of separate trusts must be assessed separately, unless the

³⁷ *Marra Pty Ltd v Commissioner of Land Tax (NSW)* (1980) 10 ATR 716, 719-20; *Abob Pty Ltd v Commissioner of Land Tax (NSW)* (1984) 15 ATR 1013, 1024-5.

³⁸ See also s64.

³⁹ New South Wales, *Parliamentary Debates*, Legislative Council, 18 October 1956, 3179 (Robert Downing, Attorney-General).

⁴⁰ *Cooper v Federal Commissioner of Land Tax* (1941) 65 CLR 320, 332 (Williams J). This case concerned the equivalent provision in Commonwealth land tax legislation. No case has considered this first proviso to s24.

beneficiaries of the separate trusts are the same, in which case the lands of those trusts are aggregated.⁴¹

The term "trustee" is defined to include "every person appointed or constituted trustee by act of parties by order or declaration of a court or by operation of law", "an executor or administrator, guardian, committee, receiver, or liquidator" and "every person having or taking upon [themselves] the administration or control of land affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the land of a person under any legal or other disability."⁴²

2.3.2 Dual assessment of trustees and beneficiaries of "fixed trusts"

Section 25 of the *Land Tax Management Act 1956* (NSW) provides that the owner of an equitable estate or interest in land is liable for land tax as if they were the legal owner of that estate or interest. The owner of the legal estate is the primary taxpayer and the owner of the equitable estate is the secondary taxpayer, with the latter given a deduction as is necessary to prevent double taxation (i.e. the lesser of the amount of land tax paid in respect of the land by the secondary taxpayer and the amount of land tax payable in respect of the land by the primary taxpayer and any precedent secondary taxpayer).⁴³

Unit holders in a unit trust are not necessarily the owner of an equitable estate or interest in trust land. In *CPT Custodian Pty Ltd v Commissioner of State Revenue (Vic)*, the High Court held that the holders of units in a unit trust, the express terms of which conferred an equal interest in all trust property, but excluded any interest in any particular item of trust property, were not the owner of an equitable estate or interest in trust land for Victorian land tax purposes.⁴⁴ The Court also emphasised that the powers of the trustee to accumulate rents and profits from land and apply them to purchase other trust assets meant that unit holders did not fall within the definition of an owner because they did not have a right to receive all rent and profits from the land.⁴⁵

Furthermore, this dual assessment of trustee and beneficiaries does not apply to a "special trust".⁴⁶ A "special trust" is effectively defined to be a trust that is not a "fixed trust", with a fixed trust being defined as one where the equitable estate in all of the land subject to the trust is owned by persons who are owners of the land for land tax purposes, with a trust being deemed to be a fixed trust, and the beneficiaries being deemed to be the owner of an equitable estate in the trust land, if the following relevant criteria as satisfied:⁴⁷

⁴¹ The position was different under the now repealed equivalent provision in Victoria, which referred to land held on trust for 'different beneficial owners'. The Victorian Court of Appeal held that this meant all land held on trust by a trustee would be aggregated unless the beneficiaries of a trust held a proprietary interest in the land and right to deal with it as their own so that they were also assessed as equitable owners of the trust land: *Lygon Nominees Pty Ltd v Commissioner of State Revenue* (2007) 23 VR 474, 488-9.

⁴² *Land Tax Management Act 1956* (NSW) s3(1)(definition of "Trustee").

⁴³ *Land Tax Management Act 1956* (NSW) ss25(1)-(2), 33.

⁴⁴ (2005) 224 CLR 98, 113

⁴⁵ Ibid 116. The High Court also referred to the trustee's existing right of reimbursement, but that is not relevant in New South Wales: *Land Tax Management Act 1956* (NSW) s3A(3).

⁴⁶ *Land Tax Management Act 1956* (NSW) ss25(3)-(4).

⁴⁷ Ibid ss3A(1)(c), 3A(2), 3A(3A), 3A(3B). Note also s25A which provides the Chief Commissioner with power to classify a trust as a special trust (including if information required to be provided is not been provided).

1. the trust deed specifically provides that the beneficiaries of the trust:
 - a. are presently entitled to the income of the trust subject only to payment by the trustee of proper expenses relating to trust administration (i.e. the deed must expressly use the words "presently entitled" in reference to income subject only to proper expenses);⁴⁸ and
 - b. are presently entitled to the capital of the trust (i.e. have a right to redeem units at a time of their choosing and not subject to any discretion of the trustee or approval of other unit holders or right of the trustee to compulsorily redeem units)⁴⁹ and may require the trustee to wind up the trust and distribute the trust property or net proceeds thereof;
2. these entitlements cannot be removed, restricted or otherwise affected by the exercise or non-exercise of any discretion conferred on a person (e.g. trustee or unit holder) by the trust deed (i.e. any amendment clause must expressly exclude the ability to amend the clauses conferring the entitlements);⁵⁰ and
3. if the trust is a unit trust, there is only one class of unit issued and the proportion of trust capital to which a unit holder is entitled on a winding up or surrender of units is fixed and equal to the proportion of income to which the holder is entitled. This requires that all units have equal entitlements to income and capital and confer a right to vote under the winding up clause and the trust deed does not include powers to issue other classes of unit or reclassify units.⁵¹

Sub-funds of a corporate collective investment vehicle are deemed to be a unit trust that is a special trust.⁵² In contrast, the following trusts are expressly excluded from being special trusts: charitable trusts, a personal representative holding a deceased's former principal place of residence (but generally only until two years after death),⁵³ concessional trusts (i.e. special disability trusts and trusts where each beneficiary of the trust is under 18 or a guardianship order or in the "relevant group" as defined in the *Coroners Act 2009* (NSW)),⁵⁴ superannuation trusts (i.e. complying or regulated superannuation funds, approved deposit funds and pooled superannuation trusts),⁵⁵ testamentary trusts (but only until two years after death), and certain grandfathered family unit trusts.⁵⁶

For a special trust, the only relevant owner is the trustee, whereas for a fixed trust both the trustee and beneficiaries are owners and are taxed pursuant to section 25.⁵⁷ This latter case may result in the effective partial or complete grouping of a company or trustee that is a beneficiary in a fixed trust and that fixed trust (i.e. the company or trustee will be assessed both on the land owned by it and also a proportion of the land owned by the trustee of the fixed trust of which it is a beneficiary). Non-special trusts, including fixed trusts, obtain the benefit of the tax-free threshold, whereas special trusts do not.⁵⁸ If the lands of a special trust and non-special trusts are aggregated under section 24, it would

⁴⁸ RevenueNSW, *Unit trust deed amendments*, CPN 003, 19 December 2017, 2 (**CPN 003**).

⁴⁹ *Ibid* 3.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

⁵² *Land Tax Management Act 1956* (NSW) s3C(5).

⁵³ *Ibid* sch1A cl9.

⁵⁴ *Ibid* s3B(1), 3B(3).

⁵⁵ *Ibid* s3A(5).

⁵⁶ *Ibid* s3A(4), sch1AA.

⁵⁷ CPN 003, 1, 4.

⁵⁸ *Land Tax Act 1956* (NSW) ss3AL(1), 3AL(2)(a)-(b), sch13 pts1-2. See also *Re Nunc Coepi Pty Ltd v Chief Commissioner of State Revenue* [2025] NSWCATAD 143 (18 June 2025) [13], [39] (Senior Member Gatland); RevenueNSW, *How Trusts are Assessed for Land Tax* <<https://www.revenue.nsw.gov.au/taxes-duties-levies-royalties/land-tax/understanding-land-tax/types-of-landowners/trusts>>.

appear that the lands subject to the non-special trust would obtain the benefit of the tax-free threshold, but the lands subject to the special trust would not.

2.4 Interaction of company and trust grouping rules

Given that the second proviso to section 24 of the *Land Tax Management Act 1956* (NSW) requires that a trustee be separately assessed on land owned in its individual/non-trustee capacity and any trustee capacity, it should follow that if that a company with related companies is also a trustee, it should be separately assessed on its trust land and the land owned by it and its related companies in their individual/non-trustee capacities.

This appears to be accepted by the Chief Commissioner in a public ruling on the grouping of related companies:⁵⁹

Liability of a company in which land is vested as a trustee should be assessed under section 24 of the *Land Tax Management Act 1956*.

This implies that the Chief Commissioner will separately assess land held by a related company to the extent that it owns land in a trustee capacity from the other lands of the related companies.⁶⁰

2.5 Grouping irrelevant for surcharge land tax

Grouping should not be relevant to surcharge land tax payable by owners of residential land who are foreign persons because that tax is imposed at a flat rate of 5% of the taxable value of that land.⁶¹ In addition, surcharge land tax is payable as if the residential land were the only land owned by the foreign person.⁶²

⁵⁹ RevenueNSW, *Related companies*, LT 003v2, 23 October 2013, 5 [19].

⁶⁰ See also *Re Edgely Pty Ltd v Chief Commissioner of State Revenue* [2014] NSWCATAD 103 (17 July 2014) 8, where the Chief Commissioner appears to have adopted the assessing practice that a trustee company cannot be grouped under s29.

⁶¹ *Land Tax Act 1956* (NSW) s5A(2)(d).

⁶² *Ibid* s5A(4)(a).

3. Victoria

3.1 Imposition of land tax

Land tax is imposed in Victoria by the *Land Tax Act 2005* (Vic) in respect of each year on all taxable land in Victoria and is payable by the owner of the land.⁶³

The owner of land is generally the person entitled to land for a freehold estate in possession (i.e. the holder of freehold title, including any trustee).⁶⁴ However, the holders of beneficial interests in certain trusts are also deemed to be the owners of land in addition to the trustee of the trust.⁶⁵

Taxpayers are generally assessed for land tax on the total taxable value of all taxable land owned at midnight on 31 December immediately preceding the tax year (i.e. on an aggregated basis).⁶⁶ The taxable value of land is generally the site value of the land (i.e. unimproved market value)⁶⁷ as at the date of the last valuation returned to the Valuer-General.⁶⁸

3.2 Company grouping rules

3.2.1 Commissioner's discretion to group related corporations

Section 50 of the *Land Tax Act 2005* (Vic) provides the Commissioner of State Revenue (**Commissioner**) with a discretion to treat related corporations as a single corporation for land tax purposes:

- (1) Subject to subsection (3), the Commissioner may treat related corporations as a single corporation for the purposes of this Act.
- (2) If the Commissioner does so –
 - (a) the Commissioner must assess the related corporations jointly for land tax (other than vacant residential land tax); and
 - (b) the related corporations are jointly and severally liable for the land tax (other than vacant residential land tax); and
 - (c) section 46 of the *Taxation Administration Act 1997* applies accordingly.⁶⁹
- (3) The Commissioner must not treat related corporations as a single corporation for the purposes of assessing vacant residential land tax.

⁶³ *Land Tax Act 2005* (Vic) ss7-8.

⁶⁴ *Ibid* s10(1)(a).

⁶⁵ *Ibid* ss10(1)(e), 18.

⁶⁶ *Ibid* s36(1). See also s38 and *Re Malcolm and Commissioner of State Revenue* [2025] VCAT 218 (17 March 2025) [4], [47]-[62] (Senior Member Tang AM).

⁶⁷ *Land Tax Act 2005* (Vic) s3(1)(definition of "site value"); *Valuation of Land Act 1960* (Vic) s2(1)(definition of "site value").

⁶⁸ *Land Tax Act 2005* (Vic) ss19(1)-(2).

⁶⁹ Section 46 of the *Taxation Administration Act 1997* (Vic) provides that nothing in that Act prevents a person who is jointly and severally liable to pay an amount of tax and pays that amount to the Commissioner from recovering a contribution from another person liable to pay the whole or part of that amount.

If one or more of the related corporations that owns land in Victoria is an absentee corporation, then each of the related corporations is jointly and severally liable for land tax on the combined taxable value of all land owned by them at general rates plus a 4% surcharge on the land owned by the absentee corporations.⁷⁰

The Commissioner's practice is to issue an assessment to one corporation within a group on behalf of the group. Those corporations "will be entitled to equitable rights of indemnity between themselves."⁷¹

3.2.2 Definition of "related corporations"

Corporations are "related corporations" in any of the following circumstances:⁷²

- a. One corporation either: (a) controls the composition of the board of the other (including by exercise of a power to appoint or remove all or a majority of board members, whether or not requiring the consent of another);⁷³ (b) is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other corporation; or, (c) holds more than 50% of the issued share capital of the other corporation (i.e. parent and subsidiary corporations).⁷⁴
- b. The same person has, or the same persons have together, a controlling interest in each of the corporations.⁷⁵ A person(s) has a "controlling interest" if they: (a) can control the composition of the board (including by exercise of a power to appoint or remove all or a majority of board members, whether or not requiring the consent of another); (b) cast or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of the corporation; or, (c) hold more than 50% of the issued share capital of the corporation (i.e. corporations with common majority ownership).⁷⁶ The reference to "the same persons have together" a controlling interest does not require 'actual active agreement' between those persons; rather, it simply requires that two or more persons collectively hold a controlling interest, even if one of those persons holds a controlling interest by themselves.⁷⁷
- c. More than 50% of the issued share capital of one of the corporations (corporation 1) is held by the other corporation (corporation 2) together with the shareholders of the other corporation (corporation 2) and the percentage of the issued share capital of the other corporation (corporation 2) held by shareholders of corporation 1 is more than the difference between 50% and the percentage of the issued share capital of corporation 1 held by corporation 2 (i.e. corporations with split common majority ownership).⁷⁸
- d. The related corporations of any related corporation, including because of one or more applications of this rule) (i.e. chains of related corporations).⁷⁹ This provision "operates to link groups together where there is commonality in the membership of two groups."⁸⁰

⁷⁰ *Land Tax Act 2005* (Vic) s50A.

⁷¹ State Revenue Office Victoria, *Grouping of Related Corporations*, LTA-008, 3 April 2018, 3.

⁷² *Land Tax Act 2005* (Vic) s47(1).

⁷³ *Ibid* ss49(1)(f)-(2).

⁷⁴ *Ibid* s47(2).

⁷⁵ *Ibid* s47(3).

⁷⁶ *Ibid* s48.

⁷⁷ *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [58], [69]-[72].

⁷⁸ *Land Tax Act 2005* (Vic) s47(4).

⁷⁹ *Ibid* s47(5).

⁸⁰ *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [48].

For these purposes, the issued share capital of a corporation excludes shares that carry no right to participate in a distribution of either capital or profit beyond a specified amount.⁸¹ Shares held or power exercisable by a person or corporation as a trustee or nominee for another person or corporation are taken to be also held or exercisable by that other person or corporation,⁸² except that:

1. shares held or power exercisable by virtue of the provisions of any debentures of another corporation or a trust deed for securing any issue of such debentures are disregarded;⁸³ and
2. shares held or power exercisable are taken to be not so held or exercisable if the ordinary business of the person or corporation includes the lending of money and the shares are held or power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money (other than one entered into with an "associate" as defined in the *Corporations Act 2001* (Cth)).⁸⁴

Corporations may be related regardless of whether they own land in Victoria.⁸⁵

The provisions defining a group of related corporations "have been drafted in broad terms."⁸⁶ The question of whether corporations are related is determined by reference to the relevant facts and circumstances as at midnight on 31 December prior to the relevant land tax year.⁸⁷ The provisions defining "related corporations" in sections 47-9 "provide objective factual and legal criteria" for determining whether corporations are related; the Commissioner has no discretionary or declaratory power that is involved in or otherwise affects whether or not these criteria are satisfied on the facts of a particular case.⁸⁸ Errors by the Commissioner in applying these criteria can be corrected by the general objection and review or appeal procedure.⁸⁹

3.2.3 Exercise of Commissioner's grouping discretion

The Commissioner does not make a formal 'determination' under section 50; rather, the Commissioner is given the power to treat related corporations as a single corporation.⁹⁰ The provisions of section 50 "confer a discretion on the Commissioner" to choose "whether or not 'related corporations' are treated as a 'single corporation'" and "it can be imagined that there may be some circumstances where the Commissioner would think it inappropriate to treat relevant corporations which are 'related corporations' under the provisions of ss 47 to 49 as a 'single corporation'".⁹¹ The Commissioner can, and necessarily does, exercise the section 50 power retrospectively.⁹²

⁸¹ *Land Tax Act 2005* (Vic) s49(1)(b).

⁸² *Ibid* s49(1)(c). See, e.g., *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [89]-[90], [94]-[95].

⁸³ *Land Tax Act 2005* (Vic) s49(1)(d).

⁸⁴ *Ibid* s49(1)(e).

⁸⁵ *Ibid* s49(1)(a).

⁸⁶ *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [69].

⁸⁷ *Numo Pty Ltd v Commissioner of State Revenue* (2016) 103 ATR 333, 345-6, 352.

⁸⁸ *Ibid* 347, 351-2.

⁸⁹ *Ibid* 346, 356.

⁹⁰ *Ibid* 340-1.

⁹¹ *Ibid* 346-7. See also *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [35], [180].

⁹² *Numo Pty Ltd v Commissioner of State Revenue* (2016) 103 ATR 333, 349-55 (i.e. by way of assessment or reassessment during or after the relevant land tax year, subject to the general limitations on assessments and reassessments).

The discretion conferred on the Commissioner by section 50 "is very wide" and expressed "in board terms", but it must be exercised *bona fide* in relation to each related corporation guided by the purpose and policy of the *Land Tax Act 2005* (Vic):⁹³

Its purpose is to protect the aggregation principle established by the Act – and standing behind that is the social good requiring the need for all taxpayers to be treated equally. It does this by allowing the Commissioner to make an assessment as to whether a particular landholding structure ostensibly containing many different taxpayers is in fact a structure controlled by a single entity.

I conclude that the discretion requires consideration of such matters as the degree of relatedness of the companies under consideration, the degree of control by the directors of the day-to-day activities of each company, the uses to which the separate parcels of land are put, and the negative impact if any on the taxpayer of the exercise [of] the discretion, as well of course as matters relating to whether the structure has been designed to avoid payment of tax.⁹⁴

As the discretion "is concerned with the avoidance of land tax, whether by intentional evasion or otherwise",⁹⁵ the exercise of the discretion does not depend upon whether there has been intentional tax evasion or avoidance, although its existence or absence would be relevant and could be significant.⁹⁶ It is not appropriate for the Commissioner to have a policy of exercising the discretion unless its exercise would be unjust.⁹⁷ The mere fact that corporations are related is insufficient to justify exercising the discretion and is a neutral factor.⁹⁸ Given the broad terms in which related corporations are defined, the Commissioner's discretion allows "for the amelioration of their operation".⁹⁹

No party bears any general burden of proof in relation to the discretion, but each party does bear the onus of proving any facts they assert or rely upon, which requires a taxpayer "to provide rational and probative evidence to convince the Tribunal to refuse to exercise the discretion, including evidence to rebut any inconsistent evidence."¹⁰⁰ A taxpayer may seek merits review of the discretion by review in the Victorian Civil and Administrative Tribunal or judicial review of the discretion by appeal to the Supreme Court of Victoria,¹⁰¹ but if an objection and then Tribunal review proceedings are run on judicial review grounds rather than merits review, the Tribunal may refuse to subsequently allow the taxpayer to then request merits review.¹⁰²

In what remains the "leading decision on the operation of the grouping provisions",¹⁰³ in *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue (Re Tadcaster)*, Vice President Judge Harbison of the Victorian Civil and Administrative Tribunal exercised the discretion to group seven

⁹³ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [41], [47], [49], [129], [180]. See also State Revenue Office Victoria, *Grouping of Related Corporations*, LTA-008, 3 April 2018, 1.

⁹⁴ *Ibid* [131]-[132]; *Numo Pty Ltd v Commissioner of State Revenue* (2016) 103 ATR 333, 349. See also *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [127]; State Revenue Office Victoria, *Grouping of Related Corporations*, LTA-008, 3 April 2018, 1.

⁹⁵ *Numo Pty Ltd v Commissioner of State Revenue* (2016) 103 ATR 333, 349.

⁹⁶ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [98]-[100], [129]-[130], [140]. See also State Revenue Office Victoria, *Grouping of Related Corporations*, LTA-008, 3 April 2018, 2.

⁹⁷ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [116]-[117].

⁹⁸ *Ibid* [142]-[143]. See also State Revenue Office Victoria, *Grouping of Related Corporations*, LTA-008, 3 April 2018, 2.

⁹⁹ *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [69].

¹⁰⁰ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [40]; *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [121].

¹⁰¹ *Nationwide Towing and Transport Pty Ltd v Commissioner of State Revenue (Vic)* (2018) 108 ATR 1, 11.

¹⁰² See, e.g., *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [114]-[115].

¹⁰³ *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) [24].

related corporations, all indirectly wholly-owned subsidiaries of a company owned and controlled by two individuals, each of which owned different parcels of land on which completely unrelated development projects were being undertaken.¹⁰⁴ The Vice President took into account in favour of those related corporations their lack of intentional tax avoidance, the (small) financial detriment arising from reliance on the Commissioner's initial assessments in which they were not grouped, and that each landholding was used for different purposes.

However, her Honour ultimately decided that the discretion should be exercised because:

1. the common theme to the activities of the related corporations was investment in land with the ultimate purpose of realising a profit by sale; and
2. most importantly, the complete unity of effective ownership and control of each of the related corporations (i.e. by the same two individuals as ultimate shareholders and directors).¹⁰⁵

The Vice President emphasised that in considering whether to exercise the discretion, the focus is on ownership, control and activities of the related corporations (which in this case was exercised by the same two individuals as ultimate shareholders and directors) and not the ownership, control and activities on the underlying land (which in this case was exercised by different project teams).¹⁰⁶ This suggests that while land owned by related corporations in unincorporated joint ventures with unrelated third parties may be grouped, land owned by an incorporated joint venture with unrelated third parties is less likely to be grouped (and, indeed, may not satisfy the definition of a related corporation in the first place).

In *Numo Pty Ltd v Commissioner of State Revenue*, Croft J upheld the retrospective exercise of the discretion in relation to two groups of related corporations: four corporations with a common majority individual shareholder and two corporations where one held 75% of the issued share capital of the other.¹⁰⁷ The sole ground of challenge to the exercise of the discretion in that case, which was rejected by Croft J, was that the discretion could only be exercised prospectively (i.e. it could only apply to assessments made after the discretion had been exercised).

The Commissioner has made a public ruling in which the position is adopted that:¹⁰⁸

In exercising his discretion, the Commissioner will consider whether related corporations in a particular landholding structure are essentially controlled by a single corporation, person or set of persons. If so, the Commissioner *is likely* to group the related corporations and treat these corporations as one single entity. This places such related corporations on a level playing field with natural persons or other corporations that own multiple lands and whose landholdings have been aggregated and assessed accordingly. The grouping provisions therefore support the aggregation principles established by the Act.

The ruling also states that while the Commissioner will consider the relevant factors listed by the Tribunal in *Re Tadcaster*, those factors are not exhaustive and no single one is determinative; rather, each relevant factor must be considered on a case by case basis in the context of the facts and circumstances of the related corporations.¹⁰⁹ In relation to the *Re Tadcaster* factors specifically, the Commissioner adds the followings points in the ruling:

¹⁰⁴ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [182].

¹⁰⁵ *Ibid* [150], [182]-[185].

¹⁰⁶ *Ibid* [149], [157]-[158], [165]-[166].

¹⁰⁷ (2016) 103 ATR 333, 334-5, 356.

¹⁰⁸ State Revenue Office Victoria, *Grouping of Related Corporations*, LTA-008, 3 April 2018, 1 (emphasis added).

¹⁰⁹ *Ibid* 2-3.

1. intention to avoid land tax: regard will be had to the purpose, history and reasons for the ownership structure/land ownership, tax planning and consequences of the structure, and the land tax effect of grouping companies;
2. degree of relatedness: regard will be had to the extent of shareholding and number of votes that can be cast at the general meeting of a corporation (including the ability to appoint or remove directors), with unity of effective ownership or control likely to result in exercise of the discretion;
3. degree of control of directors of day to day operations of related corporations: the greater the degree of control, the more likely that the Commissioner will exercise the discretion;
4. degree of interrelationship between each corporation: a strong degree of interrelationship (e.g. common business operations with profits flowing to common ultimate shareholders) makes it more likely the Commissioner will exercise the discretion, while a lack of connection in management, activities or operations militates against grouping; and
5. use of land: regard will be had to the purpose for which the land was acquired and used and control over that use, with joint activities, common usage or similar or identical land use operations a strong factor to consider.

3.2.4 Grouping irrelevant for other land taxes

The Commissioner's related corporations grouping discretion applies only for the purposes of land tax; it expressly does not apply to vacant residential land tax.¹¹⁰ In addition, grouping related corporations is unnecessary for the purposes of both vacant residential land tax and commercial and industrial property tax, because both taxes are imposed at a flat rate with no tax-free threshold.¹¹¹

3.3 Trust grouping rules

3.3.1 Trusts generally assessed separately at surcharge rates

Generally, an owner of land as trustee of a trust is assessed for land tax on the whole of the land subject to the trust as if it were the only land owned by the trustee.¹¹² The Commissioner interprets this to require that:

1. each trust that a trustee acts for is assessed separately;¹¹³ and
2. a person is assessed separately in their individual and trustee capacities.¹¹⁴

A "trustee" is defined to include a trustee, executor, administrator, guardian, liquidator and any person having or taking upon themselves the possession, administration, or control of land, income, or other property of any description affected by any trust, or having the possession, control, or management of

¹¹⁰ *Land Tax Act 2005* (Vic) ss50(2)(a), 50(3).

¹¹¹ *Ibid* s35(3); *Commercial and Industrial Property Tax Reform Act 2024* (Vic) ss17, 19.

¹¹² *Land Tax Act 2005* (Vic) s46A(2).

¹¹³ State Revenue Office Victoria, *Land Tax and Trusts* (16 January 2025) <<https://www.sro.vic.gov.au/land-tax/land-tax-and-trusts>>.

¹¹⁴ State Revenue Office Victoria, *Understanding Your Land Tax Assessment* (27 February 2025) <https://www.sro.vic.gov.au/land-tax/understanding-your-land-tax-assessment#land_held_on_trust>.

land of a person under any legal or other disability.¹¹⁵ A "trust" is defined to include a trust under which the assets of a deceased person are held by a personal representative, but does not include an implied or constructive trust.¹¹⁶

Such trustees are generally subject to surcharge rates of land tax, which are higher than general rates of land tax, up to a total taxable value of \$3 million, at which point the surcharge rate is the same as the general rate.¹¹⁷

3.3.2 Certain trusts generally assessed separately at general rates

There are exceptions to this general rule. It does not apply to implied or constructive trusts, excluded trusts (i.e. charitable trusts, concessional trusts, public unit trust schemes, wholesale unit trust schemes, trusts for certain non-profit organisations, trusts for certain clubs and superannuation trusts) or administration trusts (i.e. the personal representative of a deceased person), the trustees of which are assessed for land tax on the whole of the land subject to the trust at general rates of land tax as if the land were the only land owned by the trustee.¹¹⁸

3.3.3 Certain trustees and beneficiaries assessed at general rates

In addition, if the trustee of a fixed trust or unit trust scheme lodges a written notice of the beneficial interests in trust land or unitholdings in the scheme respectively with the Commissioner, in subsequent tax years:¹¹⁹

1. each beneficiary or unitholder is deemed to be the owner (in addition to the trustee) of a proportion of the trust land equal to the proportion of beneficial interest in trust land or units owned and is assessed for land tax on that and any other land owned by them at general rates of land tax;
2. the trustee is also assessed for land tax on the whole of the land subject to the trust at general rates of land tax as if the land were the only land owned by the trustee; and
3. to avoid double taxation, the land tax payable by a beneficiary or unitholder is reduced by the lesser of the following two amounts:

¹¹⁵ *Land Tax Act 2005* (Vic) s3(1)(definition of "trustee").

¹¹⁶ *Ibid* s3(1)(definition of "trust").

¹¹⁷ *Ibid* ss35(1), 46A(1), sch 1 cls1.6, 3.6. The highest rate is \$31,650 plus 2.65% of the taxable value in excess of \$3 million.

¹¹⁸ *Ibid* ss3(1)(definitions of "administration trust" and "excluded trust"), 46A(3)(c)-(d), 46E, 46L(1). There are also exceptions for land of a unit trust scheme or a discretionary trust used and occupied as the principal place of residence of a nominated beneficiary: ss46A(3)(a)-(b), 46H-46I.

¹¹⁹ *Ibid* ss46A(4), 46B(1)-(3), 46C(1)-(3). A fixed trust is defined to mean a trust that is not an excluded trust, a discretionary trust or a trust to which a unit trust scheme relates: s3(1)(definition of "fixed trust"). A unit trust scheme is defined to mean an arrangement allowing people to participate as beneficiaries in any income or profit from the acquisition, holding, management or disposal of trust property, but does not include an excluded trust: s3(1)(definition of "unit trust scheme"). Changes to beneficial interests in trust land or unitholdings must be notified to the Commissioner in writing within a month: ss46K(4)-(5). Until 30 June 2006, the trustee of a discretionary trust could also lodge written notice with the Commissioner of a single designated adult natural person beneficiary, with the result the designated beneficiary is deemed to also be the owner of land subject to the trust at midnight on 31 December 2005 (*pre-2006 land*) and liable for land tax on that land at general rates with a deduction for the land tax paid by the trustee on that land. The trustee is assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee at general rates in respect of pre-2006 land and at higher surcharge rates in respect of other trust land: ss46F-46G.

- a. the tax assessed to the trustee multiplied by the proportion of the beneficial interest in trust land held by the beneficiary or units held by the unitholder (i.e. the beneficiary's or unitholder's share of the trustee's tax); and
- b. the tax assessed to the beneficiary or unitholder multiplied by the taxable value of the trust land deemed owned by the beneficiary or unitholder divided by the taxable value of all land owned by the beneficiary or unitholder (i.e. the beneficiary's or unitholder's tax attributable to their deemed ownership of the trust land).¹²⁰

From a practical perspective, the lodging of written notice by the trustee of a fixed trust or unit trust scheme will result in the effective partial or complete grouping of any company or trustee that is a beneficiary in the fixed trust or unit trust scheme with that fixed trust or unit trust scheme (i.e. the company or trustee will be assessed both on the land owned by it and also a proportion of the land owned by the trustee of the fixed trust or unit trust scheme of which it is a beneficiary).

Where a beneficiary holds their beneficial interest, or a unitholder holds their units, in the capacity as trustee of another trust, the same deeming and reduction applies through the chain of trusts to the ultimate non-trustee beneficiary or unitholders.¹²¹ If a beneficiary is not the owner or deemed owner of any other land, they are not deemed to be an owner of the trust land and separately assessed (as their liability would necessarily be reduced to nil by the trustee's liability).¹²²

For completeness, the holder of a beneficial interest in a trust deemed to be an owner of vacant residential land is not liable to pay vacant residential land tax (i.e. only the trustee is so liable).¹²³

Similar provisions apply in relation to the imposition of the absentee owner surcharge on the trustees and beneficiaries or unitholders of absentee trusts.¹²⁴

3.3.4 Special rule aggregating implied and constructive trusts

There is only one circumstance where the lands of separate trusts in Victoria are aggregated. A person who is the owner of land as trustee of an implied or constructive trust is liable and assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee.¹²⁵

However, if the trustee holds land as trustee of more than one implied or constructive trust for the same beneficiary or beneficiaries, the trustee is to be assessed for land tax on the whole of the land subject to those trusts as if that land were the only land owned by the trustee (i.e. the lands of implied or constructive trusts with the same trustee and beneficiaries are aggregated).¹²⁶

¹²⁰ Ibid ss46B(4)-(5), 46C(4)-(5).

¹²¹ Ibid ss46B(7), 46B(9), 46C(6), 46C(8), 46D.

¹²² Ibid ss46B(8), 46C(7).

¹²³ Ibid s34E(3).

¹²⁴ Ibid ss46IA-46ID.

¹²⁵ Ibid ss46L(1)-(2).

¹²⁶ Ibid s46L(3).

3.3.5 Trustee statutory recoupment right

A trustee who pays land tax or absentee owner surcharge on land subject to the trust is entitled to recoup the amount from any trust property subject to the trust (or any like trust in the case of a trust other than an implied or constructive trust).¹²⁷

3.4 Interaction of company and trust grouping rules

Given that the *Land Tax Act 2005* (Vic) expressly provides for a trustee be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee, it should not matter whether the trustee is a related corporation in respect of which the Commissioner has exercised the discretion to group or any other person; in every case, the lands of each trust should be separately assessed to the trustee. The exercise of the discretion to group related corporations should only impact upon land held by those related corporations in their individual/non-trustee capacities.

This interpretation appears to have been accepted by the Commissioner and the Tribunal:¹²⁸

“Trusts provisions” of the *Land Tax Act 2005* (Vic) are contained in Div 2A of Pt 3 headed “Land held on trust.” Pursuant to s 46A(1), a trustee of land is liable to land tax at the surcharge rate set out in Pt 3 of Sch 1. Trustees are assessed on the whole of the land subject to a trust as if the land were the only land owned by the trustee under s 46A(2). Division 2A applies the surcharge rate of land tax to trustee landowners who are not assessed at the general rate set out in Pt 1 of Sch 1.

If [a corporation] owns land as trustee, the parties agree that the corporation cannot be assessed jointly with other corporations by reason of [the corporation] being related to other corporations within the meaning of s 47 of the [*Land Tax Act 2005* (Vic)]. Only trustees not liable to be assessed under the surcharge rate are subject to the aggregation provisions in Div 3 of Pt 3 of the Act [i.e. the related corporation rules]. This is because Div 2A and the surcharge rate are an entire code for trustees to whom the rate applies.¹²⁹

This interpretation was also not rejected in earlier Supreme Court proceedings in the same case.¹³⁰

The website of the State Revenue Office Victoria formerly had an express statement endorsing this interpretation:

Land held by a trustee of a trust is not grouped for land tax purposes, but you are required to notify us that the land is held on trust.¹³¹

¹²⁷ Ibid ss46J, 46M.

¹²⁸ *Re Aston (Aust) Properties Pty Ltd and Commissioner of State Revenue (Vic)* (2013) 95 ATR 792, 800, 802-3. See also *Re Urban Land Corridor Pty Ltd and Commissioner of State Revenue* [2018] VCAT 1983 (13 December 2018) Appendix 4 [4].

¹²⁹ To the extent this suggests that the trust land of a related corporation trustee of a trust to which the general rate of land tax applies can be aggregated with lands of other related corporations, this appears inconsistent with the statutory scheme: see *Land Tax Act 2005* (Vic) ss46B(4)(b), 46C(4)(b), 46E, 46G(3).

¹³⁰ *Aston (Aust) Properties Pty Ltd v Commissioner of State Revenue (Vic)* (2012) 88 ATR 211, 214, 219.

¹³¹ State Revenue Office, *Understanding your land tax assessment* (2 February 2023) <https://www.sro.vic.gov.au/land-tax/understanding-your-land-tax-assessment#land_held_on_trust>.

However, that website has now been updated to remove that statement. Presumably that is still the interpretation of the Commissioner, based on other current website statements:

What are the different types of assessments?

Trust assessments – individuals or companies who hold taxable land as the trustee of a trust will receive an assessment which states that the assessment is issued to them as trustee for their trust. The trustee will receive an assessment for each different trust which holds taxable land....

Land tax group assessments – for corporations which are grouped, the land holdings of each corporation in the group are combined and assessed as if they were a single land holding owned by a single corporation (i.e. land tax is calculated on the total taxable value of all land owned by members of a group as if it were a single piece of land held by a single company). Members of a land tax group are jointly and individually liable for the land tax payable by the group.¹³²

There is also a potential practical interaction between the company and trust grouping rules. If the trustee of a fixed trust or a unit trust scheme has lodged written notice of the beneficial interests in trust land or unitholdings in the scheme respectively, with the result that the trust land is deemed to be owned by and assessed to both the trustee and beneficiaries or unitholders respectively, then if one of those beneficiaries or unitholders is a corporation that has related corporations in respect of which the Commissioner has exercised the discretion to group, the proportion of the trust land that it is deemed to be owned by the beneficiary or unitholder will be aggregated with the other land it and its related corporations own and be assessed to them accordingly.

For completeness, the requirement for trust land to be separately assessed only applies to land owned by a trustee. It does not apply to land owned by a corporation, the shares in which are owned by a trustee.¹³³

¹³² State Revenue Office, *Understanding Your Land Tax Assessment* (27 February 2025) <<https://www.sro.vic.gov.au/land-tax/understanding-your-land-tax-assessment>>.

¹³³ See, e.g., *Land Tax Act 2005* (Vic) s49(1)(c). This means that land owned by a corporation that is in turn owned by a trust may still be grouped with land owned by a corporation that is a beneficiary of that trust.

4. Queensland

4.1 Imposition of land tax

Land tax is imposed in Queensland by the *Land Tax Act 2010* (Qld) for each financial year on the taxable value of all taxable land. The liability for land tax arises at midnight on 30 June prior to the financial year and is imposed on the owner of taxable land at that time.¹³⁴

Taxable land is an estate in fee simple alienated from the State of Queensland (i.e. freehold or a life estate)¹³⁵ that is not exempt land.¹³⁶

The owner of land includes a person:

1. entitled to a freehold estate in the land and in possession of the land;
2. entitled to receive rents and profits from the land; or
3. deemed to be an owner.¹³⁷

The owner of land would clearly include an owner in the capacity of a trustee.¹³⁸

The taxable value of the land is the lower of the value of the land under the *Land Valuation Act 2010* (Qld) as at midnight on 30 June or the average of that value and those of the two previous years.¹³⁹

Australian companies and the trustees of an Australian trust are subject to marginal rates of land tax up to 2.75% for a total taxable value above \$10 million, while foreign companies and the trustees of a foreign trust are subject to a flat rate of land tax at 3% for a total taxable value above \$350,000.¹⁴⁰ Generally, liability for land tax is assessed on the total taxable value of all taxable land owned by a taxpayer when the liability arises (i.e. on an aggregated basis).¹⁴¹

4.2 Trust grouping rules

4.2.1 Trusts with same trustee and beneficiary interests grouped

Section 20 of the *Land Tax Act 2010* (Qld) provides for alternative aggregation outcomes in respect of land for a taxpayer that is the trustee of a trust:

- (1) The liability for land tax of a taxpayer who is a trustee of a trust must be separately assessed on the taxable land that is subject to the trust, as if that land were the only land owned by the taxpayer as a trustee.

¹³⁴ *Land Tax Act 2010* (Qld) ss6-8.

¹³⁵ Explanatory Notes, *Land Tax Bill 2010* (Qld) 13-4.

¹³⁶ *Land Tax Act 2010* (Qld) s9.

¹³⁷ *Ibid* s10(1).

¹³⁸ *Ibid* s20.

¹³⁹ *Ibid* ss16-18.

¹⁴⁰ *Ibid* s32(1)(b), sch2. Reduced rates apply for particular trustees: s33, sch1.

¹⁴¹ *Ibid* s19.

- (2) However, subsection (1) does not apply if—
- (a) the taxpayer is trustee of more than 1 trust; and
 - (b) the interests of the beneficiaries of 2 or more of the trusts are, when the taxpayer's liability for land tax arises, the same.
- (3) If subsection (1) does not apply, the taxpayer's liability for land tax as trustee of the trusts mentioned in subsection (2)(b) must be assessed on the total taxable value of all taxable land that is subject to those trusts.

In summary, the general rule is that land tax must be separately assessed on the taxable land subject to the trust as if that land were the only land owned by the taxpayer as trustee.¹⁴² A trustee is relevantly defined broadly to include a person appointed or constituted trustee by act of parties, court order or operation of law.¹⁴³ Where there are multiple trustees of the same trust, the land is deemed to be owned by one person and only one assessment must be made.¹⁴⁴

Despite this general rule, there is an exception if the trustee taxpayer is the trustee of more than one trust and the interests of the beneficiaries of two or more of those trusts are the same when the land tax liability arises (i.e. midnight on 30 June). In such cases, the trustee taxpayer's liability in respect of those trusts must be assessed on the total taxable value of all taxable land subject to those trusts (i.e. on an aggregated basis).¹⁴⁵

The term "beneficiary" is defined to mean a person entitled to a beneficial interest in land subject to the trust or income derived therefrom.¹⁴⁶ This includes members of (non-statutory) superannuation funds.¹⁴⁷ For a discretionary trust, being a trust over property for which a person has a power of appointment, the beneficiaries when a land tax liability arises are the persons in whose favour the power of appointment has been exercised during the 12 month period ending when the liability arises.¹⁴⁸ As such, discretionary trust beneficiaries can change each financial year.

4.2.2 When interests of beneficiaries are the same

Importantly, the exception to the general rule of separately assessing trust land only applies where 'the *interests* of the beneficiaries of 2 or more of the trusts are ... the same' [emphasis added] and not just where the beneficiaries of two or more trusts are the same. The Explanatory Notes to the Land Tax Bill 2010 (Qld) contain the following explanation of this exception:¹⁴⁹

¹⁴² Ibid s20(1).

¹⁴³ Ibid sch4(definition of "trustee"). The definition also includes an executor, administrator, guardian, committee, receiver, liquidator and any person administering or controlling land affected by an express or implied trust, acting in a fiduciary capacity or possessing, controlling or managing the land of a person under a legal or other disability.

¹⁴⁴ Ibid s22A(1).

¹⁴⁵ Ibid ss20(2)-(3).

¹⁴⁶ Ibid sch4(definition of "beneficiary"). Note that the defined term "trust interest" is not used: cf s18F.

¹⁴⁷ Queensland Revenue Office, *Beneficiaries of Superannuation Funds*, LTA000.2.2, 29 June 2018, 2.

¹⁴⁸ *Land Tax Act 2010* (Qld) s24. If the power of appointment has not been exercised, the Commissioner's position appears to be that the beneficiaries can be the default beneficiaries, at least for certain purposes: Queensland Revenue Office, *Land Tax Home Exemption – Trustees*, LTA041.1.2, 6 June 2011, 2.

¹⁴⁹ Explanatory Notes, Land Tax Bill 2010 (Qld) 15. Section 20 has only ever been amended once, by the *Revenue Legislation Amendment Act 2022* (Qld), which sought to assess taxpayers (including trustees) by reference to all Australian land owned. These amendments were subsequently repealed before they commenced: *Betting Tax and Other Legislation Amendment Act 2022* (Qld) s81.

Clause 20 sets out the rules for assessing trust land. That is, a trustee is assessed separately on land held as trustee. Also, land the subject of different trusts is not aggregated. However, where there are “cloned trusts”, these are treated as the one trust for taxing purposes. “Cloned trusts” are trusts with the same trustee and the interests of the beneficiaries is the same.

The reference to 'cloned trusts' suggests, consistent with the wording of section 20(2)(b), that for trust land to be aggregated for land tax purposes the relevant trusts must have not only the same beneficiaries but also the same terms in respect of the interests of the beneficiaries under the trust.

Only one case has ever considered the application of the trust land aggregation provisions contained in section 20 of the Act. In *Re Harrison and Commissioner of State Revenue*, the Queensland Civil and Administrative Tribunal concluded that an individual held three residential properties in the capacity as trustee of three separate constructive trusts for each of his three children on the basis of proprietary estoppel or common intention.¹⁵⁰ It followed that the individual should have been assessed separately in respect of each property pursuant to section 20(1).¹⁵¹ In reaching that conclusion, the Tribunal held:

1. the principles of equity regarding whether a trust has arisen apply in the context of section 20 of the Act;¹⁵² and
2. by referring to the trustee "of a trust", section 20 requires a valid trust and not merely a fiduciary relationship, despite the broad definition of "trustee".¹⁵³

In refusing leave to appeal that decision, the majority of the Court of Appeal noted that the case did not concern the construction of any provision of the Act.¹⁵⁴

The Commissioner of State Revenue (**Commissioner**) has made a public ruling that provides guidelines for the assessment of land tax in respect of trust land. The ruling establishes the following propositions:¹⁵⁵

1. If the registered and beneficial owners of land are different or if the interests of the registered and beneficial owners of land are different, land tax will be assessed on the basis the land is held on trust (i.e. a single assessment will be issued to the trustee(s) of the trust).
2. If a person owns land (whether single or multiple titles):
 - a. in their own capacity and in their capacity as trustee of a trust; or
 - b. in their capacities as the trustee of multiple trusts,
 separate land tax assessments will be made for each capacity.
3. If a trustee owns land in the capacities of the trustee of multiple trusts, but the beneficiaries of those trusts are the same, one assessment will be made for the trustee for all of the land of the separate trusts.

¹⁵⁰ [2018] QCATA 75 (1 June 2018) [48], [52].

¹⁵¹ Ibid [3], [94]. See also *Harrison v Commissioner of State Revenue* [2021] QCAT 149 (20 April 2021) [87].

¹⁵² [2018] QCATA 75 (1 June 2018) [39].

¹⁵³ Ibid [83]-[85]. Note that s23 permits executors, administrators and testamentary trustees, the former two of which fall within the extended definition of trustee, to request the Commissioner instead impose land tax on the beneficiaries of the deceased estate or trust that have an interest in the land when a liability for land tax arises.

¹⁵⁴ *Commissioner of State Revenue (Qld) v Harrison* (2019) 109 ATR 813, 818-9 (Philippides JA), 828 (Davis J).

¹⁵⁵ Queensland Revenue Office, *Assessment of Trustees under Sections 20 and 22A of the Land Tax Act 2010*, LTA020.1.2, 22 June 2017, 2-4 (**LTA020**).

Relevantly for present purposes, the ruling contains the following explanation of when trust land will be aggregated for the purposes of assessing land tax:¹⁵⁶

13. Where a trustee holds several parcels of land, each in the name of a different trust, but the beneficiaries of those trusts, at the time when the land tax liability arises, are the same, one assessment will issue to the trustee including all the taxable land that is subject of the trusts.

Example 6

Y is the registered owner of three parcels of land. Y holds parcel 1 as trustee for the Gold Trust, parcel 2 as trustee for the Silver Trust and parcel 3 as trustee for the Bronze Trust. At the time of determining land tax liability, each trust has the same beneficiaries. Y is liable for land tax as trustee under ss.20(2) and (3) of the Land Tax Act. One assessment is issued to Y under the Administration Act.

Interestingly, this paragraph of the ruling only refers to the beneficiaries of the trusts being the same, not the interests of those beneficiaries being the same. However, the Queensland Revenue Office website also contains the following additional explanation of trust land aggregation:

This means that at 30 June, if you are a trustee of multiple trusts and each of the beneficiaries of the trusts are the same *and hold the same interest in each of the trusts*, you will be assessed on the total taxable value of the combined taxable landholdings of those trusts.¹⁵⁷

This statement is consistent with the statutory language and the Explanatory Note (which both refer to trust land being aggregated only when the *interests* of the beneficiaries are the same).

4.2.3 No aggregation of separate trustees

Section 20 of the *Land Tax Act 2010* (Qld) only provides for lands owned by a taxpayer that is a trustee or more than one trust to be aggregated. Separate trustees that own land in their respective capacities as trustee of separate trusts will still be assessed separately, even if the beneficiaries of those trusts are the same and those beneficiaries have the same interests in the trusts.

The Commissioner's public ruling appears to accept this position:¹⁵⁸

15. Where parcels of land are held by separate trustees under trusts where the beneficiaries are the same, separate assessments are issued to each trustee.

Example 8

A is the registered owner of parcel 1 and B is the registered owner of parcel 2. A holds parcel 1 as trustee for the Beaver trust and B holds parcel 2 as trustee for the Bear Trust. Each trust has an identical set of beneficiaries. A and B are liable for land tax as trustees under s.20 of the Land Tax Act. Separate assessments are issued to A and B under the Administration Act.

¹⁵⁶ Ibid 3.

¹⁵⁷ Queensland Revenue Office, *Land tax threshold and rates for companies and trusts* (29 November 2024) <<https://qro.qld.gov.au/land-tax/calculate/company-trust/>> (emphasis added).

¹⁵⁸ LTA020, 3.

4.3 No company grouping rules

The *Land Tax Act 2010* (Qld) does not contain any rules that would group companies or aggregate their land.

5. Tasmania

5.1 Imposition of land tax

Land tax is payable in Tasmania under the *Land Tax Act 2000* (Tas) and *Land Tax Rating Act 2000* (Tas) for each financial year in respect of certain non-exempt land by the person who is the owner of the land at the commencement of the financial year.¹⁵⁹ The owner of land is generally the person in whom the estate in fee simple is vested (i.e. the person who appears to be the owner of that estate from a folio of the Land Titles Register, unless the Commissioner of State Revenue (**Commissioner**) determines otherwise on reasonable grounds).¹⁶⁰

Exempt land means land exempted from land tax under Division 2 of Part 2 of the *Land Tax Act 2000* (Tas), which provides for complete, partial and limited exemptions for different categories of land.¹⁶¹ Non-exempt land is divided into three classes: principal residence land, primary production land and general land.¹⁶² However, the rate of land tax set for principal residence land and primary production land is nil,¹⁶³ meaning that principal residence land and primary production land are effectively exempt from land tax.

The amount of land tax on general land is determined on the assessed land value or the apportioned assessed land value of land as at 1 July in each financial year at the rate specified in Schedule 1 to the *Land Tax Rating Act 2000* (Tas) (i.e. at marginal rates of up to 1.5% for values of more than \$500,000).¹⁶⁴ The assessed land value is the land value as determined by the Valuer-General under the *Valuation of Land Act 2001* (Tas) (i.e. unimproved capital value).¹⁶⁵ The apportioned assessed land value is a proportion of the assessed land value for land that is only partly non-exempt general land.¹⁶⁶

Where an owner owns more than one parcel of land of the same class, land tax is levied on the aggregate assessed land value of those parcels of land as if they were a single parcel of land (i.e. as land tax is only levied on general land, all general land owned by an owner is aggregated).¹⁶⁷ For these purposes, if a company co-owns land with a natural person, a trustee or another company, the company is the owner of the land if it owns more than 50% of the land.¹⁶⁸

¹⁵⁹ *Land Tax Act 2000* (Tas) ss10(1)-(2), 12.

¹⁶⁰ Ibid ss3A(1)(a)-(1A). The person who appears by a folio of the Land Titles Register to be entitled to an estate of freehold for life in respect of any land is taken to be the owner of the land instead of the person entitled to the estate in fee simple in remainder: ibid s3A(2). In the case of land not registered under the *Land Titles Act 1980* (Tas), the owner is the person entitled to an estate of freehold in the land for his or her life or, if none, the person entitled to an estate in fee simple in the land, but if the land is subject to a mortgage or other encumbrance under which a person is entitled to an equity of redemption, the person for the time being having that equity of redemption: ibid s3A(1)(b); *Land Tax Regulations 2021* (Tas) reg4.

¹⁶¹ *Land Tax Act 2000* (Tas) ss3(definition of "exempt land"), 18.

¹⁶² Ibid ss6-8, 20(2), 24(1A).

¹⁶³ *Land Tax Rating Act 2000* (Tas) ss4-5.

¹⁶⁴ *Land Tax Act 2000* (Tas) ss20(1), (2)(c); *Land Tax Rating Act 2000* (Tas) s6.

¹⁶⁵ *Land Tax Act 2000* (Tas) s23(1); *Valuation of Land Act 2001* (Tas) s11(5).

¹⁶⁶ *Land Tax Act 2000* (Tas) ss19A-19C, 26-30A.

¹⁶⁷ Ibid s24(1).

¹⁶⁸ Ibid s24(3). This appears to be an exception to the general rule that joint owners are taken to be a single taxpayer and jointly and severally liable for the full payment of land tax without regard to the relative shares or interests in the land: ss14, 41(2). Instead, "the land is deemed to be owned by the company": State Revenue Office Tasmania, *Guideline: Grouping of Related Companies Land Tax Act 2000* <<https://www.sro.tas.gov.au/Documents/grouping-related-companies-guideline.pdf>> 5 (**SRO Grouping Guideline**).

5.2 Company grouping rules

5.2.1 Grouping of related companies

If a company or related companies own more than one parcel of land, land tax is levied on the aggregated assessed land value of those parcels of land as if they were a single parcel owned by a single company.¹⁶⁹ This means that "the value of the land owned by each group member is aggregated (that is, combined) to determine the amount of land tax payable by the group. This approach is consistent with the treatment of individuals who own multiple properties."¹⁷⁰

If two or more related companies are liable for land tax, those related companies are jointly and severally liable for the full payment of that land tax.¹⁷¹ Related companies may nominate one of them to be the one from whom the Commissioner may seek payment of land tax (i.e. receive assessments and correspondence);¹⁷² if no such nomination is made or the nominated company fails to pay land tax when required, the Commissioner is to nominate one of the companies.¹⁷³

5.2.2 Definition of "related companies"

Two companies are related to each other if any of the following tests are satisfied:¹⁷⁴

- a. The same person or persons together have a controlling interest in both companies (i.e. companies with common majority ownership). This will be the case if the persons or several persons acting together:¹⁷⁵
 1. may control the composition of the board of directors of the company (including if they may appoint or remove all or a majority of the directors by exercise of a power with or without the consent or concurrence of any other person);¹⁷⁶
 2. may cast or control the casting or more than half of the maximum number of votes that might be cast at a general meeting of the company; or
 3. hold more than half of the issued share capital of the company.
- b. One of those companies is related to a company to which the other is related (i.e. chains of related companies).
- c. The companies are related bodies corporate for the purposes of the *Corporations Act 2001* (Cth).¹⁷⁷ In summary, bodies corporate are related for the purposes of that Act if they are in a holding company-subsidiary relationship or are subsidiaries of the same holding company.¹⁷⁸ A

¹⁶⁹ Ibid s24(2). While this applies to all land, not just land of the same class, land tax is only imposed on the general land class.

¹⁷⁰ SRO Grouping Guideline 1.

¹⁷¹ *Land Tax Act 2000* (Tas) s34. Rights of contribution and indemnity between them remain unaffected.

¹⁷² SRO Grouping Guideline 6.

¹⁷³ *Land Tax Act 2000* (Tas) s35.

¹⁷⁴ Ibid s3(definition of "related companies"), 31(1)-(2).

¹⁷⁵ Ibid s32(1).

¹⁷⁶ Ibid s32(2).

¹⁷⁷ *Acts Interpretation Act 1931* (Tas) s46AA(definition of "Corporations Act").

¹⁷⁸ *Corporations Act 2001* (Cth) s9(definition of "related body corporate"), 50.

body corporate is a subsidiary of another body corporate, which is a holding company of the subsidiary,¹⁷⁹ if the other body:

1. controls the composition of the first body's board (including if it holds a power exercisable with or without the consent or concurrence of any other person to appoint or remove all or a majority of the directors);¹⁸⁰
2. is in a position to cast or control the casting of more than half the maximum number of votes that might be cast at a general meeting of the first body; or
3. holds more than half of the issued share capital of the first body (excluding any part of that capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital),

or is a subsidiary of a subsidiary of the other body (including through multiple subsidiaries).¹⁸¹ For these purposes, a number of deeming rules apply. Shares held or power exercisable in a fiduciary capacity are treated as not held or exercisable.¹⁸² Shares held or power exercisable by a person as nominee for, or by a subsidiary of, a body corporate are treated as held or exercisable by the body corporate.¹⁸³ Shares held or power exercisable by a body corporate by virtue of the provisions of debentures of another, or of a trust deed for securing the issue of such debentures, are to be disregarded.¹⁸⁴ Other shares held or power exercisable by a body corporate (or their nominee or subsidiary) are to be treated as not held or exercisable by it if the ordinary business of it or its subsidiary, as the case may be, includes lending money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, not being a transaction entered into with an associate of the other body, or of that subsidiary, as the case may be.¹⁸⁵ Finally, shares that are mutual capital instruments, and any powers exercisable by virtue of such shares, are to be disregarded.¹⁸⁶

- d. More than half of the issued share capital of one of those companies is held by the other company, its shareholders or by both together and the proportion of the issued share capital of the other company held by shareholders of the first company is more than the difference between half and the proportion of the issued share capital of the first company held by the other company (i.e. companies with split common majority ownership). For these purposes, the issued share capital of a company does not include any part of that capital that confers no right to participate beyond a specified amount in a distribution of either profits or capital.¹⁸⁷

It seems that for these purposes, shares held or powers exercisable by a trustee or nominee for any other person are to be treated as also held or exercisable by that other person.¹⁸⁸ However, shares held or power exercisable by a person under the provisions of debentures of another company or of a

¹⁷⁹ Ibid s9(definition of "holding company").

¹⁸⁰ Ibid s47. This expressly includes where a person cannot be appointed as a director without the exercise of such a power in the person's favour or a person's appointment as a director follows necessarily from the person being a director or other officer of the other body.

¹⁸¹ Ibid ss46-9.

¹⁸² Ibid s48(2).

¹⁸³ Ibid s48(3).

¹⁸⁴ Ibid s48(4).

¹⁸⁵ Ibid s48(5).

¹⁸⁶ Ibid ss9(definition of "MCI"), 48(6).

¹⁸⁷ *Land Tax Act 2000* (Tas) s31(4). See, e.g., SRO Grouping Guideline 5.

¹⁸⁸ *Land Tax Act 2000* (Tas) s33(1). See also SRO Grouping Guideline 6.

trust deed for securing any issue of any debentures are to be disregarded.¹⁸⁹ Other shares held or power exercisable by a person are taken to be not held or exercisable if the ordinary business of that person includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money (unless the transaction is entered into with a person associated with that person within the meaning of the *Corporations Act 2001* (Cth)).¹⁹⁰ Instead, those shares or powers are considered held or exercisable by the beneficial owners only.¹⁹¹

Companies may be related to each other regardless of whether they own land in Tasmania.¹⁹²

5.3 Trust grouping rules

A trustee of land is to be assessed for land tax in respect of that land in a representative capacity and is liable for any land tax in respect of the land as if the land were the trustee's.¹⁹³ An assessment of land tax payable as a trustee is separate from an individual assessment of land tax payable by the trustee.¹⁹⁴ A trustee may recover from any person for whom, or on whose behalf, it is liable for and has paid land tax the amount paid and may retain out of any money coming in its representative capacity sufficient money to pay the land tax.¹⁹⁵

A trustee is defined inclusively to include:

- a. a person appointed or constituted trustee by any act of parties, order, declaration of a court or operation of law;
- b. an executor or administrator, guardian, committee, receiver or liquidator; and
- c. a person who:
 1. has the administration or control of income affected by any express or implied trust;
 2. is acting in any fiduciary capacity; or
 3. has the possession, control or management of the income of a person under any legal or other disability.¹⁹⁶

The *Land Tax Act 2000* (Tas) "does not contain any express provision for the aggregation of trust land held by related trustees."¹⁹⁷ However, it does contain a limited number of exceptions to the general rule that the land of an owner is aggregated for land tax purposes. If land is held by a trustee on behalf of more than one trust, land held on behalf of one trust is not to be aggregated with land held on behalf of another trust if the trustee is (each a **specified trustee**):¹⁹⁸

¹⁸⁹ *Land Tax Act 2000* (Tas) s33(2). See also SRO Grouping Guideline 6.

¹⁹⁰ *Ibid* s33(3).

¹⁹¹ SRO Grouping Guideline 6.

¹⁹² *Land Tax Act 2000* (Tas) s31(3).

¹⁹³ *Ibid* s15(1).

¹⁹⁴ *Ibid* s15(2). See also s41(1).

¹⁹⁵ *Ibid* s40(3).

¹⁹⁶ *Ibid* s3(definition of "trustee").

¹⁹⁷ *Nekon Pty Ltd v Commissioner of State Revenue* (2010) 19 Tas R 416, 420.

¹⁹⁸ *Land Tax Act 2000* (Tas) s24(4).

- a. a registered trustee company (i.e. a trustee company as defined in the *Trustee Companies Act 1953* (Tas) or a similar law of another Australian state or territory or the Public Trustee as defined in the *Public Trustee Act 1930* (Tas));¹⁹⁹
- b. an executor, an administrator, a guardian, a committee, a receiver or a liquidator; or
- c. appointed by a court.

This "limited number of exceptions [for specified trustees] makes it clear that, as a general rule, parcels of land held by a trustee upon more than one trust are to be taxed as if they were owned by a single owner."²⁰⁰ This has the anomalous result that a non-specified trustee "to whom s 24(4) did not apply, holding land upon 24 different trusts for unrelated beneficiaries, would have to pay tax as if all the land was held by a single beneficial owner."²⁰¹

In summary, where a trustee is the owner of lands for multiple trusts, the general position is that those lands are aggregated, regardless of the beneficiaries or discretionary objects of each trust,²⁰² unless the trustee is a specified trustee, in which case the lands of each trust are not aggregated. In essence, the general position does not recognise separate beneficial ownership of trust land for land tax purposes, while for the specified trustees such beneficial ownership is recognised.

5.4 Interaction of company and trust grouping rules

In *Nekon Pty Ltd v Commissioner of State Revenue*, the Supreme Court of Tasmania held that the aggregation of the land of related companies under section 24(2) of the *Land Tax Act 2000* (Tas) applies even if those companies own the land in a non-specified trustee capacity.²⁰³ In that case, the taxpayer was one of 24 related companies, each of which owned land in Tasmania as the trustee of a trust, but none of them were a beneficial owner of the land or a specified trustee. The Commissioner determined to assess the taxpayer on all of the land held by all 24 related companies.²⁰⁴

Blow J approached the case on the basis that the relevant issue was whether the aggregation of land that related companies "own" under section 24(2) includes land owned in the capacity as trustee. His Honour held that by:

1. taxing trustees in a representative capacity separate to their individual capacity (section 15);
2. requiring the Commissioner to keep separate accounts for each capacity (section 41); and
3. providing the trustee with a statutory right of recoupment (section 40(3)),

the *Land Tax Act 2000* (Tas) "treats land held on trust differently from land owned beneficially" and "treats trustees as owners for the purpose of imposing a liability for land tax".²⁰⁵ This latter treatment suggested that the aggregation of land that related companies "own" (section 24(2)) applies to both beneficial ownership and ownership on trust, while the separate assessment of trust land and right of

¹⁹⁹ Ibid s3(definition of "registered trustee company"). A "trustee company" is defined to mean a licensed trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* (Cth): *Trustee Companies Act 1953* (Cth) s3.

²⁰⁰ *Nekon Pty Ltd v Commissioner of State Revenue* (2010) 19 Tas R 416, 420.

²⁰¹ Ibid 421.

²⁰² SRO Grouping Guideline 5.

²⁰³ *Nekon Pty Ltd v Commissioner of State Revenue* (2010) 19 Tas R 416, 423.

²⁰⁴ Ibid 417.

²⁰⁵ Ibid 419.

recoupment were said to be "entirely consistent with the holding of land on trust being regarded as a form of ownership".²⁰⁶ This conclusion was also supported by the legislative history.²⁰⁷

Blow J concluded his reasoning as follows:²⁰⁸

Having scrutinised 100 years of land tax legislation with an intensity perhaps more appropriate to haruspication, it seems to me that, whilst Parliament has recognised the distinction between beneficial owners and trustees, it has consistently treated words such as "owning", "co-owns" and "owner" as referring not just to beneficial ownership but also to ownership upon trust....

In my view s 24(2) was enacted in order to prevent the minimisation of land tax by the distribution of land holdings amongst related companies. An interpretation of s 24(2) whereby it applies to related companies that hold land on trusts would promote the purpose or object of the subsection, and a contrary interpretation would not.

Having regard to the purpose of the subsection and the use of words relating to ownership in the legislation, my conclusion is that s 24(2) must be interpreted as applying not just to companies that own land beneficially, but also to companies that own land upon trust. It follows that the assessments made by the Commissioner were correct. I therefore confirm the assessments.

Given the related companies in that case only owned land in a trustee capacity, Blow J was not required to consider, and thus did not explain, how the requirement for related companies to be assessed as if they were a single company owning a single parcel of land was to be reconciled with the requirement for a trustee to be issued with separate assessments for land held in a trustee capacity and land held in a non-trustee capacity. The State Revenue Office adopts the practice of issuing the related companies with an assessment for all land owned in their individual capacities and a separate assessment for all land owned in their trustee capacities (i.e. land held in different capacities is assessed separately).²⁰⁹

Similarly, given that the related companies in that case were not specified trustees, Blow J was not required to consider, and thus did not explain, how the requirement for related companies to be assessed as if they were a single company owning a single parcel of land was to be reconciled with the requirement in section 24(4) for the land of separate trusts owned by a specified trustee to be separately assessed. On this point, Blow J simply noted that section 24(4) did not apply to any of the related companies in the case and held it "sheds no light at all on the meaning of the word 'own' in s 24(2)".²¹⁰ Presumably the related companies would be issued with:

1. an assessment for all land owned in their individual capacities;
2. a separate assessment for all land owned in their trustee capacity (as land held in a trustee capacity is assessed separately to land held in an individual capacity); and
3. further separate assessments for the land of each trust of which a related company is a specified trustee (as the lands of different trusts held by a specified trustee are assessed separately).

²⁰⁶ Ibid.

²⁰⁷ Ibid 421-2.

²⁰⁸ Ibid 423.

²⁰⁹ SRO Grouping Guideline 5-6.

²¹⁰ *Nekon Pty Ltd v Commissioner of State Revenue* (2010) 19 Tas R 416, 420.

5.5 Grouping irrelevant for foreign investor land tax

For completeness, while foreign investor land tax is a component of land tax,²¹¹ the company and trust grouping rules are not relevant to its assessment because:

1. the grouping rules in section 24 do not apply in relation to the determination of land value upon which foreign investor land tax is imposed;²¹²
2. foreign investor land tax is only imposed on the percentage interest in land that a foreign person holds;²¹³ and
3. foreign investor land tax is imposed at a flat rate of 2% with no tax-free threshold (meaning that split ownership of land does not change the effective tax rate).²¹⁴

²¹¹ *Land Tax Act 2000* (Tas) s16A(1); *Land Tax Rating Act 2000* (Tas) s6A(3).

²¹² *Land Tax Act 2000* (Tas) s16B(6).

²¹³ *Ibid* s16C(3).

²¹⁴ *Land Tax Rating Act 2000* (Tas) s6A(2).

6. South Australia

6.1 Imposition of land tax

Land tax is imposed on all land in South Australia by the *Land Tax Act 1936* (SA), subject to exceptions and exemptions, in respect of every financial year and liability arises at the commencement of every financial year and is calculated as at midnight on 30 June immediately preceding that financial year.²¹⁵

The owner of land is liable for land tax.²¹⁶ The owner of land is relevantly defined to mean the person who holds a legal or equitable estate of fee simple in the land as well as any person deemed to be an owner.²¹⁷ The person named in a valuation roll as the owner of the land is presumed to be so in the absence of proof to the contrary.²¹⁸ A person can be an owner in the capacity as legal owner or equitable owner.²¹⁹

Land tax is generally calculated on the aggregate taxable value of all land owned by a taxpayer.²²⁰ The taxable value of land is the site value (i.e. unimproved market value)²²¹ of the land determined under the *Valuation of Land Act 1971* (SA).²²²

6.2 Company grouping rules

6.2.1 Grouping of related corporations

Related corporations that own land are to be jointly assessed, and jointly and severally liable, for land tax at general rates on all land they own as if that land were owned by a single corporation.²²³ The Commissioner of State Taxation (**Commissioner**) may issue notices of assessment for the land tax to the related corporations jointly, separately or to some jointly and the remainder separately and recover the whole of the amount from any one or more of them.²²⁴ Two or more related corporations issued with a notice of assessment jointly are deemed to be a single corporation for the purposes of that notice.²²⁵ From a practical perspective, even where related corporations are jointly assessed, one

²¹⁵ *Land Tax Act 1936* (SA) ss4(1)-(3)-5.

²¹⁶ *Ibid* s14(1).

²¹⁷ *Ibid* ss2(1)(definition of "owner" para(a)), 2(1)(definition of "owner" para(f)).

²¹⁸ *Ibid* s14(2).

²¹⁹ *Ibid* s2(1c).

²²⁰ *Ibid* s8B(1).

²²¹ *Valuation of Land Act 1971* (SA) s5(1)(definition of "site value").

²²² *Land Tax Act 1936* (SA) s7.

²²³ *Ibid* ss13J(1)-(2).

²²⁴ *Ibid* s13J(3); *Taxation Administration Act 1996* (SA) s42(1). Rights to recover contributions from any other person liable are unaffected: *Taxation Administration Act 1996* (SA) s42(2). The burden of land tax will be distributed between related corporations jointly assessed in proportion to the value of their interests in the land taxed and one who has paid land tax is entitled to recover from every other related corporation a proper proportion of the amount paid: *Land Tax Act 1936* (SA) s17.

²²⁵ *Land Tax Act 1936* (SA) s13J(4).

of them will be issued the assessment, which will list each related corporation in the group and (the percentage interest in) the land owned by each related corporation.²²⁶

6.2.2 Definition of "related corporations"

Corporations are defined to be "related corporations" in any of the following circumstances:²²⁷

1. One of those corporations:²²⁸
 - a. controls the composition of the board of the other corporation;
 - b. is in a position to case, or control the casting of, more than 50% of the maximum number of votes that might be case at a general meeting of the other corporation; or
 - c. holds more than 50% of the issued share capital of the other corporation (i.e. parent and subsidiary corporations).
2. The same person has, or the same persons have together, a controlling interest in each of the corporations (i.e. corporations with common majority ownership).²²⁹ This will be the case if that person, or those persons acting together:²³⁰
 - a. can control the composition of the board of the corporation;
 - b. is or are in a position to cast or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of the corporation; or
 - c. holds or hold more than 50% of the issued share capital of the corporation.

It is not necessary for the controlling interests to be of the same means (i.e. different limbs can apply to each related corporation).²³¹

3. More than 50% of the issued share capital of one of those corporations (**corporation 1**) is held by the other corporation (**corporation 2**) together with the shareholders of corporation 2 and the percentage of the issued share capital of corporation 2 held by the shareholders of corporation 1 is more than the difference between 50% and the percentage of the issued share capital of corporation 1 held by corporation 2 (i.e. corporations with split common majority ownership).²³²
4. One of the corporations is the trustee of a fixed trust or a unit trust scheme (**corporate trustee**) and another corporation owns, or other related corporations between them own, more than 50% of the total beneficial interests in land subject to the trust or the total number of units held by the unit holders in the scheme.²³³ This interaction between the company grouping rules and trust grouping rules is considered further in section 6.4 below.

²²⁶ RevenueSA, *2024-25 Guide to Legislation – Land Tax: Related Corporations* (1 August 2024) 16 (**RevenueSA Related Corporations Land Tax Guide**) <<https://www.revenuesa.sa.gov.au/resources/publications/guides-to-legislation/guide-to-legislation-land-tax-related-corporations/2024-25-guide-to-legislation-land-tax-related-corporations>>.

²²⁷ *Land Tax Act 1936* (SA) s13G(1).

²²⁸ *Ibid* s13G(2).

²²⁹ *Ibid* s13G(3).

²³⁰ *Ibid* s13H.

²³¹ RevenueSA Related Corporations Land Tax Guide 6.

²³² *Land Tax Act 1936* (SA) s13G(4).

²³³ *Ibid* s13G(5).

5. One of those corporations is a related corporation of a corporation of which the other of those corporations is a related corporation (including because of multiple applications of this rule) (i.e. chains of related corporations).²³⁴

In determining whether corporations are related corporations, a number of provisions apply. The composition of a corporation's board is taken to be controlled by a person or another corporation if the person or other corporation can appoint or remove all or a majority of the members of the board by exercise of a power whether or not with the consent or concurrence of any other person.²³⁵ The issued share capital of a corporation does not include any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital (i.e. preference shares).²³⁶ Generally, any shares held or power exercisable by a person or corporation as a trustee or nominee for another person or corporation are taken to be also held or exercisable by the other person or corporation.²³⁷ However, this rule only applies to bare trusts and not other fixed trusts, unit trust schemes or discretionary trusts.²³⁸ In addition:

1. any shares held or power exercisable by an excluded trust must be disregarded;²³⁹
2. any shares held or power exercisable by a person or corporation by virtue of the provisions of any debentures of another corporation, or of a trust deed for securing any issue of any such debentures, must be disregarded;²⁴⁰
3. any shares held or power exercisable by, or by a nominee for, a person or corporation (not being held or exercisable as mentioned in the previous exception) are taken to be not held or exercisable by that person or corporation if:²⁴¹
 - a. the ordinary business of that person or corporation includes the lending of money; and
 - b. the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with an associate of that person or corporation within the meaning of the *Corporations Act 2001* (Cth); and
4. if a trustee holds controlling interests in two or more corporations on behalf of different trusts, those corporations are not related to each other only because of that control.²⁴²

Corporations may be related corporations whether or not they own land in South Australia.²⁴³

²³⁴ Ibid s13G(6).

²³⁵ Ibid ss13G(1)(h)-(2).

²³⁶ Ibid s13I(1)(b); RevenueSA Related Corporations Land Tax Guide 12-3.

²³⁷ *Land Tax Act 1936* (SA) s13I(1)(c).

²³⁸ RevenueSA Related Corporations Land Tax Guide 13.

²³⁹ *Land Tax Act 1936* (SA) s13(1)(d). Such shares are disregarded in respect of the excluded trust, but are not deemed not to exist in relation to other entities (i.e. the shares are disregarded in the numerator, but not the denominator, when calculating whether any person or persons together have a 50% or greater interest): RevenueSA Related Corporations Land Tax Guide 13-4.

²⁴⁰ *Land Tax Act 1936* (SA) s13I(1)(e).

²⁴¹ Ibid s13I(1)(f).

²⁴² Ibid s13I(g).

²⁴³ Ibid s13I(1)(a).

6.2.3 Commissioner's limited degrouping discretion

A related corporation may apply to the Commissioner to be exempted from the company grouping rules and instead be treated as a single corporation for the purposes of assessment of land tax and the Commissioner may grant that application if satisfied:²⁴⁴

- a. the land held by the corporation alone, which may be one or more parcels,²⁴⁵ is being held for the purpose of being developed as a residential development of more than 10 allotments or lots; and
- b. as to any other matters prescribed by the regulations (no such matters are currently prescribed by the *Land Tax Regulations 2025* (SA)).

Any exemption granted will be for an initial term specified by the Commissioner based on the expected development period, but may not exceed a period of five years.²⁴⁶ The initial term may be extended by the Commissioner on application of the related corporation for a further period if the Commissioner is satisfied that the development of the land is occurring over a reasonable period in the circumstances.²⁴⁷

An exemption will cease if the Commissioner determines that the development has been substantially completed or the development has not been substantially commenced within the period of two years after the grant of the application (or such longer period as the Commissioner may allow).²⁴⁸ The Commissioner may only treat a related corporation as if it were a single corporation if an exemption has been granted on the basis of satisfaction of the relevant criteria (i.e. the Commissioner does not have a general discretion to exempt related corporations from the company grouping rules).²⁴⁹

6.3 Trust grouping rules

6.3.1 Trusts generally assessed separately at surcharge rates

In summary, section 11 of the *Land Tax Act 1936* (SA) provides that trust land is taxed to the trustee and only land subject to the same trust is subject to aggregation (i.e. each trust is assessed separately).²⁵⁰ The position was different prior 1 July 2020, when significant amendments to the *Land Tax Act 1936* (SA) commenced. Previously, land subject to different trusts would be aggregated if the trusts had the same beneficiaries.²⁵¹ Section 11 provides:

Where a person is the owner of land as trustee of a trust (other than a trust arising because of a contract to purchase or acquire an estate or interest in the land), the trustee is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee.

²⁴⁴ Ibid s13J(5)-(6).

²⁴⁵ RevenueSA Related Corporations Land Tax Guide 17.

²⁴⁶ *Land Tax Act 1936* (SA) s13J(7).

²⁴⁷ Ibid s13J(8).

²⁴⁸ Ibid s13J(9).

²⁴⁹ Ibid s13J(11).

²⁵⁰ Explanatory Memorandum, Land Tax (Miscellaneous) Amendment Bill 2019 (SA) 2; RevenueSA, *2024-25 Guide to Legislation: Land Tax - Land Held on Trust* (1 August 2024) 4 (*RevenueSA Trust Land Tax Guide*) <<https://www.revenuesa.sa.gov.au/resources/publications/guides-to-legislation/guide-to-legislation-land-tax-land-held-on-trust/2024-25-guide-to-legislation-land-tax-land-held-on-trust>>.

²⁵¹ RevenueSA, *Land Held on Trust – Section 13(3)(b)*, LT004, 25 February 2016.

Note — This means that where an interest in land is held on trust (other than a trust arising because of a contract to purchase or acquire an estate or interest in the land) and the trustee is the taxpayer for the land, the taxable value of the interest in land—

- will be aggregated with the taxable value of other land subject to the same trust; but
- will not be aggregated with the taxable value of other land owned by the same taxpayer and not subject to the same trust.

A trustee is defined to include a trustee, executor, administrator, guardian, liquidator and any person having or taking upon themselves the possession, administration, or control of land, income or other property of any description affected by any trust, or having the possession, control or management of land of a person under any legal or other disability.²⁵² Two or more trustees of the same trust will be treated as a single owner.²⁵³ A trust is defined to include where property of a deceased person is held by a personal representative or by a trustee of a testamentary trust, but to exclude implied, constructive or resulting trusts.²⁵⁴

6.3.2 Certain trusts generally assessed separately at general rates

The trustee of an excluded trust or a public unit trust scheme are liable for land tax on the whole of the land subject to the trust *at general rates* as if the land were the only land owned by them as a trustee.²⁵⁵ An excluded trust is defined to mean a charitable trust, a concessional trust (e.g. certain trusts for the benefit of persons with a disability or under a guardianship or administration order), a trust the beneficiaries of which are certain associations, a superannuation trust (e.g. a complying superannuation fund, complying approved deposit fund and a pooled superannuation trust), a trust established by a superannuation trust solely for the purposes of a limited recourse borrowing arrangement, a trust that holds child maintenance land and an administration trust (i.e. personal representative of a deceased person).²⁵⁶ A public unit trust scheme is a listed trust or a widely held trust.²⁵⁷

6.3.3 Dual assessment of trustees and beneficiaries other trusts

In contrast, the trustee of any other trust is liable for land tax on the whole of the land subject to the trust *at higher trust rates*,²⁵⁸ unless written notice of one of the following is in force:

1. the beneficial interests in the land under a fixed trust;
2. the unitholdings in a unit trust scheme;

²⁵² *Land Tax Act 1936* (SA) s2(1)(definition of "trustee").

²⁵³ RevenueSA Trust Land Tax Guide 4.

²⁵⁴ *Land Tax Act 1936* (SA) s2(1)(definition of "trust").

²⁵⁵ *Land Tax Act 1936* (SA) ss8A(1), 8A(1b)(d), 8A(1b)(e), 13C. The same treatment applies to the trustees of an implied, constructive or resulting trust, who are entitled to recoup any amount of tax paid from any trust property: ss13E-13F. Note excluded trusts are not individually assessed on their share of jointly owned land: s9(7).

²⁵⁶ Ibid s2(1)(definitions of "administration trust", "concessional trust" and "excluded trust"); *Superannuation Industry (Supervision) Act 1993* (Cth) s67A.

²⁵⁷ Ibid s2(1)(definition of "public unit trust scheme").

²⁵⁸ Ibid s8A(1a). The trust rates are generally 0.5% higher than the general rates, except for the top marginal tax rate, which for both is 2.4%. For the 2024-25 financial year, the difference in tax for a total site value of \$2,738,000 or more is \$12,663.

3. a designated beneficiary of a discretionary trust (in respect of pre-existing trust land).²⁵⁹

If the trustee of a fixed trust or unit trust scheme lodges a written notice of the beneficial interests in the land or unitholdings in the scheme, respectively, with the Commissioner, then for the year in which the notice is lodged and subsequent years:²⁶⁰

1. the trustee is liable for land tax on the whole of the land subject to the trust at general rates as if the land were the only land owned by the trustee;
2. each beneficiary of the trust or unitholder in the scheme is deemed to be the owner (in addition to the trustee) of a proportion of the trust land equal to the proportion of beneficial interests in the land or units they hold in the scheme, respectively;
3. each beneficiary or unitholder is liable for land tax on that proportion of trust land and any other land they own at general rates of land tax; and
4. an amount to avoid double taxation is deducted from the land tax payable by a beneficiary or unitholder equal to the proportion of beneficial interests in the land or units held in the scheme, respectively, multiplied by the total amount of land tax assessed on the trustee.²⁶¹

From a practical perspective, the lodging of written notice by the trustee of a fixed trust or unit trust scheme will result in the effective partial or complete grouping of any company or trustee that is a beneficiary in the fixed trust or unit trust scheme with that fixed trust or unit trust scheme (i.e. the company or trustee will be assessed both on the land owned by it and also a proportion of the land owned by the trustee of the fixed trust or unit trust scheme of which it is a beneficiary).

This dual assessment of both trustees and beneficiaries to land tax in respect of trust land does not apply to public unit trust schemes (i.e. listed trusts or widely held trusts) or excluded trusts (e.g. superannuation trusts), as they are already subject to land tax at general rates.²⁶²

6.4 Interaction of company and trust grouping rules

Given that section 11 of the *Land Tax Act 1936* (SA) expressly provides that trustees that own land must be taxed separately on the land of each trust of which they are a trustee and also land owned in their own capacity, it should follow that land owned by a related corporation in a trustee capacity is assessed separately to land owned by that related corporation in its own capacity, which is aggregated with land owned by its other related corporations.

²⁵⁹ Ibid ss8A(1b)(a)-(c).

²⁶⁰ Ibid ss12(1), 12(3), 12(5)-(7), 13(1), 13(3), 13(5)-(7). A "fixed trust" is defined to mean a trust that is not an excluded trust, discretionary trust or a trust to which a unit trust scheme relates: s2(1)(definition of "fixed trust"). A "unit trust scheme" is defined to mean an arrangement having the effect of allowing persons to participate in income or profit arising from the acquisition, holding and disposal of trust property as a beneficiary, but does not include an excluded trust: s2(1)(definition of "unit trust scheme"). Once notification is given, changes to beneficial interests in land or unitholdings must be notified to the Commissioner within 1 month: ss13D(6)-(7).

²⁶¹ For beneficiaries or unitholders in the capacity of trustee of another trust, the deemed ownership and deduction for trustee land tax is effected by different provisions: ibid ss2(1)(definitions of "fixed trust" and "unit trust scheme"), 12(8), 13(8), 13B. Until 31 December 2021, the trustee of a discretionary trust could also lodge written notice with the Commissioner of a single designated adult natural person beneficiary, with the result the designated beneficiary is deemed to also be the owner of land subject to the trust on or before 16 October 2019 (**pre-existing trust land**) and liable for land tax on that land at general rates with a deduction for the land tax paid by the trustee on that land: ss13A(1)-(3), 13A(9), 13A(11)-(13), 13A(16). The trustee is assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee at general rates in respect of pre-existing trust land and at higher trust rates in respect of other trust land: s13A(9)(c).

²⁶² Ibid ss2(1)(definitions of "excluded trust" and "public unit trust scheme"), 12(9), 13(9), 13B(5).

This is the Commissioner's practice.²⁶³

Where a corporation is a trustee, the land held by that corporation as trustee will not be subject to the related corporation provisions Instead, the land will be assessed in accordance with the trust provisions

The one technical exception to this rule is section 13G(5) of the *Land Tax Act 1936* (SA), which provides that corporations are related if one is the trustee of a fixed trust or a unit trust scheme and another corporation (or group of related corporations) owns more than 50% of the beneficial interests in land subject to the trust or units in the scheme respectively. A corporate trustee of such a fixed trust or unit trust scheme must notify the Commissioner within a month of this occurring.²⁶⁴

In such circumstances, the land owned by the corporate trustee and the non-trust lands owned by the other related corporations will be aggregated and assessed to them as related corporations (with the trust lands of the other related corporations assessed separately under section 11). While a corporate trustee with a related corporation under this rule cannot nominate its beneficiaries or unitholders, the higher trust rates do not apply to such a trustee in any event, provided that the corporate trustee and another related corporation both own South Australian land.²⁶⁵

There is also a potential practical exception to this rule. If the trustee of a fixed trust or unit trust scheme has lodged written notice of the beneficial interests in trust land or unitholdings in the scheme respectively, with the result that the trust land is deemed to be owned by and assessed to both the trustee and beneficiaries or unitholders respectively, then if one of those beneficiaries or unitholders is a corporation that has related corporations, the proportion of the trust land that it is deemed to be owned by the beneficiary or unitholder will be aggregated with the other land it and its related corporations own and be assessed to them accordingly.²⁶⁶

For completeness, by its terms, section 11 only applies to land directly owned by a trustee; it does not apply in respect of shares in a corporation owned by a trustee.²⁶⁷

²⁶³ RevenueSA Trust Land Tax Guide 27; RevenueSA Related Corporations Land Tax Guide 3-4.

²⁶⁴ *Land Tax Act 1936* (SA) s13D(8).

²⁶⁵ *Land Tax Act 1936* (SA) s8A(1c); RevenueSA Trust Land Tax Guide 28-9; RevenueSA Related Corporations Land Tax Guide 8-10.

²⁶⁶ RevenueSA Related Corporations Land Tax Guide 12.

²⁶⁷ *Ibid* 15-6.

7. Western Australia

7.1 Imposition of land tax

Land tax in Western Australia is imposed by the *Land Tax Act 2002* (WA) in accordance with the *Land Tax Assessment Act 2002* (WA) for each financial year on the taxable value of all non-exempt land and is payable by the owner of the land as at midnight on 30 June in the previous financial year.²⁶⁸

The owner of land is relevantly defined to mean a person who is entitled to the land for any estate of freehold in possession.²⁶⁹ The taxable value of land is the unimproved value of the land determined under the *Valuation of Land Act 1978* (WA).²⁷⁰ Land tax is payable on the aggregated taxable value (i.e. the sum of all taxable values) of all land owned by each person.²⁷¹

7.2 Trust grouping rules

A trustee in whom the legal estate of taxable land is vested is liable for land tax as if it was the beneficial owner of the land.²⁷² A trustee's liability for land tax is limited by the amount of trust funds or securities for money held or controlled after receiving an assessment notice.²⁷³ A trustee is entitled to recover land tax paid from a beneficiary or reimburse itself from trust money.²⁷⁴

Section 11(2) of the *Land Tax Assessment Act 2002* (WA) provides:

However, if a trustee owns 2 or more lots or parcels of taxable land held, in severalty, in trust for different persons, then the land tax payable for each lot or parcel is assessed separately unless another provision of this Act specifically requires the land tax to be assessed on the lots or parcels jointly.

The provision prevents all land being held by a trustee from being aggregated and thereby 'allows separate beneficial ownership to be recognised for land tax purposes.'²⁷⁵ For example, a single company that is the trustee of two trusts, one a discretionary trust and one a unit trust, should be assessed separately for the land held on each trust (note that this example does not expressly state whether the beneficiaries of those trusts is the same).²⁷⁶

²⁶⁸ *Land Tax Act 2002* (WA) s5; *Land Tax Assessment Act 2002* (WA) ss5, 7(1), 10.

²⁶⁹ Ibid Glossary cl1(definition of "owner" para(a)).

²⁷⁰ Ibid Glossary cls1(definitions of "taxable value" and "unimproved value"), 6.

²⁷¹ *Land Tax Assessment Act 2002* (WA) s11(1), Glossary cl1(definition of "aggregated taxable value").

²⁷² Ibid ss9(1), 9(4), 9(6). The term "trustee" is defined broadly to include a person in whom the legal estate of land is vested whether appointed or constituted trustee by act of parties, by order or declaration of a court or by operation or law; executor, administrator, guardian, committee of management, receiver or liquidator having administration or control of land; and a person having or taking upon themselves the administration or control of land effected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the land of a person who is under a legal disability: ibid Glossary cl1(definition of "trustee").

²⁷³ Ibid s9(2).

²⁷⁴ Ibid s9(3).

²⁷⁵ Explanatory Memorandum, Land Tax Assessment Bill 2001 (WA) 5.

²⁷⁶ Ibid. No cases have considered this provision or its predecessor s15(3)(a) of the *Land Tax Assessment Act 1976* (WA).

Similarly, if a trustee owns and holds taxable land on trust for another person and is also the beneficial owner of other land, then the land tax payable on the trust land is assessed separately from the land tax payable on the land held beneficially, unless the trust land and beneficially held land are liable to be jointly assessed.²⁷⁷ This provision requires the separate assessment of land held in the capacity of trustee and land held in a individual/non-trustee capacity.²⁷⁸

7.3 No company grouping rules

The *Land Tax Act 2002* (WA) and *Land Tax Assessment Act 2002* (WA) do not contain any rules that would group companies or aggregate their land.

²⁷⁷ *Land Tax Assessment Act 2002* (WA) s11(3).

²⁷⁸ Explanatory Memorandum, Land Tax Assessment Bill 2001 (WA) 5; *Re Kosonen and Commissioner of State Revenue* (2009) 77 ATR 326, 327, 330.

8. Australian Capital Territory

8.1 Imposition of land tax

Land tax in the ACT is imposed by the *Land Tax Act 2004* (ACT) for each quarter on each parcel of rateable land that is residential land and not exempt from land tax.²⁷⁹ Land tax is payable by the owner of the parcel.²⁸⁰ The owner of the parcel is relevantly defined to mean the registered proprietor of an interest in the parcel (other than an interest in a lease granted by a person other than the Territory or the Commonwealth).²⁸¹

Residential land is defined to mean rateable land leased for residential purposes only, leased for multiple purposes but only used for residential purposes and rateable land included in the common property of a community title scheme if at least one parcel of land in the scheme is residential land and no parcel of land in the scheme is leased for a commercial purpose.²⁸² Rateable land has the same meaning as in section 8 of the *Rates Act 2004* (ACT).²⁸³

Land tax is imposed at the appropriate rate on each parcel of taxable land.²⁸⁴ The term "parcel" is defined inclusively to include a part of a parcel of land that is separately held by an occupier, tenant, lessee or owner.²⁸⁵ The appropriate rate of land tax for a parcel of land is generally the amount worked out for the parcel according to the following formula:²⁸⁶

$$\text{Fixed charge} + (\text{averaged unimproved value of parcel} \times \text{percentage rate})$$

Despite the percentage rate charged on averaged unimproved value of the parcel of land being imposed at marginal rates,²⁸⁷ land tax in the ACT is imposed on a parcel-by-parcel basis and not on an aggregated basis. Consequently, the *Land Tax Act 2004* (ACT) does not contain any rules that would group companies or trusts or aggregate their land.

8.2 Imposition of rates

Rates in the ACT are imposed by the *Rates Act 2004* (ACT) for each year on each parcel of rateable land.²⁸⁸ Rates are payable by the owner of a parcel of rateable land.²⁸⁹ The owner of a parcel is relevantly defined to mean the registered proprietor of an interest in the parcel (other than an interest in a lease granted by a person other than the Territory or the Commonwealth).²⁹⁰

²⁷⁹ *Land Tax Act 2004* (ACT) ss8A-9.

²⁸⁰ *Ibid* s17(1).

²⁸¹ *Ibid* s3, Dictionary(definition of "owner" para(a)).

²⁸² *Ibid* s3, Dictionary(definition of "residential land").

²⁸³ *Ibid* s3, Dictionary(definition of "rateable land").

²⁸⁴ *Ibid* s9(1).

²⁸⁵ *Ibid* s3, Dictionary(definition of "parcel").

²⁸⁶ *Ibid* s9(3).

²⁸⁷ ACT Revenue Office, *Calculating Land Tax* <https://www.revenue.act.gov.au/land-tax?result_1060955_result_page=2>.

²⁸⁸ *Rates Act 2004* (ACT) ss14(1), 15, 17(1).

²⁸⁹ *Ibid* s16(1).

²⁹⁰ *Ibid* s3, Dictionary(definition of "owner" para(a)(i)).

Rateable land is defined to mean all land in the ACT (subject to certain exceptions for Commonwealth, public and charitable lands and buildings).²⁹¹ The term "parcel" is defined inclusively to include a part of a parcel of land that is separately held by an occupier, tenant, lessee or owner and land held under a declared land sublease.²⁹²

Rates are generally calculated according to the following formula:²⁹³

Fixed charge + (averaged unimproved value of parcel x percentage rate)

As such, rates in the ACT are imposed on a parcel-by-parcel basis and not on an aggregated basis. Consequently, the *Rates Act 2004* (ACT) does not contain any rules that would group companies or trusts or aggregate their land.

²⁹¹ Ibid s8(1).

²⁹² Ibid s3, Dictionary(definition of "parcel").

²⁹³ Ibid ss14(2)-(3).

9. Northern Territory

9.1 Land tax not imposed

Unlike all other Australian states and territories, there is no land tax in the Northern Territory.²⁹⁴

²⁹⁴ *Re Tadcaster Sorrento Pty Ltd and Commissioner of State Revenue* [2015] VCAT 611 (1 May 2015) [67]; Northern Territory Government, *Property Taxes* (2025) <<https://nt.gov.au/property/land/buying-and-selling-land/land-taxes>>.

10. Case Studies

10.1 Introduction

The following sections contain case study examples of how the company and trust grouping rules in each jurisdiction operate on different commercial landholding structures.

In each case, where the conclusion is that companies or trusts are "grouped" or "effectively grouped", it means the lands of those entities will be aggregated in an assessment.

10.2 Stapled Structures

10.2.1 Company-company stapled structure

The following table summarises the application of the land tax grouping rules of each jurisdiction to two companies the shares in which are stapled:

Jurisdiction	Company grouping rules	Trust grouping rules
New South Wales	The stapled companies should be related companies that are grouped .	Not relevant.
Victoria	The stapled companies should be related corporations, which could be grouped at the discretion of the Commissioner.	Not relevant.
Queensland	No company grouping rules.	Not relevant.
Tasmania	The stapled companies should be related companies that are grouped .	Not relevant.
South Australia	The stapled companies should be related corporations that are grouped .	Not relevant.
Western Australia	No company grouping rules.	Not relevant.

10.2.2 Trust-trust stapled structure

The following table summarises the application of the land tax grouping rules of each jurisdiction to the trustees of two unit trusts the units in which are stapled:

Jurisdiction	Company grouping rules	Trust grouping rules
New South Wales	Not relevant.	<p>If both trusts have the same trustee, then the trusts should be grouped because they have the same beneficiaries.</p> <p>If the trusts have different trustees, then the trusts should not be grouped.</p>
Victoria	Not relevant.	The trusts are not grouped and are assessed separately.
Queensland	No company grouping rules.	<p>If both trusts have the same trustee and trust terms, then the trusts should be grouped because they have the same trustee, beneficiaries and interests of the beneficiaries.</p> <p>If the trusts have different trustees, then the trusts should not be grouped.</p>
Tasmania	If both trusts have different trustees that are related companies, the trusts should be grouped .	<p>If both trusts have the same non-specified trustee, the trusts should be grouped.</p> <p>If both trusts have the same specified trustee or different non-related company trustees, the trusts should not be grouped.</p>
South Australia	If more than 50% of stapled units are owned by one or more related corporations, the trusts should be grouped with those related corporations. Otherwise, the trusts should not be grouped.	Trusts are not grouped and are assessed separately, subject to application of the company grouping rules.
Western Australia	No company grouping rules.	<p>If both trusts have the same trustee, then the trusts should be grouped because they have the same beneficiaries.</p> <p>If the trusts have different trustees, then the trusts should not be grouped.</p>

10.2.3 Company-trust stapled structure

The following table summarises the application of the land tax grouping rules of each jurisdiction to a company and unit trust the shares and units in which are stapled:

Jurisdiction	Company grouping rules	Trust grouping rules
New South Wales	Not relevant.	Not relevant.
Victoria	Not relevant.	Not relevant.
Queensland	No company grouping rules.	Not relevant.
Tasmania	Even if the company and trustee are related companies, the company and trust should effectively not be grouped because the land held by the company and land held by the trustee will be separately assessed.	Not relevant.
South Australia	If more than 50% of stapled securities are owned by one or more related corporations, the company and trust should be grouped with those related corporations. Otherwise, the company and trust should not be grouped.	Not relevant.
Western Australia	No company grouping rules.	Not relevant.

Aside from majority ownership in South Australia, the result is that the land of the company and unit trust is not grouped, despite the common ownership of shares in the company and units in the trust.

10.3 Head trust/Parent Company-Sub-trust/Subsidiary Structures

10.3.1 Parent company and subsidiary companies

The following table summarises the application of the land tax grouping rules of each jurisdiction to a parent company and its wholly-owned subsidiary companies:

Jurisdiction	Company grouping rules	Trust grouping rules
New South Wales	The parent and subsidiary companies should be related companies that are grouped .	Not relevant.
Victoria	The parent and subsidiary companies should be related corporations, which could be grouped at the discretion of the Commissioner.	Not relevant.
Queensland	No company grouping rules.	Not relevant.

Tasmania	The parent and subsidiary companies should be related companies that are grouped .	Not relevant.
South Australia	The parent and subsidiary companies should be related corporations that are grouped .	Not relevant.
Western Australia	No company grouping rules.	Not relevant.

10.3.2 Parent company and sub-trusts

The following table summarises the application of the land tax grouping rules of each jurisdiction to a parent company that wholly-owns unit trusts (i.e. sub-trusts):

Jurisdiction	Company grouping rules	Trust grouping rules
New South Wales	The land of the parent company and the unit trusts should not be grouped .	<p>If the unit trusts have the same trustee, then the trusts should be grouped because they have the same beneficiary.</p> <p>If the unit trusts have different trustees, then the trusts should not be grouped.</p> <p>The land of the parent company and the unit trusts should only be effectively grouped to the extent the unit trusts are fixed trusts.</p>
Victoria	The land of the parent company and the unit trusts should not be grouped .	<p>The trusts are not grouped and are assessed separately.</p> <p>The land of the parent company and a unit trust should only be effectively grouped if the trustee of a unit trust notifies the Commissioner of the trust's unit holdings.</p>
Queensland	No company grouping rules.	<p>If the unit trusts have the same trustee and trust terms, then they should be grouped because they have the same trustee, beneficiary and interests of the beneficiary.</p> <p>If the unit trusts have different trustees or interests of the beneficiary, then the trusts should not be grouped.</p> <p>The land of the parent company and the unit trusts should not be grouped.</p>

Tasmania	If the parent company and trustees of the unit trusts are related companies that are not specified trustees, then they should be grouped , but the parent company land will be separately assessed to the trust land (i.e. effectively only the unit trusts are grouped).	<p>If the unit trusts have the same non-specified trustee, the trusts should be grouped.</p> <p>If the unit trusts have the same specified trustee or different trustees, then they should not be grouped, subject to application of the company grouping rules.</p>
South Australia	The parent company and the unit trusts should be related corporations that are grouped .	Not relevant.
Western Australia	No company grouping rules.	<p>If the units trusts have the same trustee, then they should be grouped because they have the same beneficiary.</p> <p>If the unit trusts have different trustees, then they should not be grouped.</p> <p>The land of the parent company and the unit trusts should not be grouped.</p>

10.3.3 Head trust and sub-trusts

The following table summarises the application of the land tax grouping rules of each jurisdiction to a head unit trust that wholly-owns other unit trusts (i.e. sub-trusts):

Jurisdiction	Company grouping rules	Trust grouping rules
New South Wales	Not relevant.	<p>If the sub-trusts have the same trustee, then they should be grouped because they have the same beneficiary.</p> <p>If the sub-trusts have different trustees, then they should not be grouped.</p> <p>In either case, the land of the head trust and the sub-trusts should only be effectively grouped to the extent the sub-trusts are fixed trusts.</p>
Victoria	Not relevant.	The trusts are not grouped and are assessed separately.

		<p>The land of the head trust and a sub-trust should only be effectively grouped if the trustee of a sub-trust notifies the Commissioner of the sub-trust's unitholdings.</p>
Queensland	No company grouping rules.	<p>If sub-trusts have the same trustee and trust terms, then the sub-trusts should be grouped because they have the same trustee, beneficiary and interests of the beneficiary.</p> <p>If the sub-trusts have different trustees or interests of the beneficiary, then the sub-trusts should not be grouped.</p> <p>The land of the head trust and the sub-trusts should not be grouped.</p>
Tasmania	If the trustees of the head trust and sub-trusts are related companies that are not specified trustees, then they should be grouped .	<p>If the trusts have the same non-specified trustee, the trusts should be grouped.</p> <p>If the trusts have the same specified trustee or different trustees, then they should not be grouped, subject to application of the company grouping rules.</p>
South Australia	Not relevant.	<p>Trusts are not grouped and are assessed separately.</p> <p>The land of the head trust and a sub-trust should only be effectively grouped if the trustee of a sub-trust notifies the Commissioner of the sub-trust's unit holdings.</p>
Western Australia	No company grouping rules.	<p>If the sub-trusts have the same trustee, then they should be grouped because they have the same beneficiary.</p> <p>If the sub-trusts have different trustees, then they should not be grouped.</p> <p>The land of the head trust and the sub-trusts should not be grouped..</p>

10.3.4 Head trust and subsidiary companies

The following table summarises the application of the land tax grouping rules of each jurisdiction to a head unit trust and its wholly-owned subsidiary companies:

Jurisdiction	Company grouping rules	Trust grouping rules
New South Wales	The subsidiary companies will only be related companies if the head trust is a fixed trust, in which case the subsidiary companies should be grouped . Otherwise, the subsidiary companies should not be grouped .	As trust land is assessed separately, the head trust should not be grouped with the subsidiary companies.
Victoria	The trustee of the head trust and the subsidiary companies should be related corporations, which could be grouped at the discretion of the Commissioner, subject to the separate assessment of the head trust land.	As trust land is assessed separately, the head trust should not be grouped with the subsidiary companies.
Queensland	No company grouping rules.	Not relevant.
Tasmania	The trustee of the head trust and the subsidiary companies should be related companies, which should be grouped , subject to the separate assessment of trust land.	As trust land is assessed separately, the head trust should not be grouped with the subsidiary companies.
South Australia	The trustee of the head trust and the subsidiary companies should be related corporations, which should be grouped , subject to the separate assessment of trust land.	As trust land is assessed separately, the head trust should not be grouped with the subsidiary companies.
Western Australia	No company grouping rules.	Not relevant.

10.4 Custodians and Trustees

There appears to be no direct guidance on how land tax should apply where ownership of the land of a trust is divided between a trustee and their custodian. In a public ruling setting out guidelines for *ex gratia* relief from land tax foreign surcharge, the Queensland Commissioner adopts the following approach:²⁹⁵

²⁹⁵ Queensland Revenue Office, *Guidelines for ex gratia relief from the land tax foreign surcharge*, LTA000.4.3, 19 June 2024, 2.

Where a foreign entity satisfies the conditions for *ex gratia* relief from the foreign surcharge, relief will apply to all land owned by the foreign entity in Queensland. Nominees or custodians appointed for regulatory compliance purposes will be looked through, and eligibility will be determined by reference to the activities of the next level trustees and will apply to all land owned by that trustee.

While such an approach will apply for the purposes of *ex gratia* relief, it will not necessarily also apply for the purposes of assessing land tax. In any event, the reasoning in the public ruling at least implies that the correct legal position is that a custodian owns land on a separate trust to the land owned directly by the trustee.

The idea that a custodian and trustee should be separately assessed as the trustee of separate trusts is also supported by the recent decision of the Victorian Civil and Administrative Tribunal in *Re Caloutas and Commissioner of State Revenue*.²⁹⁶ In that case, Senior Member Tang AM held that where trust land was held separately, some by the trustees collectively and some by trustees individually, the proper characterisation of the arrangement was that the land held by the individual trustees was held on a bare/fixed trust for the benefit of all the trustees collectively, who in turn held that interest in the land on trust for the beneficiaries.²⁹⁷

In such a situation, and where there was no evidence that the division of ownership was a deliberate attempt to avoid aggregation, the Tribunal held that correct and preferable decision was for the Commissioner to assess the registered proprietor of the land to tax (i.e. land owned by the trustees collectively should be assessed separately to the land owned by any trustee individually).²⁹⁸ If the same reasoning was applied in the context of a custodian and trustee that were each the registered proprietor of some trust land, then the result should be that:

1. the lands of the custodial trust held by the custodian need to be aggregated with each other;
2. the lands of the trust held by the trustee directly need to be aggregated with each other; but
3. the lands of the custodial trust and the lands of the trust do not need to be aggregated with each other.

Whether or not separate assessment of the custodian and trustee may depend upon the terms of the trust deed and the custody agreement. If the custodian is merely a delegate of the trustee under those documents, and thus a separate trustee of the same single trust, then the better view may be that the custodian and trustee are assessed on the lands held by both.²⁹⁹

In Victoria and South Australia, this assumes that the custodian has not given written notice to the Commissioner of the beneficial interest of the trustee in the custodian trust land (in which case both the custodian and trustee would be the 'owner' and there would be a credit provided for land tax paid by the custodian against the land tax payable on the same property by the trustee). If such notice had been given, then the lands of the custodial trust and the trust would effectively both be taxed to the trustee (with a credit for the tax paid by the custodian). In New South Wales, if the terms of the custodial trust satisfy the requirements of a fixed trust, then the same result will obtain.

²⁹⁶ [2025] VCAT 82 (30 January 2025).

²⁹⁷ Ibid [10], [65], [96], [116].

²⁹⁸ Ibid [10], [90], [101], [120]–[122], [126], [129].

²⁹⁹ See, by analogy, *Commissioner of State Revenue v Lend Lease Funds Management Ltd* (2011) 33 VR 204, 236, 238–41, 245–8.

11. Fitness for Purpose

As the results of the various case studies demonstrate, different structures with the same ultimate beneficial ownership can have very different grouping results, depending upon the particular type of structure and the jurisdictions in which it owns land. This tends to suggest that the various different company and trust grouping rules in the different jurisdictions are achieving their purpose of protecting the aggregation principle to differing degrees.

From a policy perspective, the key impediments to the achievement of that purpose appear to be the following:

- a. Not having grouping rules that apply to both companies and to trusts. At a policy level, there seems to be no distinction between companies and trusts, in terms of split ownership of land between such entities undermining the aggregation principle.
- b. Requiring the Commissioner to determine to apply the grouping rules, rather than having them be self-executing. While a discretion provides flexibility to respond to different factual circumstances, the aggregation principle could still be protected by:
 1. having the grouping rules be self-executing; and
 2. providing the Commissioner with a discretion to exempt entities from their application.

Only having the grouping rules apply on the Commissioner's determination effectively means that they will not apply, except in the most egregious circumstances (i.e. cases that are subject to review and audit).

- c. Applying different tests of relatedness to companies and trusts. Broadly speaking, the company grouping rules that do exist apply to common majority ownership (i.e. 50% or more), whereas the relatedness test that applies to trusts varies widely:
 1. majority ownership (in South Australia);
 2. same trustee and beneficiaries (in New South Wales and Western Australia);
 3. same trustee, beneficiaries and beneficiary interests (in Queensland); and
 4. legal status and related companies of the trustee (in Tasmania).

At a policy level, there does not appear to be any reason to group companies with common majority ownership, but to apply a higher common ownership threshold (or, indeed, other criteria) in relation to trusts.

- d. In no jurisdiction do the rules apply in an integrated and consistent way to companies and trusts (although South Australia does give the company grouping rules priority over the trust assessment provisions in the case of majority ownership of a fixed trust or unit trust scheme). In the one jurisdiction where the company grouping rules apply generally to companies and corporate trustees (i.e. Tasmania), the grouping results are arguably the most anomalous.
- e. In no jurisdiction do the trust grouping rules group trusts with different trustees but the same beneficiaries, despite the fact that it is the beneficiaries that will ultimately benefit from the division of ownership, in the same manner as shareholders in companies.

- f. Reliance on beneficiary notification regimes to incentivise trust land to be assessed to beneficial owners. While in Victoria and South Australia there are surcharge trust rates attached to having some trustees assessed separately on trust land:
 - 1. once the trust owns land above the highest threshold in Victoria there is no surcharge rate, meaning there is no incentive to notify; and
 - 2. once the trust owns land above the highest threshold in South Australia, the surcharge effectively only applies on the middle marginal rates, with the burden of the surcharge less than the impact of aggregation as a result of notification, again meaning there is no incentive to notify.