

The Victorian Government's recently introduced *Duties and Land Tax Acts (Amendment) Act 2005* received Royal Assent on 29 November 2005.

Changes to the way property owning trusts are charged land tax were proposed in the State Budget in May 2005 as a means of catching trusts that were used as land tax minimisation mechanisms. The changes were to be introduced retrospectively.

However, following lobbying from several industry bodies the initial proposals have been watered down. In the legislation passed the current maximum rate has been set at a 0.375% surcharge on the aggregate value of all land held in trusts from 1 January 2006. The surcharge is zero at an Unimproved Value of \$2,700,000 and the normal scale applies. In addition the tax free threshold is reduced to \$19,999.

The new trust rates as opposed to the standard 2006 land tax scale rates are as follows:

	Tax on Trusts 2006	Land Tax Scale 2006
\$0 - \$19,999	Nil	Nil
\$20,000 - \$199,999	\$75 + 0.375% value over \$20,000	Nil
\$200,000 - \$539,999	\$750 + 0.575% value over \$200,000	\$200 + 0.20% value over \$200,000
\$540,000 - \$899,999	\$2,705 + 0.875% value over \$540,000	\$880 + 0.50% value over \$540,000
\$900,000 - \$1,189,999	\$5,855 + 1.375% value over \$900,000	\$2,680 + 1.0% value over \$900,000
\$1,190,000 - \$1,619,999	\$9,843 + 1.875% value over \$1,190,000	\$5,580 + 1.5% value over \$1,190,000
\$1,620,000 - \$2,699,999	\$17,905 + 1.706% value over \$1,620,000	\$12,030 + 2.25% value over \$1,620,000
\$2,700,000 and over	\$36,330 + 3.5% value over \$2,700,000	\$36,330 + 3.5% value over \$2,700,000

Existing discretionary trusts will be protected by the introduction of a grandfathering clause whereby the trust can nominate a once-off beneficiary to avoid the surcharge applying. If a beneficiary is nominated the trustee will be charged land tax on all land owned prior to 1 January 2006 based on the standard scale. The beneficiary will then be charged land tax on the aggregate value of the trust land in addition to other land owned by the beneficiary based on the normal scale of charges, with a deduction for the tax payable by the trustee to avoid double taxation. A nominated beneficiary who owns no other taxable land will not receive a separate Land Tax assessment (see the third example below).

Various scenarios where the Unimproved Value is \$900,000 for land owned prior to 1 January 2006 are as follows:

	Beneficiary Nominated	Beneficiary owns other land	Trustee Land Tax	Beneficiary Land Tax	Land Tax Payable
Non-trust landowner	N/A	N/A	N/A	N/A	\$2,680
Single Trust Landowner	No	N/A	\$5,855	N/A	\$5,855
Single Trust Landowner	Yes	No	\$2,680	\$2,680 less credit of trustee tax(\$2,680) = \$0	\$2,680
Single Trust Landowner	Yes	Yes - \$300,000 worth	\$2,680	\$5,730 less credit of trustee tax(\$2,680) = \$3,050	\$5,730

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Land acquired by a discretionary trust from 1 January 2006 will be charged land tax to the trustee at the surcharge rate without the opportunity to nominate a beneficiary.

Fixed trusts and unit trusts may provide details of all beneficial interests in the land. The beneficiaries (fixed trusts) or unit holders (unit trusts) nominated will have land tax assessed on their interest in the land in addition to any other land owned by the beneficiary (or unit holder) based on the standard scale less any tax payable by the trustee to again avoid double taxation. The trustee will then be charged land tax on the whole of the land based on the standard scale.

When nominating beneficiaries it will be important that consideration is given to which scenario will provide the best outcome based on the tax that each will incur. Nominations are to be provided to the Commissioner of State Revenue by 30 June 2006.

An exemption from the surcharge is available for a number of trusts including, but not limited to, public unit and wholesale unit trusts, complying superannuation funds, trusts holding land for members of a club and charitable trusts.

### CONTACT DETAILS

Shaun O'Sullivan

Senior Strategist

Phone: 03 9605 1000

Email: [shaun.osullivan@m3property.com.au](mailto:shaun.osullivan@m3property.com.au)

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