

# Legal Alert

Tax & Revenue

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## Land Tax: Minor Interests – Major Problems!

Under the new laws passed late last year, landowners' interests will be aggregated across both joint and individual ownerships.

Minority ownership interests in properties will not therefore prevent aggregation as they have done to date.

This could cause a significant increase in tax for a landowner who currently holds land in structures that involve minority interests.

### Existing Laws – Until 30 June 2020

Many investors with multiple properties hold those properties jointly. This usually involves one landowner with a majority interest and other landowners with a minority interest. To the extent the minor interests are held by different entities, the properties in such structures will not be aggregated for land tax purposes (subject to the Commissioner forming the view that those minor interests were created to reduce land tax).

For example, assume Mrs Jones owned an 85% interest in three properties, with one of her children, Kathryn, owning a 15% interest in one of those properties, her other child Tom owning a 15% interest in the second, and the Jones Family Trust owning a 15% interest in the third. In that case, subject to the proviso mentioned above, none of those properties, nor any of the interests held in them, should be aggregated for land tax purposes.

### New Aggregation Laws

Under the new laws, which will come into effect from 1 July 2020, a landowner's interest in any property they jointly hold will be aggregated with every interest they hold in other properties, whether individually or jointly. Using the above example, Mrs Jones' 85% interest in each of the three properties will be aggregated in calculating her land tax assessment. This aggregation could result in landowners, like Mrs Jones, paying a significantly larger amount of land tax than they have previously.

### Comparison Between Existing & New Laws

The potential increase in land tax for the Jones Family under the new rules is shown in the following table. In this case, there will be an additional \$15k of land tax each year for the majority holder, Mrs Jones.

Value	Title	Mrs Jones	Kathryn	Tom	Jones Family Trust
\$ 750,000	Property A	85%	15%	-	-
\$ 750,000	Property B	85%	-	15%	-
\$ 750,000	Property C	85%	-	-	15%
Land Tax Payable for Mrs Jones					
Existing Regime (FY 19/20)		\$ 5,574*			
New Regime (FY 20/21)		\$ 20,528**			

\* = \$ 2,186 (land tax for each property) x 85% of ownership x 3 properties

\*\* = \$ 24,352 (land tax for value of \$750k x 85% x 3) minus credit of \$1,500 x 85% x 3 properties

Under the existing regime, Kathryn, Tom and the Jones Family Trust will each pay land tax of \$328 (their portion of the joint liability). However, under the new regime, Kathryn and Tom will each pay land tax of \$225 (their portion of the joint liability, assuming they do not hold interests in any other properties). If the Jones Family Trust nominates an individual beneficiary, it will also pay land tax of \$225 (assuming it does not hold interests in any other property). If the Trust does not make a nomination, it will pay land tax of \$338 (land tax trust surcharge applied to a notional site value of 15% of \$750,000 less a credit for the Jones Family Trust's portion of the tax assessed to Mrs Jones and the Trust jointly).

Mrs Jones may be eligible for ex-gratia relief under the Land Tax Transitional Fund for some of the increased tax. However, the relief is only available for 3 years and reduces in the second and third years.

## Conclusion

The new laws could result in land held in existing structures with genuine minority interests effectively being aggregated for land tax purposes. This will likely lead to a substantially larger land tax liability for the landowner who holds the majority interest in those structures.

Accordingly, we strongly recommend that landowners who have structures that involve minority interests obtain advice as to the land tax consequences under the new rules. Consideration may then need to be given to restructuring to prevent any significant increases in land tax going forward.

## Contact details

If you would like to discuss any of the issues raised above in more detail, and on a strictly confidential basis, please contact the following:



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