

Victorian land tax: Positive obligation to notify errors

RECENT CHANGES TO THE VICTORIAN LAND TAX ACT IMPOSE UPON TAXPAYERS A POSITIVE OBLIGATION TO NOTIFY THE COMMISSIONER OF ERRORS IN ASSESSMENTS.



Changes made to the Victorian Land Tax Act in December 2009 impose a positive obligation upon land holders to notify the Victorian State Revenue Offices of errors in land tax assessments.

Previously this was not the case.

On 8 December 2009 Royal Assent was given to the *State Taxation Further Amendments Act No. 83 of 2009*, which amongst other things, adds a new s 104A to the *Land Tax Act 2005* (Vic).

Section 104A in part reads:

- “(1) A person who is served with a notice of assessment of land tax must notify the Commissioner of any error or omission in the notice relating to -
- (a) any land in Victoria owned by the person that is not specified in the notice;
 - (b) in the case of a notice of assessment for land jointly owned by two or more owners, any land in Victoria owned by the joint owners that is not specified in the notice;
 - (c) any land specified in the notice as exempt land.

... “

Specifically, a Victorian landholder must now notify the State Revenue Office of an error where:

- land in Victoria is not included in the land tax assessment (this includes the situation where the landowner receives a separate assessment for some of the land held by the landowner);
- land in Victoria is held on trust, but the existence of the trust has not been notified to the State Revenue Office;
- land in Victoria is wrongly notified as exempt; or

- jointly owned land is not specified in the notice.

Section 104A requires that there be a notice of assessment. The section does not appear to cover the situation where a taxpayer owns land in Victoria and receives no notice of assessment in respect of any Victorian land.¹

By a consequential amendment to the *Taxation Administration Act 1977* (Vic) (cl 17, Sch 1), s 104A does not apply in respect of a notice of assessment that was served upon the taxpayer prior to 1 January 2010.

Since the Commissioner’s assessment cycle issues land tax assessments in the period 5 February 2010 to mid April 2010, the new provision applies to assessments currently being received

Amendments to the Taxation Administration Act provide for penalties as a consequence of non-notification.

PRIMARY PENALTY

The penalty for a default is 25% of the additional amount that the taxpayer would have been assessed as liable to pay had the taxpayer not defaulted.²

DISCRETIONARY PENALTY

The Commissioner has a discretion to increase the 25% penalty to 75% where “... the Commissioner is satisfied that the notification default was caused wholly or partially by the intentional disregard by the taxpayer (or a person acting on behalf of the taxpayer).”³

The State Revenue Office website states that “The top rate of 75% will only be imposed if there has been an intentional

disregard of the law.” There is no assistance with the meaning of “intentional disregard.”

CRIMINAL SANCTIONS

In addition to penalty tax, the Taxation Administration Act contains criminal sanctions.

“A person must not fail or refuse to lodge a document, statement or return that is required to be lodged by a taxation law

Penalty: 200 penalty units in the case of a body corporate;

40 penalty units in any other case.”⁴

and

“A person must not, by a deliberate act or omission, evade or attempt to evade tax

Penalty: 1000 penalty units in the case of a body corporate;

200 penalty units or imprisonment for 2 years or both in any other case.”⁵

Since s 104A imposes a positive obligation upon a taxpayer to notify, a failure to notify could fall within one or other or perhaps both of the criminal sanctions.

REMISSIONS

The Taxation Administration Act contains provisions which provide for a remission of up to 80% of penalty tax where voluntary disclosure is made prior to the Commissioner commencing investigation.⁶

This reduces to 20% if voluntary disclosure is made after the Commissioner commences investigation.⁷

Also, the Commissioner may in such circumstances as the Commissioner considers appropriate remit penalty tax by any amount.⁸

The State Revenue Office website states that:

"If the Commissioner is satisfied that you have taken reasonable care to comply with the taxation laws or that the tax default occurred due to circumstances beyond your control"

penalty tax will not be imposed.

Amongst practitioners who frequently deal with Victorian land tax the deficient or erroneous nature of the records of the Victorian State Revenue Office is notorious.

If a taxpayer gives the Commissioner correct information and has given full disclosure in a timely manner, can he rely upon the Commissioner's statement in relation to reasonable care?

The Commissioner gives the example of Alexander Smith who owns two Victorian properties, one in the name Alex Smith and the other in the name of Alexander Smith. The Commissioner's view is that Alexander Smith should inform the State Revenue Office because all properties which he owns should be the same assessment.⁹

What if Alex Smith has taken reasonable care? He would still be caught by s 104A.

A taxpayer and his advisors can no longer ignore a land tax assessment that contains an error of the type specified in s 104A Land Tax Act even where full disclosure has previously been made to the Commissioner. Where the Commissioner has made an error of the type listed in s 104A in the taxpayer's favour, the taxpayer must notify the Commissioner of the error.

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Reference notes

- 1 Section 103 Land Tax Act requires an acquirer of land to give notice of the acquisition to the State Revenue Office.
- 2 Section 30 (1A) Tax Administration Act.
- 3 Section 30(2A) Tax Administration Act.
- 4 Section 59 Tax Administration Act.
- 5 Section 61 Tax Administration Act.
- 6 Section 31(1) Tax Administration Act.
- 7 Section 31(2) Tax Administration Act.
- 8 Section 35 Tax Administration Act.
- 9 Assuming both properties are valued below \$3,000,000, the level at which the highest land tax rate applies, having the properties the subject of one assessment will result in Alexander Smith paying a higher amount of land tax because of the progressive nature of the land tax rates.

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