

Update

Property & Projects

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Revenue and Other Legislation Amendment Bill 2009 (QLD)

The *Revenue and Other Legislation Amendment Bill 2009* (Qld) (**Bill**) was introduced to the Queensland Legislative Assembly on 3 June 2009.

If passed, the Bill will give Landlords the ability to recover land tax as an outgoing in all leases entered into after the commencement of the new legislation, other than those leases subject to the *Retail Shop Leases Act 1994* (Qld).

Under Section 44A of the existing *Land Tax Act 1915* (**Act**), a provision in a lease in which a lessee is required to pay land tax, or reimburse the landlord for land tax, is unenforceable. Section 19 of the Bill proposes to delete Section 44A meaning that those clauses will no longer be unenforceable.

Early commentary on the proposed changes had suggested that the Bill would allow landlords of existing leases to recover land tax as an outgoing, provided that the lease already contained an existing ability to do so by way of a 'future taxes' clause (A 'future taxes' clause is a clause which states that a landlord may recover any taxes permitted by law, and should contain an express reference to land tax).

However, this has been specifically prohibited by the Bill which states that Section 44A of the current Act will continue to apply to all leases entered into before the commencement of the Bill, and any options for renewal arising from a lease entered into before the commencement of the Bill.

Therefore, according to the current drafting of the Bill, only those leases entered into after the commencement of the new legislation will be able to contain an enforceable recovery of land tax clause.

Despite the Property Council of Australia placing significant pressure on the minister to amend the Bill to allow for Landlords to commence recovery of land tax regardless of the date of the lease, provided that a 'future taxes' clause is contained in the lease, the minister has refused to amend the Bill.

Accordingly, only Landlords under leases entered into after the commencement of the new legislation which include a clause allowing recovery of land tax will benefit from the legislation. Landlords will remain unable to recover land tax under leases (and any renewal/options arising from those leases) entered into prior to the commencement of the legislation.

Holding Redlich can assist Landlords in ensuring that all leases entered into after the commencement of the legislation contain a clause allowing for recovery of land tax in accordance with the new legislation.

For further information, please contact:

Andrew Johnson
Partner

T: +61 (0)7 3135 0615

E: andrew.johnson@holdingredlich.com.au

Michael Byrom
Partner

T: +61 (0)7 3135 0616

E: michael.byrom@holdingredlich.com.au

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