

NOVEMBER 2019

TAX ALERT: VACANT LAND TAX BILL PASSED WITH AMENDMENTS

Introduction

Following a review by the Senate Economics Legislation Committee in August, the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019* was recently passed into law, denying tax deductions claimed for holding costs incurred when owning vacant land in a number of scenarios from 1 July 2019.

The final version of the legislation passed Parliament only after a number of amendments were made.

Background

Current income tax law allows those who hold vacant land to claim a deduction for the costs of holding the land, if it is held for income producing purposes, or if they are carrying on a business to produce income.

Holding costs include ongoing borrowing costs, interest incurred for loans to acquire the land, land taxes, council rates and maintenance costs.

The new law will deny land owners a tax deduction for the costs of holding vacant land in certain circumstances.

Important exemptions included in the amended legislation

While the first draft of the proposed changes restricted the claiming of deductions only to vacant land owners who were carrying on a business, either themselves or through a related party, a number of new amendments have extended the availability of allowable deductions for land being used to carry on a business with another entity on arm's length terms.



Exemptions	
1.	<ul style="list-style-type: none"> • Relaxation of the rules in circumstances where the land became vacant because of a natural disaster, fire, structural defect or similar circumstance which were beyond reasonable control of the land holder. • This relaxation allows the land holder to maintain their allowable deductions for the holding costs, for a three year period whilst the structure is being rebuilt. The Commissioner has been given discretion to extend this three year period.
2.	<ul style="list-style-type: none"> • Relates to land on which a primary production business is carried on. • Where the land holder (or a related, connected or affiliated entity which leases the land) carries on a primary production business and there are no residential premises on (or under construction on) the land, the holding costs will be an allowable deduction.
3.	<ul style="list-style-type: none"> • Applies to vacant land which is leased, hired or licensed at a commercial rate to any entity (related or unrelated) which is used or made available for use in carrying on a business. • Again there must be no residential premises on (or under construction on) the land.

Conclusion

We must note that other than the three exemptions detailed above, no further amendments were made to the final version of the legislation which passed through Parliament.

Consequently, the new law will continue to have significant impact on certain individuals and trusts which hold land where residential property is to be developed. In these circumstances, holding costs will only be treated as tax deductible when the property development is completed and being marketed for rent.

Land owners leasing or renting out vacant land at a commercial rate to tenants who are not conducting a business (for example, using the land for recreational purposes such as agistment of horses for personal use) will still be negatively impacted by the new changes and denied tax deductions for their holding costs on the land.

We must also note that despite many impacted stakeholders expressing serious concerns during the consultation period, the rules continue to prevent deductions for holding costs where vacant land is leased to a community club, government organisation, charity or hobby farm (for example), where there is no business activity being undertaken.

Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.



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