

# Property NewsFlash

June 2009

## Passing on Land Tax Costs to Tenants

### Overview

On 22 June 2009 the *Revenue and Other Legislation Amendment Act 2009* (Qld) ("Act") received Royal Assent. One substantial effect of the Act is to permit landlords, in some commercial leases in Queensland, to pass on the cost of land tax to tenants. The relevant provisions of the Act become effective on 30 June 2009.

### Law

Queensland landlords have, for years, been prohibited from passing on the cost of land tax to tenants. This prohibition arises from:

1. the *Residential Tenancies Act 1994* ("RTA") in respect of residential tenancies (although note that from 1 July 2009 the RTA will be replaced by the *Residential Tenancies and Rooming Accommodation Act 2008*);
2. the *Retail Shop Leases Act 1994* ("RSLA") in respect of retail shop leases; and
3. section 44A of the *Land Tax Act 1915* ("LTA") in respect of all other commercial leases.

### Changes

The Act deletes section 44A of the LTA thereby allowing landlords of commercial leases not governed by the RTA or RSLA to pass on the cost of land tax to their tenants.

The RTA and RSLA retain the prohibition.

### Effect of the Act on Existing Leases

Existing leases, including leases which are assigned, transferred, or renewed under an

option within the lease, will remain subject to the original section 44A LTA.

### Reason for Change

The Queensland Government has sought to align Queensland law more closely with the other Australian states which allow for land tax to be passed on to tenants in some commercial leases.

### Timeline

The Act received Royal Assent on 22 June 2009. It will be effective from 30 June 2009.

### What the Act Means for Landlords

From 30 June 2009, landlords of commercial leases in Queensland which are not subject to the RTA or RSLA will be able to pass the cost of land tax on the leased premises on to their tenants. It is recommended that landlords negotiating leases which will commence after 30 June 2009 be aware of this and draft new leases accordingly.

Existing lease precedents will need to be reviewed to include this change in the law, particularly in respect of:

1. the definitions of "outgoings" in the document; and
2. clauses in the document which may exclude the recovery of land tax from the tenant.



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