



TISHER LINER & CO.
IN ASSOCIATION WITH *BALDWINS*
LAWYERS

OUR REF: JT:RN:
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Dear Client,

Re: New Land Tax Trust Provisions

We write to advise you of the new land tax trust provisions in respect to land tax and trusts which are addressed in the *Duties and Land Tax Acts (Amendment) 2005* ("the Act").

This letter should be reviewed carefully, particularly if you or another family member or a company which you are associated with owns any property through a trust or intends to purchase a property through a trust in the future.

Essentially, the proposed provisions impose a surcharge rate of tax on land held by a trust which rate is higher than the ordinary rate. In general terms, a surcharge will apply to Victorian landholdings of trusts which have a total unimproved value of between \$20,000 and \$2,700,000. This surcharge applies to all trusts (including discretionary or unit trusts) unless the trust is specifically excluded. The trustee will then be assessed on the aggregate unimproved value of all land held in each trust at the surcharge rate.

The Act has ramifications for both existing and new land owners who own property through a trust. As an existing land owner, you should not take the view that the Act does not apply to you because you purchased your property before 31 December 2005. This may result in you paying more land tax on a yearly basis than you would otherwise need to pay.

We make the following comments about the effect of the new legislation.

1. PROPERTY PURCHASED PRIOR TO 1 JANUARY 2006

1.1 Key Dates

Property owners who have purchased land in a trust prior to 1 January 2006 are entitled to pay the ordinary land tax rates as opposed to the surcharge land tax rates. In order to obtain this entitlement, all trustees that hold land must advise the State Revenue Office ("SRO") by:

- 31 MARCH 2006 that it holds land.
- 30 JUNE 2006 who the trustee will be nominating as the beneficiary of the trust.

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1.2 Discretionary Trusts and the Nominated Beneficiary

Under a discretionary trust, there is a transitional measure which enables existing landholdings as at 31 December 2005 to be charged at the ordinary rates as opposed to the surcharge rate. In order to obtain this benefit, the trustee of the relevant trust must advise the State Revenue Office ("SRO") of the land which it owns. It must also lodge a notice nominating a beneficiary of the trust.

The person nominated as the beneficiary must be a natural person who is a potential beneficiary of the trust and 18 years or older (as of 31 December 2005). The beneficiary will be required to confirm that he accepts the nomination.

Once the beneficiary is nominated, there is no automatic right to change the nomination (except where the nominated beneficiary dies). However the nominated beneficiary has the right to revoke his nomination at any time and if this occurs, the trustee will become liable for land tax at the trust surcharge rates.

Once a nomination is made, the trust will not be subject to the surcharge. The trustee will be assessed on the trusts at the ordinary rates. The nominated beneficiary will also be assessed at the ordinary rates on the aggregate value of the trust land and any other land owned by the beneficiary, which is subject to any deduction for any land tax payable by the trustee. If the beneficiary does not own any other land, the deduction will reduce his liability to nil and he will not receive a land tax assessment.

1.3 Unit trusts

A trustee of a unit trust may also elect to notify the SRO of the land which the trust holds, the unitholders and the number of units that each unitholder holds.

If the notification is made, the trustee will not have to pay the trust surcharge rates. The notified unitholder will be treated as if he owns a proportion of the trust land which is equal to the number of units that he holds as a fraction of the total number of units in the trust.

The notified unitholder will also be assessed at the ordinary rates on the aggregated unimproved value of his proportionate share of the trust property and any other land he owns, which is subject to any deduction for the proportionate tax payable by the trustee. If the unitholder does not own any other land, the deduction will reduce his liability to nil.

In circumstances where unitholders are nominated and the unitholders are trustees of discretionary trust and an individual is nominated, they in turn will not be assessed with the surcharge.

2. COMPARATIVE LAND TAX RATES – ORDINARY AND SURCHARGE

The following table sets out the differences in the amount payable depending on the value of the property.

Total Unimproved Value of Land	2006 Ordinary Land Tax Rates	2006 New Surcharge Rates
\$500,000	\$800	\$2,475
\$1,000,000	\$3,680	\$7,230
\$1,500,000	\$10,230	\$15,655.50
\$2,000,000	\$20,580	\$24,387.80

3. PROPERTY PURCHASED AFTER 1 JANUARY 2006

Unless the trust is an excluded trust, a trust which acquires land after 31 December 2005 will be taxed at the trust surcharge rate regardless of whether the trust has nominated a beneficiary under the transitional arrangement or not.

4. EXCLUDED TRUSTS

Certain classes of trusts will be excluded from the new provisions set out in the Act and will continue to be assessed at the ordinary rates. The excluded trusts include the following:

- Charitable trusts;
- Public unit trust schemes;
- Certain testamentary trusts;
- Complying superannuation funds;
- Trusts for disabled persons; and
- A trust where the sole beneficiary is a non-profit sporting club.

5. PRINCIPAL PLACE OF RESIDENCE IN A TRUST

Trustees will pay the ordinary land tax rates on land which is held in a trust (other than a fixed trust), if the land is used as the principal place of residence ("PFR") of the beneficiary of the trust. The trustee of the trust must nominate a person to be the nominated PFR beneficiary and such person must be a natural person and a unitholder or beneficiary of the trust.

The trustee will then be assessed (in respect to this property) on a single holding basis for as long as the PFR beneficiary occupies the residence as their PFR.

There are issues which the State Revenue Office ("SRO") has now clarified. In particular, we note the following:

1. What is to occur if a Trustee of a Discretionary Trust signs a Contract of Sale and Vendor's Statement prior to 31 December 2005 but settlement occurs after 31 December 2005?

The SRO will permit the nomination of a beneficiary provided a legally enforceable Contract of Sale is signed on or before 31 December 2005. As a purchaser, you are required to provide the SRO with the relevant details contained in the Contract of Sale at the same time that you notify the SRO of the acquisition of the land in a Trust.

2. Under what circumstances can the nominated beneficiary of a Discretionary Trust be changed?

The legislation permits a new nomination to be made if the nominated beneficiary dies. There is also a discretion given to the Commissioner of the SRO to permit a change of nominated beneficiary if it considers it just and reasonable to do so. This will be determined by the Commissioner on a case by case basis. It is not the intention of the SRO to allow a change in the nominated beneficiary because the person nominated acquires other taxable land.

3. **What is to occur if a Trustee acts for two or more separate trusts? Will land in those trusts be taxed separately or aggregated? In addition, can a notification of beneficiary / nomination be made for each Trust?**

In circumstances where a single entity is a Trustee of two or more Trusts, the entity will be assessed separately on the landholdings in each Trust and the Trustee will be entitled to nominate beneficiaries for each Trust.

4. **If a Trustee of a Discretionary Trust owns more than one piece of land, can it nominate more than one beneficiary for each piece of land?**

No. The Trustee can only nominate one beneficiary in respect to the Trust.

5. **If a Trustee nominates a principal place of residence beneficiary ("PPR"), will the PPR land in the trust be aggregated with the PPR beneficiary's other landholdings?**

No. If a person is nominated as a PPR beneficiary for a trust, he or she will not be assessed for Land Tax on the PPR land in the trust.

Accordingly, it is important that you discuss your specific circumstances with us and / or your Accountants to confirm that your concerns are addressed.

The purpose of this letter is to provide information about the new land tax regime. We recommend that you contact our office to discuss this matter before lodging the notification you will shortly receive from the State Revenue Office as there are a range of issues which need to be considered. We remind you again that the first deadline in the legislation for lodging the notification of land held in a Trust is 31 March 2006.

Obviously there are many factors which should be considered before a decision is made, including a review of the trust, who will be nominated and whether there will be any implications as a result of such nomination.

We invite you to contact any of the partners at Tisher Liner & Co. to discuss your specific circumstances.

Yours faithfully,
TISHER LINER & CO.