

Welcome

Local Tax Club Geelong

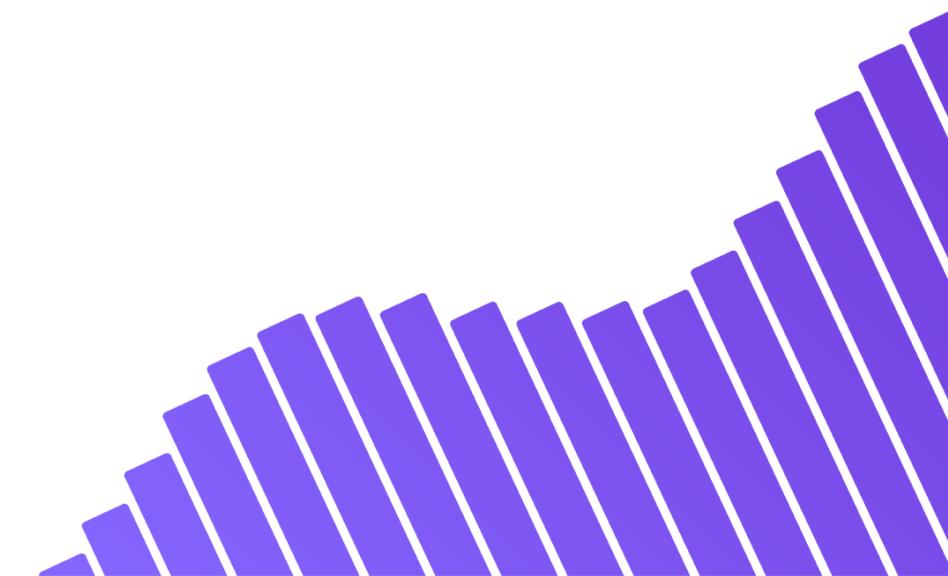
17 October 2025
Novotel Geelong



October Tax Update

Presenter:

Rob Warnock, CTA, Harwood Andrews



State Taxes – The current landscape

Presenters:

Megan Bishop, Piper Alderman
Simon Tisher, CTA, Victorian Bar

Agenda



Payroll tax

- Relevant contractor
- Employment agent

Land based taxes

- Vacant residential land tax
- Primary production exemptions
- Commercial and industrial property tax
- Windfall gains tax

Transfer duty

- Landholder duty
- Property passing to beneficiaries of discretionary trusts

SRO engagement tips & traps

Payroll tax – Current issues

Payroll Tax Grouping – FACTS, FACTS, FACTS

79 Exclusion of persons from groups

- 1) The Commissioner may, by **order in writing**, determine that a person who would, but for the determination, be a member of a group is not a member of the group.
- 2) The Commissioner may only make such a determination if satisfied, having regard to the **nature and degree of ownership and control** of the businesses, the **nature of the businesses** and any other matters the Commissioner considers relevant, that a business carried on by the person, is **carried on independently** of, and is not connected with the carrying on of, a business carried on by any other member of that group

Payroll tax – Current issues

Relevant Contractor

Section 32 Payroll Tax Act 2007

Relevant contract

(1) ...*a relevant contract ...is a contract under which a person (the designated person)...in the course of a business carried on by the designated person—*

(a) supplies to another person services for or in relation to the performance of work; or

(b) has supplied to the designated person the services of persons for or in relation to the performance of work; or...

Wages

Section 46 Payroll Tax Act 2007

Wages paid by or to third parties

[Wages includes] —

- (a) *any money or other valuable consideration paid or given, or to be paid or given, to an employee, for the employee's services as an employee of an employer, by a person other than the employer;*
- (b) *any money or other valuable consideration paid or given, or to be paid or given, by an employer, for an employee's services as the employee of the employer, to a person other than the employee;*
- (c) *any money or other valuable consideration paid or given, or to be paid or given, by a person other than an employer, for an employee's services as an employee of the employer, to a person other than the employee*

Commonly misunderstood aspects

- Breadth of meaning of “services”
- Requirement services be “**for in relation to performance of work**”
- Inclusion of **BOTH** designated person **supplying services** and **having services supplied** to the designated person
- **Beneficial entitlement not required** by employer/paying entity
- Issues are **not limited to medical practices**

Payroll tax – Current issues

Employment Agent

Section 37 *Payroll Tax Act 2007*

- (1) For the purposes of this Act, an employment agency contract is a contract, **whether formal or informal** and whether **express or implied**, under which a person (an **employment agent**) **procures the services** of another person (**a service provider**) **for a client** of the employment agent.
- (2) However, a contract is not an employment agency contract for the purposes of this Act if it is, or results in the creation of, a contract of employment between the service provider and the client.
- (3) In this section— contract includes agreement, arrangement and undertaking.

Chief Commissioner of State Revenue v Integrated Trolley Management Pty Ltd [2023] NSWCA 302

Facts

ITM provided trolley collection services by engaging independent contractors (service providers) to locate, collect, and return supermarket trolleys to the clients' [Woolworths, ALDI, IGA] stores

Issues and Decision

1. **Contract that is relevant:** It is the contract between ITM and its clients [Woolworths/ALDI/IGA] that is relevant
2. **Contract v how operated:** Contract takes precedence
3. **Core question:** Whether services (trolley collection) of individual subcontractors provided through the agent [ITM] to allow clients [Woolworths, ALDI, IGA] to conduct their business in **same or similar way as would do through an employee.**
4. **Indicia from other cases are misleading:** Different ways in which the concept of "in and for" the client's business have been expressed risk creating semantic distinctions that may put an impermissible gloss on the statutory language.

Land Tax Changes



Tax-free threshold reduced from \$300,000 to \$50,000 (\$25,000 for trusts)



Tax rates temporarily increased by 0.1% for both general and trust taxpayers with holdings above \$300,000 and \$250,000 respectively



Changes are estimated to raise \$4.7 billion to repay COVID debt over four years – expected to apply until 30 June 2033



Prompting property sales and further consideration of exemptions

Land tax Changes

- *Sale of Land Act 1962* and *Property Law Act 1958* amended to prohibit apportionment of land tax under a contract of sale below \$10 million inc GST (to be indexed) from 1 January 2024 (similar provision (but no threshold) for Windfall Gains Tax as well)
- Previously vendor would typically pay land tax and adjust at date of settlement with purchaser
- Vendors now responsible for land tax – adjustment clause is unenforceable and penalties can apply (currently 60 penalty units (approximately \$11,540 for individuals) and 300 penalty units (approximately \$57,700 for corporations))
- Transitional rules: amendments do not impact contracts of sale of land entered into on/before 31 December 2023 that settle on/after 1 January 2024
- Implications?

Vacant residential land tax

2018 to 2024

- VRLT: part of the state taxes landscape since 1 January 2018
- Only applied to inner/middle Melb LGAs
- 1% of the capital improved value (in addition to land tax imposed on site value)
- Applies to “residential land” (s 34B LTA) –
 - Land capable of being used solely or primarily for residential purposes
 - Does not include commercial residential (*GST Act* definition), residential care, supported residential services, retirement villages (*Land Tax Act* definitions)
 - From 2020, inc land with a residence under construction/renovation or an uninhabitable residence (not being constructed/renovated) on it (but see “vacant” below)

Vacant residential land tax

2018 to 2024

- “Vacant” (s 34C LTA):
 - Residential land that has not been used and occupied by the owner/owner’s permitted occupant as their PPR or by a natural person under a lease/short term letting arrangement for a period, whether continuous or aggregated, of greater than 6 months in the preceding tax year
 - For construction/renovation: not completed, and 2 years since works commenced (date of building permit), unless Commissioner is satisfied there is an acceptable reason for the delay
 - From 2020, for uninhabitable residence, residence has been uninhabitable for 2 years or >, unless Commissioner satisfied there is an acceptable reason for not being made inhabitable

Vacant residential land tax

From 1 January 2025

- Based on occupancy as at 31 Dec 2024
- Rates increase from 1% of CIV for first year of VRLT to 2% for second consecutive year to 3% for third consecutive year and beyond (in addition to land tax)
- Land that becomes residential land which remains unused, unoccupied and unsold after 3 years may be capped at 1% CIV: s 88EA, LTA
- Owners required to self-report by 15 January if land vacant in previous year – notification default if don't – see TAA-008, TAA-007v5
- Required to notify even if exemption applicable (can apply for exemption when make notification)

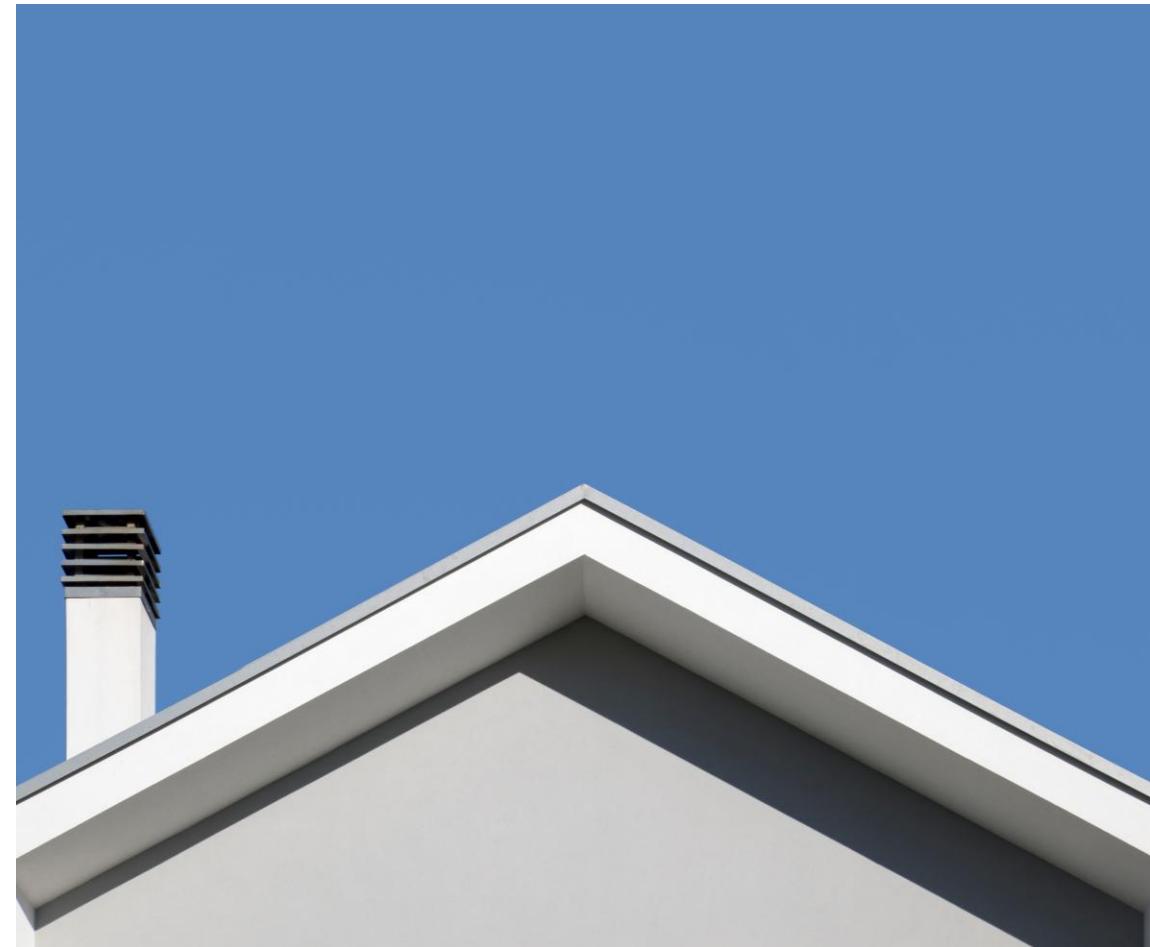
Vacant residential land tax

From 1 January 2026

- Definition of “residential land” will also include land:
 - in a municipal district of a Council in Schedule 2B to LTA (Metropolitan Melbourne) – essentially unimproved/undeveloped land;
 - in a zone other than a non-residential zone (capable of being developed as residential land)
 - that is not solely or primarily used for/under development for a non-residential use; and
 - that is not otherwise residential land (as defined)
- Unimproved land “vacant” if satisfies criteria above (undeveloped) for 5 years or more
- For example, vacant land purchased in 2020 will be considered vacant for VRLT purposes if construction does not commence (date building permit issued) by end of 2025 land tax year
- Comsnr will have discretion to determine, having regard to Treasurer guidelines, that a residence is to be constructed and an acceptable reason for the construction not having commenced - in that scenario, land not vacant for that year
- VRLT on unimproved/undeveloped land for 5 yrs or > capped at 1% (if criteria above met)

Vacant residential land tax: Holiday home exemption

- Property used and occupied by an individual owner, vested beneficiary or, from 1 Jan 2025, a “relative” for 4 weeks in preceding year; and
- Owner/vested beneficiary/relative used and occupied other land in Aust as their PPR; and
- Commissioner satisfied that land used and occupied as genuine holiday home having regard to:
 - Location of the land;
 - Distance between location of the land and the PPR of the owner/vested beneficiary etc; and
 - Nature and frequency of the use of the land
- “Relative” defined in s 3 (spouse, domestic partner of the person, lineal ancestor/descendant of person or of spouse/domestic partner of person, brother/sister or a child of brother/sister of person or of spouse/domestic partner, spouse/domestic partner of a child of person or spouse/domestic partner of a brother/sister of person)



Vacant residential land tax: Holiday home

- From 1 Jan 2025, 4-week exemption can apply to owners that are companies or trusts (other than trusts with a vested beneficiary) if (s 88A(1A) and (1B) LTA):
 - the owner of the land owned the land on 28 Nov 2023 (or became owner after that time under a contract entered before that time);
 - owner of the land has been the owner continuously since that time;
 - since 28 Nov 2023, any transfer of shares/units/beneficial interest in a company, UTS or fixed trust is between persons who are “relatives” or for a DT, any changes to the specified beneficiaries has been to add/remove a “relative” of another specified beneficiary;
 - the “PPR requirement” is satisfied;
 - in preceding land tax yr, the land has been used and occupied for at least 4 weeks by a “specified person”; and
 - Comsnr satisfied that land used and occupied as a holiday home in preceding land tax yr

Vacant residential land tax: Holiday home

- Specified beneficiary (s 3 LTA): of a DT means someone who is specifically named/declared in writing in the trust deed as a beneficiary to whom income/property of the trust may be distributed
- PPR requirement (s 88A(5) LTA) means:
 - for a company, UTS or FT, at least 50% of shares/units/ beneficial interest owned/held by one or more natural persons who used and occupied other land in Aust as a PPR in preceding land tax yr
 - for a DT, a specified beneficiary of the trust who is a natural person or a relative of that person used and occupied other land in Aust as a PPR;
- Specified person (s 88A(5) LTA) means a natural person referred to in PPR requirement definition or their relative

Vacant residential land tax: Other exemptions

Land exempt from land tax: exempt from VRLT

Work accommodation residence: land used and occupied as a residence for at least 140 days in preceding year for the purposes of attending owner's place of business/employment (provided it is in Vic) exempt from VRLT if owner used and occupied other land in Aust as a PPR: s 88B

Sold land: Land sold and transferred during a year will be exempt in the following year: s 88C

Land converted to residential: Land that becomes residential land during a year will be exempt from VRLT in the following year: s 88D

Land becomes residential during a year where land not used/occupied and no change in ownership: not subject to VRLT for up to 2 years following the year it becomes residential land (3 yrs from 1 Jan 2025 if owner made genuine and reasonable effort to sell): ss 88E, 88EA. If unused, unoccupied or unsold after 3 yrs, VRLT capped at 1% of CIV

Land contiguous to an owner's PPR (from 1 Jan 2026): Must be owned by the same owner as the "PPR land", be contiguous with the PPR land (but see s 88F(1)(b)), enhance the PPR land and be used solely for the private benefit and enjoyment of the person who uses and occupies the PPR land

Vacant residential land tax: Issues

- Why limit DT (and companies and other trusts) ownership to 28 Nov 2023?
- Application to whole state and impossibility of six month use/occupation requirement?
- Specified beneficiary issues: what if SB(s) has died? Divorce? What if no SB?
- What if some land used for holiday home and some used for rent?

Primary production land tax exemption



Melbourne's expansion into broad acres has made a primary production exemption harder to obtain



Significant recent decisions from SCV, Victorian/NSW Court of Appeal



Four PP exemptions in ss 65, 66, 67 and 68 of LTA 2005



Location of land (within "greater Melbourne"/"urban zone" or not and who the owner is) main points of distinction

Primary production land tax exemption

- **Section 65:** land outside “greater Melbourne” that is used primarily for PP is exempt land
- **Section 66:** land (one parcel) within “greater Melbourne” none of which is within an “urban zone” that is used primarily for PP is exempt land
- **Section 67:** land exempt if:
 - (one parcel) wholly/partly in greater Melbourne; and
 - wholly/partly in urban zone; and
 - used solely/primarily for the business of PP; and
 - ownership criteria in subs (b) (ss 67A-67E, as applicable) satisfied.

Primary production land tax exemption

- Section 67 ownership criteria broadly requires a natural person, or relative, who owns 50% or > of shares, or who is a specified beneficiary (of a DT), a member of a superannuation trust or a unit holder to be normally engaged in a substantially full-time capacity in PP business on land
- Where owner is a company, DT or other trust, the principal business of the entity must be the PP business conducted on the land
- Section 67 increasingly common (rezoning of land into urban zone) - usually a DT involved
- Section 68: land exempt if Comsnr satisfied that:
 - a) land being prepared for use primarily for PP; and
 - b) land will become exempt land under ss 65, 66 or 67 within 12 months after day on which the preparation commenced
- Commonly argued in alternative

Primary production land tax exemption

- Taxable status of land ascertained as at midnight 31 Dec preceding each land tax year
- Whether PP activity is the predominant use of the land so as to impart to the whole of the land the necessary character is a question of characterization
- Court of Appeal in *Rainn* and *CDPV* provided guidance (in relation to s 66):
 - ascertaining the use of the land at that point may depend on additional evidence about what was happening on the land “shortly before and/or shortly after the date in question”: *Rainn* at [17];
 - ... midnight 31 December... “taking account of events and circumstances ‘during a period not overlong and not overshort’ either side of that point in time”: *CDPV* at [50]
- Definitions of “discretionary trust”, “greater Melbourne”, “primary production” and “urban zone” contained in s 64

Primary production land tax exemption

Common issues in dispute:

- Was cultivation that took place for purpose of selling cultivation?
- Was the property used solely/primarily for PP?
- Is principal business of trust PP of type carried on on land? Leasing? Property development? Carrying on another business?
- Was there a (specified) beneficiary normally engaged in substantially full-time capacity in the business of PP of type carried on on land?

Recent cases:

- *Australian Investment & Development* [2025] VSCA 47; *Delma* [2024] VSC 649 (on appeal); *Godolphin* (2024) 98 ALJR 808; *Premier Bay* [2024] VSC 447, *Lotus Oaks* [2021] VSC 388, *Lavender Rain* [2022] VCAT 1264 and *Annat* [2020] VSC 108.

Commercial and industrial property tax – why?

- Abolishing stamp duty for commercial and industrial property recommended in Henry Review and by the Productivity Commission and Grattan Institute
- Stamp duty when added to the cost of purchasing property discourages business from investing in, expanding and relocating operations – impeding growth
- Expected benefits of commercial and industrial property tax are:
 - Remove barriers against and thereby encourage expansion and relocation
 - Supporting investment in buildings and infrastructure by business owners
 - Promoting use of commercial and industrial land



Commercial and industrial property tax – entry in

Applies to transactions of an **interest of 50% or more in property** where the contract date and settlement date are **after 1 July 2024: Results in entire property entering the new tax regime**



Stamp duty **will apply** one final time on first sale post 1 July 2024: There are financing options



Commercial and industrial property tax will **first become payable ten years after the final stamp duty payment** – 2034 at the earliest



Does not apply to:

Properties primarily used for residential, primary production, community services, sport, heritage or cultural purposes

Transfers that are **otherwise exempt** (e.g. purchase by charity)

Commercial and industrial property tax – what?

- 1% of site (unimproved) value of land assessed annually with no tax-free threshold
- Based on land ownership at 31 December
- Payable in a single payment or by instalments
- Is in addition to and not in substitution for land tax – but consistent with land tax:
 - The same exemptions will apply to the commercial and industrial property tax
 - The tax is not able to be passed through to retail tenants identified in the *Retail Leases Ac 2003*



Commercial and industrial property tax – exit out

- If commercial and industrial property is converted to a non-qualifying use (e.g. residential) and the property continues to be used for that use as at the liability date (31 December) for a given tax year, commercial and industrial property tax does not apply for that year
- If sold whilst the property has a non-qualifying use stamp duty applies to the sale
- There will be a change of use duty that applies to second and subsequent sales post 1 July 2024 where the property is sold as commercial or industrial and then changes to non-qualifying use – calculated based on the stamp duty that would have been payable when the property was transacted, including any relevant concessions, but reduced by 10 per cent for every 31 December that has passed since that transaction, to a maximum of 100 per cent
 - There is no refund if it returns to commercial and industrial use
 - Must notify within 10 days of change of use

What the windfall gains tax is

A tax of up to 50% of the uplift in value of land that arises on rezoning of Victorian land from 1 July 2023

- Applies to both owner and government initiated rezoning
 - Some exemptions for classes and types of rezoning
- Based on uplift in improved capital value of land – based on Valuation of Land Act 1960 valuations
 - Some objection rights – but must be to both pre and post valuations
- Grouping and aggregation provisions apply

Payment of the windfall gains tax

Statutory obligation to pay is on the legal landholder at the time that the rezoning takes effect

- For windfall gains tax liabilities known at the time of contracting – the liability can only be factored in through purchase price
 - From 1 January 2024 adjustments that seek to make the purchaser liable will be void and the vendor agreeing same could be subject to penalty provisions
- For windfall gains tax liabilities that are prospective future liabilities at the time of contracting – contractual provisions can be negotiated to adjust/share the risk between vendor and purchaser
- Clearance certificates should be obtained to limit exposure to windfall gains tax when sales occur

Deferral

Payment can be deferred to later of next dutiable transaction or 30 years

- Dutiable transactions include those that trigger landholder duty
- Interest does accrue
- Unpaid amount constitutes first charge over land
- Some exemptions – eg. deceased estate

Exemptions

Always check for updated regulations as changes are being made frequently at the moment

- Residential land exemption
- Land entitled to a transitional exemption from windfall gains tax
- Land rezoned to or from the Urban Growth Zone within the Growth Areas Infrastructure Contribution (GAIC) area
- Charitable and university land
- Land rezoned to Public Land Zones
- Land rezoned to correct an obvious or technical error in the Victoria Planning Provisions or a planning scheme
- Land rezoned to a Rural Zone (other than the Rural Living Zone)

Impact on property landscape

Economics have changed

- Weigh up pros and cons of immediate payment v deferral
- Review ownership structures through which landholdings are held and plans for passing landholdings from generation to generation
- Reconsider how activities such as property development are undertaken
- Consider interactions with other taxes: landholder duty, capital gains tax, GAIC

Landholder duty – *Oliver Hume* decision

Oliver Hume Property Funds (Broad Gully Rd) Diamond Creek Pty Ltd v C of SR [2024] VSCA 175

- Commissioner successful
- Subscriptions for shares in a landholding company – 18 investors individually acquired an interest below the applicable landholder duty threshold (50%)
- **Issue:** was their acquisition an “associated transaction” by reason of forming, evidencing, giving effect to or arising from substantially one arrangement, one transaction or one series of transactions?
- Subscriptions were aggregated by Comsnr, despite investors being unrelated and genuinely acting independently. Only connections were that:
 - they dealt with the same issuer around the same time in accordance with the terms set out in a widely circulated information memorandum; and
 - each transaction was interdependent – the transactions would only occur if a target total of subscription proceeds was met
- Landholder duty assessed by reference to total percentage acquired in the company by all investors - 99.99%

Landholder duty – *Oliver Hume* decision

- Commissioner successful at VCAT (VP Macnamara)
- OH's appeal to VSCA dismissed
- Three factors that supplied necessary “oneness”:
 1. Acquisitions were interconnected – no individual acquisition went ahead unless full \$1.8 million raised
 2. Entry by each acquirer into statutory contract through constitution (undertake development via entrenched management structure)
 3. Effect of acquisitions of shares on same day in same way altered shareholding in landholder from being an OH entity to being 99.9% owned by the investors
- Accordingly, acquisitions formed, evidenced, gave effect to or arose from substantially one arrangement
- Penalty tax amnesty for voluntarily disclosing any liability from capital raising extended to 30 June 2025
- DA-057 updated (as DA-057v2)
- **Caution for any capital raising where the aggregate raising exceeds the relevant statutory threshold**

Transfers from trusts to beneficiaries

Exemptions are contained in ss 36, 36A and 36B of the *Duties Act 2000* in relation to the transfer of dutiable property from the trustee of a fixed trust, discretionary trust (**DT**) or unit trust scheme (**UTS**) to a beneficiary

Exemption also in s 41A for the transfer of dutiable property from a superannuation fund to a beneficiary of the fund

Each type of trust defined in the *Duties Act 2000*

Transfers from trusts to beneficiaries

Each exemption differs, however there are some broad common requirements:

- Duty (if any) charged by *Duties Act 2000* when the dutiable property was vested in transferring trust:
 - has been paid; or
 - Commissioner is satisfied will be paid
- Beneficiary was a beneficiary at the time the dutiable property was vested in the transferring trust (fixed trust or UTS) or in the case of a DT, became a beneficiary after that time by reason of falling within a class of specified relations to a beneficiary (eg spouse, lineal descendant etc)
- Transfer is either to the beneficiary absolutely or to the beneficiary as trustee of another trust which answers strict criteria
- Commissioner satisfied that the transfer is not part of a sale or other arrangement under which there exists any consideration for the transfer

Transfers from trusts to beneficiaries

Problematic area

In some instances, timing requirements of the legislation (in terms of receiving trusts/beneficiaries) existing at the time properties were acquired is not satisfied: *Liu v C of SR* [2016] VCAT 87

In other instances, taxpayer unable to lead cogent evidence as to the creation/existence of a trust at relevant time: *Kloester v C of SR* [2016] VCAT 16

A key requirement is that the transfer not be part of a sale or other arrangement under which there exists any consideration for the transfer

Concept of “consideration” is widely construed by Commissioner

Extends to loans/UPEs that will be discharged or forgiven by reason of the transfer: problem if the only asset of significance is the property being transferred or trust will be deficient

Transfers from trusts to beneficiaries

Latest decision regarding perils of consideration for transfer is *Baullo v C of SR* [2023] VCAT 1164 (see also *Astakhov v C of SR* [2018] VCAT 1363)

- Trustee (**JTDN**) of DT acquired property in Pascoe Vale South for about \$960k (inc. stamp duty)
- Part of purchase price (\$157k) was funded by beneficiaries, recorded as a loan to the trust
- JTDN transferred the property to the beneficiaries as an “entitlement in equity”
- 30 June 2018 (pre-transfer), Assets: Freehold land and buildings: \$960k Liabilities: NAB loan: \$826k “Beneficiary loans”: \$157k
- 30 June 2019 (post-transfer): Assets: cash: \$1.00, Liabilities: nil
- Commissioner assessed duty of \$46,070, exemption in s 36A did not apply to the transfer
- Taxpayer unsuccessful arguing evidence did not establish existence of any loan forgiveness: “there must have been an extinguishment of the loan balance whether by way of payment, set off, forgiveness or otherwise”: at [43]

Consider SRO’s evidentiary manual before transfer

Tips and traps in taking on the Commissioner



Objections: Lose rights if don't; how much detail; time limits



Extensions of time for some objections (non-reviewable): TAA-004v3



Amending grounds: s 109 *Taxation Administration Act 1997*



Investigation to litigation: three bites of the apple



Extensive investigative powers (compulsory interviews and document production (subject to LPP), data sharing (inc use of social media)



Vast recovery powers – similar to ATO

Tips and traps in taking on the Commissioner



Onus on TP to prove case, though no special burden: *C of T v Cassaniti* [2018] FCAFC 212, *Portbury Development Co Pty Ltd as Trustee for Portbury Family Trust v C of SR* [2020] VCT 631



VCAT or SCV? Not the same, especially if a discretion is involved



Settling with the Commissioner: The trophy letter; ADR? Commercial settlements? Litigation risk? Principled basis? Other?



Model litigant guidelines? *Civil Procedure Act 2010?* *Comaz (Aust) Pty Ltd v C of SR* [2015] VSC 294; *North West Melbourne Recycling Pty Ltd v C of SR (No 2)* [2017] VSC 726

Thank you

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Upcoming Events

Local Tax Club

28 November 2025 – Novotel Geelong

Topic: Navigating the matrix of ATO reviews, audits and beyond - A taxpayer's survival guide

Speakers: Kaitilin Lowdon, ATI, Sladen Legal & Gareth Redenbach, Victorian Bar

Next Generation Tax Discussion

20 November 2025 – Thomson Geer Lawyers

End of Year Function

Thursday, 13 November 2025 - Please speak to a member of TTI for more information



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