

In the Loop

The Hicks Oakley Chessell Williams Newsletter

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Land Tax Implications for Trusts

Trust land and notice requirements

TRUSTEES SHOULD be fully aware of their land tax liability under the *Land Tax Act 2005*. If you, or a company of which you are a director, are a trustee you must notify the Commissioner of Taxation of any recent acquisitions or dispositions of trust land. You may be exposed to a penalty tax in default of notice within the required time.

Since 2005, trusts that own land in Victoria have been liable to pay a land tax surcharge. The surcharge applies to Victorian landholdings with an unimproved value between \$25,000 and \$3 million. Trust land valued at less than \$25,000 or in excess of \$3 million is not affected by the surcharge.

Land acquired by a discretionary trust on or after 1 January 2006 is subject to the surcharge. However, if the beneficiary of a discretionary trust occupies the land as his or her principal place of residence, the trustee need not pay the surcharge. The trustee of a fixed trust will not pay land tax if a beneficiary of the trust uses the land as their principal place of residence.

Trusts that are "excluded trusts" or

"administration trusts" are not subject to the surcharge. Excluded trusts include charitable trusts, complying superannuation trusts, public unit trusts, wholesale unit trusts and concessional trusts. An administration trust is a trust that relates to the administration of a deceased estate.

In addition to the general obligation to lodge a Notice of Acquisition, a trustee must give the Commissioner notice of changes of trust land. To this end, a "Notice of Trust Acquisition of an Interest in Land" form should be forwarded within one month after the acquisition of trust land and a similar form is required in the event of a sale. If a trustee fails to give the Commissioner notice, the trustee may be liable to pay an additional penalty tax of 25% (which the Commissioner has discretion to increase to 75% if there is an attempt to defraud).

If you (or your company) are a trustee you should be aware of your notification obligations. Any change in trust landholding carries with it notification requirements. If you would like advice on your land tax or trust situation, please do not hesitate to contact us.

Shayne Barnett
Trainee Lawyer

Who Owns your Medical Information and Records?

THE NEED to obtain evidence for litigious disputes such as challenges to Wills and Family Law disputes, raises questions concerning a doctor's duty of confidentiality to his or her patient, and the ownership of medical records.

Confidential communications

The longstanding duty of a doctor to keep patient information confidential, perhaps even after the patient dies, was established by the Hippocratic Oath and is enshrined in the Australian Medical Association's Code of Ethics 2004 (revised in 2006).

Exceptions to this requirement are when:

1. the information is already in the public domain;

2. the patient's consent (or the consent of his or her legal representative) has been obtained;
3. mandatory disclosure is required by legislation (for example in relation to sex offences against children);
4. the interests of the public outweigh the individual's right to privacy (for example when a patient confides his intention to commit murder);
5. disclosure is required by operation of law.

Medical records

A patient's medical information belongs to the patient until it is conveyed to the doctor, after which, it belongs to them both. A patient's test results, xrays and so forth, belong to the patient if they are paid for by him or her, but the analyses, reports and file

notes prepared by a medical practitioner on the basis of these tests and examinations, belong to the doctor or the organization for whom he or she works.

The operation of law

Access to medical information and records is available in Victoria under the *Freedom of Information Act 1982*, the *Information Privacy Act 2000* and the *Health Records Act 2001* provided the documents are not exempt (for example documents which are a risk to national security).

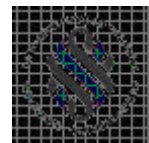
In civil proceedings, a subpoena to produce evidence can be issued by the presiding court and the subpoenaed documents will usually be made available by the court, for inspection by the

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Who Owns your Medical Information and Records (cont.)

issuing party. A subpoena of this nature may relate to the records of a person who is deceased.

Except in cases where a patient's testamentary capacity or sanity is in question, the *Evidence*

(*Miscellaneous Provisions*) Act 1958 (Vic) (s28) protects doctor/patient professional privilege in civil actions, for both the living and the deceased (provided that in the latter case a legal personal representative exists). This pro-

tection does not exist in criminal cases.

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Acknowledgement: Lexis Nexis Commentary on Halsbury's Laws of Australia

Paid Parental Leave – Are You Ready?

Employer obligations

THE PAID parental leave scheme has been operating since 1 January 2011, with Centrelink making payments to eligible employees. From 1 July 2011 employers will be responsible for most payments.

This has the following implications for employers:

- Payroll systems need to be programmed to pay employees their government parental leave pay. Online registration can simplify administration of the information.
- A responsible person in your business must be appointed to administer this scheme.

Main features of the scheme

- Primary carers of a child will be entitled to paid leave for up to 18 weeks at the federal minimum wage (\$589.30 from 1 July 2011).
- "Eligible workers" are defined as employees who have:
 - earned less than \$150,000.00 (indexed) in the previous financial year;
 - worked continuously for at least 10 of the past 13 months (breaks of up to 8 weeks are permitted);
 - worked at least 330 hours in that 10 month period and
 - satisfy an Australian residency requirement.
- Current employees are entitled to paid parental leave (including some casual and some short term employees). In limited circumstances the self employed, contractors and employees who have resigned are also entitled to payment.
- A carer other than the child's mother (for example the child's father or a grandparent) may be able to receive the balance of any unused parental leave pay.
- Payments cease if employees return to work.
- The baby bonus is not available to employees who receive parental leave pay.

Which employees are covered?

As a general rule, your business will be responsible for payment of government parental leave payments to employees if:

- their child is born or adopted on or after 1 July 2011;
- they have worked for you for at least 12 months before the expected birth or adoption, and

- they are expecting to receive at least 8 weeks parental leave pay.

Centrelink will make the payments if any of the above requirements are not met, unless your business opts to pay them and employees agree.

How to apply?

Employees must apply to Centrelink's Family Assistance Office, which assesses the application. Employees also nominate when they want their payments to start, which could be well after the date of birth of their child. Centrelink will inform you if employees are eligible and require you to provide certain information.

Administration of the scheme

Basic administrative requirements are as follows:

- The parental leave pay will be transferred by Centrelink to your nominated bank account in advance of any payments that have to be made to your employees. Once the funds have been received, you must pay employees in their usual pay cycle.
- Parental leave pay must not be paid in a lump sum or at half pay – it must be paid in the same way as salary and wages. However, employees may salary sacrifice their parental leave pay or agree to other deductions from it and your business must also deduct PAYG tax. Employees must be given written notification of each payment.
- Centrelink must be advised if your employees' employment is terminated, you sell your business, or the employees return to work. You may only stop paying parental leave pay if Centrelink tells you to do so.
- You are not required to make Superannuation contributions on parental leave pay and it is not taken into account for the purposes of calculating payroll tax, workers compensation premiums or as service for the purposes of most leave accruals. Accordingly, it should be identified separately from other amounts that do count for these purposes.

Other resources

Further information regarding the scheme can be obtained from Centrelink via their website www.centrelink.gov.au under the 'Businesses' link.

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