

LAND CAN BE TAXING

Addressing land tax issues before entering into a lease or contract can avoid problems later.

Land tax of one sort or another has probably been around since the Roman times. For conveyancing practitioners, land tax can be a source of much grief, especially given the complexity of the land tax regime in Victoria.

Claims in relation to land tax, sometimes arise where a:

- Lease or contract of sale of land is silent as to the basis on which land tax is payable and the parties disagree as to whether it is a single or multiple holding.
- Practitioner fails to advise their lessor client that s50 of the *Retail Leases Act* 2003 (Vic) prohibits the recovery of land tax from the tenant.
- Purchaser's practitioner fails to advise their trustee client that land tax assessment will be on a higher trust surcharge rate.
- Practitioner acting for a trustee purchasing land, fails to notify the State Revenue Office (SRO) that the land was acquired by the purchaser in a trustee capacity.

Land Tax Trust Form 8

Where real estate is being acquired by a trust, make sure the correct notice is given to the SRO. You can access the Land Tax Trust Form 8 at <http://tinyurl.com/mzdgmuuj>.

Addressing land tax issues before a lease or contract is entered into is a good strategy to avoid problems later.

Here are some examples of issues that you may need to address pre-lease/contract.

General condition 15.2 of the prescribed contract pursuant to the *Estate Agents (Contracts) Regulations* 2008 (Vic) does not specify whether land tax is adjusted inclusive

or exclusive of the trust surcharge. To avoid a dispute, consider including a special condition in the contract specifying the basis on which land tax is to be adjusted.

Ask your vendor client if any land tax exemption will cease to apply after the day of sale. For example, this may occur where settlement spans 31 December and where the property ceases to be the vendor's principal place of residence. To avoid a dispute, consider including a special condition in the contract dealing with this issue.

Where a purchaser is buying more than one property from the same vendor, the purchaser will want to know the pros and cons of having one contract compared to a separate contract for each property. For example, compare the cost of preparing one or separate contracts to the amount of land tax which will be adjusted under one or separate contracts.

In some circumstances a vendor may have grounds to object to a land tax assessment and it may be in the best interests of the purchaser for the vendor to do so. Consider the need to include a special condition dealing with the objection process. For example, the condition may require the vendor to inform the purchaser of the right to object. The parties will also want to determine who pays for the legal costs in relation to any objection.

Always check the title for any land tax charges. Note s96(1) of the *Land Tax Act* 2005 (Vic) which provides that unpaid land tax is a first charge on the land. A purchaser will want any charge released at or prior to settlement.

Check whether any special land tax will be payable as a consequence of the sale of the

property. See ss24-29 of the *Land Tax Act*. Any special land tax would need to be disclosed in the s32 statement.

Tips on avoiding claims

Here are some other tips from LPLC to help practitioners avoid a claim.

Be aware that the LIV copyright lease of real estate provides for land tax to be included as part of the outgoing paid by the tenant calculated on a single holding basis unless the *Retail Leases Act* applies.

Land tax may only be recovered by the landlord on retail leases that predate July 2003, but s121(2) of the *Retail Leases Act* outlines the procedures to be complied with.

When acting for a purchaser, obtaining a land tax certificate means that the purchaser has the benefit of the protection pursuant to s96(4) of the *Land Tax Act* 2005 (Vic). That is, only the amount in the certificate can constitute a charge on the land.

The SRO has recently issued a number of new land tax forms in relation to deceased estates. For example, Land Tax Trust Form 13 must be completed and lodged with the SRO on commencement of the administration of a deceased estate. You can read more information about the new forms at <http://tinyurl.com/krtud5g>.

For more LPLC risk management information on land tax, visit the LPLC website at www.lplc.com.au/search/land+tax.

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