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CONVEYANCING SERIES 2021

Mastering the essentials

Conveyancing tax issues

Presented by | Phil Nolan, Risk Manager, LPLC



Quote

“Risk comes from not knowing what you are doing”.

Warren Buffett.



Introduction



Hot topics

- Federal Budget

Go to: <https://budget.gov.au/>

- State Budget

The 2021-22 Victorian State Budget will be delivered tomorrow - Thursday 20 May 2021.

New tax - windfall gains tax

Go to: www.budget.vic.gov.au



Introduction

Zoom poll

How many tax issues do you raise with clients in conveyancing matters?

- a) One
- b) Two
- c) Three
- d) Four



Five key points

1. Develop, use and update a checklist about tax issues.
2. Give clients information about relevant taxes.
3. Warn clients of possible double duty consequences of nominating.
4. Keep up to date with legislative changes and tax cases.
5. Know your limit so you know when to refer the client to an expert for tax advice.



Agenda

1. CGT

2. GST

3. Land Tax

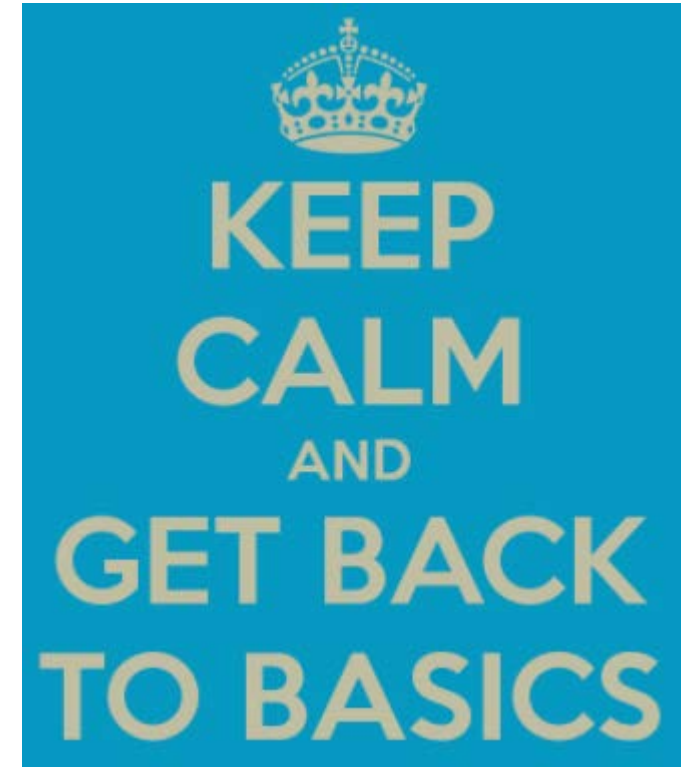
4. Duty

5. Know your limits

6. Conclusion

CGT basics

- **Legislation** - *Income Tax Assessment Act 1997* (Cwlth).
- **Commencement** - 20 September 1985.
- **Aim** - To collect tax on any net gain on disposal of a CGT asset.
- **Imposition** - Payable as part of income tax.
- **Exemptions** - include: pre-CGT assets, personal use assets (eg your home), roll-overs.



CGT exercise no. 1

Background

You are instructed by a couple to do three transfers to remove the husband as a registered proprietor as part of a refinance to be undertaken on advice from their accountant. The properties include:

- principal place
- holiday home available for rent on Airbnb during summer
- investment property used as a retail shop and subject to a lease.

You agree to do the work for a fixed fee of \$900 plus disbursements.

The day after you receive instructions you commence drafting your retainer letter.

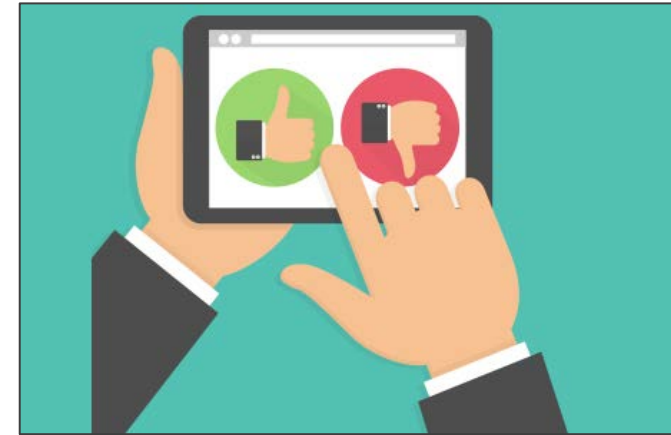
CGT exercise no. 1

Zoom poll

Which of the following would you include in your retainer letter?

1. Your work is confined to preparing and executing the transfers of land.
2. Your work is confined to preparing and executing the transfers of land and any tax advice is at an additional cost.
3. Your work is confined to preparing and executing the transfers of land and that the clients should seek accounting and financial advice before signing the transfers including advice about any CGT payable.
4. If none of the above, email me with your preferred wording:

phil.Nolan@lplc.com.au



CGT exercise no. 2



Property - 386 Blackburn Road
Glen Waverley:

- Proposed sale.
- Value estimate - \$1,200,000.
- One party a foreigner.
- Part subject to a lease.
- Part home office.

CGT exercise no. 2

Time to chat

Insert in the chat box one issue you would raise with your clients about CGT.



GST basics

- **Main legislation** - *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).
- **Commencement** - 1 July 2000.
- **Imposition** - 10 per cent value added tax payable on most goods and services.
Registered businesses collect GST and those in the chain of supply are entitled to claim a credit for any GST paid. The end consumer is not entitled to claim a credit.



GST basics

- **Exemptions**

Entity not registered for GST

GST-free supplies:

- Sale of businesses.
- Farmland.

Input taxed supplies:


- Supply of residential premises (not new).
- Financial supplies.



GST information

- LPLC GST FAQ's.
- LPLC GST advice service.
- LPLC GST checklist.

Key Risk Checklist

**LEGAL
PRACTITIONERS'
LIABILITY
COMMITTEE**

GST

GST is not simple but there are some easy steps you can take to help protect you and your clients. References to divisions and sections can be found in [A New Tax System \(Goods and Services Tax\) Act 1999 \(Cwth\)](#).

GST alert – for settlements from 1 July 2018, purchaser to collect and pay GST to the ATO for some properties. See 'Purchaser withholding' on page 4 below.

Input taxed supplies

☐ **Is the supply wholly input taxed?**

No GST payable where the supply is input taxed. The recipient of an input taxed supply is not entitled to an input tax credit.

Existing residential premises are input taxed.

Supplies which are not input taxed include:

- new residential premises – see [ATO information](#)
- vacant land - see s.9-5 and [ATO information](#)
- commercial real estate
- commercial residential premises - see Division 87 and [GSTR 2012/6](#) and [ATO information](#).

See s.40-5 to s.40-130 and [GSTR 2012/5](#).

GST cases

- *Cityrose Trading Pty Ltd v Booth v Anor* [2013] VSC 504 - GST special condition void for uncertainty.

Key takeaway: use the standard LIV GST clause.

- *Ashton v Monteleone* [2010] NSWSC 258 – contract did not deal with mixed supply

Key takeaway: if in doubt obtain an ATO ruling before going to court.

- *Aurora Developments Pty Ltd v Commissioner of Taxation* [2011] FCA 232

Key takeaway: for the going concern exemption to apply the sale must comprise all things necessary for the purchaser to operate the business.

GST cases

- *Duoedge Pty Ltd v Leong & Anor* [2013] VSC 36 – vendor not registered for GST but contract provided the supply was GST inclusive. Purchaser argued 1/11th of the price not payable.

Key takeaway: where vendor is not registered the purchaser must pay the price and is not entitled to a deduction of 1/11th.

- *Igloo Homes v Sammut Constructions* [2004] NSWSC 1213 – confusion about GST position in NSW contract but special condition expressly provided plus GST.

Key takeaway: carefully consider the GST clause when acting in an interstate matter.

- *SeaRoad Logistics v Patricks Stevedores* [2014] VSC 170

Key takeaway: where no tax invoice received purchaser can withhold GST amount only. See general condition 19.3.

- *A & A Property Developers Pty Ltd v MCCA Asset Management Ltd* [2017] VSCA 365 – ‘GST’ inserted in particulars of sale in contract instead of ‘Plus GST’.

Key takeaway: attention to detail is crucial.

GST quiz

Background

You act for two companies selling a house located at 706 Pascoe Vale Road Glenroy.

The house is leased to a dentist.

The sole director of the two companies informs you that the companies are not registered for GST.



GST quiz

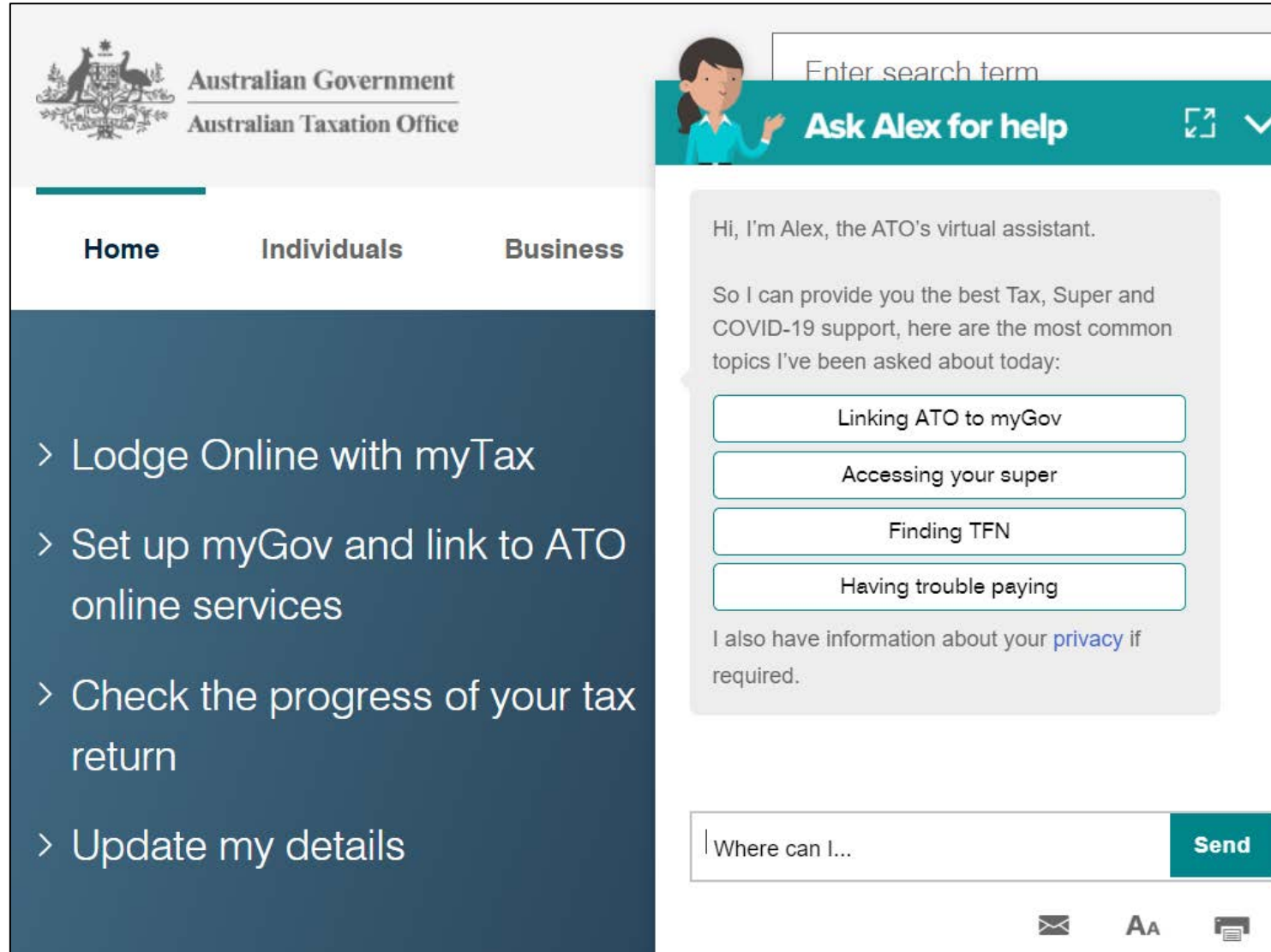
Zoom poll

How would you treat the supply of the premises for GST purposes?

1. No GST as vendor not registered.
2. Input taxed as existing residential premises.
3. Taxable as new residential premises.
4. Taxable as commercial premises.
5. Going concern.



ATO has AI



The screenshot displays the Australian Taxation Office (ATO) website. At the top left is the Australian Government crest and the text "Australian Government" and "Australian Taxation Office". Below this is a navigation bar with "Home", "Individuals", and "Business" tabs. A dark blue sidebar on the left contains a list of services: "Lodge Online with myTax", "Set up myGov and link to ATO online services", "Check the progress of your tax return", and "Update my details". On the right, a chatbot interface titled "Ask Alex for help" is open. It features a search bar at the top with the placeholder "Enter search term". Below the search bar, a message from Alex, the ATO's virtual assistant, reads: "Hi, I'm Alex, the ATO's virtual assistant. So I can provide you the best Tax, Super and COVID-19 support, here are the most common topics I've been asked about today:". This message is followed by four buttons: "Linking ATO to myGov", "Accessing your super", "Finding TFN", and "Having trouble paying". Below these buttons, a message states: "I also have information about your [privacy](#) if required.". At the bottom of the chatbot interface is a text input field with the placeholder "Where can I..." and a "Send" button. In the bottom right corner of the website, there are icons for email, font size (Aa), and a printer.

Australian Government
Australian Taxation Office

Home Individuals Business

- > Lodge Online with myTax
- > Set up myGov and link to ATO online services
- > Check the progress of your tax return
- > Update my details

Ask Alex for help

Enter search term

Hi, I'm Alex, the ATO's virtual assistant.

So I can provide you the best Tax, Super and COVID-19 support, here are the most common topics I've been asked about today:

- Linking ATO to myGov
- Accessing your super
- Finding TFN
- Having trouble paying

I also have information about your [privacy](#) if required.

Where can I... Send

ATO private ruling

Go to:

[https://www.ato.gov.au/general/ato-advice-and-guidance/ato-advice-products-\(rulings\)/private-rulings/](https://www.ato.gov.au/general/ato-advice-and-guidance/ato-advice-products-(rulings)/private-rulings/)

Private rulings

A private ruling is binding advice that sets out how a tax law applies to you in relation to a specific scheme or circumstance.

If you would like to discuss your issue with us prior to applying, you can submit an early engagement (for advice) request.

Find out about:

- > [Early engagement for advice](#)
- > [What private rulings can cover](#)
- > [When to consider applying for a private ruling](#)
- > [Can you rely on a private ruling?](#)
- > [When we would not give a private ruling](#)
- > [When we have not given you a private ruling – your review rights](#)
- > [Applying for a private ruling](#)
- > [How we deal with your application – private rulings](#)
- > [We may revise a private ruling](#)
- > [Publishing of private rulings](#)
- > [TR 2006/11](#) *Private rulings*

Land tax basics

Main legislation - *Land Tax Act 2005* (Vic)

Commencement - *Land Tax Act 1877* (Vic)

Imposition - A tax on the value of land owned as at 31 December.
There are various rates and a few exemptions.

Exemptions – include: principal place, primary production land, retirement villages.

Deduction - Generally land tax can be claimed as an expense for a rental property for the period the property was rented or available for rent.

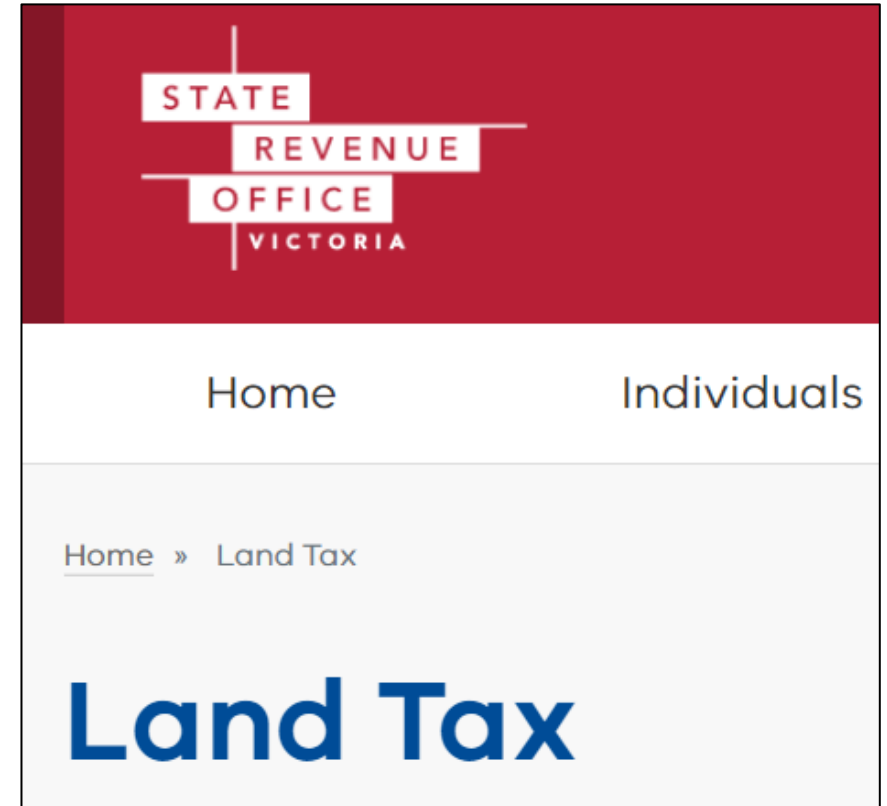
Land tax information

SRO website

- <https://www.sro.vic.gov.au/land-tax>

LPLC articles

- [Land can be taxing](#)
- [More land tax woes](#)
- [Land tax adjustments aren't standard](#)
- [Beware of tax land issues when advising your client](#)



Land tax – what's new?

- The closing date for applications for the [2020 land tax coronavirus relief](#) was 31 March 2021 but late applications will be considered provided they are lodged by **30 September 2021**.
- Missed a payment due to the SRO?

Due to the coronavirus pandemic, the SRO announced that late payment interest would not be applied on outstanding taxation debts during the pandemic.

From **1 October 2021**, any outstanding taxation debts that have not been paid by **30 September 2021** will be subject to late payment interest calculated from the date of the tax default.

Land tax – what's new from the State Budget

0.25% land tax increase for taxable landholdings worth \$1.8m-\$3 m

Example - land tax value \$3,000,000

Current amount - \$24,975

Increased amount - \$27,975

\$3,000 increase in land tax

0.3% land tax increase for taxable landholdings above \$3m.

Example - land tax value \$4,000,000

Current amount - \$47,475

Increased amount - \$50,475

\$3,000 increase in land tax

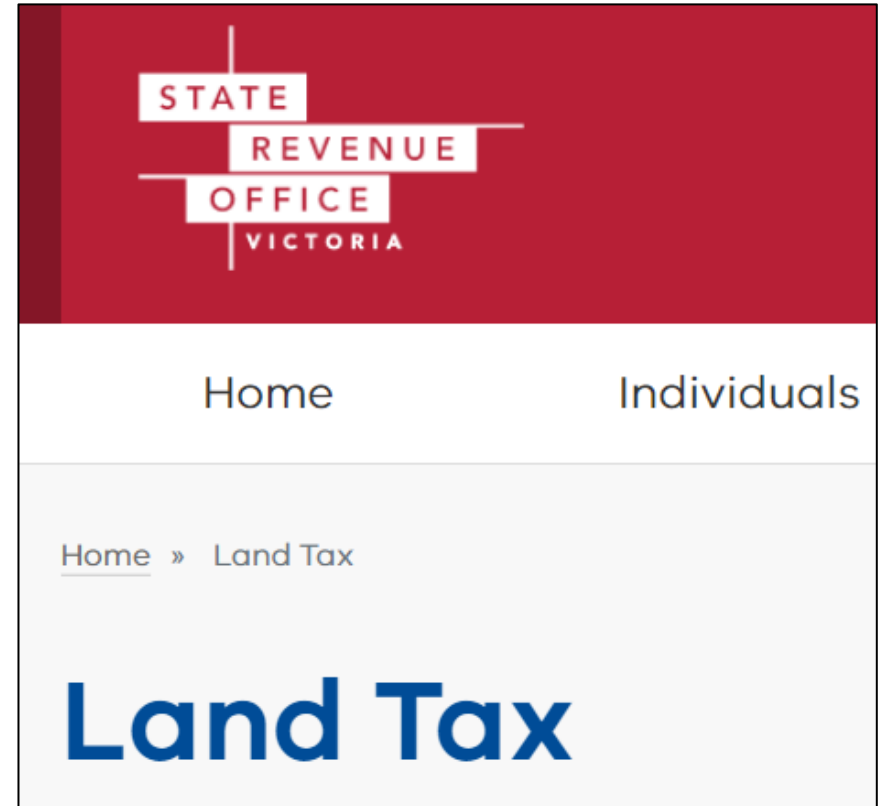
Land tax claim

Failure to warn client of the need to notify the SRO where purchaser is a trustee.

Zoom poll

Do you ask your purchaser client whether the purchaser is acting in a trustee capacity?

1. Yes
2. No



Land tax claim

Failure to adjust land tax at settlement

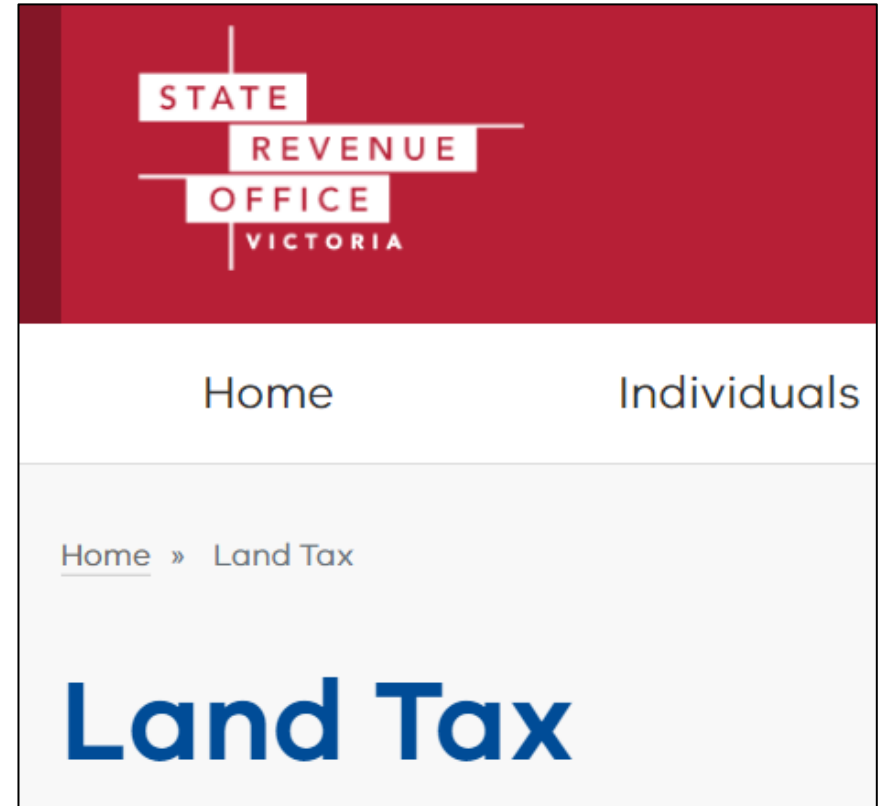
Warning

Some contracts provide that land tax is adjusted on the basis that it is paid even when it is unpaid, and the purchaser cannot draw a cheque to pay the amount at settlement.

Zoom poll

Is this condition fair?

1. Yes
2. No



Land tax

Zoom poll

What rate of land tax is payable by a SMSF?

1. General rate.
2. Trust surcharge rate.



Land tax

Zoom poll

When acting for a trust purchasing land, do you inform the trustee about the nomination of a beneficiary to pay land tax?

1. Yes
2. No



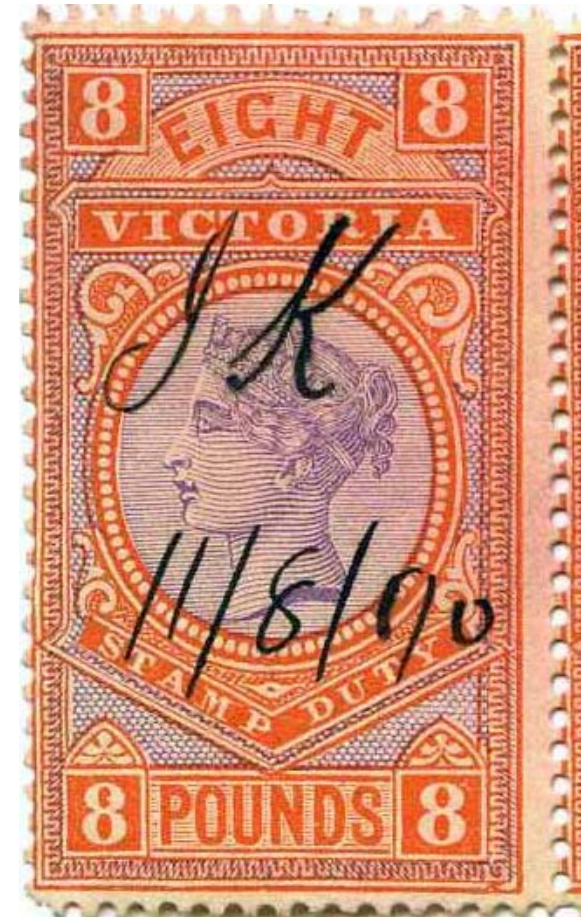
Duty basics

Main legislation - *Duty Act 2000* (Vic)

Commencement - *Stamp Duties Act 1879* (Vic)

Imposition - Duty payable to the Victorian Government on various transactions including land transfer, declaration of trust and certain leases.

Exemptions – include: transfer from trustee to beneficiary.



Duty – what's new from the budget?

6.5% duty payable on property transactions with dutiable value above \$2m.

Commences – 30 June 2021

Example

Sale price - \$3m

Duty payable June 2021 - \$165,000

Duty payable July 2021 - \$195,000

\$30,000 increase in duty

Duty information

SRO website

- <https://www.sro.vic.gov.au/>

LPLC articles

- [Double duty and nominations](#)
- [Nomination woes – GST, foreign investment and stamp duty](#)
- [Trusts and family farm transfers](#)

LPLC checklist – tax issues

Key Risk Checklist		LP LC LEGAL PRACTITIONERS' LIABILITY COMMITTEE	
<h3>Tax issues</h3> <p>This checklist contains the most common taxes and related charges and is not intended to be exhaustive. Ticking a box indicates who is responsible for considering the selected item. Both practitioner and client may be selected. A column has been included for initial comments. It is recommended that a memorandum be sent to the client after the checklist is completed setting out what was agreed. Also refer to the LPLC GST checklist here.</p>			
<h4>Duty</h4>			
Item	Client	Practitioner	Comments
Estimate – transfer duty \$.....	<input type="checkbox"/>	<input type="checkbox"/>	
Exemptions – eg spouse	<input type="checkbox"/>	<input type="checkbox"/>	
Sub-sales / nomination / land development	<input type="checkbox"/>	<input type="checkbox"/>	
Concessions – eg pensioner	<input type="checkbox"/>	<input type="checkbox"/>	

Duty claims

- Double duty where land development before nomination.
- Failure to advise foreigner of higher duty payable.
- Incorrect advice about an exemption / concession.
- Duty payable on transfer to beneficiary as there was 'consideration' for the transfer.
- Failure to advise on duty exemption.

Duty exercise

Background

You receive instructions post contract from an individual buying a large parcel of land ripe for development in Officer.

The client tells you they intend on nominating a corporate trustee once they have sorted things out with their accountant.



Duty exercise

Zoom poll

When do you advise the client about any possible double duty issues and nomination?

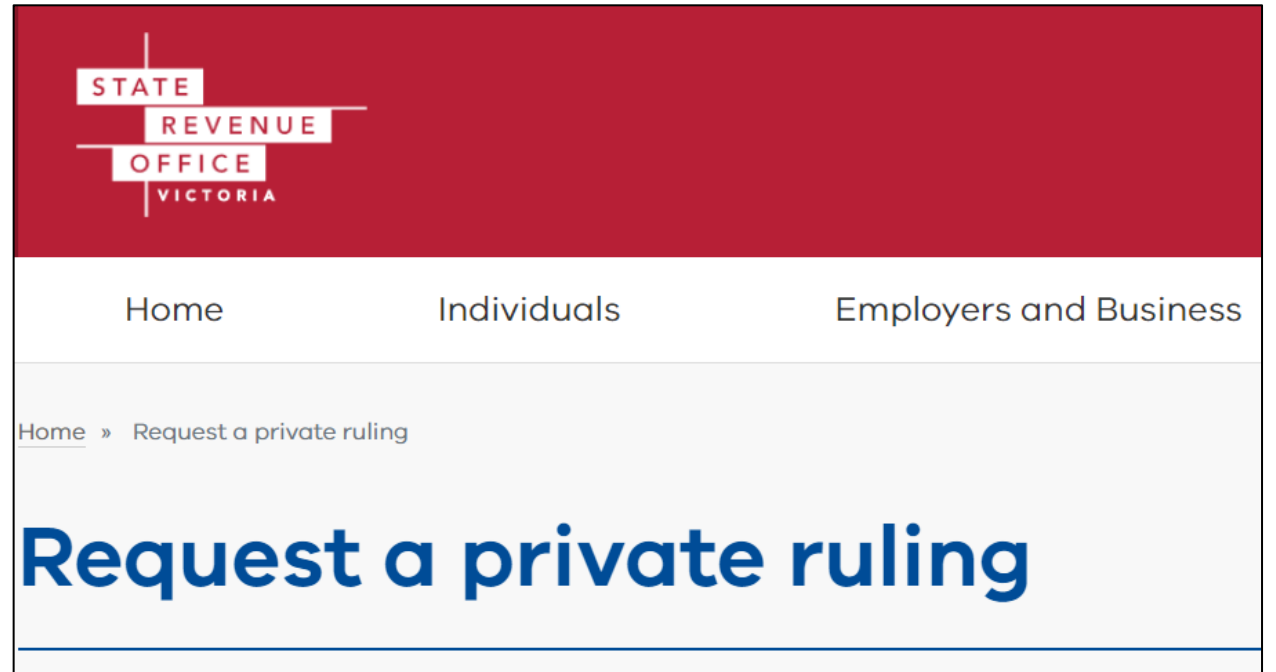
1. In your first letter to the client about their purchase.
2. After you receive details of the nominee.
3. At some other time.



SRO private ruling

Go to:

<https://www.sro.vic.gov.au/request-private-ruling>



Know your limits

It is important to recognise where your limits are in relation to providing tax advice to clients.

You need to determine whether the firm has the expertise to deal with the tax issues.

Options

- Recommend that the client speaks with their accountant before making any tax decisions.
- Refer the client to an appropriate expert for tax advice.



F E E D B A C K

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