



RISK MANAGEMENT INTENSIVE 2019

FULL-DAY RISK MANAGEMENT
SEMINARS FOR VICTORIAN
LAWYERS



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Conveyancing tax issues

Phil Nolan

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

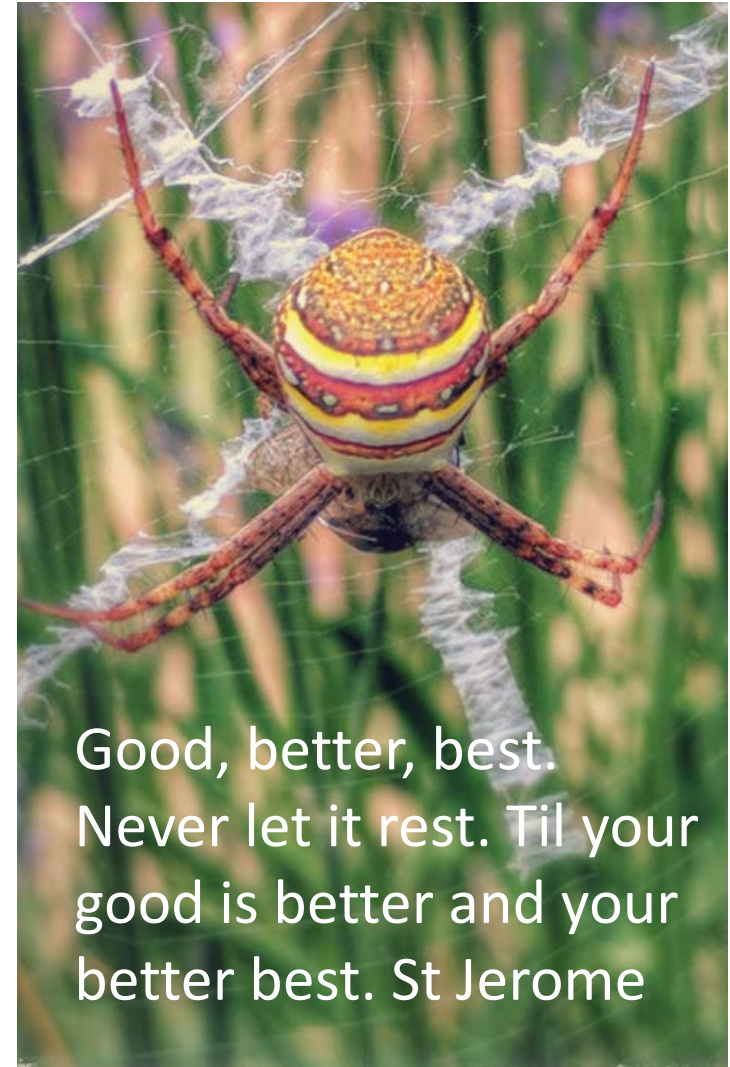
Three key points

- Develop, use and update a checklist about tax issues
- Invest in some good resources on taxes and consult them regularly
- Take some time to read cases about taxes



Take the tax test

- Do I have a checklist of tax issues?
- Do I have enough tax knowledge to know which taxes may impact on a client's conveyance?
- Do I discuss tax issues with conveyancing clients to enable clients to make informed choices?
- Do I refer clients to on-line calculators?
- Do I document tax advice to clients in writing?
- Do I allocate responsibility for tax issues?



CGT

- **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



CGT exercise no. 1

Background

Instructed by two registered proprietors to do two transfers:

- Green acre (their principal place) from both to just one of them.
- Black acre from both to a self-managed super fund that they are in the process of establishing.

You write to the clients confirming their instructions and make it clear you are not providing any tax advice.

Some months after the transfers are registered the clients contact you saying their accountant recently informed them that CGT is payable. They also tell you, with some anger, that they would not have gone ahead with the transfers if you had explained to them the CGT consequences.

CGT exercise no. 1

Question

Is there anything more you might reasonably do in this situation about any tax issues?



CGT exercise no. 2



25 Doncaster Road, Balwyn
North VIC 3104

- Proposed sale
- Value estimate - \$1,200,000
- One party a foreigner
- Subject to a lease
- Home office

Action

List three issues you would raise with your clients about CGT.

Any questions or comments?



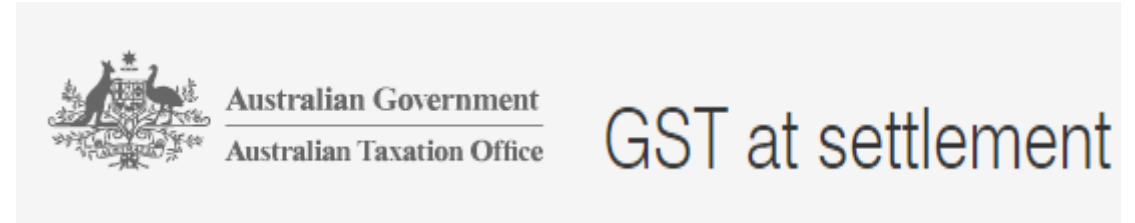
GST basics

- **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 withholding issues identified by the ATO

- Grouping problem
- Multiple lodgement of forms without cancelling existing notifications
- Purchasers not lodging the settlement date notification form
- Vendor not recording supply of property on their BAS



GST property settlement withholding notification

GST property settlement date confirmation

GST FAQs

- Q1: What should I do where I am acting for a purchaser buying a new townhouse and the vendor is not registered but I suspect they are required to be registered?
- Q2: My client is not registered for GST and he is selling a commercial property/factory for around \$400,000. Do I need to deal with GST in the contract?
- Q3: What are the notice and/or GST withholding requirements for retirement village units?

GST claim

Background

Practitioner acted for a **purchaser** of a new residence. The practitioner knew the purchaser for over 30 years.

Looked like a simple residential purchase.

- Contract price \$812,500
- 'Plus GST' box separated from the price.
- \$812,500 was in fact fair market value
- Purchaser could not afford the GST.
- Claim incurred \$86,000.

-4-

GOODS SOLD WITH LAND: All fixtures and fittings of a permanent nature.

PRICE:

Deposit:	\$ 800,000 812,500
Residue:	\$ 80,000 81,250

PAYMENT OF DEPOSIT: The Deposit shall be paid on Monday September 2010 the signing hereof by the Purchaser.

PAYMENT OF RESIDUE: The Residue or balance of the purchase price shall be paid on the latest of the following dates, namely:

(a) the date, being 14 days after the Proposed Plan of Subdivision is registered by the Registrar of Titles; and

(b) the 14th day of December, 2010 November

SETTLEMENT DATE: Is the date upon which vacant possession of the Property and the Chattels (if any) must be provided, namely, upon acceptance of title and payment of the price.

PURCHASER'S FINANCE: This Contract is subject to finance details of which are as follows:

Lender: _____

Loan being not less than: \$ _____

Approval Date: _____

DAY OF SALE: The _____ day of _____ 2010

Special Conditions	Special Conditions
This contract does not include any Special Conditions unless the words 'Special Conditions' appear in this box to the right:	
GST (General Condition 13) The price includes GST (if any) unless the words 'Plus GST' appear in this box to the right:	Plus GST
If this is a sale of a 'farming business' the words 'Farming Business' will appear in the box to the right:	Not Applicable
If this is a sale of a 'going concern' the words 'Going Concern' will appear in the box to the right:	Not Applicable
If the margin scheme will be used to calculate GST then the words 'Margin Scheme' will appear in the box to the right:	Not Applicable
Lease (General Condition 1.1)	Not Applicable

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GST quiz

What is the GST issue here?

GST (general condition 13) The price includes GST (if any) unless the words 'plus GST' appear in this box		<input type="text"/>
If this sale is a sale of land on which a 'farming business' is carried on which the parties consider meets requirements of section 38-480 of the GST Act or of a 'going concern' then add the words 'farming business' or 'going concern' in this box		<input type="text"/>
If the margin scheme will be used to calculate GST then add the words 'margin scheme' in this box		<input type="text"/>
SETTLEMENT is due on 2019 or earlier if mutually agreed upon. Unless the land is a lot on an unregistered plan of subdivision, in which case settlement is due on the above date or 14 days after the vendor gives notice to the purchaser of registration of the plan, whichever is the later.		
At settlement the purchaser is entitled to vacant possession of the property unless the words 'subject to lease' appear in this box: in which case refer to general condition 1.1		<input type="text" value="Subject to Lease"/>
Lease commencing 1 February 2016 for a term of five (5) years with rent fixed at \$48,000 pa.		

Any questions or comments?



GST special conditions

Example 1

The consideration payable for any taxable supply made under this contract represents the value of the taxable supply for which payment is to be made; Where a taxable supply is made under this contract for consideration which represents its value, then the party liable to pay for the taxable supply must also pay at the same time and in the same manner as the value is otherwise payable the amount of any GST payable in respect of the taxable supply.

Action

List 3 issues you would raise with your purchaser client about GST.



GST special conditions

Example 2

In addition to the purchase price the purchaser must pay to the vendor on completion an amount equal to any goods and services tax (GST), value added tax or other tax of a similar nature which is payable or may be payable by the vendor in connection with the sale of the property to the purchaser.

Case

Igloo Homes v Sammut Constructions [2004]
NSWSC 1213



Any questions or comments?



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.

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 – what's new

Payment of land tax by BPAY:

- SRO - from March 2019
- Via PEXA - coming soon



Foreigners

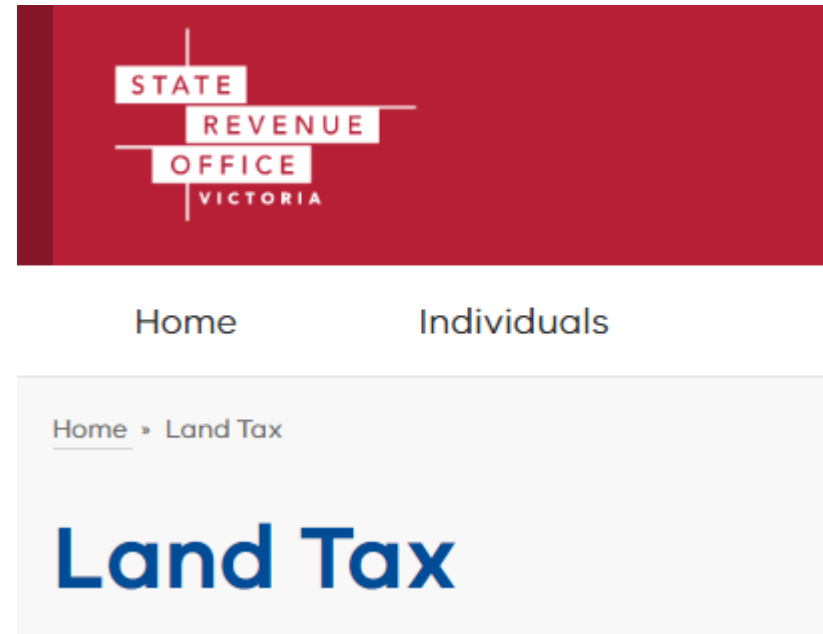
Increase in land tax surcharge from 1.5% to 2% for absentee foreign owners for land holdings as at 31 December 2019.

Legislation

State Taxation Acts Amendment Act 2019 (Vic)

Land tax – examples of claims

- Unaware of trust
LTX form 8 not lodged
- Knowledge of trust
LTX form 8 not lodged
- Lucky it was an SMSF
Trust rate does not apply



Land tax exercise

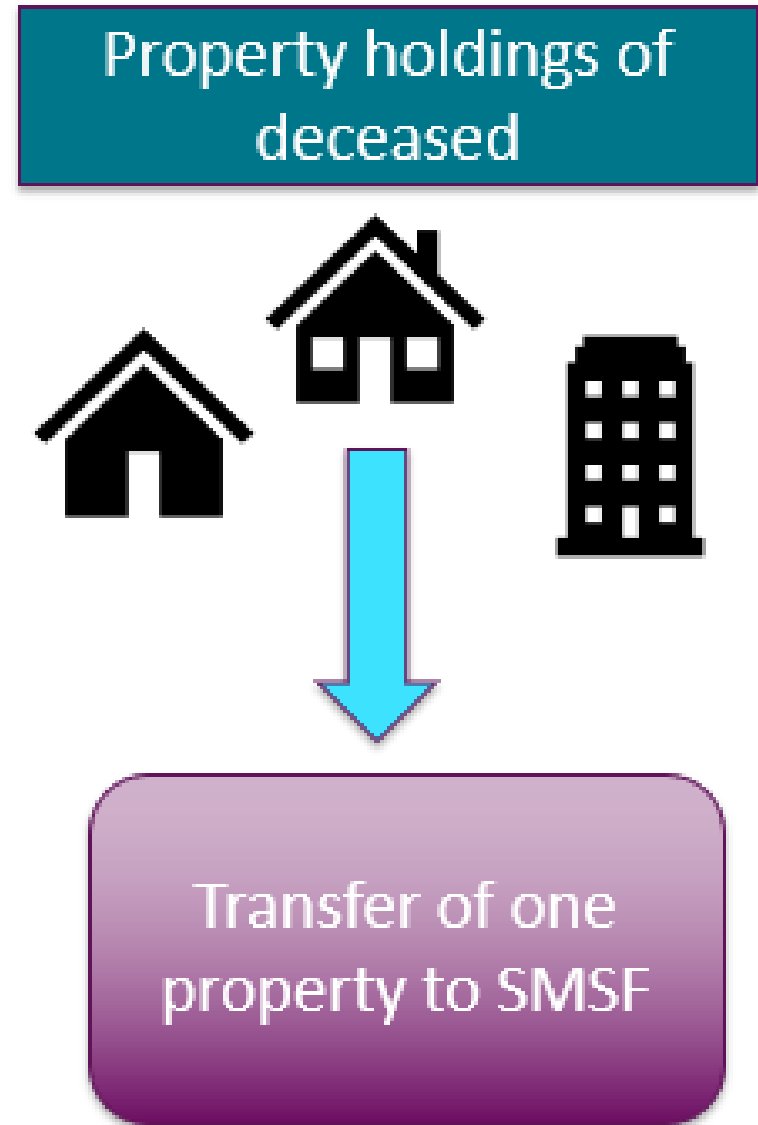
Background

A client of many years passed away in July 2017.

The deceased's daughter is named as sole executor and instructs you to act in the probate.

It is a very complicated estate with numerous property holdings, trusts and companies that need to be dealt with.

The daughter also seeks advice from you about her entitlement as a beneficiary including whether any land tax will be payable if there is a transfer of one of the properties from the estate to the daughter's SMSF.



Land tax exercise

Action

List three land tax issues you would raise with the daughter.

1.

2.

3.

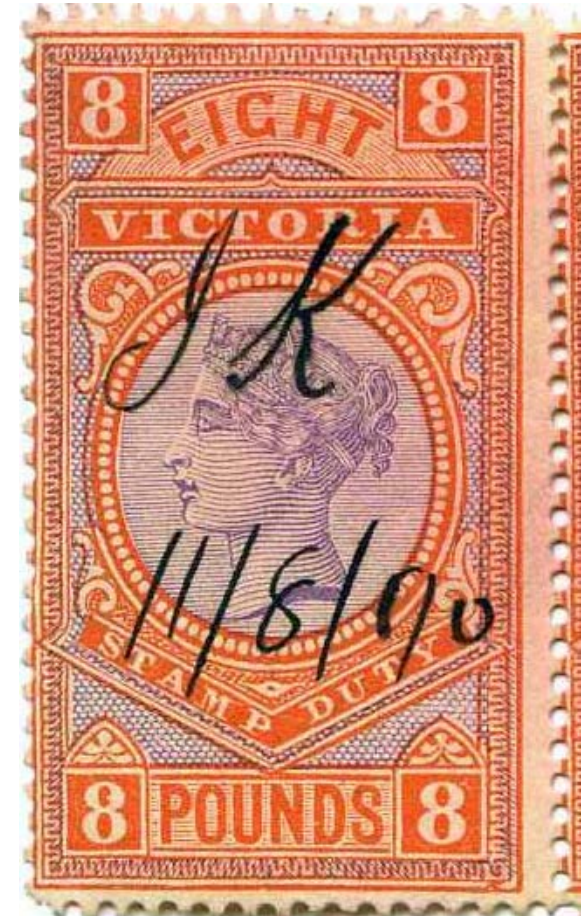


Duty basics

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.



Duty – what's new from the budget?

Foreigners

Increase from 7% to 8% additional duty for contracts entered into from 1 July 2019.

Economic entitlements – 'a fresh head of duty'

State Taxation Acts Amendment Act 2019 (Vic)

Relevant case

BPG Caulfield Village Pty Ltd v Commissioner of State Revenue [2016]
VSC 172

More information

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

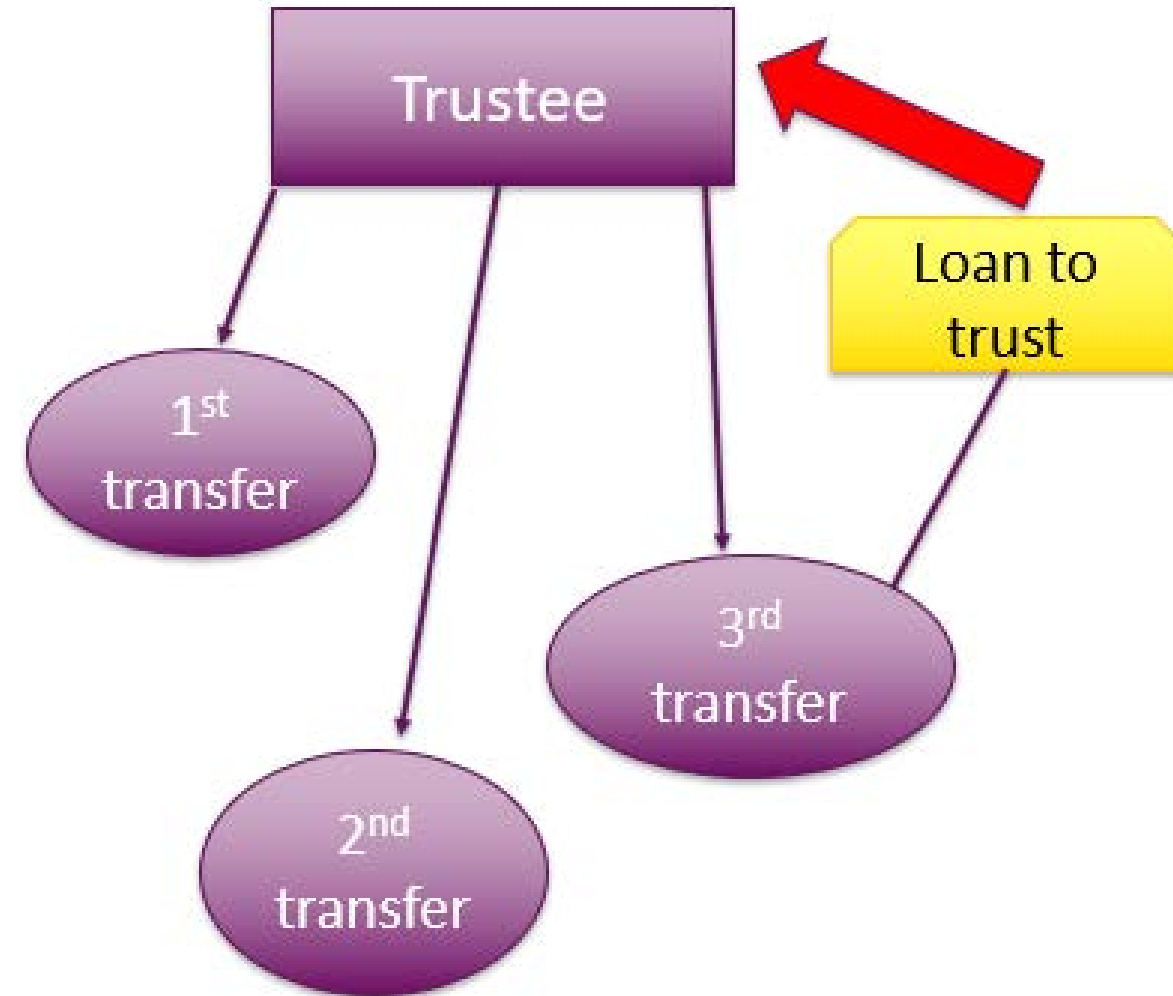
Duty exercise

Background

The trustee of a family trust instructs you to transfer a property to a son who is a specified beneficiary.

This is the third such transfer by the trustee. The previous two transfers were to the other two children of the trustee.

The client provides you with the usual information about the transfer including details of a loan account between the trust and the son.



Duty exercise

Action

What duty issues would you raise with the trustee?

Do you have any feedback for me?

F E E D B A C K



Conveyancing tax issues

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