



Last minute Christmas shopping loophole for clients with NSW residential property in trusts

Victor Dominello MP wrote his letter to Santa in October this year but called it The State Revenue Legislation Further Amendment Bill 2019 (NSW). Who knows what his Valentine Day cards look like!

In brief, all he wants for Christmas are changes to:

- The Duties Act 1997 (NSW);
- The Land Tax Act 1956 (NSW); and
- The Land Tax Management Act 1956 (NSW).

The key changes to the above tax legislation are designed to treat the trustee of a discretionary trust as a foreign person if even one of the potential beneficiaries is a foreign person. In that case, the trust is subject to a 2% surcharge land tax if it owns NSW residential property and an 8% duty if it buys such land. The get out is if the trust deed excludes foreign beneficiaries. Most trusts do not and in fact include a wide range of relatives (parents, cousins etc) as beneficiaries, many of whom may be overseas. Therefore, urgent amendments should be considered.

So far, so xenophobic, so good, some of Victor's voters may say. This reminds the writer of when arriving in Australia after September 11, he was invited by Australian migration to sign a photocopied form saying "I am not a terrorist". We, especially we dual citizens, do not make the rules!

The Bill also provides that the \$2m land value threshold which determines if a trust or a company is a "landholder" will be easier to exceed as:

- the value will no longer be the registered land tax value (the unimproved value) but rather the unencumbered market value (the improved value); and
- anything fixed to the land by more than its own weight will be included eg office fit outs so ... don't nail it down!

It is important to note that the Bill:

- is not yet law and time is running out this year;
- is stated to have retrospective application; and yet
- purports to allow exemptions to trustees who amend their trust deeds to exclude foreign beneficiaries **before midnight on 31 December 2019**.

We do a lot of work in estate planning for people like us (half foreigners) and Schedule 3 of the Bill provides that if a person dies within two years of the passing of the Bill and they were not a foreign person, the trustee of their Australian testamentary trust will not be a foreign person in certain limited circumstances. We suggest that people review this now if their beneficiaries may be overseas, and do not wait for another hysterical deadline in December 2021.

The 31 December deadline arises from a ruling by the NSW Commissioner of State Revenue in 2017. The writer will not be amending trust deeds up until midnight 31 December 2019 or even after 1pm on 20 December 2019 when our office closes for a well deserved break after a busy year. If clients want changes made within this timeframe, please contact us as soon as possible as we will have to prioritise and manage our resources.

Victor may not get what he wants for Christmas but we hope that you do. Have a great Aussie Christmas everyone!