

This Update outlines changes to two areas - Land Tax which will take effect from 1 January 2016 and Powers of Attorney.

ABSENTEE LAND TAX

The Victorian government has decided to increase its revenues by raising taxes. In particular, it is targeting "foreigners". Unfortunately, not just foreigners will be caught.

On 1 July 2015, Victorian land tax rates were increased for absentee land owners with effect from 1 January 2016

The following table sets out the amount of Victorian land tax payable for land having the nominated values. The two right hand columns represent the absentee rates, the second and third columns the "normal" rates.

VALUE OF VICTORIAN LAND	GENERAL	TRUST	GENERAL ABSENTEE	TRUST ABSENTEE
500,000	775	2,363.50	3,275	4,863.50
1,000,000	2,975	6,438	7,975	11,438
2,000,000	11,975	17,360.80	21,975	27,360.80
3,000,000	24,975	24,975	39,975	39,975
10,000,000	182,475	182,475	232,475	232,475

What land is affected?

All Victorian land is caught. This is not limited to residential land, as are changes made to Victorian Duty on 1 July 2015.

Who is an absentee?

An absentee natural person or an absentee corporation or an absentee trust.

ABSENTEE NATURAL PERSON

An absentee natural person is a natural person who is none of:

- An Australian citizen,
- The holder of a permanent residency visa within the meaning of S 30 migration act
- A New Zealand citizen who holds a visa within the meaning of S 32 (1) migration act

And who does not ordinarily reside in Australia

And who

- Was absent from Australia on 31 December in the immediately preceding year, or
- In the immediately preceding year was absent from Australia for at least six months, whether on one or several periods.

(In short you will be an absentee natural person if you are a Foreigner and were not in Australia on either 31 December or for at least six months in the preceding 12)

ABSENTEE CORPORATION

An absentee corporation means:

- A corporation that is incorporated outside Australia, or
- A corporation which is controlled by absentee persons

ABSENTEE TRUST

An absentee trust is one in which at least one absentee beneficiary:

- Has a beneficial interest in land subject to a fixed trust, or
- Is a discretionary object of a discretionary trust,

(So any discretionary trust which has at least one discretionary object who is a foreigner who was not in Australia in either 31 December or for at least six months in the preceding 12 will be an absentee trust)

TREASURER'S POWER

The Victorian treasurer has the power to exempt an absentee from the operation of the absentee provisions

NOTICE TO THE COMMISSION

An absentee owner is obliged to notify the commissioner each year.

OFFENCE

It is an offense to fail to give notice to the commissioner.

company. This is so, even if it is not intended and in fact no absentee natural person or absentee company ever receives a distribution from the trust.



The result can usually be avoided by careful drafting at the time of trust establishment. In an established trust, it will often be possible to avoid the result by amending the trust deed.

Norbury Lawyers can supply a discretionary trust which will not be caught in the absentee net. Similarly, we can vary most discretionary trusts to avoid the absentee rules.

POWERS OF ATTORNEY-CHANGES

From 1 September 2015, Victoria changed the law in relation to enduring powers of attorney.

The enduring power of attorney (financial) and enduring power of guardianship have been combined to form a single enduring power of attorney.

An enduring power of attorney (financial) which was valid prior to 1 September 2015 remains valid after 1 September 2015, as does an enduring power of guardianship.

The new enduring power of attorney is in a new form with new procedures for establishment which are designed to reduce the incidence of fraudulent use of powers of attorney.

The new enduring power of attorney allows the appointment of a "supportive attorney". The supportive attorney may, but not necessarily, be given limited power to assist the principal. The supportive attorney can be given the power to supply and collect information on behalf of the principal, and to give effect to the principal's decisions.

There is no change in relation to medical powers of attorney, nor to the trustee power of attorney.

The Powers of Attorney Act contains provisions designed to protect principals from the abuse by the attorney, the Act sets out many of the obligations and duties of the attorney.

NEW OFFICES

Norbury Lawyers has moved to **Level 6, 410 Collins Street, Melbourne**. This is also our new postal address.

We look forward to seeing you!

