

Arnold Bloch Leibler
Lawyers and Advisers

Level 21
333 Collins Street
Melbourne VIC 3000
Australia
Telephone 61 3 9229 9999
Facsimile 61 3 9229 9900

Level 36
Chifley Tower
2 Chifley Square
Sydney NSW 2000
Australia
Telephone 61 2 9226 7100
Facsimile 61 3 9226 7120

www.abl.com.au



media release

Land Tax Win for Unit Trusts

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Investors who hold property through unit trusts are breathing a sigh of relief following a recent decision by the High Court, says Joey Borensztajn, a partner at law firm, Arnold Bloch Leibler.

In *CPT Custodian Pty Ltd v Commissioner of State Revenue; Commissioner of State Revenue v Karingal 2 Holdings Pty Ltd* the High Court unanimously held that unitholders in a unit trust that owns land are not the “owners” of the land for the purposes of liability for Victorian land tax. In that case the taxpayers were unitholders in unit trusts that owned land in Victoria (being a number of suburban shopping centres). The Commissioner of State Taxation had assessed the taxpayers on the basis that they were “owners” of the land held by the trusts and the taxpayers appealed.

If the Commissioner’s interpretation was correct, then he could aggregate all of the taxpayers’ land interests, whether held in their own name or through unit trusts. The effect of such an aggregation would be to increase the total value of property interests held by the taxpayers for Victorian land tax purposes, resulting in a higher tax being applicable to these properties.

The High Court judges found that the unit holders, regardless of whether they held all or only some of the units, were not “owners” of land held by the trust. This was so because the unit holders could not demand immediate transfer of the trust assets to themselves. Any claims against the trust would first have to be settled before the trustees were entitled to payment out of the remaining assets. Importantly, the Judges noted that a trustee’s right of indemnity against trust assets was a significant factor in their conclusion.

“This decision is hugely significant to many taxpayers, particularly those with major property investments,” says Borensztajn, whose firm has waged a six-year battle with the Victorian State Revenue Office in relation to this issue. A number of Arnold Bloch Leibler’s property clients have been awaiting the outcome of this decision to determine their own objections and appeals.

“Our job as lawyers is to ensure that the provisions of the *Land Tax Act*, and any other act that affects our clients, have been appropriately and fairly applied,” says Borensztajn.

“Had the decision gone the other way, it would have significantly increased our clients’ tax liability beyond what they could reasonably have anticipated and budgeted for.”

While welcoming the result, Borensztajn adds that its effect is to be a short-term one, as the State Government has announced that there will be a new legislative regime for the taxation of trusts that involves a separate, penal rates regime for land held by trusts.

Details of the proposed new arrangements have previously been released for consultation with industry groups and taxpayer bodies. It is expected that the legislation will be passed in the spring 2005 session and will come into effect on 1 January 2006.

About Arnold Bloch Leibler

Arnold Bloch Leibler is a leading commercial law firm with offices in Melbourne and Sydney. The firm represents a wide range of individuals and corporate clients, including high-net-worth individuals and entrepreneurs, large family businesses and blue-chip corporations. Arnold Bloch Leibler also has a dedicated pro bono practice providing advice on social and environmental issues.

Arnold Bloch Leibler is particularly known for its expertise in commercial law, litigation and dispute resolution, taxation and property. The firm also has an expanding presence in trade practices law. In these areas, the firm has been involved in many landmark matters and transactions.

For further information, please telephone David Pleydell, Director of Marketing & Business Development, on 03 9229 9620 or Stephanie Green, Marketing Communications Executive, on (03) 9229 9715.

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