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VACANT LAND DEDUCTIONS

In the last Federal budget it was announced that costs incurred on the holding of vacant land would be non-deductible for tax purposes.

Land-banking is not uncommon, particularly when the economic climate is not ideal for development. Even if the costs of holding land are not being used to set off against other income, the accumulation of losses is useful when the land is ultimately developed and income is generated from it. The loss of these deductions will therefore cause considerable pain for those taxpayers who are holding land for development in the future.

The new law has now been introduced and is applicable for costs incurred from 1 July 2019. Examples of these costs include:

- Interest on borrowings to acquire land;
- Land tax;
- Council rates;
- Maintenance costs; and
- Insurance.

Generally, land will not be considered vacant if there is a "substantial and permanent" structure on the land. When constructing residential premises, these will only be considered substantial and permanent when they are able to be legally occupied and are rented or available to rent. With farm land, if it does not contain a structure it will be considered to be vacant. Perimeter fencing, for example, is not likely to be considered a "substantial and permanent" structure.

Importantly, the changes only relate to individuals, SMSFs, partnerships and trusts. Companies and non-SMSF superannuation funds will still be able to claim deductions on

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their vacant land. The use of multiple trusts to hold land is often used and these trusts will now be at risk of losing their deduction for costs incurred on their vacant land. Partnerships, trusts or individuals holding vacant land could consider rolling the land into a company. However, while there is CGT roll-over relief, transfer duty would be payable on the transfer of the land.

Costs on vacant land will remain deductible if the land:

- is used or is available for use in the carrying on of a business;
- is vacant because of a natural disaster;
- is rented out by a farmer; or
- is rented out and used to carry on a business.

Where vacant land is used to carry out a business, it may be difficult to show that the business is being carried out on the whole of the land. This might lead to a requirement to apportion the land and therefore the costs between deductible and non-deductible portions.

It might be arguable that a developer who is holding vacant land ready for future development is still able to deduct its costs on the basis that it is carrying on a business. However, if the land is held in a stand-alone trust which has no history of land development or any other business, then it might be difficult to argue that the land is being held for use or is available for use in the carrying on of a business.

If farmers own vacant land, the costs will be deductible if the farmer leases that land. It does not appear that the farmer needs to have used that land for farming nor that the tenant uses that land for farming. The exception is also available if the landowner has a related party who is a farmer. This exception is very broad in its application and seems to favour anyone who has a farmer in the family. It is likely that its application will be narrowed once the ATO starts to apply the law.

The application of these provisions will potentially have a negative affect on entities holding land with the intention of developing or selling it in the future. It is therefore essential to obtain advice during the course of this financial year so to ensure that there are no surprises when you do your 2019/2020 tax return.

For further information or assistance contact Murfett Legal on +61 8 9388 3100.

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Murfett Legal is a leading law firm in WA, providing services in litigation, corporate and commercial, employment and workplace relations, insolvency, debt collection, business restructuring, Wills & estates, property, leasing, settlements, liquor licensing and intellectual property.

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