



## Monthly Information Newsletter – Tax & Super

October 2023

### Property developers – and would-be ones – beware!

For property developers - or would-be property developers – a recent decision of the Federal Court may be of interest.

In *Makrylos v FCT [2023] FCA 971*, land acquired by a property developer was treated as trading stock from the date of its original acquisition, and not a later date proposed by the taxpayer. This meant, among other things, that his profit was calculated on the original purchase price of the land and not the later (and larger) market value at the time it had been “ventured” into the relevant property development activity, as claimed by the taxpayer. It also had an influence on what costs he could claim as a deduction and when he could claim them.

The Federal Court came to its decision notwithstanding that the taxpayer lived on the property at various times. However, the taxpayer was also an experienced property developer who subdivided the land, albeit this was not required for the construction of a family home and caretaker’s residence, which is what the taxpayer claimed was his original intention for the land.

The fact that the taxpayer periodically lived in the dwelling on the land but left it vacant for significant periods did not assist him as the Court found that his intention from the time when he purchased it was to treat it as trading stock of his business.

The Federal Court said that it would have come to the same result even if he was not a property developer, but had “merely” acquired it for profit making purposes in a one-off transaction.

So, if you buy property for property development purpose for which documentary evidence exists, it may not matter if you rent it and/or live in it first, especially if you are a property developer.

And one thing for sure, it won’t help if you staked out the property for subdivision purposes soon after you acquire it!

Suffice to say, if you are thinking of acquiring land for property development purposes, you should seek professional advice from your taxation and legal advisers.

#### DISCLAIMER

All information provided in this article is of a general nature only and is not personal financial or investment advice. Also, changes in legislation may occur frequently. We recommend that our formal advice be obtained before acting on the basis of this information.

***Our liability may be limited by a scheme approved under Professional Standards Legislation.***