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**FOREIGN RESIDENT CGT
WITHHOLDING TAX – WHAT DOES
IT MEAN FOR YOU WHEN
PURCHASING PROPERTY?**

On 1 July 2016 changes to the Taxation Administration Act 1953 (Cth) came into effect which require Purchasers buying real property in Australia with a market value of over \$2,000,000.00 to withhold 10% of the market value of the property, and remit this 10% they are holding to the ATO. There are certain exemptions which apply to this rule. The main exception is where the Vendor provides the Purchaser with a clearance certificate from the ATO.

The responsibility of the withholding of the tax essentially falls with you as the Purchaser. Failure to comply with these laws may result in the Purchaser being liable to the ATO.

What these new laws essentially do is force foreign resident Vendors selling property in Australia to apply for a tax file number (TFN) (if they don't have one), and lodge a tax return at the end of the financial year declaring their Australian assessable income, including any capital gain from the disposal of the asset. The Vendor may then claim a credit for any withholding amount paid to the ATO in their tax return.

Don't get caught out with these new laws. Contact one of our experienced property law solicitors today to ensure that you are complying with your obligations under these new laws.

**FAMILY LAW COURT ORDERS –
TRUST MONEY FOR CHILDREN**

In 2013 we acted for a wife in family law property proceedings. During the marriage, substantial sums of money were held in the names of the children. The parents were trustees of the funds held in the children's names.

The court proceedings were resolved by consent orders. Part of the compromise arrangement reached during the negotiations was that the husband would become the sole trustee for the children and the funds were to be held in trust for the children until they reached an agreed age or were entering into contracts to purchase real estate. There was also an injunction to restrain both parents from telling the children about the funds.

In September 2016, the wife became aware that the husband had informed one of the children about the trust funds. The wife also became aware following discussions with the husband that the trust fund balance was significantly below what it should have been if the funds had been invested. The trust fund balance was below the amount that was invested in 2013 when the original property settlement orders were made.

The husband had made comment to one of the children that he used some of the funds when he purchased his new property after the property settlement orders were made.

We advised the wife to initiate urgent proceedings under the Family Law Act to seek orders for the wife to be appointed sole trustee of the funds. A non urgent court application ordinarily has a first return date of approximately 12 to 14 weeks after the date of filing. The court allocated a first return date of less than 2 weeks from the date of filing the documents.

The husband was served with the court documents and the husband signed consent orders agreeing that the wife be appointed sole trustee of the trust funds and that he deposit monies back in to bring the trust account balances back to what they should have been.

Prior to the consent orders being made, submissions were being made to the judge about what the issues were in the matter. The judge commented to the husband and his legal representatives that if the wife's allegations proved correct and the husband had breached his fiduciary obligations as trustee of the children's funds, the court could make orders against the husband including a term of imprisonment.

The husband agreed to consent orders largely in accordance with the wife's application shortly after the judge made these comments.

Enforcement of court orders can sometimes be problematic. Sometimes breaches of court orders occur on an ongoing but comparatively trivial basis. On the other hand, where court orders are blatantly breached and an application is made to the court promptly after you are aware of the breach, the court can impose significant penalties against the party at fault.

In this particular case, the trust funds have been restored, the wife is the sole trustee and the funds will be distributed to the children in accordance with the terms of the orders approved by the judge.

If you need any advice in relation to Family Law issues then please contact **Sean Cahill** who is an **Accredited Family Law Specialist**.

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