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family discretionary trusts and land tax

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In the middle of a busy afternoon your client Tom calls in to see you to discuss a matter. He tells you he has a block of land on the coast worth about \$1.5 million with an old shack on it. He tells you he plans to demolish it and build a really nice holiday home for the family.

Tom inherited the property from his parents so it has been in his name for some years. Tom has been successful in business and likes to keep things in one place.

He has a share portfolio in his family discretionary trust and asks you to transfer the property into the trust before he adds value by building the new holiday home. You accordingly comply.

The following year Tom comes to see you with his land tax assessment which has issued in his own name. You are a bit surprised because you assumed this would have been attended to by Tom's accountant.

Tom explains that he didn't think about land tax and that actually he didn't think his accountant knew about the property being in the trust yet.

The land value of the property is the same as last year around \$1.25 million. Tom is familiar with the process: after deducting the threshold of \$387,000 he calculates the land tax at \$13,808 (\$1.25 million minus \$387,000 = \$863,000 x 1.6% = \$13,808).

Tom gives you a cheque for the amount and asks you to send it off with the assessment explaining to the Office of State Revenue that the property has been transferred.

The sting

Not long afterwards Tom comes in saying that you got it wrong, that the land tax in fact is an extra \$6,192 just because the property is owned by the family trust. Tom says, "For goodness sake, if you warned me I will be up for this amount extra every year there is no way I would have transferred the property to the trust".

That's the problem. The land tax threshold does not apply to "a special trust". In essence, pretty much all trusts are special trusts except those that jump through the hoops of the definition of "fixed trust" under the *Land Tax Management Act*.

The relevant definition in s.3A(3B) requires that for a trust to be a fixed trust the beneficiaries must be presently entitled to the income and capital under entrenched provisions. This is the opposite to the situation with a family discretionary trust where the beneficiaries only become presently entitled to income at the end of each year and often don't become presently entitled to the capital until the trust ends.

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