

Education Update

Victorian land tax exemption for student accommodation

The University of Melbourne has successfully argued that land tax is not payable with respect to land, situated on campus, that is leased to a student accommodation provider.

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Background

The University of Melbourne (the University) entered into a number of agreements including the Project Deed, an agreement for lease, and an operator's side deed between the University, CLV (Melbourne) Pty Ltd (CLVM) and Campus Living Villages Pty Ltd (Campus Living) for the purpose of providing student accommodation. The Project Deed included the University's objectives which included:

- To obtain good quality, well located, secure and competitively priced facilities that meet students' reasonable expectations
- To facilitate a good quality contemporary student residential living and learning community which contributes materially to a developing University community spirit, with an appropriate level of Residents' support services and integrating with services to and opportunities for University students by and at the University
- For the continuing ability of the University to ensure appropriate standards and requirements are met, for example, with respect to amenities, Residents' support services, security and rental levels but with no day-to-day management obligations.

There were requirements included in the Project Deed:

- Specific support services had to be provided to residents
- The accommodation was to be provided to students in preference to the general public
- The fees were inclusive of most of the costs of the 'Residential Life Program' provided by CLVM to encourage residents to participate in life at the Student Village
- There was an affordability criterion of 90% below market rental underpinning the rent charged by CVLM to residents of the Student Village
- The University was entitled to survey students regarding the accommodation.

The Law

Section 74 of the Land Tax Act 2005 provides a land tax exemption for land "if it is *used* by a charitable institution *exclusively* for charitable purposes".

The applicability of this exemption turns on the proper interpretation of the words 'used' and 'exclusively'. The Commissioner argued the land had to be used exclusively by the charitable institution. The taxpayer argued that the word exclusively was linked to the charitable purposes of the charitable institution. That is, it is the charitable purpose of the charitable entity that is relevant, not any business purpose of a third party leasing or occupying the land.



Key findings in judgement

The text of Section 74 alone points to a wider meaning of 'use' than the active physical use of the land by the lessee, as was held in *Ryde Municipal Council v Macquarie University* (the Ryde Case) and *Chief Commissioner of State Revenue v Metricon (Qld) Pty Ltd*.

The manner in which the provision is drafted points to an interpretation of 'exclusively' which is linked to the purposes of the charitable institution. The history of the provision and its predecessors indicated that the University used the land exclusively for its charitable purposes, even though it was leased to a commercial operator. The University furthered its objects through the arrangement as it actively promoted the provision of a quality contemporary student residential living and learning community. Whilst the University's provision of student accommodation was indirect, it was held that the provision of the service in this way does not disentitle the University from relying upon the exemption.

This can be contrasted with an exemption where the land must be 'used exclusively by a charitable institution for charitable purposes' (such as an earlier exemption under the *Land Tax Act 1958*). This precluded any third party use.

It was held that university has ensured that in entering these agreements, it has been able to play an ongoing role in monitoring the provision by CLVM and Campus Living of the student accommodation and ancillary services. This was done to ensure that the University's objectives with respect to the enhancement of the students' overall educational objectives are maintained. This agreement is different to a situation where the land is leased to a lessee as office space who then uses the space for a business completely unrelated to the purposes of the charitable institution.

Therefore, the University is eligible to apply the land tax exemption.

In relation to a separate area sub-leased as a café, the Court concluded this was nevertheless exempt as the provision of the café and the attendant services provided by its operator were established in order to enhance the student living experience and to provide a further meeting place for residents to complement the other common areas in the Student Village. It was therefore ancillary to the charitable purposes of the University.

Importance of decision

This is an important decision for Universities that have leased land situated on campus to student accommodation providers. The findings in this case have hinged upon the particular facts of the arrangement and the University has been able to demonstrate that the land has continued to be used to achieve the universities charitable purposes notwithstanding that it has been leased to a third party student accommodation provider that is endeavouring to derive a profit from the arrangement.

Get in touch

Please contact your ShineWing Australia advisor or one of our experts below should you have any questions.



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