MILLS OAKLEY

2020 Vic Budget - What the tax changes mean for you

Introduction

The Victorian State Budget was handed down on 27 May 2019 and unsurprisingly contained measures aimed at foreign investors and certain land tax loopholes to raise further revenue in light of the reduced stamp duty collections from a softening property market. However, surprisingly, the State Taxation Acts Amendment Bill 2019 released the following day goes much further and includes measures that significantly extend the application of stamp duty to property developers and other parties who undertake transactions in which they share economically in the benefits of property owned by someone else (known as "economic entitlement provisions").

The Changes at a Glance

Stamp Duty

- Substantial changes will be made to the economic entitlement provisions.
- These provisions previously formed part of the landholder duty regime and therefore only affected land held by private unit trusts and private companies, and even then, only if entitlements met a minimum threshold of 50%.
- These provisions will be extended so that they apply to land with a market value of more than $1m owned by any type of land owner (ie extended to individuals, discretionary trusts, public unit trusts and listed companies), regardless of the percentage economic entitlement acquired by a third party (ie no minimum threshold), and triggering transfer duty (rather than landholder duty).
- Significantly, unless the percentage of the economic entitlement is clearly stated in the arrangement and there are no other entitlements granted, the percentage of the underlying land deemed acquired is 100% for the purposes of calculating the transfer duty (unless the Commissioner of state Revenue exercises his discretion to substitute a lower percentage).
- Furthermore, these economic entitlements will also be counted as landholdings for landholder duty purposes, so that landholder duty is triggered if there is a relevant change in the ownership of a unit trust or company owning these rights (20% for unit trusts / 50% for companies).
- The economic entitlement provisions in the landholder duty regime will now be limited to only those types of transactions specifically relevant to unit trusts and companies, being entitlements to dividends or income.
- A second major change is that transactions solely relating to fixtures (without a dutiable transfer of an interest in land) with a value in excess of $2m will now be subject to transfer duty. Fixtures will extend beyond fixtures at common law to include goods fixed to land and tenant's fixtures. They will also be treated as landholdings for assessing whether an entity is a landholder and calculating landholder duty.
- Foreign purchaser duty surcharge will rise from 7% to 8% from 1 July 2019.

- A discount on land transfer duty for commercial and industrial properties in regional Victoria will phase in gradually from 1 July 2019 to 1 July 2023 (10% discount from 1 July 2019 through to a 50% discount from 1 July 2023).
- From 1 July 2019, the corporate reconstruction exemption will be widened but also changed to a 90% concession rather than a full exemption (10% of the duty will remain payable). The provisions will now also apply to intra-group leasing transactions and the 3 year post-association requirement will be removed.
- Wholesale unit trust schemes will now be able to become public unit trust schemes (entitling them to a 90% relevant acquisition threshold instead of the usual 20% relevant acquisition threshold) but conversion duty will apply (10% of ordinary landholder duty).
- A 2.75% gold royalty will be introduced from 1 January 2020. Small miners will be exempt.
- There will be an increase in the duty on luxury passenger vehicles worth more than $100,000 in a scaled way from 1 July 2019.

Land Tax

- From 1 January 2020, the absentee owner surcharge will increase from 1.5% to 2%.
- Land tax will apply to vacant land attached to a principal place of residence from the 2020 land tax year.
- Concessional valuation rules that applied to land listed on the Victorian Heritage Register will be removed (to close a loophole in response to the GPO Case).

Payroll Tax

- The payroll tax-free threshold will be increased by $50,000 to $700,000 by 2022-23.
- The regional payroll tax rate will be cut to 25% of the metropolitan rate by 2022-23.

These changes will be effective from date of royal assent of the Bill (unless otherwise stated).

What these Changes mean for You

These changes may significantly impact taxpayers and businesses, especially those operating in the property industry. For example:

- The new economic entitlement provisions will mean that any party entering into an arrangement involving land over $1m, which involves sharing in the economic benefits of property without transfer of the underlying land, will need to consider the stamp duty consequences and costs of the arrangement. There will also be an incentive for parties to negotiate and clearly document the percentage of their economic entitlements, or potentially suffer the consequence of triggering duty on 100% of the underlying land. Companies and trusts holdings these interests will also need to be mindful of triggering duty on ownership changes to their structures.

- The most obvious arrangements effected are property development and joint venture arrangements, as these arrangements typically involve a sharing of profit. But, these provisions potentially also extend to fund management agreements, project management agreements, leasing agents agreements and even real estate agent sales contracts, or any other agreement where the fees are linked to a percentage of the sale price, rent or profits made from the property.

  Anyone currently negotiating these agreements should where possible act immediately to finalise and sign up their agreements before the Bill receives royal assent. This will be particularly important for developers given the high value of development land and the exposure to this new duty.

- The extension of the duty base to fixtures with a value in excess of $2m that are dealt with separately from a dutiable interest in land may catch an array of transactions. In addition to property transactions such as assignments and surrenders of ordinary commercial/industrial leases, the most common transactions are likely to be sales of businesses where there is a transfer or assignment of such leases. In the past, the SRO had a practice of ignoring interests in fixtures transferred with these leases under a sale of a business transaction, so no duty was triggered. Business sales may now trigger duty costs, also giving rise to the need for valuations, advice, lodgments and other compliance costs. Infrastructure projects may also be affected and particular care will need to be taken in relation to the timing of transfer of title to goods under EPC contracts. Other transactions that could potentially be caught include lease fit out incentive arrangements and make good arrangements which involve the transfer of ownership of fixtures and fittings.

- The increase in the absentee owner land tax surcharge will make it more expensive for a Victorian business to lease Victorian premises where the ultimate owner is a foreign investor. This essentially will make leasing premises from foreign investors less attractive than leasing from locally owned landowners. Tenants may need to revisit their leases to check whether these further increases can be passed on and, if so, consider renegotiating leases or moving premises. There is an ability to ask the Commissioner to exercise his discretion and exempt a property from the surcharge, but only if it can be demonstrated that the landowner contributes significantly to the Victorian economy, and generally only where the landowner has undertaken development rather than being a passive investor. Tenants may need to explore this more closely and pressure landlords to reduce their exposure or make applications on behalf of landlords.

- Although more restructure transactions will qualify for the corporate reconstruction duty exemption given the removal of the 3 year post-association requirement, restructuring will be more administratively complex and costly. The new rules will necessitate valuations of assets, giving rise to valuation issues and costs for corporate groups. Corporate groups will now need to weigh up the stamp duty and compliance costs with the benefits of the restructure.

- Managers of wholesale unit trust schemes will now need to monitor registers of unitholders, as these trusts can now be subject to conversion duty.

- Individuals owning their homes over more than one title will need to consider consolidating titles prior to 31 December 2019 or commence to have land tax levied on the land around their home.

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