Client Alert

April 2024

Australia: Important tax changes in Victoria continue – Commercial and Industrial Property Tax and stamp duty

In brief

On 20 March 2024, the *Commercial and Industrial Property Tax Reform Bill 2024* (Vic) ("**Bill**") was introduced into Victorian Parliament. The Bill, once passed, will reform the Victorian transfer duty and landholder duty regimes in respect of eligible commercial and industrial property ("**CIPT Regime**"), with transfer duty to be largely replaced by a Commercial and Industrial Property Tax (CIPT) of a flat rate of **1% of the taxable value** of the land (broadly, site value). There is no absentee surcharge on CIPT.

CIPT will be payable *in addition to* land tax.

In this issue

Key takeaways

- The CIPT Regime applies to land that has a "qualifying use". This includes Victorian land allocated to certain categories under the Australian Valuation Property Classification Code (AVPCC) by the Valuer General (broadly, this will include land of a commercial or industrial use), as well as certain land used for student accommodation ("**Qualifying Land**"). For mixed use properties, these will broadly be taken to be Qualifying Land where the sole or primary use is a "qualifying use".
- Qualifying Land enters the CIPT Regime on the occurrence of an "entry transaction" on or after 1 July 2024 (unless an exemption applies), including:
  - **Direct acquisition**: where a contract of sale to purchase 50% or more interest in Qualifying Land is entered into and completes
  - **Indirect "landholder" acquisition**: where a significant interest is acquired in a "landholder" company or unit trust scheme which holds freehold Qualifying Land such that a 50% or greater interest in that underlying landholding is transacted.
- Qualifying Land can also enter the CIPT Regime through certain "entry subdivisions" or "entry consolidations", where the land subdivided is land already in the CIPT Regime, or where the land is consolidated, 50% or more of the consolidated land area is land already in the CIPT Regime.
- At completion of the entry transaction, there will be a final duty liability that can be paid upfront as a lump sum, and in some circumstances through a government-facilitated transition loan, allowing the duty plus interest to be paid in instalments over 10 years.
- Where the *entire* interest in the property is acquired in the entry transaction, via a direct or indirect acquisition, then:
  - On any subsequent sale of the land – there will be no transfer duty payable
  - On any subsequent relevant acquisition in the landholder entity – landholder duty will not be payable on the value of the Qualifying Land held by that landholder. In other words, the Qualifying Land will be carved out of the duty base, with duty only being chargeable on the value of the other Victorian land held by the landholder, provided the property continues to have a "qualifying use".

- The CIPT will start 10 years after the entry transaction ("**Transition Period**"). That is, the sale of 50% or more interest in Qualifying Land (either directly or indirectly through a landholder transaction) the subject of the "entry transaction" will cause the entire property to be subject to CIPT after the transition period. The transition period for land that enters the CIPT Regime through entry consolidation, will start on the earliest entry date any of the land in the CIPT Regime were consolidated. The transition period for land that enters the CIPT Regime through entry subdivision, will start on the entry date of the parcel of land in the CIPT Regime before it was subdivided.
- CIPT will then be levied annually at a flat rate of 1% on the taxable value of the land, most commonly being site value. This is the unimproved value of land (i.e., excluding capital improvements such as buildings) which is determined by the Valuer-General Victoria as at 1 January each year. A concessional rate of 0.5% will be available for certain "build-to-rent" land eligible for a BTR benefit under the *Land Tax Act 2005* (Vic).
- After the 10 year transition period, there will be no transfer duty payable on any sale of Qualifying Land (or in a landholder acquisition – no landholder duty will be payable on the value of an underlying landholding of a landholder which is Qualifying Land), and whoever owns the property will be liable for the annual CIPT.
- Existing concessions and exemptions for duty (including the corporate reconstruction concession) will generally continue to be available when the reform commences.
- The reform will not apply to Qualifying Land purchased before 1 July 2024 (or if the purchase occurs pursuant to an agreement or arrangement entered into before 1 July 2024), and properties primarily used for a non-qualifying purpose such as residential, commercial residential, primary production, community services, sport, or heritage and culture purposes as coded by the Valuer General.

In more detail

How will the reform work?

Step 1: The "entry transaction" (i.e., Commencement of the CIPT Regime)

Transfer duty

The CIPT Regime will commence on a purchase of a 50% or greater interest in Qualifying Land where the contract for sale is entered into and completion both occur on or after **1 July 2024**, unless an exemption applies.

Where interests of less than 50% are acquired under separate transactions, the rules may aggregate these transactions for the purpose of determining whether a 50% or greater interest has been transacted.

For example, the rules will aggregate acquisitions of a percentage interest in the same property, including:

- Where contracts of sale entered are into within a 12 month period
- Where the same or associated persons in separate transactions acquire a percentage interest within a three year period.

Qualifying Land is land that:

- Has been allocated one or more of AVPCCs in the ranges 200 – 499 (commercial, industrial and extractive industry uses) or 600 – 699 (infrastructure and utilities uses)
- Has been allocated more than one AVPCCs, not all of which are in the above ranges, but is used solely or primarily for a use described in an AVPCC in the above ranges
- Is used solely or primarily for student accommodation.

Existing stamp duty exemptions will continue to be available when the reform commences. Property transactions that are eligible for the corporate reconstruction concession or exemption will not enter the regime. Similarly, transactions which receive stamp duty exemptions (such as transfers of deceased estates, transfers between spouses etc) will not enter the regime. However, subsequent transactions of such properties that are liable for stamp duty, will then enter the regime.

Landholder duty

Qualifying Land will also enter the CIPT Regime where 50% or greater interest in the underlying Qualifying Land is indirectly acquired under:

- A relevant acquisition of a significant interest in a landholder entity (broadly, an acquisition of at least 50% in a private company or 20% in a private unit trust scheme which holds Victorian land interests with an unencumbered value of AUD 1 million or more)
- At the time when the landholder holds (directly or through subsidiaries) freehold interests in Qualifying Land. Interests in lan d held pursuant to an uncompleted agreement (including a put and call option) for the sale of land may be disregarded if the agreement does not complete
- The acquisition is not otherwise exempt or eligible for corporate reconstruction concession or consolidation available for certain intra-group transactions.

Similarly to transfer duty, where interests of less than 50% are indirectly acquired in the underlying land the rules aggregate relevant acquisitions which occur within a three year period which are made by the same or associated persons.

Importantly, for there to be a qualifying landholder transaction, there must be an acquisition of an interest of 50% or more in the underlying Qualifying Land. In calculating whether the threshold is crossed, the following formula is to be used:

$$A \times B$$

Where:

A is the interest acquired in the landholder on which duty is chargeable

B is the interest the landholder holds in the Qualifying Land

In determining variable A, any exempt acquisitions on which landholder duty would not otherwise be chargeable are not counted .

Where a landholder holds multiple interests in Qualifying Land, the relevant acquisition in the landholder is taken to be a separate qualifying landholder transaction in respect of each interest in Qualifying Land.

Step 2: Final duty

On completion of the entry transaction, duty will be payable.

The purchaser can either:

- Pay the duty liability as an upfront lump sum payment
- If eligible, finance the duty through a government-facilitated transition loan, repayable (with fixed interest) over 10 years. According to the Victorian Treasurer, the transitional loan system is intended to free up capital which businesses can use to invest in expanding and employing more workers. The eligibility criteria is not contained in the Bill. However according to public Government statements:
  - The loan will be available to eligible purchasers who are Australian citizens/permanent residents or an Australian business.
  - The loan will be issued by Treasury Corporation of Victoria at a commercial interest rate.
  - The interest rate will be fixed over the 10-year term of the loan, and will be paid off in annual principal and interest repayments.
  - The first repayment will be due 12 months after settlement.
  - Early repayments will be allowed but break fees will apply.
  - If the property is sold before the end of the 10-year term, the balance of the loan will be paid off from the proceeds of the transaction.
  - The loan cannot be novated or transferred to a subsequent purchaser.

Where the entry transaction is the direct acquisition of 100% interest in the Qualifying Land, any subsequent direct acquisition of Qualifying Land will not be subject to transfer duty.

Where the entry transaction results in the direct acquisition of less than 100% interest in Qualifying Land (i.e., because 50% has been acquired causing the land to enter the CIPT Regime), subsequent transactions over the following three year period with respect to the remaining interests in land may be liable to transfer duty until the entire 100% interest in the land has been transacted.

Where:

- The entry transaction is the acquisition of an interest in a landholder entity in circumstances where 100% of the underlying Qualifying Land is transacted, or
- Where the entry transaction resulted in less than 100% interest in underlying land being transacted and the subsequent relevant acquisition occurs at least three years later,

landholder duty will generally not be payable in any subsequent relevant acquisitions on the value of the Qualifying Land held by that landholder. In other words, the Qualifying Land will be excluded from the duty base, with duty only being chargeable on the value of the other Victorian land held by the landholder (if any).

Step 3: 10 year transitional period

At settlement of the entry transaction, a 10 year transitional period will commence ("**Transitional Period**"). If the property is sold again during the transitional period, transfer duty will not apply provided the property continues to have a "qualifying use" (e.g., be used for commercial and industrial purposes). If the property is subsequently converted to a non-qualifying use (e.g., residential) then a change-of-use duty would apply, and if the property is sold while it has a non-qualifying use, stamp duty will again become payable. Property owners will be required to inform the State Revenue Office within 30 days of changing the use of the property. As noted above, if the initial purchaser opted for a transition loan to pay the final stamp duty, they will be obliged to make the remaining repayments prior to settlement of the sale.

Step 4: Commercial and Industrial Property Tax (CIPT)

The new CIPT will be payable after the end of the 10 year transitional period, regardless of whether that property has transacted again since the initial transaction.

The tax will be levied annually at a flat rate of 1% of the taxable value of the land (broadly, site value). A concessional rate of 0.5% will be available for certain "build-to-rent" land eligible for a BTR benefit under the *Land Tax Act 2005* (Vic).

There is no absentee surcharge on CIPT.

CIPT will be separate from and in addition to the existing land tax, which will continue to apply.

However, the administrative arrangements for the CIPT will largely align with those already in place for land tax and will be based on land ownership as at 31 December following the 10th anniversary of the entry transaction on or after 1 July 2024, and then as at 31 December for every subsequent year.

Therefore, whoever owns that property at the relevant time will be liable for the annual CIPT. Where there are joint owners of property, they will be jointly assessed as if it were owned by a single person.

Similar to land tax, the annual CIPT will be able to be paid by instalments.

Information on whether a property has entered the CIPT Regime, including the amount of any outstanding CIPT will be included on the Property Clearance Certificate issued by the State Revenue Office.

Relevantly:

- The CIPT will constitute a first charge on the land.
- If the CIPT is not paid, the Commissioner may serve a written notice on an unrelated lessee, mortgagee or occupier on the land, requiring the other person to pay an amount of unpaid CIPT. However the Commissioner cannot require an unrelated lessee or occupier to pay an amount that is greater than the amount of rent that the person is required to pay to the taxpayer, or to pay an amount before the rent is due to be paid to the taxpayer.
- The CIPT cannot be passed on in a residential rental agreement or under the provision of any contract of sale for the land.

Next steps

Given the reform applies from 1 July 2024 and will not apply to Qualifying Land purchased before 1 July 2024 (or if the purchase occurs pursuant to an agreement or arrangement entered into before 1 July 2024), businesses should consider how the reform will impact any pending transactions.

If you require assistance in relation to the above, or would like further information on the amendments, please do not hesitate to contact us.

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