

Victorian duty changes now law

Significant changes to Victorian duty provisions are now law. Industry advocacy since the Victorian Budget announced the amendments calling for greater consultation regarding the intent, application and potential modifications to the changes have been largely unsuccessful.

The expanded Economic Entitlement provisions have passed both Victorian Houses and is effective (from Royal Assent) whereas the corporate reconstruction provisions are proposed to commence 1 July 2019.

2019/20 State Budget

The Victorian Government handed down its 2019/20 State Budget on 27 May 2019. There were a number of revenue raising announcements including:

- An increase in additional duty payable by foreign purchasers of Victorian residential property (now 8% - previously 7%)
- An increase in land tax absentee owner surcharge for foreign landowners (now 2% - previously 1.5%).

Two further measures, however, have far more significant and far reaching implications:

- The introduction of expanded economic entitlement provisions
- Removal of duty exemption for corporate group restructures and replacement with a 10% concessional rate of duty payable.

Economic entitlement landholder provisions

Under the existing Victorian economic entitlement provisions, a duty liability will arise where a person acquires an economic entitlement of 50% or more in a Victorian private landholder (that is a company or unit trust). An economic entitlement arises where the parties to the arrangement are entitled, amongst other things, to participate in the dividends, income, rents, profits, capital growth or proceeds of the land held by the private landholder. The 50% threshold is calculated by reference to the total land held by the landholder.

The changes broaden the scope of the existing economic entitlement rules by:

- Removing the 50% economic entitlement threshold; and
- Applying to an interest in a discrete piece of land rather than interest in a landholder, i.e. can apply to land held by any entity type.

This means an 'acquisition' of any economic entitlement in Victorian land (with an unencumbered value greater than \$1m) will be subject to Victorian duty.

What might be an economic entitlement?

Any contract entered where a party is rewarded directly or indirectly by the value of Victorian land would seem to be prima facie be caught by the proposals. For example, the new provisions could result in duty for real estate agents on commissions or fund managers who derive management fees by reference to capital growth of property held. And, of course, the proposals will apply to many property developers irrespective of any ownership thresholds.

Corporate reconstructions

The Victorian Government also announced the abolishment, from 1 July 2019, of corporate reconstruction relief. The Government will instead replace the exemption with a concession which will be 10% of the usual duty.

Potential impact

Given the broad application of the economic entitlement announcements, all participants in the property industry have the potential to be impacted. Organisations with reward structures linked to asset performance need to be especially mindful.

Any organisation, with Victorian property, seeking to reorganise their group will need to obtain valuations and pay duty at the new 10% "concession" rate.



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