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Key Duty and Tax Changes for Australia's Victorian Property Purchasers: Bill Released

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Following our alert on 24 March 2017, the ***State Taxation Acts Amendment Bill 2017 (Vic) (Bill)*** has now been released and is currently before ***Australia's Victorian Parliament***.

We have been following the proposed changes to stamp duty, the first home owner grant and property taxes since the housing initiatives were announced by the Victorian Government in March 2017. The release of the Bill gives important insight into how the changes are intended to operate, including transitional arrangements for existing contracts of sale.

If the Bill passes, the majority of the changes will come into effect for contracts entered into from 1 July 2017.

The changes proposed by the Bill are significant and will require careful consideration by property developers in particular. Developers should be preparing for the impact of the changes on purchaser demand, particularly for off-the-plan purchases by investors and foreign purchasers. Demand by first home buyers may be deferred until after 1 July 2017 to take advantage of the changes.

Transitional Arrangements

A key unknown issue when the housing initiatives were announced was whether the changes would apply to nominations made under existing contracts.

The Bill clarifies that the current off-the-plan duty concession, principal place of residence (**PPR**) duty concession and first home buyer duty reduction will continue to apply to any dutiable transactions that occur under contracts entered into before 1 July 2017.

Where a contract is entered into before 1 July 2017 and a nomination of a substitute purchaser occurs after 1 July 2017, the new provisions will not apply to the subsequent transfer to the nominee.

Changes to the Off-the-Plan Duty Concession

Under the Bill, for contracts entered into from 1 July 2017, the off-the-plan duty concession under the *Duties Act 2000* (Vic) (**Duties Act**) will now only be relevant to calculating the dutiable value to determine whether a purchaser is eligible for the:

- current PPR concession (for dutiable values up to AUD550,000)
- proposed first home buyer duty exemption (for dutiable values up to AUD600,000)
- proposed first home buyer duty concession (for dutiable values between AUD600,000 and AUD750,000).

For eligible first home buyers or PPR purchasers, the dutiable value of the property will be calculated after applying the off-the-plan concession. For off-the-plan purchases where construction has not commenced, this means that residential properties with significantly higher contract prices may now be eligible for the PPR concession or first home buyer duty exemption or reduction, if the land value (after deducting construction or refurbishment costs) is below the relevant threshold.

The off-the-plan concession will no longer be available for purchases of residential property with a dutiable value over the above thresholds. It will also no longer be available for other purchases of property, including investment properties or purchases by foreign purchasers.

First Home Buyer Duty Exemption or Concession

The Bill amends section 57JA of the Duties Act to abolish stamp duty for purchases of new or existing properties under a dutiable value of AUD600,000 by eligible first home buyers. Eligible purchases of property with a dutiable value between AUD600,000 and AUD750,000 will also receive a tapered concession applied on a sliding scale.

The exemption and concession will apply to contracts entered into on or after 1 July 2017.

Both the exemption and concession will be subject to the residence requirement that currently applies to the PPR duty concession. At least one purchaser must occupy the property as their PPR for at least 12 months commencing within 12 months of taking possession of the property.

Doubling of First Home Owner Grant in Regional Victoria

The Bill amends section 18 of the *First Home Owner Grant Act 2000* (Vic) to increase the first home owner grant to AUD20,000 for new homes built in regional Victoria with a consideration up to AUD750,000.

The increased amount will apply for contracts entered into on or after 1 July 2017 and before 1 July 2020.

Eligible first home buyers of new homes in metropolitan Melbourne will continue to receive the current grant of AUD10,000.

Vacant Residential Land tax in Melbourne

Under the Bill, a new section 34A will be introduced to the *Land Tax Act 2005*(Vic) to impose an annual vacant residential land tax on vacant residential properties within the municipalities of Banyule, Bayside, Boroondara, Darebin, Glen Eira, Hobsons Bay, Manningham, Maribyrnong, Melbourne, Monash, Moonee Valley, Moreland, Port Philip, Stonnington, Whitehorse and Yarra.

A residential property will be vacant if it has not been used or occupied for more than six months in the preceding calendar year by:

- the owner as their PPR
- the owner's permitted occupant as their PPR

or

- a natural person under a lease or short-term letting arrangement.

The six months does not need to be in a continuous period, but can be aggregated.

The tax will apply from 1 January 2018 and will be applied at a rate of 1% of the capital improved value of the land.

The Bill includes exemptions for:

- holiday homes used and occupied for a period of at least four weeks (whether continuous or aggregate) in the relevant year. The holiday home exemption can only be used in respect of one holiday home in any tax year
- land that was used and occupied for the purposes of attending the owner's place of business or employment (where the place of business is within the relevant municipalities) for an aggregate period of at least 140 days

- land that changed ownership in the year preceding the tax year
- land that became residential land during the tax year
- land on which a residence has been under construction or renovation for more than two years, where the Commissioner of Taxation is satisfied that there is an acceptable reason for the construction or renovation not being completed by the end of the year preceding the tax year
- commercial residential premises
- residential care facilities
- supported residential services
- retirement villages.

An owner of vacant residential land must notify the Commissioner before 15 January each year. The State Revenue Office intends to undertake monitoring and compliance activities to ensure that vacant residential properties are being declared.

Duty Exemption Abolished for Transfers of Non-Residential or Investment Properties Between Spouses

The Bill also amends section 43 of the Duties Act to abolish the stamp duty exemption for transfers of non-residential or investment properties between spouses or de facto partners. The change will apply to contracts entered into from 1 July 2017.

Transfers of residential property will still be exempt from duty provided that at least one spouse or de facto partner occupies the property as their PPR for a continuous period of at least 12 months commencing within the 12 month period immediately after the transfer.

No changes have been made to the duty exemptions for transfers following the breakdown of a marriage or de facto relationship.

Next Steps

The Bill is currently being considered by the Victorian Legislative Assembly. K&L Gates will continue to monitor any key amendments to the Bill.