

# LAND TAX ADJUSTMENTS AREN'T STANDARD

Be alive to land tax adjustment clauses not using single holding basis.

When acting in conveyancing transactions, practitioners should always consider and advise clients on whether land tax is adjustable at settlement, and the basis and timing of the adjustment.

Typically, land tax is adjusted on a single holding basis, but more recently the LPLC has been alerted to instances of contracts of sale specifying that tax is to be adjusted on a higher proportional basis. The LPLC has also seen contracts requiring purchasers to pay land tax from the date the contract is signed rather than from settlement. As some off-the-plan developments can take years to complete, this may result in a purchaser paying the vendor's land tax while construction is completed.

In these scenarios, the land tax liability may be higher than expected and could impact the purchaser's finance arrangements or their decision to proceed. As such, practitioners should give timely advice to clients in these instances to help them make the right decisions and to avoid professional negligence claims.

## Calculation of proportional and single holding land tax

Victoria's State Revenue Office has a land tax web page (<https://www.sro.vic.gov.au/land-tax-assessment-example>) which explains how to calculate land tax.

Land tax is imposed at progressive rates (ie, starting at \$275 plus 0.2 per cent for land valued at \$250,000, increasing exponentially up to \$24,975 plus 2.25 per cent for land valued at \$3 million and more). The tax is calculated on the aggregate value of the vendor's land and then apportioned across their total land holdings. As such, a vendor with multiple land holdings may pay significantly more land tax on an individual property than if the vendor had only owned that one property. In these circumstances, a purchaser may be exposed to a higher land tax adjustment merely because the vendor owns other land.

In recognition of this issue, it is common for contracts of sale in Victoria to include a general condition providing for any land tax adjustment at settlement to be calculated on a single holding basis. This means that the property being sold is treated as if it were the only land owned by the vendor and unaffected by a higher tax rate resulting from the vendor's other land.

## Recent examples

Nonetheless, the LPLC is aware of standard form contracts, particularly in the context of off-the-plan sales, that have been modified to require land tax to be assessed on a proportional basis. In a recent example referred to the LPLC, a diligent practitioner identified an adjustment to be paid by the purchaser calculated on a proportional basis resulting in a payment of \$2000 more than if it was calculated on a single holding basis. In another recent example, the unexpected differential in land tax liability from paying proportional tax was around \$4000.

Practitioners should always advise purchasers of the basis and timing of land tax adjustment before entering a contract of sale. Consideration of this issue should also be built into practitioners' conveyancing processes, checklists and precedent letters of advice to clients.

Identifying land tax issues at an early stage will allow the purchaser to consider other potential options such as negotiating the removal or substitution of the proportional tax adjustment clause, stipulating a cap on the amount of tax to be paid or otherwise not proceeding with the purchase.

Even if the contract has already been signed, practitioners should still advise the purchaser of the issues as the purchaser may need to make allowance for the extra amount payable, or there may be other legal options available to withdraw from the contract. ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit [www.lplc.com.au](http://www.lplc.com.au).

## TIPS

- Always carefully review contracts even if they appear to be standard form.
- Be mindful of the potential for a purchaser to incur higher land tax liabilities if the contract of sale prescribes tax to be calculated on a proportional basis and/or adjusted from the contract date rather than the settlement date.
- Advise your clients of the basis and timing of land tax adjustment at an early stage before entering the contract.
- Incorporate consideration of land tax adjustment in your firm's processes, checklists and precedent letters of advice.

