February 2025

PROPERTY TAXES GUIDE

VICTORIA

LEGAL PRACTITIONERS' LIABILITY COMMITTEE

LEGAL PRACTITIONERS' LIABILITY COMMITTEE

Contents

Introduction

Practitioners are often engaged by a client to 'do the conveyancing' associated with the sale or purchase of real property. Typically, they are not specifically instructed to provide taxation or stamp duty advice, but there is usually no transaction relating to real property that doesn't have taxation or duty implications.

The purpose of this guide is to make practitioners aware of the potential taxes and duties that may apply to property dealings in Victoria, so they can ask appropriate questions and, if relevant and required, alert and advise their client.

The guide is not a comprehensive resource on the intricacies of tax and duty issues, but an overview to improve awareness with links to additional resources for more information. It also identifies some common claims and areas of risk that practitioners should focus on when completing work with tax and duty implications.

Actions to reduce risk

- Look for the tax and duty implications associated with the transfer of real property and associated transactions (like share transfers) to alert clients and, if appropriate and required, provide advice or direct the client to seek expert advice.

- In addition to this guide, read the ATO and SRO guidance and the information linked in this guide to improve your understanding and awareness.

- Identify complexities beyond your expertise and refer clients for expert advice.

- Use a checklist or prompt at the start of a matter to identify tax and duty issues.

- Always check the details in the legislation and SRO guidelines before advising clients and keep records to confirm any advice given.

- Establish, update and maintain comprehensive advice letters and resources that you can adapt for each specific client matter to ensure relevant advice is given to clients and confirmed in writing.

- Maintain a focus on tax and duty in all property and property conveyancing matters.

Capital Gains Tax

Overview

Main Legislation

Income Tax Assessment Act 1997 (Cth).

Capital Gains Tax (CGT) is a tax on the net gain on the disposal of a CGT asset. The gain is added to income and paid as part of the income tax system. There are many exemptions including pre-CGT assets, personal use assets (your principal residence) and roll-overs, but such exemptions are based on complex criteria. CGT commenced on 20 September 1985.

CGT claims

CGT claims LPLC sees typically arise when a client believes that it was their lawyers' role to both raise and explain the possible CGT consequences of a transaction, allowing the client to take these tax consequences into account before making their decision to act. Most claims involve the transfer of land, especially where the practitioner is not focused on the commercial nature of the transaction. This includes scenarios such as an inter-family transfer of land that can trigger a CGT event or transfers from a deceased estate where roll over relief for CGT does not apply.

More information on CGT

Capital Gains Tax | Australian Tax Office (ATO)

Beware of tax issues when advising your client | LPLC article

CGT withholding obligations

To support the timely collection of CGT, the Federal Government introduced obligations on purchasers of real estate to withhold and pay part of the purchase price of the real estate transaction to the ATO, to be applied to the vendors potential CGT obligations.

Withholding originally commenced in 2016 at an acquisition price of $2M or more, but then reduced to an acquisition price of $750,000 or more from 1 July 2017. Further changes from 1 January 2025 have removed any threshold acquisition price and increased the rate to 15%. It is anticipated these changes will apply to contracts for the disposal of real property entered from 1 January 2025. Details are in the *Treasury Laws Amendment (Tax and other Measures No. 1) Act 2024* which amends schedule 1 of the *Taxation Administration Act 1953 (Cth)*.

From 1 January 2025 withholding will apply to all Australian real property transactions regardless of value. It will require the purchaser to withhold and pay 15% of the acquisition price to the ATO, unless the vendor provides a valid clearance certificate or a withholding variation at or before settlement.

The legislation also applies to some indirect interests in Australian property including leases, mining and quarrying rights, and options to acquire interests in such property. Note that it is currently being considered whether the rules will extend to other types of similar assets. Withholding can apply to property transactions in conveyancing, family law, deceased estates and commercial transactions.

More information on CGT withholding obligations

Foreign resident capital gains withholding overview | Australian Tax Office.

Goods and Services Tax

Overview

Main legislation

A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act).

Goods and Services Tax (GST) is a 10% value added tax payable on supplies of most goods and services. Registered businesses (and other registered entities that carry on an enterprise) are responsible for collecting GST and remitting it to the ATO. Those in the supply chain are generally entitled to claim a GST credit for any GST paid in respect of their purchases (subject to some limitations and certain criteria being satisfied). However, the end consumer is not entitled to claim GST credits. Registered entities report their GST and GST credits in a business report known as a Business Activity Statement (BAS), which they are required to lodge with the ATO.

In general, GST applies to transactions that involve a supply (in any form whatsoever) of goods and services by an entity that is registered (or required to be registered) for GST, including the sale of real estate and businesses. However, there are many exempt transactions and complex rules that practitioners must understand when representing clients in these matters. It is crucial for practitioners to always assess whether GST applies to the transaction. If it does apply, they should ensure that their client is informed of the GST consequences, and that the contract and any associated documents accurately represent the client's instructions.

Certain supplies other than goods and services can also be subject to GST, such as the provision of advice, or the creation or release from an option or obligation (such as an option to purchase).

GST claims

GST claims LPLC sees usually arise during the sale of commercial or new residential land and the sale of businesses or business assets. The reasons for these claims can include:

- **Legal issues**

  Failure to identify and advise about the payment of GST on the transaction or failing to verify the details to qualify for an exemption. For example, failing to check the registration of both the vendor and purchaser for GST to apply the going concern exemption.

- **Simple oversight**

  Failure to include appropriate clauses in the contract or to advise on the impact of such clauses if acting for a purchaser.

More information on GST

[GST and property | Australian Tax Office]

[GST | LPLC]

[GST Checklist | LPLC]

[Take Steps to Avoid GST Claims | LPLC LIJ Article]

LPLC GST advice service

LPLC provides a GST advice service. The service provides practitioners insured with LPLC with expert advice for client-related GST queries. The service is intended to cover most queries from practitioners but will not cover complex advice.

GST withholding

GST withholding provisions apply to contracts of real estate or long-term lease transactions in certain circumstances. Where these provisions apply, purchasers are required to withhold part of the purchase price and remit it to the ATO.

GST withholding does not apply if the vendor is neither registered nor required to be registered for GST. However, the vendor may still be required to provide a written notice to the purchaser before making a supply.

Broadly, for GST withholding to apply, the relevant sale or long-term lease must be made in the course or furtherance of an enterprise carried on by a vendor / lessor that is registered (or required to be registered) for GST and must be a supply of:

- 'new residential premises' that have not been created through substantial renovations and are not commercial residential premises (e.g. motel — see *GSTR 2012/6* for the ATO's guidance on this definition); or
- 'potential residential land' that is included in a property subdivision plan **at the time of supply** (i.e. settlement), where:
  - the land does not contain any building that is in use for a commercial purpose) and
  - the recipient (i.e. purchaser) is not registered for GST or does not acquire the land for a 'creditable purpose'.

'Potential residential land' means land that is permissible to use for residential purposes, but that does not contain any buildings that are used for 'residential premises'.

Broadly, a purchaser acquires land for a 'creditable purpose' to the extent that:

- the purchaser acquires the land in carrying on its enterprise (i.e. usually this means acquiring it for a business purpose)
- the land will not be used to make (or in relation to making) 'input taxed' supplies
- the acquisition of the land is not of a private or domestic nature and
- the purchaser is not acquiring the land under the GST 'margin scheme'.

Various other terms are defined in the GST Act and may require careful consideration in the context of a particular client matter.

Importantly, a purchaser's withholding obligation is generally not affected by a vendor's failure to provide a withholding notice. Accordingly, when acting for a purchaser, practitioners should ensure their client complies with the withholding obligations even if the vendor fails to comply with the vendor notice obligations.

When is a vendor withholding notice required?

A vendor of residential premises or potential residential land must give a purchaser a written notice before settlement stating whether withholding is required and, if so, providing specified information. Importantly, this requirement applies to **all residential land** (not just new residential land) **except for:**

- commercial residential premises (as defined)
- potential residential land where the purchaser is registered for GST and acquires the land for a creditable purpose.

See: *section14-255(2) of Schedule 1 to the Taxation Administration Act 1953 (Cth)*.

This means the vendor must give a withholding notice for most existing residential land even though it will say that the purchaser is not required to withhold GST.

Failure to give a required withholding notice is a strict liability offence for which a penalty may apply.

More information on GST withholding

GST at settlement | Australian Taxation Office

GST property settlement online forms and instructions | Australian Taxation Office GST withholding flowchart | LPLC

Transfer duty and Landholder duty

Overview

Main legislation

Duties Act 2000 (Vic).

Taxation Administration Act 1997 (Vic) (which contains provisions for the administration and enforcement of Victoria's taxation laws).

Note that the summary below only relates to Victorian duty (each Australian state and territory has its own duties legislation).

Transfer duty is a tax on 'dutiable transactions' in respect of 'dutiable property', with each of these concepts being defined in the Duties Act. The top standard rate of Victorian duty is currently 6.5%, however 'foreign purchaser additional duty' (being an additional 8% on top of the standard duty) can apply to the transfer of 'residential property' to a 'foreign purchaser' (as those terms are defined in the Duties Act).

The most common example of a dutiable transaction is a transfer of land that occurs upon settlement of a contract of sale. Other types of dutiable transaction can include (but are not limited to) a declaration of trust relating to dutiable property, a surrender of dutiable property or another type of transaction that involves (or is deemed to be) a change in beneficial ownership of dutiable property. Further, the acquisition of an 'economic entitlement' may also constitute a dutiable transaction.

Importantly, dutiable transactions can sometimes arise even where there is no dealing in freehold land involved. For example, the grant or the transfer of a leasehold interest can in certain circumstances constitute a dutiable transaction.

Further, indirect dealings in interests in land can in certain circumstances give rise to a separate type of duty —'landholder duty'. Broadly, where a company or trustee of a unit trust holds interests in land (including improvements/items fixed to land) with an unencumbered market value of $1m or more:

- the company or unit trust (as applicable) will be a 'landholder' for the purposes of the Duties Act and
- where a person acquires or commences to hold a 'significant interest' in the landholder, a liability to landholder duty can arise (for which the person and the landholder are jointly liable) — note that:
    - the 'significant interest' is generally 50% or more in the case of companies or 20% or more in the case of private unit trusts (the threshold generally increasing to 90% or more in the case of listed landholders) and
    - percentage interests must be determined having regard to interests acquired or held by 'associated persons' and under 'associated transactions' — consideration of these concepts can often require expert input.

Landholder duty can arise in limited circumstances even when the relevant 'significant interest' threshold outlined above is not met. In particular:

- the acquisition of 'control' in a private landholder can also give rise to landholder duty (this can require reference not only to rights attaching to shares / units, but also to the rights and practical influence obtained by persons other than shareholders/unitholders) and
- a separate analysis is required if a person acquires (either alone or together with an associated person) an 'economic entitlement' in a private landholder — this requires reference to shares/units held in the landholder and extends to any other rights to participate in the dividends or income of the private landholder (and certain derivative rights relating to the landholder — e.g. a right to receive an amount determined by reference to the dividends or income of the private landholder).

Exemptions/concessions: Various exemptions or reduced rates of duty may be available in certain circumstances, however these require strict conditions to be satisfied. For example, for the purposes of the 'spouse and partner exemption' there must be compliance with sections 43, 43AA, 43A and 43B of the Duties Act including the transfer must be between spouses or genuine domestic partners (no other person can take or be entitled to take an interest in the property).

- the transfer must be for no consideration (special rules apply in respect of mortgages)
- the land must be residential property
- at least one person in the relationship must generally occupy the land as their principal place of residence for a continuous period of at least 12 months commencing within the 12-month period immediately after the transfer.

Other common examples of transactions eligible for an exemption or concession from duty include, but are not limited to:

- 'off-the-plan' duty concessions
- transfers from the trustee of a trust to a beneficiary or a newly appointed trustee
- transfers occurring following the breakdown of a marriage or domestic relationship
- transfers from deceased estates and
- certain transfers involving superannuation funds.

It is not uncommon for the State Revenue Office (SRO) to audit exemption and concession claims (sometimes years later) to check for compliance.

More information on transfer duty and landholder duty

Land transfer duty | State Revenue Office

Landholder duty | State Revenue Office

Tax issues checklist | LPLC

Duty Claims

Double Duty

Every practitioner involved in dealings in Victorian land must be aware of the 'sub-sale' rules contained in Part 4A of Chapter 2 of the Duties Act.

If a person or entity enters a contract (or option) to purchase land and then nominates (or otherwise arranges for) a substitute, new or different purchaser to complete the land transfer, in certain circumstances the SRO may assess duty on both the first purchaser and the nominee/ultimate transferee (i.e. two separate assessments of duty may arise, commonly referred to as 'double duty').

Broadly, 'double duty' can arise if:

- the nominee/ultimate transferee (referred to in the Duties Act as the 'subsequent purchaser') or an associate gives or agrees to give 'additional consideration' in order to obtain the transfer right. While the most common example of additional consideration is a nomination fee, this concept is broadly defined and expert input may be required to confirm whether there has been or will be additional consideration. For example, additional consideration can include a 'parallel arrangement'. Such arrangements can arise where the nominee/subsequent purchaser (or an associate of the nominee/subsequent purchaser) engages the first purchaser (or an associate of the first purchaser) to construct (or arrange the construction of) improvements to the property and/or
- 'land development' occurs after the contract/option is signed and before the nomination (or other relevant transaction) occurs — note that the concept of 'land development' is defined very broadly — it can occur even if nothing physical is done to the land, it does not of itself need to increase the value of the land and it can generally be undertaken by any person (i.e. it could be a person other than the original named purchaser). The Duties Act defines 'land development' to include:
    - preparing a plan of subdivision or taking steps to have it registered
    - applying for or obtaining a planning permit
    - requesting a planning authority to prepare an amendment to a planning scheme that would affect the land
    - applying for or obtaining a building permit or approval
    - doing anything on the land for which a building permit or approval would be required
    - developing or changing the land in any way which would increase its value.

More information on 'Double Duty'

Sub-sales and duty | State Revenue Office

Sub-sales | State Revenue Office

Nomination and the risk of double duty | LPLC

Foreign purchaser additional duty

Where a 'foreign purchaser' enters a dutiable transaction in respect of 'residential property' (each of those terms being specifically defined in the Duties Act), 'foreign purchaser additional duty' (FPAD) will generally apply. FPAD is currently 8% of the dutiable value of the property (this being in addition to the standard rate of duty, meaning that duty of up to 14.5% can be imposed where FPAD applies).

When advising clients, practitioners must have regard to the specific definition of 'residential property' in the Duties Act. This definition is broad, noting that it can include land which is intended to be developed as residential in the future (and notification requirements can apply where non-residential land becomes 'residential' after a transaction occurs).

Broadly, an individual will be a 'foreign purchaser' if they are not an Australian citizen, the holder of a permanent visa within the meaning of section 30(1) of the *Migration Act 1958 (Cth)* or a New Zealand citizen who is the holder of a special category visa (and physically in Australia) within the meaning of section 32(1) of the *Migration Act 1958* (Cth).

Further, companies and trusts can also be 'foreign purchasers' if they have foreign ownership or control (or if they are incorporated offshore). Foreign status in such circumstances generally requires foreign ownership or voting power of more than 50%, however a detailed analysis of direct or indirect holdings and control may sometimes be required.

In the case of discretionary trusts (often referred to as 'family trusts'), a trust will be treated as a 'foreign trust' if the trustee has a power or discretion to distribute capital to any person or entity that is 'foreign' for the purposes of the Duties Act (even if such person or entity is an unspecified member of a class of objects of the trust). Accordingly, it is critical that a practitioner reviews the terms of the relevant trust deed (and considers the potential need for amendments) prior to entry into any transaction documentation.

More information on foreign purchaser additional duty

Foreign purchasers of property | State Revenue Office

Foreign purchaser additional duty — does it apply | LPLC information and flowchart

Foreign purchaser additional duty for discretionary trusts — what you need to know | LPLC

Economic entitlements

The most common type of dutiable transaction is the transfer of land. However, in cases involving land with an unencumbered market value that exceeds $1m, regard must be had to the 'economic entitlement' duty rules set out in Part 4B of Chapter 2 of the Duties Act.

Broadly, a person will acquire an 'economic entitlement' if they acquire an entitlement to any one or more of the following:

- to participate in the income, rents or profits derived from the relevant land
- to participate in the capital growth of the relevant land
- to participate in the proceeds of sale of the relevant land
- to receive any amount determined by reference to the above or
- a right to acquire any entitlement outlined above.

In such circumstances, the person will generally be deemed to have acquired beneficial ownership of the relevant land (the relevant percentage can be up to 100% but this can be subject to the Commissioner of State Revenue determining a lesser percentage as appropriate).

Development agreements are the most common example of where a dutiable economic entitlement may arise, however the rules are broad enough to capture many and varied scenarios.

These provisions are nuanced and complex. Practitioners who are not experienced in this work should refer clients for expert advice.

Practitioners should note that the economic entitlement rules outlined above are in addition to separate economic entitlement rules applicable in the landholder duty context (refer section 81 of the Duties Act).

More information on economic entitlements duty

Economic entitlements | State Revenue Office

Economic entitlement in land — what you should know | LPLC

Trusts

Various exemptions from duty may be available in the context of transfers of land to and from trustees of trusts. These exemptions are set out in Part 5 of Chapter 2 of the Duties Act.

These exemptions require the satisfaction of strict (and sometimes complex) criteria. For example, in the case of transfers of land from the trustee of a discretionary trust or a unit trust to a beneficiary, one criterion (among many) is that the transfer cannot be for consideration (whether that be cash, or non-cash such as the assumption of a mortgage). Further, not all beneficiaries of a trust can qualify for exemption (only beneficiaries which meet a series of criteria can qualify).

This is not an area where a general understanding of basic principles is enough. Any practitioner advising on these exemptions must have regard to the detailed provisions, case law and SRO guidance. The terms of any trust deed and the proposed transaction documents should be reviewed carefully prior to proceeding.

Commercial and Industrial Property Tax

Overview

Main legislation

Commercial and Industrial Property Tax Reform Act 2024 (Vic).

Duties Act 2000 (Vic).

Taxation Administration Act 1997 (Vic) (which contains provisions for the administration and enforcement of Victoria's taxation laws).

A property will generally enter into the new 'commercial and industrial property tax' (CIPT) regime if:

- the relevant contract of sale is entered into on or after 1 July 2024
- the property has a qualifying 'commercial' or 'industrial' use at the date of settlement
- 50% or more of the property transacts (either directly, or indirectly e.g. by way of share or unit sale)
- the transaction is not exempt from stamp duty.

Land can enter into the CIPT regime in certain circumstances where it is not directly dealt with. In particular, where a 'relevant acquisition' occurs for landholder duty purposes and that acquisition relates to an (indirect) interest of 50% or more in the land, that land will generally enter into the CIPT regime.

Where the CIPT regime applies to a property, the first purchaser of that property on or after 1 July 2024 will generally be the last purchaser to ever pay stamp duty in respect of that property (provided that the property continues to have a qualifying commercial or industrial use). Duty may still arise in certain circumstances involving 'non-standard' transactions in respect of CIPT land (e.g. having regard to the grant of or other dealings in leases, interests in items fixed to land or the grant of economic entitlements) – expert input may be required in such circumstances.

CIPT will then become payable annually, with the first CIPT year being 10 years after that post 30 June 2024 first transaction (whether or not the property is transacted again in the meantime). The CIPT will apply at a flat per annum rate of 1% of the unimproved land value (with no tax-free threshold), unless the property is qualifying build-to-rent land (in which case a 0.5% p.a. rate will apply).

As part of the transition to the new regime, eligible first purchasers will have a choice of paying the final stamp duty in respect of the property by:

- paying upfront (i.e. the standard approach under the current stamp duty regime) or
- using a government-facilitated transition loan with a 10 year repayment term (noting that interest will accrue on such loan and the loan will be repayable sooner than 10 years if the property is transacted within 10 years).

Various criteria must be satisfied in order for a purchaser to be eligible for a transition loan. For example, evidence of finance pre-approval must be provided and the value of the relevant property can be no more than $30m. Further, certain types of taxpayer (e.g. trustees of self-managed superannuation funds and foreign purchasers) are ineligible. Criteria are published by Treasury Corporation Victoria.

More information on CIPT

Commercial and Industrial Property Tax | State Revenue Office

Commercial and Industrial Property Tax reform in Victoria — What you need to know | LPLC

Commercial and Industrial Property tax questions and answers | LPLC

Land Tax

Overview

Main legislation

Land Tax Act 2005 (Vic).

Taxation Administration Act 1997 (Vic) (which contains provisions for the administration and enforcement of Victoria's taxation laws).

Note that the summary provided here only relates to Victorian land tax (each Australian state has its own land tax legislation).

Land tax is assessed on the unimproved value of most types of land ('taxable land') owned on 31 December each year. A progressive scale of land tax rates applies (the higher the value of taxable land, the higher the effective tax rate). Higher effective tax rates can also apply in the case of land held in trusts ('trust surcharge rates') and land held by 'absentee'/foreign individuals or entities (in which case the 'absentee owner surcharge' generally applies).

For the 2024 land tax year, the top rate of standard land tax is 2.65% p.a. and the 'absentee owner surcharge' rate is 4% p.a. (meaning a top rate of 6.65% p.a. for absentee owners of land).

Where an individual or company holds more than one parcel of taxable land, the taxable value of all parcels will generally be aggregated for the purposes of applying the progressive scale of land tax rates.

Further, related corporations can often be grouped for the purposes of applying the progressive scale of land tax rates.

Various land tax exemptions are available in certain circumstances (e.g. for a principal place of residence, primary production land, retirement villages and land used and occupied by charitable institutions exclusively for charitable purposes). However, these exemptions are subject to satisfying strict criteria.

Land tax claims

Clients sometimes pursue practitioners, alleging that an unexpected land tax assessment or arrears of land tax arose due to the practitioner's failure to provide proper advice or failure to provide correct details to the SRO.

A common scenario is when a client does not inform the practitioner that the purchaser of the land is acting in a trustee capacity (e.g. for a discretionary trust, unit trust or superannuation fund). As a result, a 'notice of trust acquisition of an interest in land' is not lodged with the SRO as required. When the trustee capacity is detected by the SRO at a later point, land tax arrears (potentially with penalties) can be assessed.

To prevent these oversights, it is crucial to ask the client if they are buying the property in a trustee capacity.

No adjustment of land tax from 1 January 2024

The *Sale of Land Act* (Vic) has recently been amended to include a new section 10G, which generally prohibits a vendor from seeking to adjust/apportion for land tax in contacts of sale entered on or after 1 January 2024. However, this prohibition does not apply if the sale price including GST exceeds $10 million (to be indexed annually).

More information on land tax

Land tax | State Revenue Office

Snapshot of Major Victorian Property Tax Changes effective from 1 January 2024 | LPLC

Vacant Residential Land Tax

Overview

Main legislation

Land Tax Act 2005 (Vic) (with amendments made by the *State Taxation Acts and Other Acts Amendment Act 2023* (Vic)).

Vacant residential Land Tax (VRLT) is a tax on 'residential land' that is 'vacant', each of these concepts being defined in the Land Tax Act 2005 (Vic).

Importantly, where applicable, VRLT is imposed in addition to general land tax (as described above). Further, unlike general land tax (which is imposed on the unimproved value of land), VRLT is imposed on the capital improved value of the relevant land. The VRLT tax rate is 1% p.a.in the first year, and in the case of consecutive years of vacancy, it is generally 2% in the second year and 3% in the third and subsequent years.

There are various VRLT exemptions and exceptions that may be available (e.g. for holiday homes, homes under construction and unsold new homes). However, each of these have specific criteria that must be satisfied.

The VRLT now applies to all 'residential' properties throughout Victoria. The landowner must notify the SRO by 15 January if 'residential land' was 'vacant' in the previous calendar year.

For the 2026 land tax year onwards, the concept of 'residential land' will be extended to cover unimproved land in specified Melbourne municipal council areas that is deemed 'vacant' over a 5-year period (therefore the vacancy of certain unimproved land in years prior to 2026 can be relevant). This measure has been introduced to help encourage development of residential stock.

'Residential land' will generally be treated as 'vacant' for the purposes of a land tax year (i.e. a calendar year) if it has not been 'used and occupied' in the immediately preceding calendar year for a period of more than 6 months (whether continuously or in aggregate) by:

- the owner of the residential land, as the principal place of residence of the owner or
- the owner's permitted occupant, as the principal place of residence of the occupant or
- a natural person under a lease or short-term letting arrangement, provided that the arrangement is not made for the purpose of avoiding the payment of the VRLT.

Special rules apply for the purposes of determining whether certain types of land (e.g. land on which a residence is being constructed or renovated) is deemed to be 'vacant' for VRLT purposes.

More information on VRLT

Vacant Residential Land Tax | State Revenue Office

Snapshot of Major Victorian Property Tax Changes | LPLC

Vacant Residential Land Tax changes – some questions answered | LPLC

Growth Areas Infrastructure Contribution

Overview

Main Legislation

Planning and Environment Act 1987 (Vic).

Taxation Administration Act 1997 (Vic) (which contains provisions for the administration and enforcement of Victoria's taxation laws).

Growth Areas Infrastructure Contribution (GAIC) is a contribution payment (tax, levy or charge) that a landowner or a purchaser of land may be required to pay as a one-off contribution towards the provision of infrastructure in certain defined growth areas of Melbourne (i.e. expanding fringe suburbs). GAIC is imposed on a per hectare basis. For FY25, the rate of GAIC is either $115,530 or $137,230 per hectare, depending upon the type of land being dealt with. The GAIC rate is indexed annually in line with CPI.

In some circumstances a landowner may, subject to criteria, be entitled to an exemption.

The GAIC only applies to *land in the contribution area*, which is growth area land zoned for urban use and development in the municipalities of:

- Cardinia
- Casey
- Hume
- Melton
- Mitchell
- Whittlesea
- Wyndham

A GAIC liability may be triggered by certain events such as the issue of a building permit, a transfer of land or a subdivision of land. In some situations, a GAIC liability may be deferred or managed under a staged payment arrangement.

GAIC Claims

Most claims LPLC have seen have arisen because:

- the vendor fails to fully disclose the GAIC liability in the vendor's statement when selling the land
- the purchaser's solicitor fails to identify and explain the liability to their client or
- either party incorrectly manages the issue in the sale contract.

More information on GAIC

Growth areas infrastructure contribution | State Revenue Office

Windfall Gains Tax

Overview

Main Legislation

Windfall Gains Tax Act 2021 (Vic).

Taxation Administration Act 1997 (Vic) (which contains provisions for the administration and enforcement of Victoria's taxation laws).

Valuation of Land Act 1960 (Vic).

Windfall Gains Tax (WGT) is a tax on a 'value uplift' that arises as a result of a rezoning of Victorian land.

More specifically, the value uplift is the increase in the land's Capital Improved Value (CIV) resulting from its rezoning. The revaluation is completed by the Value General. For an uplift of more than $100,000 but less than $500,000: the tax will apply at a rate of 62.5% on the uplift above $100,000. For uplifts of $500,000 or more: a tax rate of 50% will apply to the total uplift.

The owner of the land at the time of the rezoning is liable to pay the tax and can generally elect to defer payment. The deferral period is up to 30 years, however a deferral will come to an end earlier in the case of a transfer of the land or various other specified events occurring (e.g. a landholder duty event occurring in respect of the company or unit trust in which the land is held). Deferred payments accrue interest.

More information WGT

Windfall gains tax | State Revenue Office

Windfall gains tax — frequently asked questions | State Revenue Office

Windfall gains tax hub | LPLC

Practitioners should know their limits of expertise

In all matters of tax and duty it is important for practitioners to know their limits and identify when to refer the client to an appropriate tax expert.

For example, a lawyer may inform a vendor client that CGT might be payable but recommend that the client speaks with their accountant before entering a contract of sale for the property. The accountant should know the cost base and would be able to discuss with the client off setting any losses against gains and timing for the sale. It may be that there is a benefit to selling in the current financial year compared to the next or vice versa.

Another example, referring the client to an expert is in the case of a GST issue. A client who is selling a mixed supply of real estate, part input taxed and part taxable, would usually need advice from a valuer about a fair and reasonable apportionment of the price between the two supplies.

Some tax issues can be very complicated, both because the law itself is complex and the factual situation can be complex or have poor historical records. For example, when a client is entering into a joint venture to develop land, understanding the application of the 'economic entitlement' provisions in the Duties Act can be challenging. In these situations, the client will benefit from speaking with an expert in tax matters, such as a practitioner or barrister who specialises in state taxes.

All tax and duty exemptions are subject to meeting strict criteria and therefore informing the client of all relevant definitions and criteria is important. This is not an area where practitioners can be general, and the detail is critically important. Always check the legislation and relevant case law and confirm advice in writing. Moreover, it is essential that the client understands any advice provided, including any qualifications and limitations.

If practitioners try to provide tax and duty advice on matters outside their expertise, they may not have the necessary systems and precedents to handle the matter efficiently or cost-effectively. This could also increase the likelihood of missing important legal issues and providing inadequate or incorrect advice. It is crucial for practitioners to know their limitations and refer clients to experts as required in order to ensure they receive accurate and comprehensive guidance.

lplc.com.au/property