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The Commercial and Industrial Property Tax: Navigating the new reform

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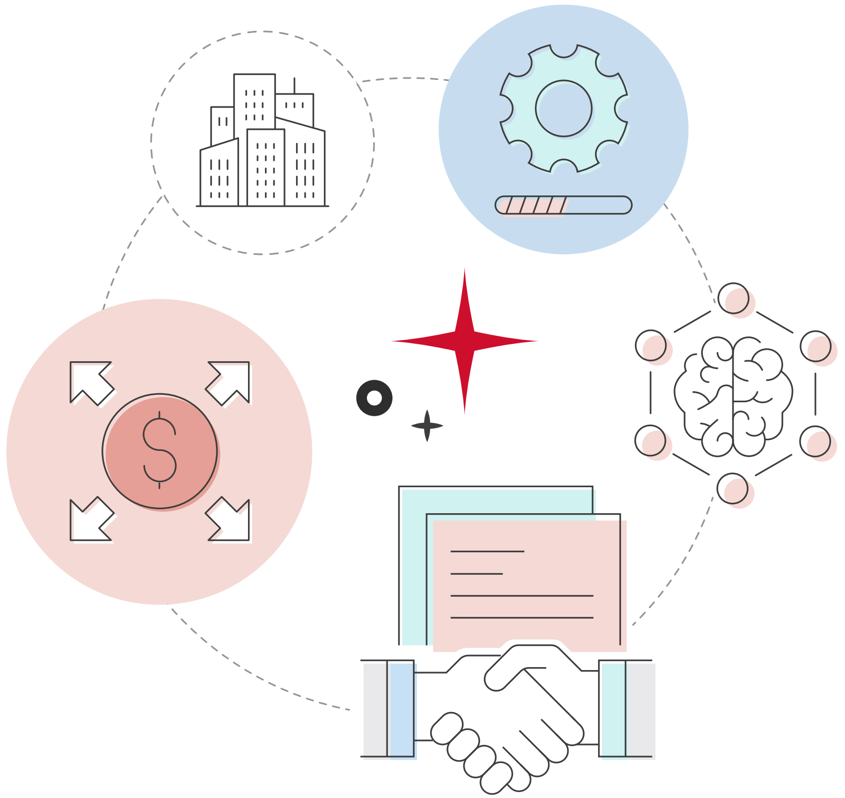
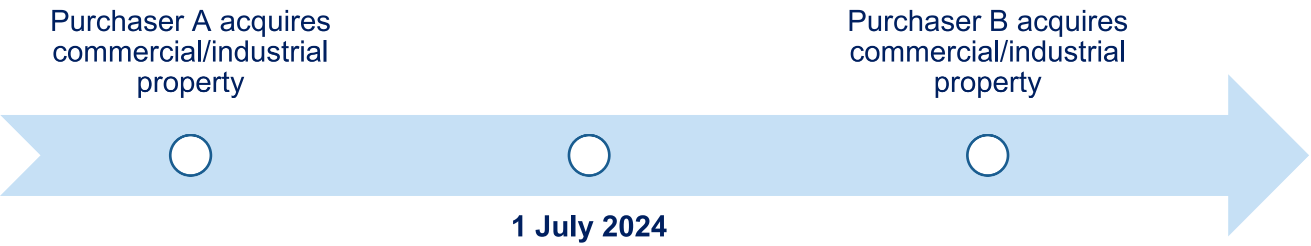
Agenda

- Current versus new position
- CIPT - overview
- Key issues
- Sale contracts and due diligence
- Government transition loans
- Example
- Questions



Current versus new position



Purchaser A pays stamp duty.
Purchaser B pays stamp duty and, 10 years after acquiring the property, commences to pay the annual CIPT.

Before 1 July 2024

- Transfer duty on transfers of (and certain other dealings in) interests in Victorian land at rates up to 6.5%.*
- Landholder duty can apply in respect of 'relevant acquisitions' made in companies or private unit trusts that are 'landholders' for the purposes of the Vic Duties Act.

**excludes any foreign purchaser additional duty surcharge that could apply in certain circumstances*

From 1 July 2024

- For commercial or industrial property:
  - duty on first 'entry transaction' to contract and settle on or after 1 July 2024;
  - annual property tax at 1% of unimproved value of the land will commence 10 years after the first entry transaction; and
  - a subsequent purchaser / transferee of the land (or subsequent acquirer for landholder duty purposes) will generally not have to pay stamp duty.

Commercial and industrial property tax - overview

Key features	
Commencement date for reform	Applies to transactions that contract and settle on or after 1 July 2024 Transitional provision for agreements / arrangements entered before 1 July 2024
Transactions that cause entry into the reform	Dutiable transactions (or relevant acquisitions for landholder duty purposes) that relate to an interest of 50% or more in the property and that are not exempt from duty or eligible for a corporate reconstruction / consolidation concession
Duty on first post 30 June 2024 transaction	The first transaction on or after 1 July 2024 will generally be the last transaction of the property to be charged with duty
	Duty on the first transaction on or after 1 July 2024 can be paid either: (1) in the usual manner; or (2) if eligible for and obtain a government transition loan, by annual instalments over a 10-year period
CIPT	Commences ~10 years after the first post-30 June 2024 transaction
Rate of CIPT	1% of the unimproved value of land (or 0.5% in the case of qualifying build-to-rent land)
Properties subject to the reform	'Qualifying use' Excludes residential, primary production, community services, sport, heritage or cultural purposes

Assessment of the commercial and industrial property tax

Key concepts	
Liable party	Owner of the land
Liability date	Midnight 31 December immediately preceding the tax year
CIPT tax year	1 January – 31 December
CIPT taxable land	Meets all of the following criteria at the liability date: • tax reform scheme land; • not within the 10-year transition period; • has a qualifying use; and • not exempt from land tax
Tax-free threshold	None
Aggregation	Assessed on the taxable value of all CIPT taxable land owned at the liability date

Key concepts	
Notification obligations	60 days to notify of errors / omissions in a CIPT assessment 30 days to notify of a change of use of tax reform scheme land
Objection rights	60 days to object to an assessment (or 2 months if objecting to unimproved value)
Security / recovery of CIPT	Unpaid CIPT (including interest and penalty tax) is a first charge on the land. Commissioner may recover unpaid CIPT from a lessee, mortgagee or occupier of the land
Reassessment period	Unlimited

Key issues

- Is the property '**commercial**' or '**industrial**'?
  - if AVPCC is commercial, industrial, extractive industries, or infrastructure and utilities land (200-499, 600-699); or
  - used solely or primarily as eligible student accommodation.
- What if mixed-use?
- Ability to pass CIPT through to tenants?
- What if the use of CIPT land changes in the future (e.g. to residential)?
- Complex transactions
  - fractional interests / aggregated transactions of 50% or more
  - landholder acquisitions
  - sub-sales
  - certain exclusions – e.g. corporate reconstructions / consolidations, dutiable leases, economic entitlements
- Existing (i.e. pre-1 July 2024) owners not impacted directly – though query impact on value
- Integrity (anti-avoidance) rules

Sale contracts and due diligence

1

Section 32 statement

Must contain the following disclosures:

- whether or not the land is tax reform scheme land;
- AVPCC most recently allocated to the land; and
- if the land is tax reform scheme land, the entry date.

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Property clearance certificates

- Owners, purchasers or mortgagees of land can apply.
- Will show any unpaid CIPT (including interest and penalty tax).
- May state:
  - whether the land is tax reform scheme land;
  - entry date; and
  - when the land became (or will become) subject to CIPT.
- Bona fide purchaser for value (who obtains a certificate) is protected from the recovery of CIPT in excess of the amount set out in the certificate.

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Prohibition on CIPT apportionment in sale contracts

- It will be an offence for a vendor to enter into a contract of sale that purports to apportion any CIPT liability of the vendor to a purchaser.
- **Exception:** Where the sale price meets or exceeds a ‘high value’ threshold amount (currently $10 million).
- Penalty:
  - Individual: 60 penalty units (currently $11,538.60)
  - Body corporate: 300 penalty units (currently $57,693)

Government transition loans

- Loan from Treasury Corporation of Victoria (TCV)
- Principal and interest payable in equal instalments over 10 years from the date of settlement
- Fixed interest rate: Base rate (TCV yield curve) + Risk margin (2.25% for 2024-25)
- Secured by first ranking charge recorded on title
- Prohibition on transfer to a subsequent purchaser
- Mandatory repayment events: sale, property exits the reform, prohibited events
- Break fees on early repayment of the loan

Key eligibility criteria	Exclusions
• Owner occupied or investor owned property with a qualifying use	• Tax reform scheme land that is sold a second or subsequent time
• Value up to $30 million (max. land transfer duty payable of $1.93 million)	• Foreign purchasers or SMSFs
• Eligible applicant: − Australian business; or − Australian citizen or permanent resident (18+)	• Non-standard property transactions (e.g. landholder duty, long-term lease arrangements, changes in beneficial ownership)
• Finance pre-approval for subject property from approved lender	• Prohibited activities / entities (e.g. bankruptcy / external administration, cancellation or lapse in registration of company)

Transition to CIPT - Example

Year 1 (e.g. 2025)

1. Purchaser A acquires commercial property.
2. Contract and settlement in July 2025
3. Purchase price: $2,000,000
4. Unimproved value: $800,000

Stamp duty in Year 1

- Purchaser A pays stamp duty upfront or if eligible, obtains government transition loan to pay annually over 10 years (first annual payment in July 2026).

CIPT from Year 11 onward

- CIPT applies from 2036 calendar year.
- 1% of unimproved value = $8,000 p.a. (assumes unimproved value is $800,000 in 2036, obviously values can change annually).

Year 3 (e.g. 2027)

1. Purchaser A (as vendor) sells the property to Purchaser B in July 2027.

Stamp duty in Year 3

- No stamp duty for Purchaser B in Year 3.
- If Purchaser A obtained a transition loan for the duty on their original purchase, Purchaser A must pay loan (and accrued interest) at settlement.

CIPT from Year 11 onward

- CIPT payable by Purchaser B from ‘Year 11’ onward (i.e. from 2036).

Questions?

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