

# Tax Alert

## Victoria: Commercial and Industrial Property Tax Reform Bill 2024

### At a glance

- ▶ Commencing on 1 July 2024, land enters the tax reform scheme if:
  - ▶ there is a qualifying dutiable or landholder transaction; or
  - ▶ there is an entry consolidation or subdivision; and
  - ▶ the interest in land is 50% or more (standalone or aggregated basis); and
  - ▶ the land has a qualifying use.
- ▶ Once land enters the tax reform scheme:
  - ▶ stamp duty is payable for a final time (subject to certain rules); and
  - ▶ CIPT will be imposed 10 years after land enters the tax reform scheme
  - ▶ Government transition loan may be available.

As part of the Victorian FY24 State Budget, the Victorian Government announced its proposed landmark Commercial and Industrial Property Tax Reform (CIPT Reform) to replace stamp duty on commercial and industrial property with an annual property tax based on the unimproved value of land.

The *Commercial and Industrial Property Tax Reform Bill 2024* (the Bill) was introduced into Victorian Parliament on 20 March 2024. The Bill sets out the legislative framework for the CIPT Reform which we have summarised below.

The CIPT Reform represents a significant departure from the current Victorian stamp duty regime. Owners of commercial and industrial land will need to be across this significant change as it will inform behaviour in how such land is transacted going forward and, overtime, add considerably to the holding costs of owning such property.

### Key features of the CIPT reform

#### Overview

##### *Entry into the tax reform scheme*

Effective on and from 1 July 2024, land enters the tax reform scheme if:

- ▶ There is an entry transaction, an entry consolidation or an entry subdivision; and
- ▶ The transaction relates to an interest in land that is 50% or more (i.e., a qualifying interest); and
- ▶ On the date of the transaction, the land has a qualifying use which broadly includes:
  - ▶ Land that has been allocated at least one Australian Valuation Property Classification Code based on the Valuation Best Practice Specifications Guidelines (AVPCC) in the latest valuation, which are in the ranges of 200-499 and/or 600-699; or
  - ▶ Where land has a mixed use - land that is used solely or primarily for a use described in a AVPCC in the above ranges; or
  - ▶ Land that is used solely or primarily as eligible student accommodation (the current drafting of this definition, perhaps unintended, appears to have a narrower application than expected as it is limited to residential premises for students at prescribed universities).

On entry into the tax reform scheme, a final stamp duty assessment will be payable (subject to change of use and additional acquisitions in the same land if less than a 100% interest was transacted as part of the entry transaction). After a 10-year transition period, starting on the date the land entered the scheme, commercial and industrial property tax (CIPT) will begin to apply to the land.

## Imposition of the CIPT

The CIPT will be imposed on CIPT taxable land (essentially, land which as at midnight on 31 December immediately before the relevant tax year, has entered the tax reform scheme, is no longer in the transition period, has a qualifying use and is taxable land under the Land Tax Act 2005 (Vic) (LTA)), at a rate of:

- ▶ For land other than build-to-rent (BTR) land (broadly, land that is eligible for the BTR land tax concession under the LTA) - 1% of the taxable value of the land; or
- ▶ For BTR land - 0.5% of the taxable value of the land.

CIPT is payable in addition to land tax. Unpaid CIPT is a first charge on land and in the event of a tax default, the Commissioner of State Revenue ('Commissioner') may recover unpaid CIPT from a lessee, mortgagee, or occupier (subject to certain restrictions).

## Stamp duty imposed on a change of use

- ▶ Where a change in the use of land results in the land losing its qualifying use or results in the land having a qualifying use, there is a change of use. If the land in question has already entered the CIPT Reform (i.e., is tax reform scheme land) the owner must notify the Commissioner within 30 days after the change of use.
- ▶ A change of use can result in stamp duty becoming payable on each dutiable transaction or relevant acquisition (in a landholder) that occurred in relation to the land while the land was tax reform scheme land. As a technical matter, dealings in the land are still subject to stamp duty, however, exemptions from this duty are available whilst the land is tax reform scheme land. These exemptions may be wholly or partially clawed back in certain circumstances; however, a 10% reduction is available (up to a maximum of 100%) for each calendar year that has passed since the date of the dutiable transaction or relevant acquisition.
- ▶ Land can also re-enter the tax reform scheme following a change of use back to a qualifying use but no refunds of any duty paid in the period whilst it was not tax reform scheme land will be provided.
- ▶ Other than for subdivided or consolidated land, general apportionment provisions are not available for land that may have a partial change of use.

## Entry transactions

A transaction is an entry transaction if:

- ▶ The transaction is either a qualifying dutiable transaction or a qualifying landholder transaction; and
- ▶ On the date the transaction occurs, the land has a qualifying use; and
- ▶ The transaction relates to a qualifying interest in land (either on a standalone basis or on an aggregated basis). Australian activities and to

prevent diversion of profits offshore through arrangements with related parties.

## Qualifying dutiable transaction

- ▶ A qualifying dutiable transaction is, broadly, a dutiable transaction of an interest in land that has a qualifying use other than dealings with dutiable leases, acquisitions of an economic entitlement, acquisitions that are subject to exemptions, corporate reconstruction or consolidation concessions and transactions that are subject to an agreement or arrangement that was entered into before the commencement of the CIPT Reform. The definition of arrangement has not been defined.
- ▶ For the purposes of determining whether there is a qualifying interest in land, interests in land acquired under two or more qualifying dutiable transactions may be aggregated in certain circumstances (including if the interests are acquired by the same transferee or an associated person within 3 years). Further, any interest acquired in a landholder that was exempt or for which duty was not charged for landholder duty purposes is not to be taken into account.
- ▶ Once an entry transaction occurs (and land becomes tax reform scheme land), whether or not any further duty is payable in respect of the tax reform scheme land will depend on certain circumstances. Broadly, if the entry transaction in relation to the tax reform scheme land amounts to:
  - ▶ An interest of 100% - no duty should be chargeable on a subsequent tax reform scheme transaction;
  - ▶ An interest of less than 100% - duty may be chargeable for a 3-year period or until full duty has been assessed on the land (whichever occurs sooner) if the subsequent tax reform scheme transaction is a dutiable transaction which relates to a different interest (i.e., not substantially the same interest as the entry transaction) in the land.

## Qualifying landholder transaction

- ▶ To be a qualifying landholder transaction the requirements are broadly the same as a qualifying dutiable transaction. However, the transaction must be a relevant acquisition in the landholder (interests acquired prior to the CIPT Reform can be aggregated with the interests acquired in the current transaction to be a qualifying landholder transaction). Accordingly, the interest in land held by the landholder and the types of transactions that are excluded are the same as set out above. The aggregation of interests acquired in a qualifying landholder transaction also apply in a similar manner as for qualifying dutiable transactions.
- ▶ Once an entry transaction occurs (and land becomes tax reform scheme land), there are reciprocal provisions similar to those that apply in the context of a qualifying dutiable transaction

which determine whether or not any further duty is payable in respect of the tax reform scheme land.

## Other

### *Entry consolidation and subdivisions*

Land can also enter the tax reform scheme if an entry consolidation or an entry subdivision occurs in respect of the land.

- ▶ Entry consolidation - land enters the scheme on the first date on which land that forms part of the consolidation entered the tax reform scheme. Consequently, the transition period for consolidated tax reform scheme land starts on the earliest entry date of any of the parcels of tax reform scheme land that were consolidated.
- ▶ Entry subdivision - land enters the scheme on the date on which the land that was subdivided entered the tax reform scheme. Consequently, the transition periods for parcels of tax reform scheme land following subdivision (i.e., the child lots) start on the entry date of the parcel of land before subdivision (i.e., the parent lot).

### *Specific anti-avoidance provisions*

- ▶ The Bill contains detailed provisions specifically targeted at tax avoidance schemes, and the factors which the Commissioner may take into account in determining whether one or more persons have participated in a tax avoidance scheme are broad.

### *Transition loan program*

- ▶ Taxpayers have an option to finance the final stamp duty payable on a transaction by which land enters the tax reform scheme by way of a government-facilitated transition loan.
- ▶ The loan will be issued by the Treasury Corporation of Victoria, which will have a first ranking statutory charge over the interest in the land in relation to the transition loan. The Treasurer may determine (by notice to be published in the Government Gazette) any matters necessary for the operation of the transition loan program.
- ▶ While the Bill is silent on the conditions and parameters of the loan, based on the CIPT Information Sheet released by the Government in December 2023, we understand the proposed eligibility and other conditions include: applicants must be Australian citizens/permanent residents or an Australian business, applicants must be approved for finance from an Authorised Deposit-taking Institution or other approved lender for the subject property and the purchase price of the property cannot be more than \$30 million.

## How EY can help

Our indirect taxes team can assist you with:

- ▶ Navigating the complexities of the new tax reform scheme as applicable to your circumstances, including how it interacts with existing Victorian stamp duty and land tax laws
- ▶ Understanding your obligations to ensure compliance with the requirements of the tax reform scheme
- ▶ Considering any other implications for your commercial arrangements.

For more information please contact:

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