

Taxing times – Victoria prohibits apportionment of land tax and windfall gains tax

This is an update to the article below which relates to the State Taxation Acts and Other Acts Amendment Bill 2023 (Vic) (the Bill). The Bill was introduced on 4 October 2023 and eventually passed as the State Taxation Acts and Other Acts Amendment Act 2023 (Vic) (the Act) but with a number of amendments made to the initial Bill. The Bill received royal assent on 12 December 2023.

We highlight the following key amendments that were ultimately passed in the Act that were not contained in the Bill that was originally introduced to the Parliament.

1. Prohibition on apportionment of land tax – restricted to contracts below \$10m

From 1 January 2024, a vendor under a contract for sale cannot pass on the land tax liability to a purchaser if the contract is less than the threshold amount. For contracts entered into during the 2024 calendar year, the threshold amount is \$10 million. This amount will be adjusted each calendar year for CPI movements. The original Bill that was first introduced did not restrict this amendment to contracts below \$10 million.

2. Vacant Residential Land Tax rates amended

Under the Bill that was first introduced, Vacant Residential Land Tax (VRLT) was to continue to be imposed at 1 per cent of the capital improved value (CIV) of the land for all properties. However, under the Act VRLT is now imposed at

Criteria	Rate
If the land was not liable for VRLT in the preceding tax year	1 per cent
If the land was liable for VRLT in the preceding tax year but not the tax year preceding that tax year	2 per cent
If the land was liable for VRLT in the last 2 preceding tax years	3 per cent

3. Amendment to Fire Services Property Levy Act 2012

Due to lobbying by the Clean Energy Council, among others, the Government inserted a new Part 2A into the Act which reclassified wind and solar projects as being for the public benefit such that the value of fixtures or items fixed to land will not be included in the calculation of the Fire Services Property Levy in respect of these projects.

One day after Jacinta Allan was sworn in as the new Premier of Victoria, on 4 October 2023 Treasurer Tim Pallas introduced the State Taxation Acts and Other Acts Amendment Bill 2023 (Vic) (the **Bill**) which proposes a further suite of new state tax changes. These changes come less than five months after the government introduced a raft of [tax changes in the May state budget](#) and the announcement in September that a 7.5 per cent Short Stay Levy would be imposed on short-stay platforms' revenue (discussed in more detail below).

In this Insight we provide a brief summary of the latest changes outlined in the Bill which include:

- prohibiting the apportionment of land tax and windfall gains tax (**WGT**) between the vendor and a purchaser as part of a contract of sale of land and, in respect of WGT, also in relation to an option to enter into a contract of sale of land;
- removing the ability of public landholders to obtain multiple duty concessions;
- extending the existing vacant residential land tax (**VRT**) to apply to all vacant residential land in Victoria and introducing a new tax for certain unimproved land in metropolitan Melbourne;
- amending the Valuation of Land Act 1960 (Vic) (**VOL Act**) to insert a broad definition of "fixtures" and to confirm that in calculating the capital improved value (**CIV**) of land, fixtures are to be included, regardless of whether they are owned by the land owner or a tenant or other land occupier;
- extending the corporate reconstruction rules to certain transactions involving sub-sales of land; and
- implementing minor amendments to the Windfall Gains Tax Act 2021 (Vic) (**WGT Act**) to make changes to clarify what is included in an excluded rezoning and to amend the charitable land exemption and the rezoning errors exemption.

We also briefly outline the proposed Short Stay Levy (which is not part of the Bill).

Prohibition on the apportionment of land tax and WGT

Currently, land taxes are usually paid by the vendor until the date the purchaser becomes entitled to possession, at which point they are apportioned between the vendor and the purchaser.

The Bill proposes to amend the Sale of Land Act 1962 (Vic) (**SOL Act**) and the Property Law Act 1958 (Vic) from 1 January 2024 to prohibit the apportionment of land tax under the Land Tax Act 2005 (Vic) (**LTA**) as between a vendor and a purchaser under a contract of sale of land.

The SOL Act is also being amended to prohibit the apportionment of WGT imposed under the WGT Act where a notice of assessment has been issued in respect of the WGT liability as between a vendor and a purchaser under an option to enter into a contract of sale or a contract of sale of land.

The Bill introduces offence provisions with significant penalties (60 penalty units^[1] for an individual and 300 penalty units for a body corporate) which will apply to a vendor who enters into a contract or grants an option to enter into a contract which provides for such adjustment.

The purpose of this change is said to be to ensure the vendor remains responsible for the tax liability arising under the LTA or the WGT Act. This means that all standard property contracts will need to be updated to reflect these amendments.

Public landholders prevented from accessing multiple duty concessions

Currently, landholder duty is imposed under the Duties Act 2000 (Vic) (the Duties Act) at a concessional rate of 10 per cent of the duty otherwise payable in respect of a relevant acquisition made in a public landholder (s 87(1)).

Under the corporate reconstruction provisions, if the relevant acquisition is made by members of a corporate group, duty is charged on an eligible transaction (as defined) at 10 per cent of the duty that would otherwise be payable. In certain circumstances both concessional rates of duty may apply which currently has the effect of imposing only a 1 per cent concessional rate of duty.

The Bill proposes to introduce a new section which provides that if both concessional rates of duty would apply, only the corporate reconstruction concession applies. This change will take effect on the day after royal assent.

Widening the scope of the VRT

Since 1 January 2018, Victoria has imposed VRT on residential properties in Melbourne's inner and middle suburbs that are unoccupied for more than six months in the preceding calendar year. The tax currently applies to 16 local council areas (the specified geographic area (SGA)) and is imposed at 1 per cent of the CIV of taxable land.

Under the Bill, from 1 January 2025, the VRT will no longer be restricted to 16 local council areas and will instead apply to all vacant residential land in Victoria. These changes are said by Mr Pallas in his second reading speech to be made to "encourage all owners of long-term vacant and unoccupied homes in the outer suburbs of Melbourne and in regional Victoria to make their homes available for rent or occupation" to help improve housing affordability. Some transitional arrangements are proposed for land currently outside the SGA.

Further, from 1 January 2026, the VRT will be extended to include unimproved land located in established areas of metropolitan Melbourne (31 identified local council areas) that has been unimproved for a continuous period of 5 years or more. Two new exemptions are to be introduced for land contiguous to a principal place of residence and for land that cannot be used or developed for residential purposes. This change was said by Mr Pallas to be *"to incentive the development of empty blocks in metropolitan Melbourne and increase the supply of housing"*.

Land CIV confirmed to include anything fixed to land

The Bill inserts a new definition for the word "fixture" into the VOL Act which is broadly defined to mean any of the following, whether owned by the owner of the land or a tenant or any other occupier of the land –

- Anything that constitutes a fixture at law;
- Any other item fixed to the land.

Changes are also proposed to clarify that in determining the CIV of any land, the sum which the land might be expected to realise at the time of valuation includes the value of the fixtures.

In his second reading speech of the Bill, Mr Pallas noted this will apply for WGT, VRT, rates and the fire services property levy and will *"provide greater certainty to owners of land about what forms part of the land for valuation purposes"*. This change will apply from the day after royal assent. In addition to increasing certainty, these amendments will also have significant cost implications for Victorian taxpayers.

Extending the corporate reconstruction rules to sub-sales of land

The Duties Act contains “sub-sale” rules which charge duty where a person (the vendor) enters into a contract to sell or transfer land to another person (the first purchaser), however, at some time after the contract is executed, a subsequent purchaser obtains the right to have the property (or part of it) transferred on completion to the subsequent purchaser. If the transaction also involves additional consideration, land development or results from options involving additional consideration or land development, duty will be charged on two separate transactions (i.e. this is double duty).

The Bill proposes to allow the corporate reconstruction rules to apply in limited circumstances to transactions treated as a sub-sale under the Duties Act. These changes are proposed to commence on the day after royal assent. If the vendor, purchaser and subsequent purchaser are all members of the same corporate group, it is proposed that the first purchaser will be entitled to a concession and a subsequent purchaser will be entitled to an exemption. Where the vendor is not part of the corporate group, ordinary duty will be payable by the first purchaser, however, the subsequent purchaser may be entitled to a concession.

We note that for the corporate reconstruction rules to apply, entities must be members of a corporate group which means the parent corporation and the subsidiaries of that parent corporation. A parent corporation means a corporation that directly or indirectly holds at least 90 per cent of the beneficial ownership of another corporation and has the ability to cast, or to control the casting of, at least 90 per cent of the maximum number of votes that may be cast at a general meeting of the subsidiary. This high ownership threshold can often be a barrier to corporate groups accessing the concession.

Amendments to the WGT Act

In addition to the changes outlined above regarding the prohibition on the apportionment of WGT, a number of further small amendments are proposed to be made to the WGT Act to:

- amend the exemption relating to rezoning errors;
- clarify that the first rezoning of land that was in a GAIC contribution area immediately before a rezoning is excluded from WGT; and
- confirm the charitable land waiver in s 41(1) can apply where only part of the land is being used as charitable land at the time of a WGT event.

These changes take effect from the day after royal assent.

Short Stay Levy

On 20 September 2023, then-Premier Daniel Andrews announced that from 1 January 2025, the government would introduce a new Short Stay Levy that will impose a 7.5 per cent tax on the revenue of short-stay platforms such as Airbnb and Stayz. In the press release announcing this new tax, the government declared that revenue from the levy will go to Homes Victoria to support building and maintaining social and affordable housing. It further stated that 25 per cent of funds would be invested in regional Victoria.

We note that this announced tax is not contained in the Bill.

Key takeaways

Victorian taxpayers are paying more taxes than ever before. Given a number of the proposed tax changes outlined in this Insight are to be made to encourage the development of housing stock in Victoria (including in particular affordable housing stock), it seems highly contrary to that objective to continue to increase taxes on landowners who will ultimately have to pass these taxes on to homebuyers and tenants.

Even the prohibition on apportioning land tax and WGT will not prevent vendors ultimately passing on these increased costs to purchasers. The significant number of tax changes creates much uncertainty for businesses and individuals making investment decisions. For this reason, it is important to seek advice prior to undertaking transactions to ensure they are as efficient as possible and comply with all relevant laws.

[1] One penalty unit is currently \$192.31 in Victoria

Source: "Taxing Times: Victoria Prohibits Apportionment," JWS

 | info@rjsanderson.com.au  | www.rjsanderson.com.au  | 1300 27 28 29

Albury | Berwick | Corowa | Cranbourne | Dandenong | Epping | Frankston | Mornington | Myrtleford | Pakenham | Rutherglen
South Morang | Wangaratta | Werribee

RJ Sanderson
& ASSOCIATES PTY LTD
PUBLIC ACCOUNTANTS



Accounting, taxation, business advisory and consulting services are offered through RJ Sanderson & Associates Pty Ltd ABN 71 060 299 783. Wealth management, financial services, and insurance services are offered through a professional referral service with RJS Wealth Management Pty Ltd ABN 24 156 207 126, a corporate authorised representative (No. 438158) of Modoras Pty Ltd. Modoras Pty Ltd ABN 86 068 034 908, Australian Financial Services and Credit Licence No. 233209 is located at Level 3, 50-56 Sanders St, Upper Mt Gravatt Q 4122.