

Victorian Landholder Duty

First details released

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Victoria Landholder Duty – first details released

The State Revenue Office released, late yesterday, a consultation paper which outlines the proposed design elements for the new Victorian landholder model. The change from a land rich to land holder regime was announced by the Treasurer in the 2011-12 State Budget. The new regime will commence on 1 July 2012 and is in line with recent changes in the other states and territories (excluding Tasmania).

The full consultation paper can be found by [following this link](#).

Next steps

The new landholder model will broaden the duty base in Victoria as from 1 July 2012.

To the extent that there are current, or proposed transactions, concerning interests in land in Victoria, there is a real benefit in properly considering the potential change in duty outcomes if the transaction were to fall under the current land rich model, as compared to the new proposed landholder model.

At this stage, there is no draft legislation and the Victorian State Revenue Office is seeking written submissions regarding the proposed design features. These submissions are due by 30 September 2011.

The following are some key points to note in relation to the current proposal:

No increase to \$one million threshold

This is the relevant threshold value for "landholdings" (interests in land) an entity must hold to fall within the landholder duty net.

Removal of the "60 per cent land rich" test

The removal of the "land rich" test means that all entities that hold \$one million or more in landholdings become subject to the landholding duty rules irrespective as to whether landholdings represent a significant or otherwise proportion of total asset holdings. In brief, this means that many entities conducting significant businesses may potentially be caught under the landholding rules, where previously they may not have been.

Inclusion of listed companies/trusts, but concessional rates apply

It is proposed that under the new landholder model, acquisitions of 90 per cent or more in listed companies and listed trusts will now be subject to duty. The rate of duty proposed to be levied is a concessional rate in that it is ten per cent of the duty otherwise chargeable on landholding acquisitions (i.e. 0.55 per cent).

Maintenance of a 20 per cent relevant acquisition for unlisted trusts / 50 per cent for unlisted companies and wholesale unit trusts

Unlike most jurisdictions (with the exception of the Australian Capital Territory), most landholder models (land rich in Tasmania) require that an interest of 50 per cent or more be acquired in a landholder before landholder duty is chargeable.

It is intended that the current distinction between the treatment of unlisted trusts and other entities will be maintained.

Accordingly, the relevant acquisition thresholds under the new model are:

- 20 per cent or more for unlisted trusts
- 50 per cent or more for private companies and wholesale trusts, and
- 90 per cent or more for listed entities (new).

Maintenance of a 20 per cent "linked entities" test - including listed entities

A landholder's landholdings are not limited to its direct holdings, but also include indirect holdings, via "linked entities".

Victoria will retain its current 20 per cent relevant threshold for "linked entities", and this will include listed entities.

In practice, this has meant, and will continue to mean, that a much larger group of entities is caught under the Victorian land rich (and new landholder) models as compared to other Australian jurisdictions.

New broader concept of "interest"

This concept is relevant in determining the type of "interest" a person has to acquire in a landholding entity that may be considered in determining whether a "relevant acquisition" has been made.

It is proposed that under the new landholder model, the definition will be a three pronged approach, and will be the greater of certain direct and indirect entitlements.

The broadening of this concept is significant, particularly as it would appear that potentially many joint venture and development agreements could now result in a landholder duty consequence.

No inclusion of goods into the landholder duty net

Consistent with the current land rich provisions, only landholdings (and fixtures) will be subject to landholder. Moveable goods and chattels will not be subject to duty.

Broadening the concept of fixtures

It is proposed that fixtures (which are included in the duty net) will include items that are fixed to the land regardless of whether they are a fixture or not at common law.

Further information

Please do not hesitate to contact any of our stamp duty specialists, or your usual PwC contact, to discuss the potential impacts on current or proposed transactions, or whether you would like to put forward any comments for inclusion into a written submission.

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