Provisions to phase out stamp duty on commercial and industrial property transfers receives Royal Assent

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As announced in the 2023-24 Budget, the Victorian Government is implementing a significant reform in property taxation. The existing stamp duty on commercial and industrial properties will be progressively eliminated and replaced with an annual property tax, the Commercial and Industrial Property Tax (CIPT). The legislation for the new CIPT regime received Royal Assent on 21 May 2024, and will commence on 1 July 2024.

The introduction of the Commercial and Industrial Property Tax will eventually reduce upfront transaction costs and is intended to promote investment in buildings and infrastructure. Anyone looking to buy or sell commercial or industrial property should stay informed.

Existing property owners

Importantly, the reforms only apply when a new transaction occurs post 1 July 2024; therefore, existing land holders will remain outside of the CIPT regime until the property is next transacted.

Transactions from 1 July 2024

Stamp duty

From 1 July 2024, when a commercial or industrial property is transacted, it will trigger a 10-year transition period for that property, where the purchaser has the choice to either:

- pay the property's final stamp duty liability as an upfront sum or,
- pay the stamp duty via an annual payment for 10 years plus interest, supported by a government transition loan. The loan will be provided by the Treasury Corporation of Victoria (TCV) on commercial terms, including a fixed market-based interest rate (base rate plus a risk margin determined annually by the Treasurer). The applicant must not be a foreign owner and must have received finance pre-approval from an authorised provider to be eligible for the loan from TCV, and such loans would be secured by a first ranking charge over the relevant land. The borrower may prepay the loan in full or in part at any time to reduce the interest payable, noting that each repayment needs to be at least $10,000 and a break fee will apply. A transition loan will only be available for properties with a value of up to $30 million.

Annual tax

Once a transfer of applicable land has occurred after 1 July 2024, the CIPT regime will be triggered. This will mean that 10 years later (i.e. 10 years after a relevant transfer of land occurs), an annual property tax based on the property's unimproved land value will commence, which will be payable each year thereafter. Following initial entry into the CIPT regime, subsequent transfers of that land will be exempt from land transfer (stamp) duty.

Entry requirements

A property will enter the CIPT system if all of the following occur:

- Settlement occurs for contracts of sale entered into on or after 1 July 2024
- 50% or more of the property transacts
- there is a positive duty liability; and
- it has a qualifying commercial or industrial use at the date of settlement.

A property is considered to have a qualifying commercial or industrial use if it has an Australian Valuation Property Classification Code (AVPCC) of 200-499 or 600-699 or is a qualifying student accommodation. The reform will not apply to properties coded as having residential, primary production, community services or sport, heritage or cultural purposes.

For mixed use property, the Commissioner will undertake a sole or primary use test, determined on various factors such as floor area, and the economic and financial significance of each use of the property, determined on a case-by-case basis. A concessional rate of 0.5% will apply to qualifying build to rent properties (i.e. properties that qualify for a build to rent land tax concession).

For a subdivision of land that is already within the CIPT reform system, the subdivided lots will be exempt from stamp duty if they transact. The entry date for the subdivided land for the annual CIPT purposes will be the same as the entry date for the original piece of land. For instance, if land (the original lot) enters the tax reform system on 1 November 2025, and this original lot is subdivided into four new parcels (the subdivided lots) on 1 February 2027, the entry date for each subdivided lot remains 1 November 2025.

Calculation of CIPT

The rate of CIPT is 1% of the taxable value of the land, being the unimproved value, and will apply in addition to the existing land tax regime. Assessments will be made on 31 December annually, similar to the land tax system. Unlike stamp duty which includes dutiable value ranges and a duty threshold value, the CIPT applies as a flat rate on all qualifying land, with no additional foreign surcharges.

Practical Application of CIPT

<u>Entering the CIPT regime - example</u>

A commercial property is acquired on 1 October 2024, initiating the property's entry into the new tax system, as the contract and settlement occur on or after 1 July 2024. At this stage, the purchaser can either pay the stamp duty upfront or opt for a transition loan. If the property is located in a regional area, the purchaser will benefit from a 50 percent discount on the stamp duty due to the regional commercial and industrial stamp duty concession. The CIPT will begin to apply in 2035, being annual payments of 1% of the taxable value of the land. Any subsequent transfer of the land after 1 October 2024 will not attract land transfer duty.

In summary

The reform poses significant changes, beginning 1 July 2024. Under the new reform, stamp duty will be paid one final time on transactions after 1 July 2024, and then the annual CIPT will commence on the ten-year anniversary of the transaction date. This tax will be in addition to other taxes imposed relating to land, including the existing land tax regime.

Taxpayers should be informed when considering undertaking transactions of qualifying commercial and industrial land, and in particular whether it is appropriate in their circumstances to apply for a government transition loan (and therefore seek finance preapproval). Further, taxpayers should carefully consider the timing of settlement for any upcoming commercial & industrial property purchases, noting that if settlement occurs post 1 July 2024, the future impact for them may be significant.

To discuss how these changes might impact you and the best ways to manage your situation, please contact your Fordham Partner.