THE TAX INSTITUTE

4 June 2021

The Hon Tim Pallas MP
Treasurer
Treasury and Finance
1 Treasury Place
East Melbourne VIC 3002
By email: tim.pallas@parliament.vic.gov.au

cc: Paul Broderick
Commissioner of State Revenue
State Revenue Office
Southern Cross Tower
121 Exhibition Street
Melbourne VIC 3000
paul.broderick@sro.vic.gov.au

Dear Treasurer,

Expression of concern – State Taxation and Mental Health Acts Amendment Bill 2021

The Tax Institute wishes to provide its views on the proposed measures set out in the State Taxation and Mental Health Acts Amendment Bill 2021 (**Bill**), or otherwise announced as part of the 2021-22 Victorian State Budget (**Budget**) delivered on Thursday, 20 May 2021.

The Tax Institute commends a number of the proposed measures announced by the Victorian Government as part of the Budget. In particular:

- from a real estate perspective, we welcome the stamp duty concessions for new residential properties in the City of Melbourne, the increase to the threshold for the off-the-plan duty concession, the increase to the general land tax threshold and the expansion of the vacant residential land tax exemption for newly constructed properties; and
- from a payroll tax perspective, we welcome bringing forward the increase to the payroll tax threshold and the reduction to the Victorian regional employer payroll tax rate.

We consider that these changes provide a welcome signal of support for Victoria's taxpayers and economy.

However, we wish to express our concerns in respect of the proposed introduction of the following measures set out in the Bill:

- a 'premium' land transfer duty rate; and
- a mental health and wellbeing payroll tax surcharge.

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We are concerned that these measures are not consistent with the implementation of sound tax policy, particularly considering the even greater divergence they create between Victoria and other states and territories.

We also wish to express our willingness to be involved in the consultation process in respect of the new 'windfall gains tax', which is proposed to be introduced with effect from 1 July 2022.

Premium land transfer duty rate – value threshold

The Tax Institute is of the view that $2 million is not a realistic 'high-value' threshold for a premium rate of duty for real estate in Melbourne in 2021 (whether residential, commercial or industrial), and should not be implemented. Increasing, let alone maintaining duty is contrary to the trends in other States and will be counterproductive to Victoria's competitiveness.

The Second Reading Speech for the Bill states (**emphasis added**):

> *'The Bill will also make Victoria's tax system fairer and more progressive by increasing the amount of land transfer duty revenue collected from* ***high-value transactions*** *and* ***increasing the revenue collected from taxpayers with large taxable landholdings****.*
>
> *From 1 July 2021, property transactions with a dutiable value above $2 million will be subject to a premium duty rate of $110,000 plus 6.5 per cent of the dutiable value in excess of $2 million. Based on current data, this premium rate is* ***expected to affect less than four per cent of all property transactions****.*
>
> ***This measure will not impact the overwhelming majority of homeowners and first home buyers****, as there is no change to land transfer duty payable on properties valued below $2 million.'*

Additionally, in its 2021-22 Statement of Finances, the Government stated (emphasis added):

> *'Additional revenue will flow from the introduction of a premium rate of land transfer duty for transactions of* ***high-value properties*** *in excess of $2 million from 1 July 2021.'*[1]

We acknowledge that stamp duty is a significant source of revenue for Victoria, as it is for each of the states and territories. However, as a transaction tax, it is also highly volatile, and revenues generated are highly dependent on a number of external factors such as market forces and the extent to which properties are transacted.

Further, stamp duty has a long established and proven reputation as an inefficient and unfair tax that is borne disproportionately by those who transact in real property. Victoria's proposed introduction of the premium land transfer duty rate exacerbates the impost on Victorian property transactions, in direct contrast to the trend in other states and territories.

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1 State of Victoria 2021 (Department of Treasury and Finance), Budget Paper No. 5 – Statement of Finances 2021-22, p 171. Available at: https://www.dtf.vic.gov.au/2021-22-state-budget/2021-22-statement-finances

The harmonisation of state-based tax regimes has the benefit of ensuring fairness and consistency for Australians regardless of the state or territory in which they choose to live and / or invest. Uniformity across regimes also helps multi-jurisdictional investors reduce compliance costs associated with navigating different regimes. It is evident that Victoria's proposal is out of step with current trends across Australia, in particular noting:

- the New South Wales Government's proposal to replace stamp duties (and where applicable, land tax) with a broad-based annualised property tax;
- the Australian Capital Territory's progress on its tax reform agenda which commenced in 2012. The aim of the 20-year program is to modernise the Australian Capital Territory's taxation system including a shift away from stamp duties;[2]
- the abolition of stamp duty in respect of South Australian commercial and industrial properties;
- New South Wales' 'premium' rate of duty being limited to residential land transactions; and
- the proposed Victorian 'premium' rate will, in part, counteract some recently introduced duty concessions. For example, the ability of the 50% duty concession for commercial and industrial land in regional Victoria to achieve its policy objectives will be adversely impacted if the underlying duty rate is increased.

The proposed premium duty measure, representing an 18% increase in the stamp duty applicable to the excess of dutiable value over $2 million, is likely to further distort the behaviour of investors. We expect that raising the duty rate at this threshold will lead to fewer sales above $2 million due to the increased cost barrier, with possible repercussions across the broader real estate market.

As noted above, we also consider that the $2 million threshold does not appropriately reflect a 'high-value' threshold for real estate in Melbourne in 2021. In the residential context, as at March 2021, there are 15 Melbourne suburbs with a median house price in excess of $2 million.[3] This number could increase significantly in coming years, noting that the median value of house prices in the Victorian property market recently has been rapidly increasing (in spite of immigration to Melbourne being in decline due to the COVID-19 pandemic). Further, it is clear that a significant proportion of commercial and industrial land transactions are undertaken for prices in in excess of $2 million.

The Tax Institute submits that the premium duty measure should not be implemented. If however, it is to be implemented, we strongly recommend that the Government impose a higher threshold that better reflects 'high-value' properties in Victoria (at a minimum, this should be above $2.5 million). Regular reviews and increases to this threshold should also be made in order to fairly account for the effects of bracket creep.

Premium land transfer duty rate – transitional rule

Clause 10 of the Bill introduces a new transitional provision to Schedule 2 of the *Duties Act 2000* (**Act**) in respect of the applicable rate of duty under section 28 of the Act. It provides that the new rate of duty does not apply to a dutiable transaction or an acquisition of an interest in a landholder that occurs on or after 1 July 2021 that is made pursuant to an agreement or arrangement entered into before 1 July 2021.

The term 'arrangement' is not defined in the Act. The term has been interpreted as having a broad meaning in various court decisions, as the Victorian State Revenue Office (**SRO**) has recognised in its public rulings (e.g.

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2 Further information on the Australian Capital Territory Government's tax reform program is available here: https://apps.treasury.act.gov.au/taxreform

3 Domain House Price Report - March 2021 quarter. Available here: https://www.domain.com.au/research/house-price-report/march-2021/

Revenue Ruling DA.057[4] and Revenue Ruling DA.026 (version 2)[5]. In the context of a transitional provision, The Tax Institute submits that the term should be given a broad interpretation.

Should the premium land transfer duty measure be implemented, clarification should be provided on the meaning of the term 'arrangement'. In particular, the SRO should publish administrative guidance which is consistent with its position on similarly worded transitional provisions in respect of the economic entitlement duty provisions in Part 4B of Chapter 2 of the Act, and the corporate reconstruction and consolidation relief provisions in Part 2 of Chapter 11 of the Act.[6]

Mental Health and Wellbeing Levy

The Victorian Government has proposed the introduction of the Mental Health and Wellbeing Levy (**Levy**), to be imposed from 1 January 2022. The Levy is proposed to be implemented as a payroll tax surcharge on Victorian wages paid by businesses with annual Australian Group wages above $10 million, as follows:

Table A: Mental Health and Wellbeing Levy – surcharge rates

Taxable wages	Surcharge rate
More than $10 million up to $100 million	0.5%
More than $100 million	1.0%

The impact of the Levy on different sized businesses is set out in Table B.[7] The Levy will particularly impact medium to large businesses in labour-intensive industries. The table also illustrates an increase in the effective payroll tax rate after taking into account the Levy.

Table B: Mental Health and Wellbeing Levy – financial impact on businesses

	Victorian Taxable Wages ($)				
	$15,000,000	$50,000,000	$120,000,000	$150,000,000	$200,000,000
Total payroll tax	$693,550	$2,391,050	$5,786,050	$7,241,050	$9,666,050
Total Levy	$25,000	$200,000	$650,000	$950,000	$1,450,000
Grand total	$718,550	$2,591,050	$6,436,050	$8,191,050	$11,116,050
Effective payroll tax rate	4.79%	5.18%	5.36%	5.46%	5.56%

4 Victorian State Revenue Office, Revenue Rulings: *Landholder Provisions –. Meaning of 'Associated Transaction'*. Revenue Ruling DA.057. Available here: https://www.sro.vic.gov.au/sites/default/files/revenue-ruling-da-057.pdf

5 Victorian State Revenue Office, Revenue Rulings: *Aggregation of dutiable transactions and the exception from aggregation for domestic builders where residential premises are to be constructed*. Revenue Ruling DA.026 (version 2). Available here: https://www.sro.vic.gov.au/sites/default/files/revenue-ruling-da-057.pdf

6 https://www.sro.vic.gov.au/economic-entitlements and https://www.sro.vic.gov.au/corporate-reconstruction-and-consolidations-%E2%80%93-agreements-or-arrangements-entered-1-july-2019

7 Calculations have been prepared for illustrative purposes and are based on assumption that a business employs in Victoria only and is entitled to the full payroll tax threshold.

Tables C and D show payroll tax liabilities across jurisdictions for different sized businesses.[8] In Table C, the payroll tax liability in Victoria has been calculated based on the increased Victorian payroll tax threshold of $700,000 but **excluding** the proposed Levy. In Table D, the payroll tax liability in Victoria has been calculated based on the increased Victorian payroll tax threshold of $700,000, **including** the proposed Levy.

Table C: Payroll tax liability (exc. Mental Health and Wellbeing Levy)

State	Taxable Wages ($)							
	$1,000,000	$2,000,000	$5,000,000	$10,000,000	$20,000,000	$50,000,000	$100,000,000	$200,000,000
VIC	$14,550	$63,050	$208,550	$451,050	$936,050	$2,391,050	$4,816,050	$ 9,666,050
NSW	-	$38,800	$184,300	$426,800	$911,800	$2,366,800	$4,791,800	$ 9,641,800
QLD	-	$41,563	$219,688	$495,000	$990,000	$2,475,000	$4,950,000	$ 9,900,000
WA	-	$63,462	$253,846	$550,000	$1,100,000	$2,750,000	$5,500,000	$11,500,000
SA	-	$69,300	$217,800	$465,300	$ 960,300	$2,445,300	$4,920,300	$ 9,870,300
NT	-	$34,375	$240,625	$550,000	$1,100,000	$2,750,000	$5,500,000	$11,000,000
TAS	-	$30,000	$213,000	$518,000	$1,128,000	$2,958,000	$6,008,000	$12,108,000
ACT	-	-	$205,500	$548,000	$1,233,000	$3,288,000	$6,713,000	$13,563,000

Table D: Payroll tax liability (inc. Mental Health and Wellbeing Levy)

State	Taxable Wages ($)							
	$1,000,000	$2,000,000	$5,000,000	$10,000,000	$20,000,000	$50,000,000	$100,000,000	$200,000,000
VIC	$14,550	$63,050	$208,550	$451,050	$986,050	$2,591,050	$5,266,050	$11,116,050
NSW	-	$38,800	$184,300	$426,800	$ 911,800	$2,366,800	$4,791,800	$ 9,641,800
QLD	-	$41,563	$219,688	$495,000	$ 990,000	$2,475,000	$4,950,000	$ 9,900,000
WA	-	$63,462	$253,846	$550,000	$1,100,000	$2,750,000	$5,500,000	$11,500,000
SA	-	$69,300	$217,800	$465,300	$ 960,300	$2,445,300	$4,920,300	$ 9,870,300
NT	-	$34,375	$240,625	$550,000	$1,100,000	$2,750,000	$5,500,000	$11,000,000
TAS	-	$30,000	$213,000	$518,000	$1,128,000	$2,958,000	$6,008,000	$12,108,000
ACT	-	-	$205,500	$548,000	$1,233,000	$3,288,000	$6,713,000	$13,563,000

Key:

Payroll tax liability in Victoria	Payroll tax liability is less than in Victoria	Payroll tax liability is greater than in Victoria

Based on the calculations presented above, The Tax Institute's observations in relation to the Victorian payroll tax regime are as follows:

- compared to other Australian jurisdictions, the payroll tax regime in Victoria is less favourable for businesses with taxable wages of around $1 million, and less favourable than in many other jurisdictions for businesses with taxable wages of around $2 million;
- Victoria is a less favourable jurisdiction than NSW for businesses of all sizes. The introduction of the Levy will increase the gap between Victorian and NSW payroll tax liabilities even further for medium to large size businesses; and
- with the introduction of the Levy, the Victorian payroll tax regime will become even less competitive (particularly as compared with NSW, Queensland and South Australia).

8 Calculations have been prepared for illustrative purposes and are based on the assumption that a business employs in one jurisdiction only. An entitlement to a payroll tax threshold has been assessed based on relevant rules in each jurisdiction.

While The Tax Institute supports and welcomes all initiatives directed towards promoting and supporting the provision of mental health services to the Australian people, we question whether a further tax on employment is an appropriate means to raise revenue, particularly at a time when many Victorian businesses continue to be affected by the impact of Government mandated lockdowns in response to COVID-19.[9]

The Tax Institute is also concerned that the proposed introduction of the Levy from 1 January 2022 (i.e. the middle of the payroll tax year) will lead to increased complexity, noting that payroll tax calculations will be required to be determined on a split year basis. This will increase the compliance burden on affected businesses. In The Tax Institute's view, if such change were to be introduced, it should be introduced from the beginning of a payroll tax year (i.e. for example, from 1 July 2022).

Windfall gains tax

We note the Government's proposal to introduce a 'windfall gains tax' on gains made as a result of the rezoning of land not already covered by the Growth Areas Infrastructure Contribution (**GAIC**) regime.

Given the novelty and lack of detail that is currently publicly available in respect of this measure, The Tax Institute would welcome the opportunity to be involved in the consultation process prior to introduction of relevant legislation. The Tax Institute's Victorian State Taxes Committee comprises leading practitioners in the areas of state and federal taxation and are well placed to constructively contribute to this process.

At this preliminary stage, we have listed the following key open questions to include (but are not limited to):

- whether there will be transitional provisions to exempt pre-existing projects from the windfall gains tax (and if so, the scope of such provisions);
- how a 'windfall gain' is to be calculated;
- the precise circumstances in which the payment of the windfall gains tax can be deferred (e.g. until sale of the land post-development in order to ensure the landowner has the cash to pay the tax); and
- whether a windfall gains tax liability will be registered on title (in a similar fashion to GAIC liabilities).

* * * * *

The Tax Institute is the leading forum for the tax community in Australia. Please refer to **Appendix A** for more about The Tax Institute.

If you would like to discuss any of the matters raised above, please contact the Chair of The Tax Institute's Victorian State Taxes Committee, James Hamblin on (03) 8608 2854, or Associate Tax Counsel, Michelle Ma, on (02) 8223 0084.

Yours faithfully,

Peter Godber
President

[9] At the time of writing, Victoria is in its fourth lockdown which is due to last at least 14 days.

Appendix A

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge, and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.