

Welcome News for Developers: Temporary Expansion of the Victorian Off-the-Plan Duty Concession

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The Victorian State Government (the Government) has announced a temporary expansion of the off-the-plan duty concession for purchasers of residential apartments and certain townhouses. The measure is a part of the Government's response to the housing crisis and is aimed at stimulating new housing supply.

Under the measure the off-the-plan duty concession will be available to all purchasers of off-the-plan residential property in 'strata subdivisions'. This will include investors and there is no restriction on the price of the property.

This is a significant temporary expansion of the off-the-plan duty concession. Following changes in 2017, eligibility for that concession has been limited to purchasers buying their principal place of residence. Further, the dutiable value had to be below a relevant threshold of AU\$750,000 for first home buyers and AU\$550,000 for other principal place of residence purchasers. Both of those thresholds were temporarily increased to AU\$1 million for a two-year period from 1 July 2021 in response to COVID impacts on the development and construction sectors. Since 2017, the concession has not been available to residential property investors regardless of the price of the property.

Subject to considerations outlined below, the effect of the Government's temporary measure is to restore the availability of the concession to the position which generally existed prior to 1 July 2017.

Although not yet legislated, it has been announced that the measure will apply immediately (that is, to contracts entered into on and after 21 October 2024) and will run for a 12-month period. Provided a contract is signed within the qualifying 12-month period, the concession will be available even if construction is not completed and settlement does not occur until after the 12-month period has expired.

Duty is typically payable based on the purchase price for a property. However, the off-the-plan duty concession allows purchasers to deduct the value of construction occurring after the date of entering into the contract in order to calculate the 'dutiable value' of the property. Put another way, if the

concession applies the duty should effectively be calculated based on the purchase price after deducting the value of construction that occurs after the date of the contract. It is the developer's responsibility to determine the value of the construction that has occurred after the contract date, using one of the available prescribed methods.

The duty savings can be material. This provides a significant incentive for purchasers to buy property off-the-plan and prior to significant development occurring. In-turn, this supports development feasibilities. The savings are greatest where a purchaser executes a contract before construction has commenced.

The measure does not impact the foreign purchaser additional duty regime. Foreign purchasers of off-the-plan residential property will still be liable for substantial foreign purchaser additional duty (presently 8% of the purchase price or market value, whichever is the higher) albeit the off-the-plan duty concession may apply when calculating the duty payable at general rates.

While high level details of the measure have been announced, there remain a number of uncertainties.

Our initial observations are as follows:

- The Government's announcement refers to properties within 'strata subdivisions'. This suggests that the expanded concession criteria *will* be available for apartments and townhouses within 'vertically' subdivided developments.
- However, the expanded concession criteria *will not* be available for:
 - Standalone (or 'detached') townhouses in 'horizontally' subdivided developments where there is no common property;
 - house and land packages; or
 - refurbished lots,

all of which will remain subject to the existing eligibility criteria.

It is clear that contracts entered into by purchasers from 21 October 2024 will qualify for the expanded concession and that prior executed contracts will not. It is likely that nominations under prior contracts of sale will also be ineligible.

- We also expect that transitional provisions will expressly preclude a purchaser who has terminated an ineligible contract (executed prior to 21 October 2024) and entered into a replacement eligible contract for the same property (executed on or after 21 October 2024) from accessing the concession.
- Given the measure has been announced without notice, and applies for a limited period of 12 months, it will most likely benefit existing projects which have already launched to the market or projects that are in a position to launch within the next 12 months.
- While the measure may be extended before the 12-month period expires, it remains to be seen whether the current temporary announcement will provide sufficient incentive for developers to acquire new sites or to activate projects with a longer lead time.

Given the enduring nature of the housing crisis, which will most certainly outlast this temporary measure, it is our view that permanent relief measures are required to support the feasibility of new housing projects. To fully commit to new housing projects, all stakeholders (including developers, construction contractors, purchasers, capital investors and financiers) need the certainty that only permanent measures can provide.

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