17 March 2021

The Hon. Dominic Francis Perrottet MP
NSW Treasurer
Tax Reform Taskforce
NSW Treasury
52 Martin Place
Sydney NSW 2000

By email: TaxReformTaskforce@treasury.nsw.gov.au

Dear Treasurer

Consultation paper – buying in NSW, building a future

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on the consultation paper "Buying in NSW, Building a Future" (the consultation paper).

Moving from stamp duty on property to an annual tax on land is a significant tax reform that can reap substantial economic and social benefits. Stamp duty is considered one of the least efficient taxes, with taxes based on insurance being the worse type of tax. Numerous economic analyses have concluded that moving from stamp duty to property tax will generate economic benefits.

CA ANZ has consistently supported a move from stamp duty to property tax. However, moving from stamp duty to property tax will be difficult. The New South Wales government has already experienced some of these difficulties when it tried to replace the emergency services levy (which is based on insured property) with a fire and emergency services levy based on property ownership. **If the NSW government is going to move from stamp duty to property tax, it should consider also eliminating insurance taxes on land and buildings.**

With a quarter of all households occupying their current residence for more than 20 years, and only 25% of commercial properties being subject to land tax a substantial portion of the population will not have an incentive to opt in. The proposed opt in transitional method is likely to be protracted and complex with three tax regimes running in parallel for many decades.

Choice avoids double taxation but increases complexity and revenue cost. The consultation paper indicates that the voluntary opt in model will cost at least $2 billion per annum over the next four years and it will take 50 years to repay debt that is expected to be borrowed for this initiative alone.

The proposed transitional method also raises issues regarding intergenerational equity, wealth inequality and housing affordability. Yet details of the impact on the State budget, housing prices, and equity impacts have not been disclosed. This lack of detail makes it extremely difficult to form an educated view of the impact of this proposed transition.

CA ANZ calls upon the NSW government to release the detailed distributional and financial modelling that has been undertaken to date so that the impact on future revenue and property prices can be better understood.

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The choice of tax base, the availability of exemptions as well as potential rates and price thresholds are just some of the policy choices that are worthy of detailed discussion and evaluation. For example, the choice of valuation method for the tax base affects whether owners of freehold land pay more than unit owners for government services. **CA ANZ calls upon the NSW government create a series of detailed consultation papers** that discuss and cost these policy choices.

As noted the long transition period will result in property market participants having to deal with three different taxes. Advice on how to determine the impact of decisions to pay stamp duty and/or land tax versus opting in to property tax will be necessary. As the law currently stands, accountants will not be able to assist their clients in relation to any of these three taxes unless they happen to also be a lawyer. **CA ANZ calls for the NSW government to make legislative changes to ensure that people who are a qualified accountant can provide advice in relation to State taxes.**

CA ANZ strongly recommends that a sunset date to the current transfer duty system be enacted in advance. For political reasons to reinforce the current choice attribute, it is appreciated that the sunset date will need to be distant, for example 2040 or 2050.

To give an indication of the practical long-term issues here, an appropriate question to ask is, in 50 years' time, do we really expect that Revenue NSW will still be required to:

- Determine the land tax free and premium property thresholds?
- Review trust deeds to determine if they are special or fixed trusts?
- Educate its officers and the community in transfer duty and land tax?

Appendix A details some of the issues that need to be explored and debated to help develop the understanding of this proposal. This is important for most citizens of Australia as other States and Territories are closely watching these developments in NSW.

[redacted]

Yours sincerely

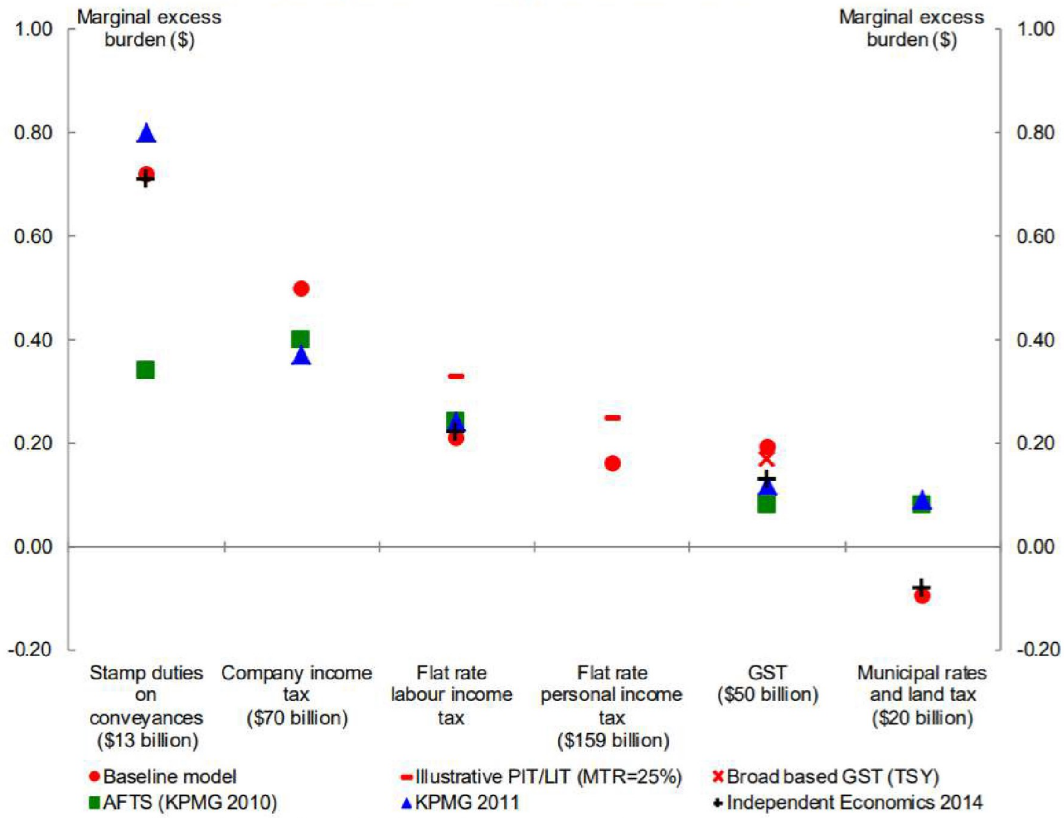
[redacted]

Appendix A

1. Do you agree that stamp duty is out of date and is a handbrake on the economy? Is there merit in replacing it with a broad-based annual property tax?

Moving from stamp duty on property to an annual tax on land is a significant tax reform that can reap substantial economic and social benefits. Numerous economic studies have demonstrated that stamp duty is a much less efficient tax than a **broad-based** annual property tax. The table below summarises the findings of several economic studies[1].

Chart 34: Comparison of marginal excess burden estimates



Source: KPMG (2010), KPMG (2011), Independent Economics (2014) and Treasury estimates.

CA ANZ has consistently supported a move from stamp duty to property tax but has noted that transitioning is difficult. The difficulty of transitioning was recognised in the final report of NSW "Federal Financial Relations Review" (the Review). The review recommended that a transition from stamp duty to a broad-based land tax "should be managed with the support of detailed distributional and financial

[1] Source: Page 54 https://treasury.gov.au/sites/default/files/2019-03/TWP2015-01.pdf

modelling and public communications and consultation, so that the transition is fair, efficient and minimises the amount of revenue foregone."[2]

The consultation paper provides some indicative rates and classifications that could be used[3], namely:

- Owner-occupied residential property – $500 + 0.3% of unimproved land value
- Investment residential property - $1,500 + 1.0% of unimproved land value
- Primary production land (farmland) - $0 + 0.3% of unimproved land value
- Commercial property - $0 + 2.6% of unimproved land value
- Property tax is expected to increase 3.8% per annum[4].

But key choices and budgetary and distributional impacts are not discussed.

Key choices – which transitional model?

The July 2020 draft report of the NSW Review of Federal Financial Relations (the NSW review) outlined four possible transitional models:

- Switch on next sale
- Voluntary opt in
- Credit for paid transfer duty
- Gradual phase in/out (the ACT model).

The consultation paper only considers the voluntary opt in transitional model which will generate the least political resistance as initially most people will get to choose the best outcome for themselves. This, however, may not be the best outcome for the State and future taxpayers as it comes at a substantial revenue cost and delays the efficiency benefits of the switch. Given the significance of this proposed change alternative options should also be canvassed.

CA ANZ calls upon the government to provide details of financial and distributional impact of adopting a transition model similar to that adopted by the ACT and/or the credit for paid transfer duty.

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[2] Recommendation 7 https://www.treasury.nsw.gov.au/sites/default/files/2020-10/FFR%20Final%20Report%20-%20200828%20%281%29.pdf

[3] https://www.treasury.nsw.gov.au/budget-financial-management/reform/nsw-property-tax-proposal/other-information

[4] See the response provided to first home buyers at https://www.treasury.nsw.gov.au/budget-financial-management/reform/nsw-property-tax-proposal/what-could-mean-you which indicates that property tax is expected to increase 3.8% p.a.

Budgetary impact

Federal and State governments (other than Western Australia) are currently running significant budget deficits. GST collections are in decline[5], aged care costs are set to dramatically increase[6], and the proportion of aged Australians is increasing, all of which are resulting in increasing government expenditure and reducing revenue[7]. The consultation paper indicates that the voluntary opt in model will cost at least $2 billion per annum over the next four years and it will take 50 years to repay debt that is expected to be borrowed for this initiative alone. Generating substantial budget deficits creates concerns about inter-generational equity if current generations benefit from the debt but leave the repayment of debt to future generations.

The consultation paper makes multiple references to $11 billion being injected into the economy over four years[8]. The $11 billion matches the expected fall in revenue over the same 4-year period. Thus the $11 billion appears to be a transfer of funds from the State to active property market participants rather than an improvement in economic activity.

The substantial and recurring nature of the expected deficit in State revenue generated by the opt in transitional method raises an important issue: how is this shortfall along with other expected shortfalls to be funded in the short to medium term?

Debt is proposed to be used in the consultation paper to help fund the shortfall from transitioning from stamp duty to property tax. This debt is expected to take 50 years to pay back. But this is not the only shortfall that the NSW government is expecting.

- The NSW 2020 budget paper[9] notes that the latest changes to the horizontal fiscal equalisation calculation that affects how GST is distributed, have a no worse off payment mechanism that is due to expire in 2026/27 and that this no worse off payment is worth $2 billion for the period 2021-22 to 2023-24.
- In addition to this the latest NSW Intergenerational Report (2016) states that "If we allow current trends to continue, a widening fiscal gap will emerge between what the state government receives, and what it spends on the services and infrastructure people expect. Expenditure would exceed revenues resulting in a fiscal gap1 of 3.4 per cent of GSP by 2056, which is equivalent to $17 billion if applied to today's GSP. If this eventuates, ***net debt would rise from around one per cent today to almost 75 per cent of GSP in 2056***. ***A fifth of revenues would have to go from services to meet interest payments alone***." A 2021 Intergeneration Report[10] is expected to be published and any updates to the above analysis will be relevant to the consultation process.

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[5] https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Publications/Research_reports/Structural_Trends_in_GST

[6] https://agedcare.royalcommission.gov.au/

[7] https://treasury.gov.au/intergenerational-report and https://www.treasury.nsw.gov.au/nsw-economy/intergenerational-report/2021-nsw-intergenerational-report-treasury-technical-research

[8] Page 7

[9] 4-19 https://www.budget.nsw.gov.au/sites/default/files/2020-11/Budget%20Paper%20No.%201%20-%20Budget%20Statement%20-%202020-21%20Budget_1.pdf

[10] https://www.treasury.nsw.gov.au/nsw-economy/intergenerational-report/2021-nsw-intergenerational-report-treasury-technical-research

The NSW review recommended that a transition from stamp duty to a broad-based land tax "should be managed with the support of detailed distributional and financial modelling and public communications and consultation, so that the transition is fair, efficient and minimises the amount of revenue foregone."[11]

CA ANZ calls upon the NSW government to release the detailed distributional and financial modelling that has been undertaken to date so that the impact on future revenue and property prices can be better understood.

Other comments that have been made in the NSW budget papers and in the final report of the NSW Review of Federal Financial Relations indicate that NSW will be looking to advocate for both an increase in the base and rate of GST and a change in the GST distribution formula. **CA ANZ calls upon the NSW government to:**

- **Release financial information to contextualise this proposed change in relation to the broader State financial trends.**
- **Explain how the funding gap is to be financed and whether this proposal is dependent upon other tax reform changes such as increasing the GST base/rate and/or changing the GST distribution formula.**
- **Explain why the alternative transition methods such as that adopted by the ACT are not being adopted.**

2. The annual property tax would be based on unimproved land value, much like the way council rates are currently calculated – what do you think of this approach?

A major policy decision will be what base will be used. Whilst the consultation paper asks a question regarding this issue there is limited meaningful discussion of the choices, such as unimproved land value (UV) versus capital improved value (CIV).

It appears that UV is the government's preferred choice on the basis that it is the same as the current base for rates and land tax. Using UV has the advantages of using a system that is established and understood by both government and taxpayers who pay rates and/or land tax. Some have argued that using UV ensures that there are no State tax disincentives to improve the land.

However, there are equity and revenue sustainability concerns about using UV. If UV is used, then an owner of a free-standing house will be paying four times as much as an apartment owner who is on an identical block of land that contains four apartments. Yet government services that are needed for the block of land with the apartments could be four times the amount needed for the free-standing house.

To better match the demand for services with revenue needed and to ensure a sustainable revenue stream the review of the Local Government Rating System by the Independent Pricing and Regulatory Tribunal (IPART) of NSW that was publicly released on 21 June 2019[12] recommended mandating the CIV as the basis for setting rates in metropolitan council areas.
The government rejected this recommendation "given the unclear distributional impacts along with the high cost of implementation and prolonged transition timeframes."[13] **As the government is now intending to implement difficult long-term changes to the taxation of property, the tax base used**

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[11] Recommendation 7

[12] https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Release-of-IPART-final-reports-on-the-Local-Government-sector

[13] Page 6 https://www.olg.nsw.gov.au/wp-content/uploads/2020/06/IPART-Rating-Review-Government-Response.pdf

for the determination of rates, land tax and the proposed property tax should also be on the table for discussion to ensure that the long term revenue and equity needs of the State are met.[14]

3. Do you agree that it would be attractive to be able to choose an annual property tax rather than paying a large lump-sum stamp duty on a purchase and, for investors, the current annual land tax?

Purchasers who currently can access stamp duty and/or land tax exemptions or intend to hold the property for a long period of time would probably not choose a property tax. Given that only 25% of commercial properties are subject to land tax and that over half of owner occupiers have been in the same home for at least 10 years[15] , this could be a very significant proportion of active market participants.

Property developers and property "flippers" are likely to opt for a property tax.

4. Is an opt-in and gradual approach the best way of ensuring a fair transition to the property tax?

The consultation paper argues that the transition from stamp duty to property tax will improve housing affordability in the long run. However, the timing of the long run is not specified and there is no discussion of the impact of this proposal on housing affordability in the short/medium term.

It is unclear whether this proposal will improve housing affordability – any stamp duty savings could dissipate in the form of higher house prices in an era of record low interest rates. It is noted that some academic papers[16] have concluded that first home buyer grants (FHBG) combined with ease of access to finance and an inelastic supply, resulted in the median price of houses in Australia increasing by approximately $57,321.

This raises intergenerational equity issues as younger generations take on large amounts of debt and older generations see their house value increase.

The impact of this proposal on housing affordability should be made clearer.

It is noted that the Federal Financial Relations Review was concerned about the inequity of long term holders of property obtaining benefits from the States compared to people who move frequently. Adopting an opt in approach entrenches this inequality compared to other potential transitional methods.

CA ANZ has also already raised in discussion forums the issue of whether an annual property tax will be tax deductible for property investors (as distinct from stamp duty forming part of the CGT cost base). Federal Treasury officials will no doubt have something to say about this because (if deductible) it will bring forward the costs to income tax.

5. Would you delay a home purchase if it meant you could opt-in to the property tax? Should there be a limited

[14] It is noted that the consultation paper states that the economic benefit of this reform will be approximately halved if the property tax was based on market values instead of UV. It is also noted that the IPART report estimated that net gains over 15 years of up to $2.1Billion if CIV was used instead of UV. This conflicting economic analysis need further explanation.

[15] "Data on household tenure from the SIH suggest that in 2008 around one-quarter of owner-occupier households had not moved for over 20 years, and over half of owner-occupiers had been in the same home for at least 10 years"https://www.rba.gov.au/publications/bulletin/2010/jun/1.html#:~:text=While%20housing%20turnover%20varies%20over,dwellings%2C%20change%20ownership%20each%20year.

[16] Refer - https://ojs.deakin.edu.au/index.php/dpibe/article/download/52/59/

window for retrospective opt-in to the property tax, after it commences?

If it is expected that home purchases may be delayed in order to gain access to the ability to opt into a property tax, then a limited window for retrospective opt in to property tax after it commences may assist in reducing the likelihood of this happening.

6. Should there be different property tax rates for residential owner-occupied properties, residential investment properties, farmland, and commercial properties?

Having different property tax rates for different uses of a property raises a number of issues. For example:

- The process and timing for assessing / classifying the nature of the property.
- The default rate for land that does not fit into any of the four categories for which a rate has been suggested e.g. uncleared bushland.
- The need for clear definitions to assist in assessing property. For example, will assessment be made solely on the basis of proposed use, actual use or zoning?
- The sanctions for deliberate incorrect property classification.
- The treatment of property that fits into two rate categories (e.g. primary production land owned by the farmer who lives in the farmhouse).
- The position in relation to mixed-use property (e.g. residential land used for dual purpose such as leased granny flat or running a business from home).

Also, what happens when there is a change of use without a change in ownership? For example, if a residential investment property is demolished and replaced by a new residence which is proposed to be occupied by the owner, when and how will the new liability be determined? What financial adjustments will be available, and most importantly from an integrity perspective, how will a change in use be detected? A similar issue arises if a principal place of residence is demolished and units or townhouses are erected, some of which will be rented out.

There will need to be legislation and administrative guidance on these issues. A private ruling system will also be integral for people who hold mixed use properties. Given the speed in which property transactions occur, the NSW private ruling system will need to be very agile and interactive in dealing with these situations (as will the NSW compliance function). Revenue NSW may need substantial resourcing.

7. Given this tax reform is an investment into our future, do you think it is worth the cost?

As noted in the cover letter and discussed in greater detail in responses to questions 1-6 of the consultation paper, it is impossible to answer this question without further information.

8. Should price thresholds be used to exclude people buying the most expensive properties from being able to choose the property tax?

From an economic efficiency perspective, ideally the transition from stamp duty to a property tax should happen as quickly as possible and no properties should be excluded from the ability to opt in to a property tax.

From a state budgetary perspective, transitioning from stamp duty to a property tax could have a significant negative budgetary impact – state governments lose an immediate benefit of a large up-front percentage of the market value of properties sold and gain a lower rate property tax based on a lower value (unimproved market value). Given the opt-in nature of the transitional model property buyers will have the ability to choose the lowest cost tax option for a substantial period of time.

The substantial budgetary impact has resulted in the consultation paper proposing that certain high-end properties be excluded if a price threshold (based on **market** value) is exceeded. If such an approach is taken the consultation paper expects that the budgetary impact can be limited to $2 billion per annum whilst still ensuring that over 80% of residential and 90-95%of non-residential properties can opt in at the outset.

The consultation paper notes that: *"This approach would allow the least expensive properties to transition to the property tax from the outset"*. Whether it is socially appropriate for those on lower incomes who generally buy lower priced property to have the burden of an on-going tax as opposed to a liability for once off stamp duty is a discussion that is yet to be had.

Property reports[17] estimate that in December 2020 quarter the median Sydney house costs $1- 1.2 million and the median Sydney unit costs $733,000. According to recent media reports, the trend since has been "up". It is unknown what price threshold is proposed or if consideration is being given to having different price thresholds for different types of property or whether the threshold will be raised over time[18]. It is difficult to determine the impact on important market segments (for example property developers) without these key pieces of information.

CA ANZ calls upon the NSW government to:

- **Announce what the proposed price threshold or thresholds are expected to be.**
- **Clarify whether the price thresholds will vary between these property classifications.**
- **Release the detailed distributional and financial modelling that has been undertaken regarding the proposed price threshold(s) so that the impact on future revenue and property prices can be better understood.**
- **Clarify whether the price threshold or thresholds will change over time and, if so, provide details regarding the criteria which would trigger a threshold review along with expected distributional and financial impact and possible timing would be appreciated**.

From an administrative perspective the introduction of price thresholds adds complexity. Purchasers of properties that are close to the price threshold will need to obtain funding approvals from financiers on two bases – one that the property is subject to property tax and one if the property is subject to stamp duty.

CA ANZ is concerned by the conflicting message communicated to the community by the following core

[17] https://www.abc.net.au/news/2021-01-28/nsw-sydney-property-sees-units-shrink-in-value-houses-increase/13096746

[18] The consultation paper indicates that "Residential owner-occupied and primary production properties would pay lower rates than residential investment properties, which in turn would pay lower rates than commercial properties."

features announced:

- the important economic and community benefits from the shift to an annual property tax rather than imposition of an upfront transfer duty
- Giving buyers the choice between the current regime and the proposed regime, and
- Prohibiting buyers above a certain threshold from selecting the proposed regime simply to protect the NSW budget.

CA ANZ takes the view that preventing a segment of buyers from opting-in to the annual property tax will have the effect of:

- Undermining both the arguments for the change and the ability to choose hence making the proposal harder to sell both to the media, community and parliament.
- Making the transition to the new regime more complex both from a community education and Revenue NSW administration point of view
- Add to the complexity that prospective buyers at prices around or above the threshold price face in reviewing contracts, arranging financing and bidding at auctions. CA ANZ perceives a significant likelihood of buyers bidding or agreeing to prices above the threshold without factoring in the compulsory transfer duty or their inability to opt-in because they are over a relevant threshold. This could lead to greater likelihood of uncompleted sales, mortgage foreclosures and litigation.

A possibility to alleviate some of these concerns would be to collect the stamp duty that would have been payable if stamp duty had been chosen for the acquisition. In summary, for property purchases above the relevant thresholds:

- An amount otherwise payable as transfer duty is payable by the prospective buyer,
- Revenue NSW issues an assessment to that buyer for the annual property payable in advance equal to the amount paid,
- The amount paid in advance is reduced each year for the annual property tax actually assessed for that year until the credit balance is exhausted, and
- Any outstanding credit balance is refunded if the buyer then sells the property.

For example, assume a residential property is sold in 2022 to an owner occupier for $2 million. The unimproved value of that property at 1 July 2021 is $1.5 million. The tax calculations are:

- Transfer duty on $2 million at current rates = $95,050
- Annual property tax $500 + 0.3% of $1.5m = $5,000
- Revenue NSW treats the upfront payment as advance payment of the first 19 years of annual property tax
- From the 20th year the buyer is assessed for annual property tax on the unimproved value at that time based on the applicable rates.

This measure would address the NSW Budget problem. It would also ensure that the applicable property is brought into the annual property tax regime enabling Revenue NSW to continue to collect further property tax after the credit has been exhausted (unlike under the existing proposal where that property would qualify for the PPR land tax exemption indefinitely).

9. What arrangements should be made for residential and commercial tenants if their landlord chooses to pay the property tax?

Recoverability from tenants of property tax imposed on landlords depends on both legislative restrictions on recoverability (for certain retail properties) and practice that has evolved. In some cases, existing land tax is recovered from tenants, and in other cases it is partially recovered or not recovered at all.

It would seem sensible that existing practices in relation to recovery of land tax are maintained. Where the practice is that land tax is recovered from the tenant, this should be allowed to continue. The overall rent payable by the tenant is a matter for commercial negotiation.

10. What should happen for people who have chosen the property tax, but then can't afford it?

People who are asset rich but income poor such as retirees and people who are experiencing hardship such as loss of employment will have difficulty paying property tax.

These people are also likely to have difficulty paying their local council rates. Exploration of how hardship and pensioner payment concessions operate in relation to local council rates should be undertaken.

In the ACT, there is a differentiation between the treatment of temporary hardship situations and retirees. Deferred payment plans are offered to those that meet temporary hardship conditions. Retirees can effectively enter a reverse mortgage, that is their property tax plus a very low rate of interest accumulates as a debt against their property and is recovered when it is sold. Identifying the criteria for people who are eligible for hardship payment plans or the ability to reverse mortgage will be key to ensuring that these relief mechanisms meet their intended audience. The rate of interest is also an interesting policy decision – a government bond rate of interest would encourage people to defer payment if it is cheaper than alternative credit sources available to them, yet a personal loan interest rate may be too high for retirees.

CA ANZ also notes comments in the recently published Retirement Incomes Review[19] about the need for retirees to make better informed decisions about their retirement investment strategy and some reconsideration of the desirability of holding onto "nest egg" assets (such as the family home). It could well be that the NSW policy proposal will be impacted by any decisions made at Federal level in response to the Review.

11. What is the best way of ensuring that the property tax remains affordable for taxpayers, while generating the same amount of long-run revenue as stamp duty and land tax?

CA ANZ recognises that Parliamentary sovereignty means that a current government cannot pass laws that future governments cannot change. As such there can be no guarantees that a future government will not raise tax from property beyond a set amount.

That said, CA ANZ welcomes the consultation paper statement that "if the Government proceeds with this reform, it will legislate a clearly defined formula for calculating the amount of tax payable now and in the future. This will ensure that future Governments seeking to modify the rates would need to enact new legislation."

Discussions with our ACT members, who are currently experiencing a transition from stamp duty to property tax have highlighted that it is not just the property tax rate that affects the amount of property tax,

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[19] https://treasury.gov.au/publication/p2020-100554

it is also the tax base. This will be a particular issue in Sydney, where "Sydney's median house price grew by almost 290 per cent over the 20 years to June 2020, nearly triple growth in average income of 105 per cent over the same period"[20] This high rate of growth in property prices compared to wage increases means that even with no changes in the rate, a property tax will have a significant and growing impact on personal and investor budgets. Another circumstance where the tax base may be significantly impacted is when rezoning occurs. When legislating these formulas consideration needs to be given to the impact of not only the tax rate, but also changes in the tax base.

12. Is there a specific aspect of our proposed reform you would change to help make the proposal better?

Implementing the transition from stamp duty to the proposed property tax requires consideration of many detailed and varied issues. Some of the issues that will need to be clarified include:

- The continuing relevance of existing stamp duty and land tax exemptions.
- Whether foreign investor surcharge will apply to the proposed property tax, and, if so, will there be an up-front payment of the current stamp duty and/or land tax surcharge element, or will there be an increase in the amount payable annually as property tax to cover this?
- Will foreign investors be given the ability to opt-in?
- How will the existing premium property tax for residential properties be dealt with?
- How the property tax will apply in a landholder context, especially where a market value threshold exists for landholder duty?
- Who should provide advice?
- The need to educate buyers.
- Property identification.

These are discussed in greater detail below.

Exemptions

Economic theory postulates that an efficient tax has a broad base and a low rate. That is, ideally a tax should have few exemptions. But for social policy and political reasons that ideal is rarely met.

Both land tax and stamp duty currently have numerous exemptions many of which exist for strong equity or social policy reasons. The consultation paper discusses the first home buyer stamp duty exemption, but other stamp duty exemptions and land tax exemptions are not discussed.

How the existing stamp duty and land tax concessions will be treated when a new property tax is introduced, needs to be clarified. Clarification is also needed as to whether the new property tax will or will not have exemptions that are similar to those that exist for stamp duty and land tax purposes. Thoughts as to how the existing stamp duty and land tax concessions should be treated are outlined below.

Stamp duty concessions

A significant stamp duty concession is the first home buyer stamp duty exemptions and associated concessions. The consultation paper postulates that this exemption will no longer be needed as first home buyers can opt to pay property tax rather than stamp duty. Further the consultation paper

[20] https://www.treasury.nsw.gov.au/sites/default/files/2021-01/2021_igr_ttrp_-_sensitivity_analysis_on_sydneys_urban_structure_and_house_prices_for_the_2021_nsw_intergenerational_report.pdf

postulates that a cash grant[21] to first home buyers who opt in to property tax could further incentivize them to transition from stamp duty to property tax.

In the absence of modelling, it is difficult to determine at what price points first home buyers will be incentivized to opt-in. CA ANZ believes that a table should be circulated showing the current first home buyer concessions compared with the level of cash grant available at relevant price points. CA ANZ considers that the proposed cash grant should mirror the current first home buyer concessions at each price point as much as possible. A cash grant that adds to the first home buyer concession might encourage buyers to over bid and simply inflate house prices.

CA ANZ strongly believes that a cash grant system is preferable to a property tax exemption or concession system for home buyers. Given thresholds, choices and a transition period, the resulting property tax system will be complex enough. Having first home buyer exemptions would add unnecessary complexity.

Other existing stamp duty exemptions include:

- Corporate reconstructions.
- Trustee changes.
- Inheritance.
- Transfers on divorce or between partners.
- Intergenerational transfers.
- Transfers to hospital, public benevolent and charitable entities etc.

Exemptions for corporate reconstructions and trustee changes exist as whilst the legal ownership of the land changes as a result of these events the economic and beneficial ownership does not change. CA ANZ is of the view that these stamp duty exemptions should continue to exist[22]. It would be inappropriate to prevent commercial restructures from occurring due to adverse state tax consequences.

Assuming that this exemption continues to apply to a transfer, will a transfer that obtains corporate reorganization relief result in the opt-in ability to be lost for anyone acquiring the property? In other words, will an entity acquiring property in a corporate reorganisation be deemed to exercise the option or will the intra-group transactions be ignored for the purpose of the proposed opt-in arrangements? Also, what will be the position in relation to transfers for which other exemptions apply – will the transfer be deemed to result in an opt-in or will there be a choice by the transferee?

The current stamp duty exemptions relating to inheritance and divorce should also continue. CA ANZ does not believe that this reform should be complicated by moves that would create, in effect, wealth taxes or death duties.

Land tax concessions

The consultation paper notes[23] at page 11 that only 8.5% (that is 260,000 out of 3 million) residential properties and around 25% of commercial properties are subject to land tax. The consultation paper clearly intends that all residential property will eventually be subject to land tax but is silent regarding

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[21] Offer cash grants of $25,000 to people buying their first homes at values of up to $1 million (or up to $650,000 for vacant land), for a period of, say, three years from the start of reform

[22] An exemption may not be required for the new property tax provided the use of the property remains the same as once in the property tax regime the property is subject to property tax regardless of the owner.

[23] See page 11

whether other existing land tax exemptions will be brought across into the proposed property tax regime.

By the announcement of an annual property tax rate for primary production land, CA ANZ understands that the annual property tax will apply to newly acquired farmland that would otherwise qualify for the primary production land tax exemption. This needs to be clarified. Further, the rate applicable to primary production land that does not meet the current land tax exemption needs to be clarified. Among other scenarios, where the farmhouse is rented, does that land qualify as residential investment land or commercial land. Under the proposed model, CA ANZ can see increased disputation for such properties in relation to property tax classifications, land values and even land zoning.

Some of the current other land tax exemptions that apply include:

- Boarding House.
- Low cost accommodation.
- Residential and caravan parks.
- Retirement villages, aged care establishments and nursing homes.
- Child care centres.
- Non-profit organisations such as charities, educational institutions, religious organization.
- Crown or council land.
- Society, clubs and associations that are not for profit.

A property tax that only applies to 25% of commercial properties is clearly not going to a broad-based low rate tax, which is usually taken as a sign of an efficient tax. Applying the proposed land tax to industries and organisations that are accustomed to accessing land tax exemptions is going to generate tough discussions.

How the proposed property tax will apply to future property acquisitions is one matter, discussing whether the existing land tax exemptions will continue for existing and future properties is another.

If an opt in transitional approach is being adopted, then it would be appropriate for properties that can currently access the existing land tax exemptions to continue to do so until they are sold when the new owner will have a choice. But what choice will the new owner face? Will they have the choice of paying stamp duty and obtaining a land tax exemption based on the existing land tax exemptions versus a property tax, or will they face a choice of paying stamp duty and land tax versus paying a property tax? Paying stamp duty and land tax is likely to be perceived as coercing people into the property tax system. Maintaining the extensive land tax exemptions is likely to substantially delay the transition to property tax.

Properties of the types qualifying for these other land tax exemptions are usually held long term. The choice adopted by a new buyer of such property will lock in the property tax regime for that property for the very long term, in some cases, for centuries. CA ANZ sees this reform as a chance to review whether such an open-ended long-term exemption is in the community interest at a time of escalating home prices and limited social housing stock. The continuing exemption that, for example, not-for profits secure for land utilized for commercial operations should be examined on competition grounds alone. **CA ANZ encourages the NSW Government to consider a low-rate annual property tax of say 0.1% of the unimproved value to apply to all new purchases of some of these categories of property currently exempt from land tax.** This will act as a disincentive for this sector of landowners to hold underutilized land and should result in some properties being returned to the market for the community.

Interaction with foreign surcharge provisions

The foreign surcharge regimes have an ongoing policy objective to discourage foreign buyers from bidding up residential land prices. This objective co-exists with a revenue raising one and both objectives continue to be relevant. Having a foreign surcharge with the new proposed annual property tax regime is possible and appropriate.

There is an overlay with a Federal impost which has a similar policy objective.

CA ANZ believes that the potential for community misunderstanding and even non-compliance will be higher when a non-resident acquiring residential property seeks to adopt the annual property tax regime. It is likely that more foreign buyers will fail to distinguish the difference between transfer duty and duty surcharge than under the current regime. It will be critical that the NSW Government clearly communicates that buyers who opt-in to the new annual property tax regime may still be required to pay the 8% duty surcharge even if they do not pay the upfront transfer duty.

Operating three tax systems – how long

There will be considerable complexity in operating the three property tax systems simultaneously over the long term. There will be even more complexity in maintaining the opt-in choice long term. CA ANZ does not believe that it is realistic to attempt to do so.

CA ANZ agrees with the economists that replacement of the transfer duty system with an annual property tax is an important goal. The maintenance of a large and growing number of properties outside that system merely cements the inefficiencies of the current system permanently.

CA ANZ strongly recommends the NSW Government be fully transparent in communicating the policy objective that all properties will eventually be within the annual property tax regime. While appropriately grandfathering currently owned properties, **CA ANZ strongly recommends a sunset date to the current transfer duty system be enacted in advance. For political reasons to reinforce the current choice attribute, it is appreciated that the sunset date will need to be distant, for example 2040 or 2050.**

To give an indication of the issues here, an appropriate question to ask is, in 50 years' time, do we really expect that Revenue NSW will still be required to:

- Determine the land tax free and premium property thresholds
- Review trust deeds to determine if they are special or fixed trusts, and
- Educate its officers and the community in transfer duty and land tax.

Who should provide advice?

Buying property is a major decision regardless of whether you are buying your first home or a major property developer. Having a choice between paying stamp duty (and possibly land tax) and a property tax will be a major concern for buyers.

Who are buyers likely to ask for advice?

Buyers are likely to seek advice from real estate agents, lawyers, licenced conveyers, accountants and friends. Some will also want to research the answer themselves.

Who should provide the advice?

The most significant tax revenue sources in Australia are income tax and GST – both Federal taxes. Tax advice for Federal taxes is heavily regulated to ensure that tax advice is issued by qualified and ethical people.

However, stamp duty, land tax and the proposed property tax do not fall within this existing regulatory regime that enables tax advice to be provided by non-lawyers. Corresponding exemptions from the NSW Legal Practitioners Act clarifying that qualified accountants can give advice on stamp duty, land tax and the proposed property tax will be necessary. In the absence of these, CA ANZ expects the following to occur:

- landowners and prospective buyers will not be able to obtain advice from accountants who advise them on CGT, GST, FIRB and vacancy taxes on the same transaction.
- parties requiring "one stop shop" advice may struggle to find a professional capable of advising them on the broad issues noted above. For example, it is important to remember that many law firms, even mid-tier firms have a policy of not giving tax advice.
- many parties requiring advice will be required to make transaction decisions without it because of the difficulty in finding professionals willing to provide it (at a reasonable cost).

These factors will greatly add to the cost to the community of the new system.

CA ANZ recommends that the new law include a provision limiting the practitioners who are permitted to advise in this area. That is, from the date of enactment of the new Property tax legislation, the only practitioners permitted to provide advice on the application of the Property tax and its interactions between Stamp duty and Land tax are:

(a) a qualified accountant, as defined under ASIC's Legislative Instrument by reference to the three "professional accounting bodies"; and
(b) an Australian legal practitioner.

If such a limitation is not imposed, we are concerned that individuals working in the property sector, such as real estate agents or conveyancers, may attempt to provide advice on transactions under the new law which is outside of their knowledge, qualifications and competencies.

We note that professional accountants and practising lawyers are subject to stringent Professional Standards and Codes of Ethics that ensure they can only provide their professional services in areas where they are competent to do so. We believe that this step would substantially reduce the risks of the new opt-in mechanism and its transitional complexities for both clients (consumers and businesses) and the Government revenue.

Educating Buyers

A critical aspect missing from the proposal is any measure to dissuade buyers simply bidding up prices of properties for sale. Many buyers will think they have the capacity to pay a price equivalent to the transfer duty inclusive cost they would pay under the current system. Further, CA ANZ perceives many prospective buyers will not accurately assess their capacity to meet the annual property tax once the property has settled.

CA ANZ does not have an immediate solution to this likelihood but suggests that the NSW Government, Revenue NSW, conveyancers, real estate agents, financiers, mortgage brokers financial planners and accountants all will have a role to play in educating their clients and the community particularly during the transition period.

Property Identification

The annual property tax will, like the current land tax system, rely on the identification and valuation of property parcels (known as Property IDs or PIDs) determined by the Valuer General. Under the current system, where a property is amalgamated or subdivided a new PID is issued for the new parcel. Further, a new PID is often issued when an adjoining title is acquired, is not amalgamated as such but the combined land is applied to a single use. CA ANZ believes that system will need to be significantly modified in respect of amalgamations under the annual property tax system.

Consider an example where an owner acquired a parcel under the current duty/ land tax regime. Following the introduction of the annual property tax the owner acquires the lot next door or there is a boundary adjustment which increases the size of the owner's existing landholdings. The owner either chooses to or is required to opt-in to the annual property tax for the newly acquired lot.

CA ANZ believes that issuing a single PID for a property subject to the two regimes would be unworkable. If the parcel already owned was exempt, would the new PID be exempt and if so, from what tax? If the new lot would, in isolation, be entitled to the reduced annual property tax rates for owner-occupied residential property and primary production land, how would that be achieved under a single PID?

CA ANZ believes that a separate PID would need to be issued for the newly acquired lot. However, for determining the application of exemptions or rates for the newly acquired lot, the owner will need to be entitled to have their existing and newly acquired lot treated as a single parcel if they so choose. Examples where this would be critical are:

- PPR exemption for adjoining lots per cl 13, Sch 1A, *Land Tax Management Act 1956*, and
- Primary Production Land exemption for non-rural land per sec 10AA(2) where the commercial purpose and profit purpose tests are often not satisfied on smaller lots but are more easily achievable by virtue of economies of scale if separate lots are treated as a single parcel.

In the absence of such measures, owners of parcels comprising lots acquired under both regimes may be significantly worse off than they would have been under the existing regime.