

# MELBOURNE PROPERTY INVESTOR ALERT: NEW TAX ON VACANT RESIDENTIAL PROPERTIES

Date: 11 January 2018

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## VACANT RESIDENTIAL LAND TAX

With effect from 1 January 2018, owners of residential properties in certain Melbourne suburbs, which have been unoccupied for more than six months in a calendar year, will be liable to pay the Victorian Government's new "vacant residential land tax" (**Tax**).

The Tax was introduced as part of the 2017 State Budget and is now being implemented by the State Revenue Office (**SRO**).

## INTRODUCTION OF THE TAX

The Tax commences on 1 January 2018. However, it is based on use and occupation of residential properties in 2017. As the legislation was only introduced in May 2017, all properties are deemed to have been occupied between 1 January and 30 April 2017. This means a property will only attract the Tax in 2018 if it was unoccupied for more than six months between 1 May 2017 and 31 December 2017.

The owner of an eligible property as at midnight on 31 December of the preceding year will be liable to pay the Tax.

While the owner of a property is the same as for land tax purposes, mortgagees in possession and beneficiaries of trusts will not be liable to pay the Tax.

The Tax is in addition to:

- land tax
- the absentee owner surcharge, which is an additional surcharge over the usual land tax rates for land owned by "absentee persons"
- the Federal Government's annual vacancy fee, which is levied on foreign owners of residential real estate where a property is not occupied or genuinely available for rent for at least six months in a 12 month period.

## TAX RATE

The Tax is assessed at 1% of the "capital improved value" (CIV) of the property. CIVs are displayed on council rates notices and take into account the value of any improvements on the land.

For example if the CIV of a property is AUD500,000 and the Tax applies, the tax payable would be AUD5,000.

We note that this is different to regular land tax which is calculated on "site value", which is the unimproved value of the land.

## **AFFECTED MUNICIPALITIES IN MELBOURNE**

The Tax applies to vacant residential properties in the following Melbourne municipal council areas:

- Banyule
- Bayside
- Boroondara
- Darebin
- Glen Eira
- Hobsons Bay
- Manningham
- Maribyrnong
- Melbourne
- Monash
- Moonee Valley
- Moreland
- Port Phillip
- Stonnington
- Whitehorse
- Yarra

## **WHAT IS CONSIDERED RESIDENTIAL LAND?**

Residential land is land that is capable of being used solely or primarily for residential purposes.

It also includes land on which a residence is being constructed or renovated, where the land was capable of being used solely or primarily for residential purposes before the works commenced and will be so capable on completion of the construction or renovation. However, as explained further below, there is an exemption available for up to two years for properties that will be vacant while renovated or constructed.

Residential land does not include vacant land (i.e. where there are no improvements on the land), commercial residential premises, display homes, residential care facilities, supported residential services or retirement villages.

## WHEN IS A PROPERTY CONSIDERED VACANT?

A residential property will be considered vacant if it has not been used or occupied for more than six months in the preceding calendar year by:

- the owner as their principal place of residence
- the owner's permitted occupant as their principal place of residence or
- a natural person under a lease or other short-term letting arrangement.

The six months does not need to be in a continuous period, but can be aggregated. For example if a property is vacant for four months between January to July, and is then also vacant for more than two months between July to December, the Tax will apply.

If a property is only occupied on a casual basis during the year it will be considered vacant and will be liable for the Tax unless an exemption applies or there is a bona fide lease. A lease made solely for the purpose of avoiding the Tax will not be considered a genuine arrangement.

If the property is vacant for more than six months in a calendar year it will be subject to the Tax regardless of whether the property is advertised for rent or sale during that time, including as a result of listing on casual vacancy websites such as Airbnb and Stayz.

## EXEMPTIONS

Exemptions are available for:

- Holiday homes used and occupied by the owner themselves for a period of at least four weeks (whether continuous or aggregate) in the relevant year. The owner must have a different principal place of residence in Australia. A taxpayer can only claim the holiday home exemption for one holiday home in any tax year.
- Properties occupied for the purpose of attending the owner's place of business or employment (where the business is within the eligible municipalities) for an aggregate period of at least 140 days in the relevant year. The owner must have a different principal place of residence in Australia.
- Land that changed ownership in the year preceding the tax year. For example, if a property was transferred in 2017, it will be exempt from the Tax for the 2018 tax year.
- Land that became residential land during the tax year. For example, if a warehouse is converted into residential apartments during that tax year.
- Up to two years, for land on which a residence is under construction or renovation. The two year exemption commences from the date of issue of the building permit. Under certain circumstances, the Commissioner of Taxation can extend the two year period if satisfied that there is an acceptable reason for the construction or renovation not being completed.

## WHEN IS THE TAX PAYABLE?

Owners of vacant residential properties are required to notify the SRO by 15 January each year via the SRO's online portal. If a property is eligible for an exemption, the landowner is required to notify the SRO and advise which exemption applies.

Landowners who have notified the SRO and are liable for the Tax will receive assessment notices early in the year for properties that were vacant in the preceding year. If an exemption has been claimed, the owner will receive confirmation that an exemption has been processed, or a request for further information.

The assessment notice for the Tax will be separate to the land tax assessment notice for the property. Landowners will have 60 days to pay the assessment in full.

## **LANDOWNERS MUST NOTIFY SRO BY 15 JANUARY 2018**

If you own an unoccupied residential property in the relevant municipal areas, you must notify the SRO by Monday, 15 January 2018 through the SRO's online portal, which is available on the SRO website here:

<https://www.sro.vic.gov.au/vacantportal>

If a landowner fails to notify the SRO by 15 January, it will be deemed to be a notification default and penalties under the *Taxation Administration Act 1997 (Vic)* may apply. The SRO intends to undertake monitoring and compliance activities to ensure that vacant residential properties are being declared.

The SRO has not indicated how it will monitor compliance with the new Tax. However, the SRO could potentially look at energy usage records as one possible indicator that a property was vacant for an extended period. Further, the SRO is actively seeking anonymous tip-offs from members of the community via its website.

K&L Gates can assist with any queries you have on the introduction of the Tax. Please get in touch with us if you have any questions.

## **KEY CONTACTS**



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