

NSW 20/21 BUDGET: PROPOSED CHANGES TO STAMP DUTY

19 November 2020 | Australia
Legal Briefings - By **Sorin Ridgway-Browne**

Important taxation changes have been announced in NSW, with the Treasurer, The Hon. Dominic Perrottet MP, outlining a proposal to transition from the up-front payment of stamp duty to an annual property tax.

The proposal, outlined below, is contained in the NSW State Government's 2020-21 Budget and is subject to a public consultation process until 15 March 2021.

The proposed changes are relevant to commercial property transactions, although as noted below, stamp duty will initially remain on higher value commercial and residential properties.

INTRODUCING THE PROPERTY TAX

The NSW Government is proposing to gradually transition to an annual property tax on all properties, including:

- residential property (both owner-occupied and investment);
- commercial property; and
- primary production land.

Any applicable land tax would also be replaced by the property tax.

Under the proposal, eligible purchasers would have a choice to 'opt-in' to annually pay the property tax, or to pay up-front stamp duty plus any ongoing land tax on unimproved land (if applicable). Because of the dual system, a purchaser would have to decide which system best suits their circumstances. Once a property has been opted-in, it will be subject to property tax for all future transactions.

TIMING

The timeline for implementing the proposal has not been confirmed. However, after the consultation period ends on 15 March 2021, the NSW Government will review the submissions and report its outcomes in mid-2021.

PROPOSED PROPERTY TAX RATES

The property tax is proposed to be calculated based on unimproved land values (in the same way council rates are determined), paid at a fixed amount plus a rate applied to the unimproved land value of the property. Landholdings would not be aggregated under the proposal.

The NSW Government is considering how to index rate increases to avoid outpacing income gains over time, and the proposed property tax is underpinned by a guiding principle of "revenue neutrality" – that the same amount of taxation revenue is received from the property tax as is received from stamp duty today.

The property tax rates below are not final, but as outlined properties for residential owner-occupy and primary production would be subject to a lower rate, relative to residential investment properties and commercial properties.

Property type	Potential property tax rate
Owner-occupied residential property	\$500 plus 0.3% of any unimproved land value
Primary production land	\$0 plus 0.3% of unimproved land value
Investment residential property	\$1,500 plus 1% of unimproved land value
Commercial property	\$0 plus 2.6% of unimproved land value

THRESHOLDS AND TRANSITION

It is proposed that thresholds are adopted so that initially, only properties of a lower value are able to opt-in to the property tax (according to the NSW Government around 80% of residential and 95% of commercial property could be eligible to opt-in). The most valuable residential and commercial properties would still be subject to stamp duty, which is intended to minimise the impact on State revenues during the transition. However, over time the threshold would be increased to gradually include all property in NSW.

Further, in order to prevent short-term disruption to the property market, the NSW Government is considering a short window for retrospective opt-in that would refund any stamp duty paid on a property purchase, and allow the property tax to be applied to that property going forward.

However, due to the opt-in nature of the property tax, the NSW Government estimates that even in 20 years, over half the properties in NSW would still fall under the current stamp duty regime.

IMPLICATIONS FOR YOUR BUSINESS

It will be important to monitor this proposal and the detailed outcomes, as well as consider potential benefits and risks of both systems based on individual circumstances. For current transactions, particularly those involving development coupled with future land acquisitions, it will be important to appropriately plan for and deal with potential future law changes, including in documenting the transaction today.

For more information, please contact [Jinny Chaimungkalanont](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**JINNY
CHAIMUNGKALANO
NT**

PARTNER, SYDNEY

+61 2 9322 4403

Jinny.Chaimungkalanont@hsf.co
m

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2021