

State & Federal Property Tax Changes

News & Announcements 2018

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Preamble

At the Victorian 6th Annual Tax Forum held by The Tax Institute, Australia's pre-eminent and leading taxation professional body (which I attended), the Hon Stuart Robert MP (a key note speaker) addressed attendees on day one of the technical program. During his presentation, the Hon Stuart Robert MP stated on more than one occasion that the Government is all about making our tax system "*fairer*", "*easier*" and "*lower*". The notion and ideal that the tax system in Australia is or about to become, "*fairer*", "*easier*" and "*lower*" is a very difficult one to digest, particularly once you process and dissect the three (3) new property taxes covered in this paper.

Please take the time to read this important paper.

Vito Bove
Consultant Principal

Victorian State Taxes

Vacant Residential Land Tax

Owners of Victorian residential land (“VRL”) may be liable to pay Vacant Residential Land Tax (“VRLT”) which is an additional land tax of 1% of the taxable value of the VRL ¹. VRLT is effective from 1 January 2018 and you will be liable to pay VRLT if:

1. The VRL is vacant (not used or occupied) for more than six (6) months (whether continuous or aggregate) in the calendar year prior to the relevant tax year ²; or
2. Construction or renovation in respect to the VRL is incomplete for more than two (2) years since commencement of that construction or renovation ³; and
3. The VRL is located within the following geographic areas ⁴:
 - a. Banyule City Council
 - b. Bayside City Council
 - c. Boroondara City Council
 - d. Darebin City Council
 - e. Glen Eira City Council
 - f. Hobsons Bay City Council
 - g. Manningham City Council
 - h. Maribyrnong City Council
 - i. Melbourne City Council
 - j. Monash City Council
 - k. Moonee Valley City Council
 - l. Moreland City Council
 - m. Port Phillip City Council
 - n. Stonnington City Council
 - o. Whitehorse City Council
 - p. Yarra City Council

If your VRL falls within any of the above circumstances, you must lodge a written notice to the State Revenue Office (SRO) prior to 15 January 2019 ⁵.

All notifications must be made using the ([SRO Vacant Residential Land Tax Portal](#) ). Failure to notify SRO by the specified date may result in penalties being imposed.

You may be eligible for an exemption if any one of in the following circumstances applies to you:

1. If the VRL is used and occupied as:
 - a. a holiday home for at least four (4) weeks (whether continuous or aggregate); and
 - b. you occupy other land in Australia as a principal place of residence; and
 - c. the Commissioner of SRO is satisfied the VRL was used and occupied as a holiday home.

Note that you can only claim one (1) holiday home exemption in each year ⁶.

2. If you used and occupied the VRL for:
 - a. at least one hundred and forty (140) days with the purpose of attending your place of business or employment; and
 - b. you occupy other land in Australia as a principal place of residence ⁷.

3. Land changed ownership in the year preceding the tax year ⁸.

4. Land becomes 'residential land' during the year preceding the tax year ⁹.

Even if you believe VRL you own satisfied any of the above exemptions you must still notify the SRO by 15 January 2019. Failure to notify the SRO may result in penalties being imposed.

VRLT is not payable in respect of VRL that is not vacant (used or occupied), for example rented. This is the only time no requirement exists to notify the SRO. Contact our office if you are unsure about the status of your VRL.

Absentee Owner Surcharge

From 1 January 2017, a surcharge land tax of 1.5% (“AOS”) applies to Victorian land owned by an absentee owner; this surcharge is in addition to the general and trust surcharge rates of land tax. An absentee owner is defined to mean an absentee person ¹⁰ and includes any one of the following:

1. Natural person absentee, meaning a natural person who is not an Australian citizen or resident; and
 - a. Who does not ordinarily reside in Australia; and
 - b. Who in the year immediately preceding the tax year was absent:
 - i. from Australia on 31 December; or
 - ii. for a period of at least six (6) months (continuous or aggregate).
2. Absentee corporation, meaning a corporation:
 - a. that is incorporated outside Australia; or
 - b. in which an absentee person has a controlling interest.
3. A trustee of an absentee trust, meaning a trust under which at least one (1) absentee beneficiary has a beneficial interest in the land subject to a trust which is either a:
 - a. discretionary trust; or
 - b. unit trust; or
 - c. fixed trust.

If any of the above applied to you on 31 December 2017, you must have already notified the SRO by 15 January 2018 ¹¹. If any of the above applies to you on 31 December 2018, you must notify the SRO by 15 January 2019. You must also notify the SRO by 15 January 2019 if you ceased to be an absentee owner during 2018.

You must notify the SRO by accessing the ([SRO Absentee Owner Notification Portal](#) ). Failure to notify the SRO may result in penalties being imposed.

The rates of land tax with the AOS included are set out in Appendix A.

Each year, the Treasurer publishes guidelines outlining the basis on which exemption decisions are made. An exemption is intended to only apply to Australian based absentee corporations or trusts that make a significant contribution to the economy and community. An exemption may be available to you if you are:

1. An absentee person who holds a controlling interest in a corporation ¹⁴.

For this exemption to apply, the Treasurer must be satisfied that the absentee person should not be taken to hold a controlling interest in the corporation and the corporation must have been incorporated in Australia.

2. An absentee beneficiary who holds a beneficial interest in the land subject to an absentee trust ¹⁵.

For this exemption to apply, the Treasurer must be satisfied that the absentee beneficiary should not be treated as an absentee beneficiary in relation to the absentee trust.

It is important to note that the exemptions are not intended to apply where the absentee corporation or trust is merely a property investor or landlord.

No exemption is available to a natural person who falls within the definition of natural person absentee.

Federal Taxes

Federal Annual Vacancy Fee

A foreign person ¹⁴ who makes an application from 9 May 2017 to the Foreign Investment Review Board (“FIRB”) to purchase residential land in Australia on which a dwelling is or will be situated may be liable to pay Federal Annual Vacancy Fee (“FAVF”). A foreign person is defined to include any one of the following:

- (a) an individual not ordinarily resident in Australia.
- (b) a corporation in which:
 - i. an individual not ordinarily resident in Australia; or
 - ii. a foreign corporation; or
 - iii. a foreign government;holds a substantial interest in the corporation.
- (c) a corporation in which:
 - i. two (2) or more persons, each of whom is an individual not ordinarily resident in Australia; or
 - ii. a foreign corporation; or
 - iii. a foreign governmenthold an aggregate substantial interest.
- (d) the trustee of a trust in which:
 - i. an individual not ordinarily resident in Australia; or
 - ii. a foreign corporation; or
 - iii. a foreign government;holds a substantial interest in the corporation.
- (e) the trustee of a trust in which:
 - i. two (2) or more persons, each of whom is an individual not ordinarily resident in Australia; or
 - ii. a foreign corporation; or
 - iii. a foreign government;hold an aggregate substantial interest.
- (f) a foreign government.
- (g) any other person, or any other person that meets the conditions, prescribed by the regulations.

Liability to pay FAVF in respect to a dwelling is assessed on a yearly basis known as the vacancy year. The vacancy year is the first and each successive twelve (12) month period beginning from the date the foreign person acquired the right to occupy the dwelling ¹⁵. If the dwelling is residentially occupied for fewer than one hundred and eighty-three (183) days in any vacancy year the foreign person will be liable to pay FAVF ¹⁶.

A dwelling is residentially occupied on any given day if ¹⁷:

- a. The foreign person or a relative of theirs genuinely occupies the dwelling as a residence; or
- b. The dwelling is genuinely occupied as a residence under a lease or licence with a term of thirty (30) days or more; or
- c. The dwelling is genuinely available for occupation under lease or licence with a term of (30) or more days.

You are required to lodge a [\(Vacancy Fee Return !\[\]\(5ebcf382a6ee952d6c5b8b948415801e_img.jpg\)](#)) within thirty (30) days ²¹ of the end of your vacancy year. Before you lodge your Vacancy Fee Return you must be registered on the Land & Water Register. If you have not registered, you must submit a [\(Registration Form !\[\]\(5473b7cf4bc841e091ff7eccabf530b8_img.jpg\)](#)). You are also required to keep English records of all transactions relevant to determining your FAVF liability. Records must be kept for at least five (5) years after each and every vacancy year ²².

The FAVF payable is based on the consideration paid for the residential land in Australia on which a dwelling is or will be situated (refer Appendix B).

You may be eligible for an exemption from FAVF if any one of the following circumstances applies to you:

1. Legal ownership of the property changed during the year.
2. Your property is damaged, unsafe or otherwise unsuitable to be occupied.
3. Your property is undergoing substantial renovations or repairs.
4. You or your tenant is receiving long term in patient, medical or residential care.

A foreign person will not be liable to pay FAVF in respect of residential land in Australia on which a dwelling is or will be situated that is residentially occupied for one hundred and eighty-three (183) days or more in any vacancy year.

Ready Reckoner

Property Tax	Australian Resident Owners	Non-Resident (Foreign) Owners
Vacant Residential Land Tax (VRLT)	✓	✓
Absentee Owner Surcharge (AOS)	✗	✓
Federal Annual Vacancy Fee (FAVF)	✗	✓

Appendix A

Absentee Owner Surcharge

Rate of land tax on land held by **absentee owners** for **2017** and subsequent years ¹²

Taxable Value of Land (\$)	Rate
0 – 250,000	Nil
250,000 – 600,000	\$4025 + 1.7% of the taxable value that exceeds \$250,000
600,000 – 1,000,000	\$9975 and 2% of the taxable value that exceeds \$600,000
1,000,000 – 1,800,000	\$17,975 and 2.3% of the taxable value that exceeds \$1,000,000
1,800,000 – 3,000,000	\$36,375 and 2.8% of the taxable value that exceeds \$1,800,000
3,000,000 or greater	\$69,975 and 3.75% of the taxable value that exceeds \$3,000,000

Rate of land tax on land held by an **owner** subject to an **absentee trust** for **2017** and subsequent years ¹³

Taxable Value of Land (\$)	Rate
0 – 25,000	Nil
25,000 – 250,000	\$457 + 1.875% of the taxable value that exceeds \$25,000
250,000 – 600,000	\$4676 and 2.075% of the taxable value that exceeds \$250,000
600,000 – 1,000,000	\$11,938 and 2.375% of the taxable value that exceeds \$600,000
1,000,000 – 1,800,000	\$21,438 and 2.675% of the taxable value that exceeds \$1,800,000
1,800,000 – 3,000,000	\$42,838 and 2.2614% of the taxable value that exceeds \$1,800,000
3,000,000 or greater	\$69,975 and 3.75% of the taxable value that exceeds \$3,000,000

Appendix B

Federal Annual Vacancy Fee

Consideration paid for residential land in Australia on which a dwelling is or will be situated	FAVF payable
\$1,000,000 or less	\$5,500 ¹⁸
\$1,000,000 - \$10,000,000	Formula 1 ¹⁹
\$10,000,000 or more	Formula 2 ²⁰

Formula 1

1. $\frac{\text{Consideration for the acquisition}}{1,000,000}$ Round the resulting amount down to the nearest whole number.
2. Multiply the step 1 amount by \$10,000.
3. Multiply the step 2 result by 1.015. Round the resulting amount down to the nearest multiple of \$100.
4. Multiply the step 3 amount by 1.1. Round the resulting amount down to the nearest multiple of \$100. This amount is the amount of the fee.

Formula 2

1. $\frac{\text{Consideration for the acquisition}}{1,000,000}$ Round the resulting amount down to the nearest whole number.
2. Multiply the step 1 amount by \$10,000.
3. Multiply the step 2 result by 1.03. Round the resulting amount down to the nearest multiple of \$100. This amount is the amount of the fee.

Please note that the above formulae are for your general knowledge only; the Australian Taxation Office (“ATO”) will calculate your FAVF for you. If the consideration for your acquisition is \$10,000,000 or greater, you will need to contact the ATO directly.

References

Legislative

Land Tax Act 2005 (“LTA”)

- ¹ LTA ss. 35(3) What is the rate of land tax?
- ² LTA ss. 34C(1) When is residential land vacant?
- ³ LTA ss. 34C(2) When is residential land vacant?
- ⁴ LTA Schedule 2A Specified geographic area
- ⁵ LTA s 34G Owner of land subject to vacant residential land tax must notify Commissioner
- ⁶ LTA s 88A Holiday home exemption
- ⁷ LTA s 88B Exemption for land occupied for purposes of attending place of business or employment
- ⁸ LTA s 88C Residential land transferred during tax year
- ⁹ LTA s 88D Land becomes residential land during tax year
- ¹⁰ LTA ss. 3(1) Definition of absentee person
- ¹¹ LTA s 104B Notification of absentee owner status
- ¹² LTA Schedule 1 Table 4.2 Rate of land tax on land held by absentee owners for 2017 and subsequent years
- ¹³ LTA Schedule 1 Table 5.2 Rate of land tax on land held by owner subject to an absentee trust for 2017 and subsequent years
- ¹⁴ LTA s 3B Exemptions from holding absentee controlling interests
- ¹⁵ LTA s 3BA Exemption - land held on trust under absentee trusts

Foreign Acquisitions & Takeovers Act 1975 (“FATA”)

- ¹⁶ FATA s 4 Definition of foreign person
- ¹⁷ FATA ss. 115C(2) and (3) Liability for vacancy fees
- ¹⁸ FATA ss. 115C(1) Liability for vacancy fees
- ¹⁹ FATA ss. 115C(4) Liability for vacancy fees
- ²³ FATA s 115D Vacancy fee liability--vacancy fee return
- ²⁴ FATA s 115G Vacancy fee liability--requirement to keep records

Foreign Acquisitions & Takeovers Fees Imposition Act 2015 (“FATFIA”)

- ²⁰ FATFIA ss. 7(1) item 3(a) Fees for giving notice of notifiable actions
- ²¹ FATFIA ss. 7(2) Fees for giving notice of notifiable actions
- ²² FATFIA ss. 7(3) Fees for giving notice of notifiable actions

Other

 [Vacant Residential Land Tax](#)

 [Absentee Owner Surcharge](#)

 [Federal Annual Vacancy Fee](#)

Disclaimer

The contents of this paper are for general information only. They are not intended as professional advice nor should it be used or relied upon in place of appropriate professional advice, for this you will need to contact our office (fees apply). Whilst every effort has been made to ensure the contents of this paper are accurate at time of publication, Bove Chartered Tax Advisers & Accountants expressly disclaims all liability for any loss or damage arising from reliance upon any information in this paper.

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