

Property development update

Recent changes to tax and duty legislation put Victorian property developers at risk of paying double duty.

Experienced property developers have been patiently waiting to capitalise on an anticipated property market downturn after being priced out of many opportunities over recent years. With a number of these developers preparing to act now that property prices are beginning to trend upward again, changes to tax and duty legislation have reared their heads. Unfortunately for these developers, these changes provide a new cause for uncertainty surrounding feasibilities.

In particular, the wide reaching changes to the economic entitlements provisions in the Victorian Duties Act put developers at risk of paying duty more than once. Structures that have previously been commonplace may no longer be suitable for current and future developments.

Understanding the implications of the legislation changes

Under the new rules widely used development management agreements, project management agreements, joint venture agreements and lending agreements are now at risk of triggering duty.

Following the recent changes, the State Revenue Office (SRO) provided guidance on how the Commissioner will apply the new law, however there are very few test cases for advisors and developers to refer to as yet. The SRO is now seeking to provide guidance on specific arrangements if any developers are willing to submit their structure for scrutiny.

Potential risks for developers

One potential at risk arrangement may involve bringing an equity provider into the development after an interest in land has been obtained.

Whilst it is recommended to have all equity participants in place upfront and to have the entire development structure and all associated agreements in place before signing a land purchase contract, practically this is often a difficult or even impossible task.

Actions for developers

Developers should review their pro-forma documentation before proceeding with any new developments to ensure any duty risks are understood and addressed.

Get in touch

Reach out to one of our property or tax experts to discuss the duty implications on your development structures and agreements and avoid being caught out by the SRO.



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