DENTONS

Property

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2024

Property

Foreign investment in residential and commercial property is tightly regulated in Australia. See Section 2 for details of the foreign investment regime.

1. Due diligence on property

Before purchasing an asset such as a property, a purchaser should always conduct due diligence on the asset.

Property due diligence will generally include the following:

- Examining the title to the property (including checking whether there are any third-party rights which affect the title)
- Reviewing registered and unregistered leases and licences
- Considering whether or not FIRB approval is required and whether substantial inspection fees are payable (see 2.5)
- Reviewing planning certificates and regulations
- Investigating whether any statutory bodies have an interest in the property

Careful consideration of ownership structures is also important for property investment.

2. Transfer duty

In Australia, each state and territory charges its own form of transfer duty (also known as stamp duty) on certain transactions, including:

- The transfer of real estate
- The transfer of shares
- The acquisition of an interest in a 'landholder' (see below)

Transfer duty is charged at either a flat rate or an ad valorem rate (based on the value of the transaction), depending on the value of the property and the type of transaction.

Transfer of real estate

The duty payable on the acquisition of real estate in each state and territory is charged on a sliding scale based on the greater of the value of the property, or the consideration paid plus GST. Most states and territories impose an additional surcharge for acquisitions of residential-related land by foreign persons.

The acquisition of an interest in a 'landholder'

The indirect acquisition of real estate through the purchase of shares in a company or units in a unit trust scheme may attract duty at the general rate, as if it were the acquisition of the real estate held by such an entity.

Who is liable?

The party liable to pay stamp duty is generally the buyer unless an exception applies. In Queensland and South Australia each of the parties is liable. In some jurisdictions the landowning entities may also be jointly and severally liable.

Exemptions and concessions

Certain transactions may be exempt from stamp duty or entitled to a concession. These include:

- Acquisitions by charitable institutions, religious bodies and educational organisations
- Transfers between members of the same corporate group
- Transfers of property between spouses or partners
- The acquisition of your first home

3. Goods and Services Tax (GST)

The acquisition of Australian real estate may usually be subject to a requirement that GST be paid by the seller. GST is similar to the value added tax operating in most OECD countries. It is calculated at a rate of 10% on the value of a wide range of goods, services, rights and other things sold or consumed in Australia.

Registering for GST

You must register for GST if you carry on an 'enterprise', and your current or projected annual turnover is A$75,000 or more. The concept of 'enterprise' for GST purposes is very broad and (among other things) activities in the form of a business, activities in the form of an adventure or concern in the nature of trade or activities in the form of a lease, licence or other grant of an interest in land if made on a regular or continuous basis.

An entity may wish to register for GST even if it does not meet the turnover threshold. The benefits of voluntary registration may include the ability to claim GST 'input tax credits' (which can only be claimed by GST registered entities in respect of creditable acquisitions) by claiming a credit or refund for GST embedded in the price of purchases the entity uses in its enterprise. These 'input tax credits' for creditable acquisitions may be offset against the amount of GST it is liable to pay in respect of taxable supplies it makes to other entities.

Who is liable?

The liability to pay GST rests with the supplier of the goods or services.

For most transactions involving Australian real estate, the supplier would be the seller, builder, contractor or lessor. If the supplier is registered, the sale, construction and leasing of real property and buildings, whether new or used, will normally be subject to GST unless a specific exemption or concession applies.

Generally, the seller (as the supplier) will seek to recover any GST for which it is liable from the purchaser (as the recipient), by including the GST in the price under the contract for sale. If the purchaser (as the recipient) is carrying on an enterprise and is registered (or required to be registered) for GST, it will usually be able to claim a 'GST credit' by claiming back any GST it pays to the seller.

Exemptions and concessions

Various exemptions and concessions may apply to sales of Australian real estate. For example, land sold as part of the supply of a going concern or as farm land may qualify for exemption as GST - free supplies. Due to the broad definition of an 'enterprise' under the GST law, land that is sold subject to existing tenancies may qualify for the going concern exemption. Established residential premises are generally exempt (input taxed) but GST is normally applicable to sales of 'new residential premises'.

GST is normally calculated on the full value of the Australian real property sold by sellers who are registered for GST purposes and input tax credits can normally be claimed for real property purchased by a registered entity from a registered seller.

However, a special method of calculating GST known as the 'margin scheme' only in relation to certain real estate transactions is available if the parties agree in writing to apply the margin scheme and certain conditions are satisfied. Under the margin scheme, GST is calculated on the seller's notional 'margin' on the sale rather than the full selling price. This seeks to ensure that GST is only payable on the uplift in value since the GST commenced on 1 July 2000 or when the real property became subject to the GST regime (e.g., if an unregistered owner chooses to register for GST or sells the property to a registered entity).

If real property is purchased as a taxable supply on which GST was calculated on the full value of the supply, the property cannot usually be resold under the margin scheme. A purchaser under the margin scheme cannot claim input tax credits on the supply even if the purchaser is registered for GST. For this reason, the margin scheme is generally confined to sales of real property that is or will be developed for sale as 'new residential premises'.

4. Land tax

Land tax is an annual tax levied by each state and the Australian Capital Territory (but not the Northern Territory) on the owners of land within that state or territory.

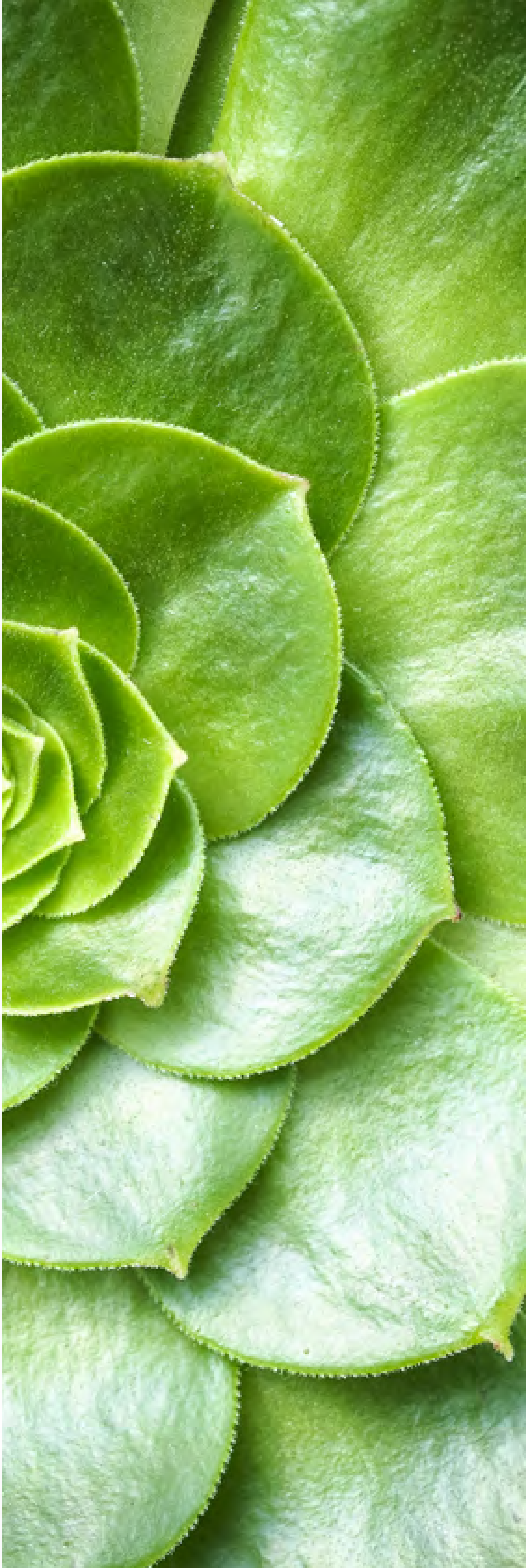
Land tax is assessed on an annual basis on the combined, unimproved value of all the taxable land you own. In general, your principal place of residence (your home) or land used for primary production (e.g. a farm) is exempt from land tax. Most states and territories impose an additional surcharge for residential-related land owned by foreign persons or absentee owners.

Surcharge land tax is also payable by foreign persons or certain non-resident permanent residents on residential land held by them. Exemptions exist for qualifying residential developers subject to conditions.

5. Municipal rates

Municipal rates are taxes set, collected, and used by local governments to provide a range of services in your municipal area.

Municipal rates are different from water and electricity rates, which generally depend on your water and electricity consumption. You will generally receive a monthly or quarterly account that sets out how much you owe.



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