

## VICTORIA

### VICTORIA'S NEW "LAND-RICH" REGIME\*

The *State Taxation Acts (Tax Reform) Act 2004* (Vic) (the Reform Act), which received Royal Assent on 16 June 2004, amends the *Duties Act 2001* (Vic) in a number of important ways. As well as implementing the measures contained in the May Budget, the Reform Act also contains a number of significant amendments to the "land-rich" provisions which commence retrospective to 13 May 2004. The following brief discussion outlines some of the key changes.

There has been a reduction in the land proportion test from 80% to 60%, so that a landholder (being a private unit trust scheme, a wholesale unit trust scheme or a private company) will be "land rich" if it has land holdings in Victoria whose unencumbered value is \$1,000,000 or more and its land holdings in all places comprise 60% or more of all its eligible property. This is coupled with a broadening of the acquisition test for a private company or a unit trust that is not a private unit such that a liability for duty will be triggered by the acquisition of an interest of 50% or more (rather than the acquisition of an interest of "more than 50%" under the old provisions) and, for a private unit trust, a liability for duty will now be triggered by the acquisition of an interest of 20% or more.

The test for indirect ownership of property through subsidiaries has been reduced from 50% to 20% or more. The test will be based on the cumulative percentage of each entity.

Even where a person does not acquire units or shares, a liability for land rich duty can nonetheless arise if a person acquires "control" over a land-rich landholder. A person acquires "control" if that person acquires "the capacity to determine or influence the outcome or decisions about the landholders financial and operating policies". In this situation, a liability for duty can arise in respect of 100% of the entity's landholdings or such other lesser proportion which the Commissioner determines is appropriate.

Because the land-rich provisions have the potential to apply so broadly, a discretion is reposed in the Commissioner to determine that a particular acquisition is exempt upon being satisfied that it would not be "just and reasonable" to impose duty.

The liability for land-rich duty is imposed jointly and severally on the person (or persons where acquisitions are aggregated) who makes a relevant acquisition as well as on the landholder (or the trustee of the landholder if the landholder is a trust).

A registration regime has been introduced by which the Commissioner may, upon application and subject to being satisfied in relation to certain criteria, register a trust as either an "imminent public unit trust scheme", a "declared public unit trust scheme", a "wholesale unit trust scheme" or an "imminent wholesale unit trust scheme". Provided that the relevant conditions are satisfied, the acquisition of an interest in a trust which is registered with the Commissioner would be regarded as not being a private unit trust so that the higher acquisition threshold applied before a duty liability arises. Failure to satisfy all relevant conditions can, however, trigger duty on a retrospective basis.

The requirements to qualify as a "widely held trust" (which is not a private unit trust) have been tightened, by increasing the minimum number of unitholders required from 50 to 300 and by

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requiring that none of the unitholders (either individually or together with any associated person) be beneficially entitled to more than 20% of the units in the trust.

Of particular significance is the introduction of a broadly drafted general anti-avoidance provision. Duty is charged on an acquisition in respect of which duty would have been charged "but for a tax avoidance scheme". A tax avoidance scheme is a scheme that:

- (a) directly or indirectly has tax avoidance as its purpose or effect; or
- (b) directly or indirectly has tax avoidance as one of its purposes or effects, if the purpose or effect of tax avoidance is not merely incidental to another purpose or effect of the scheme,

whether the scheme had that effect at the time it was entered into or only subsequently.

Despite extensive lobbying by various interest groups, the land-rich changes became operative in Victoria retrospective to 13 May 2004. The amendments themselves are complex and technical, filling some 42 pages. They are potentially extremely far-reaching, in particular the introduction of the general anti-avoidance provision. The full impact of the changes, including the economic impact, remains to be seen.

#### ***PETROLEUM (SUBMERGED LANDS) ACT (VIC) AMENDMENT\****

The *Petroleum (Submerged Lands) (Amendment) Bill* (Vic) (Bill), which amends the *Petroleum (Submerged Lands) Act 1982* (Vic) received royal assent on 11 May 2004. The *Petroleum (Submerged Lands) (Amendment) Act* (Vic) (Act) comes into operation on a date yet to be proclaimed, or 1 January 2005, whichever is earlier.

The main purpose of the Bill is to amend the *Petroleum (Submerged Lands) Act 1982* (Vic) with respect to the occupational health and safety of persons in offshore petroleum facilities, data management and protection of confidentiality. According to the explanatory memorandum, the amendments contained in the Bill reflect amendments made by the Commonwealth *Petroleum (Submerged Lands) Act 2003* (Commonwealth Amending Act) in respect of the Commonwealth *Petroleum (Submerged Lands) Act 1987* to ensure that a "consistent regulatory regime operates on offshore facilities in State waters and meets the State's obligations under the 1967 Offshore Constitutional Settlement."<sup>1</sup>

The amendments result from a 2001 report by the Commonwealth Department of Industry Science and Resources on offshore safety, which found that the then system of regulation was inadequate, with unclear limitations, overlapping Acts and inconsistent application between Commonwealth and State jurisdictions. The Commonwealth Amending Act provides for the creation of a National Offshore Petroleum Safety Authority to regulate occupational health and safety on matters on offshore petroleum facilities in both Commonwealth and State waters. The Commonwealth Amendment Act also provides for amendments to data management and the protection of confidentiality of information and petroleum mining samples.<sup>2</sup>

A brief overview of the amendments which will be effected by the Act follows:

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<sup>1</sup> *Petroleum (Submerged Lands) (Amendment) Bill* Introduction Print Explanatory Memorandum 2/3/2004, p 1.

<sup>2</sup> Ibid..