

15 March 2021

Mr Michael Warters  
Executive Director, Economic and Revenue Analysis  
NSW Treasury  
52 Martin Place  
Sydney NSW 2000

Via email: [TaxReformTaskforce@treasury.nsw.gov.au](mailto:TaxReformTaskforce@treasury.nsw.gov.au)

Dear Mr Warters

## ABA Submission to Consultation Paper: Buying in NSW, Building a Future

The Australian Banking Association (**ABA**) welcomes the opportunity to provide feedback on the proposed changes to the NSW taxation system. We have developed our response with a focus on the stated policy intent to remove unnecessary financial barriers to home ownership.

### The ABA's position

The ABA supports the NSW Government's proposal to give residents the ability to opt into an annual property tax. ABA members believe the proposal has the potential to deliver much-needed economic benefits to the state as we emerge from the COVID-19 pandemic. These benefits are structural in nature and as a result should continue to provide benefits to the economy and people's prosperity for years to come.

Stamp duty has been criticised as a highly inefficient and inequitable form of taxation. It discourages transactions of commercial and residential property.<sup>1</sup> This reform will remove a key barrier to home ownership and should make it easier for people to enter the property market by reducing up-front costs at the time of purchase. It will encourage both upsizing and downsizing and should release unused housing capacity for generations to come.

The banking industry anticipates that the greatest improvements to accessing the housing market will come from reducing the time required to save the stamp duty and supporting people to enter the market sooner.

It should also improve workforce mobility, by removing one of the major disincentives that currently exists when an individual decides it is time to move to a new house. The RBA Governor Philip Lowe has described the current stamp duty regime as a tax on mobility, noting that "*if we are looking for an economy that's dynamic and vibrant, we want to remove taxes on mobility.*"<sup>2</sup>

From a state government perspective, the introduction of the annual property tax will result in greater efficiencies in the state tax system and will result in more stable tax revenue over time.

### Key points

To realise these potential benefits, the scheme will need to be designed in a manner that is clear and one that minimises any customer confusion. The ABA has provided feedback on the scheme's key design parameters in [Attachment A](#).

<sup>1</sup> Australia's Future Tax System Review Final Report, Ken Henry, May 2010, [https://treasury.gov.au/sites/default/files/2019-10/afts\\_final\\_report\\_part\\_1\\_consolidated.pdf](https://treasury.gov.au/sites/default/files/2019-10/afts_final_report_part_1_consolidated.pdf).

<sup>2</sup> RBA appearance, House of Representatives Standing Committee on Economics, Friday August 17, 2020.



## Australian Banking Association

The proposed timelines for implementation of the tax changes are ambitious. Further information, set out in Attachment A, is needed on policy and system parameters before ABA members can implement the necessary changes to support the reform. We encourage the NSW Government to publish these details as soon as possible.

We look forward to consulting further with the NSW Government on this change. Please contact me on [REDACTED] if you require anything further.

Yours sincerely



Associate Director, Policy  
Australian Banking Association

### About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

## Attachment A - Feedback on the design of the scheme

### 1. Impacts to the loan assessment process

The proposed scheme will have implications for a bank's loan approval process. This is because it may change a customer's capacity to access and service a housing loan.

To ensure that banks are well prepared to assist NSW residents in accessing the scheme, banks will require more detail on its design and operation six months in advance of its commencement. The data points that ABA members will require are:

- confirmation of when the customer will be required to nominate their preferred tax model
- the process by which a customer chooses the tax treatment for their property and the subsequent process by which lenders get line of sight of this information
- the property value threshold for opt-in
- API / system specifications to enable data feeds from NSW Treasury systems to banks, including details of expected data points to be included and timelines for implementation of feeds
- the rules to determine unimproved land value and property tax payable (if an integrated data feed will not be provided by NSW Treasury)
- the rates to be applied for different property purposes
- the treatment of mixed-use properties (e.g. combination of residential and holiday letting), and
- the frequency of re-assessment based on value and property purpose.

In addition, ABA members will need to seek confirmation from ASIC and APRA regarding their expectations around the treatment of the tax scheme under the lending regulations. This discussion will need to clarify:

- what assessment is required for customers who pay stamp duty upfront but intend to transition to annual payment during the retroactive period, and
- whether the customer-stated estimate of annual land tax is suitable for serviceability assessment, in line with other expenses, or whether expense verification is expected.

Banks will then need to update communications content aimed at customers, including changing online lending calculators and product options. Other implementation changes will include conducting training and providing updated materials for lenders and mortgage brokers and consideration of the consequences for other banking business units, including commercial property lending and agricultural land. Customers will turn to banks as a first point of contact to seek information on these reforms, and it will be important that banks are provided with the necessary communication material ahead of announcement to ensure effective transition.

### 2. System impacts and considerations

As foreshadowed above, our members will need to make changes to their loan application and management systems to support the NSW taxation reform. To make these changes, banks require detailed system specifications, including the data fields that NSW Treasury intends to provide through its API platform. At a minimum, these fields should include the:

- address / title details
- property stamp duty model
- unimproved land value, and
- property tax applicable (figures should be provided for each possible property purpose).



In addition to property-level data feed, the ABA suggests that modelled estimates at a suburb level are required to support 'approval in principle' lending for prospective buyers.

The ABA encourages NSW Treasury to engage with key broker industry system providers, including NextGen and Sympology to ensure that mortgage broker front-end systems are updated with the relevant changes and a consistent approach is applied at an industry level. In addition, we suggest that the NSW Government should also engage with Lixi regarding necessary changes to the industry standard approach for expense categorisation.

### 3. Support for customers

#### 3.1. Access to information

The ABA believes that customers should be able to obtain appropriate information and guidance about electing to pay stamp duty or property tax. The NSW Government holds accountability for the creation and dissemination of such information. However, banks can play an important role in this decision, by referring customers to NSW Government information and calculators, or other reputable, official advice, including regulatory guidance where relevant. Individual banks may also take commercial decisions to offer supplementary information.

Importantly, customers should have access to NSW Government information early in their research process. This will help individuals understand whether the property they are considering has been opted into the regime, and, where a choice remains, how the property tax option may affect the structure of their transaction and borrowing power.

The ABA recommends that the following kinds of information are made available to customers to help facilitate this decision-making process:

- a Government register or database is made available to confirm the status of a property (e.g. eligible for choice between stamp duty/annual property tax or only annual property tax). This will need to be aligned to the commencement of the scheme
- real estate advertisements could disclose the duty/tax status of a particular property
- a dedicated Government webpage should provide detail on the new regime, including online calculators to help inform citizens' decision between stamp duty or annual property tax, FAQs, resources for customers to seek further advice and assistance, and
- factsheets should be made available directly to NSW residents and to brokers and lenders. These factsheets may need to be tailored per property purchase (e.g. residential including first home buyers, commercial, and primary production).

We note that NSW Treasury branded and endorsed content would be required by our members by 1 May 2021 (or one month prior to public announcement of the policy) to allow sufficient time for rollout of training to staff and to enable lender discussions with customers.

#### 3.2. Tailored support and guidance

Further consideration is required of how customers might receive individual information and guidance, tailored to their circumstances. The ABA has not identified a relevant advice regime that would support the provision of this guidance. Information and guidance on state-based land taxes does not fall within the financial advice regime, credit assistance regime or tax agent services regime. This means that there is no framework to underpin the appropriate qualifications, competency, disclosures and formal complaint mechanisms required to appropriately provide this guidance.

The ABA submits that there is merit in considering whether the regulation of conveyancers could extend to setting requirements on how to provide individual guidance on property tax vs stamp duty.

#### 4. First home owner grant (FHOG) scheme

To enable smooth implementation of an additional grant, the application process and the payment of the grant should be administered in line with the existing FHOG scheme, so that lenders can process the grant on the customer's behalf. In order for the grant to contribute toward borrowing power, grant eligibility must be confirmed prior to loan approval and payment of the grant must be aligned to settlement of the property.

#### 5. Consideration of hardship cases

In the event of hardship, the ABA understands that the current NSW government proposal retains the normal caveat practices, with priority given to the mortgagee. In the case that a customer chooses to sell their property this will mean that a debt must be repaid from the sale of the property, and any land tax liability would be repaid after the mortgage is discharged. We assume that this will be achieved by the NSW Government applying a caveat on the property.

Any deferral of the tax outside of this scenario would be handled directly between the customer and the Government. We would encourage NSW Government to engage with the ATO on their current process for recouping unpaid tax liabilities, and/or processes to recover unpaid land tax under the existing regime. It would not be practical or appropriate for mortgagees to assume the responsibility for tax collection in this scenario.

In addition, customers will require further clarity from the NSW Government on whether:

- the hardship scheme will be restricted to customers borrowing for their principal place of residence (i.e., owner-occupied borrowers)
- when a customer enters hardship, this will be disclosed to the lender and credit reporting agencies, and
- there will be any enforcement triggers applied by the NSW Government.

#### 6. Transitional provisions

The ABA supports a period of retroactivity as the simplest and fairest way to ensure access to the new tax arrangements for home buyers while mitigating market distortions. A retroactive period will contribute to a fair transition to the new regime for customers and may mitigate possible market distortions from people delaying transactions while they wait for the change to commence. Reducing such distortions will be aided by prompt and detailed information about the proposals being provided to banks ahead of the announcement and further information being made available to customers from the date of the announcement.

If settlement for a particular property occurs during the retroactive period, the ABA anticipates that banks will continue to assess the loan based on the customer's liabilities under the current stamp duty regime. Legal and prudential requirements stipulate that banks must conduct loan assessments based on customers' circumstances at the relevant point in time. This means lenders are unlikely to consider a possible future rebate of stamp duty when assessing borrowing capacity. The ABA understands that any stamp duty rebate process will be conducted outside lender processes and will be undertaken directly between the borrower and the NSW Government.

It may be that if the customer indicates a definite intention to seek the stamp duty rebate and revert to a property tax, the ongoing property tax liability will need to be considered as an expense when assessing the serviceability of the loan. This may result in a reduction in borrowing power for the customer.

When settlement for a particular property occurs after the scheme's implementation (for example, on 1 October 2021):

- customers who have obtained a loan approval in principle prior to 1 October 2021 may need to be re-assessed at point of full approval if they intend to avail of the annual property tax.



- as the Letter of Offer is valid for 180 days, it is possible that customers will have loan approval in place from 1 April 2021 which has been approved on the incorrect basis if the customer decides to utilise the annual property tax.

The above further emphasises the importance of publishing the specific details of the scheme as quickly as possible, so that customers who are searching for a property now are not adversely impacted.