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GPO Box 144
Sydney NSW 2001
1300 554 817
enquiries@mfaa.com.au

Tax Reform Taskforce

NSW Treasury

Email: TaxReformTaskforce@treasury.nsw.gov.au

Submission on NSW Treasury property tax proposal Consultation Paper

The Mortgage & Finance Association of Australia (**MFAA**) is pleased to have the opportunity to comment on the consultation paper on property tax reform.

Our submission focusses on residential property. We have not considered the impact on other types of real estate.

About the MFAA

With more than 13,500 members, the MFAA is Australia's leading professional association for the mortgage broking industry, with membership covering mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. The stated purpose of the MFAA is to advance the interests of our members through leadership in advocacy, education and promotion. To achieve this aim, the MFAA promotes and advances the broker proposition to a range of external stakeholders, including governments, regulators and consumers, and continues to demonstrate the commitment of MFAA professionals to the maintenance of the highest standards of education and development.

Our general approach

In general, the MFAA supports the proposals as contained in the NSW Treasury property tax proposal Consultation Paper. Although there are pros and cons, on balance we feel that subject to the levels of the proposed property tax and suitable protections for retirees and those who have difficulty paying the tax, the regime will:

- provide choice and flexibility/mobility;
- make homeownership more achievable allowing earlier entry into the market for many than may otherwise have been the case;
- allow investors to enter the market more easily and encourage the provision of rental stock because the property tax is less than the current land tax rates (other than in the case of investors where the property value is less than the land tax threshold);
- be supportive for the housing sector and stimulate the economy. Thought should however be given to the timing of commencement and the possible effect it may have on an already buoyant market;
- remove stamp duty which can be a material impediment to changing homes when requirements change;
- lower transactions costs which means an increased likelihood that people will have homes that better suite their lifestyle;
- stimulate turnover in housing stock which is supportive for those that service the sector;
- allow short term acquisition and ability to downsize and upsize potentially allowing additional capital to be used for renovations which would add further stimulus;

- likely broadens the tax base over time;
- likely smooth receipts in the form of a property tax regardless of the economic conditions whereas in a recession/period of weak economic activity property purchases and associated stamp duty would normally decline.

Our understanding

Before setting out our comments, it is appropriate for us to record our understanding of how the regime will work.

- Once property tax (PT) is selected, future buyers will not be able to select paying stamp duty.
- If stamp duty is selected, subsequent buyers may choose PT or stamp duty.
- If stamp duty is selected, stamp duty and land tax will continue to be paid under the current regime and rates continue (where applicable).
- If PT is selected, duty applies from the first dollar (i.e. there is no threshold as currently applies for land tax).
- Interest will run on arrears of PT, but there will be a 'soft' collection policy for arrears.
- Existing exemptions from stamp duty (e.g. conveyance between spouses, inheritance) will continue and no choice will be triggered.
- Certain properties will at least initially be excluded from the PT regime (determined by dollar value and property type).
- If PT is selected, there will be no clawback of unrecouped stamp duty on early re-sale.
- There is no 'end point' for PT so a buyer of a 'forever' home could end up paying more than current stamp duty.

Below we discuss some aspects which may warrant consideration.

1. Consumer debt

The proposal effectively allows consumers to postpone debt. In this regard it has shared characteristics with buy now pay later products (BNPL). As BNPL has demonstrated, when given an opportunity to postpone debt, consumers often opt to do so.

Australians carry very high level of debt by world standards. Irrespective of whether the debt carries interest (in which case the protections of the *National Consumer Credit Protection Act 2010* (Cth) apply) or is interest free (like most BNPL products), debt is an obligation burdening consumers.

It can be argued that establishing a regime which promotes more debt is not ideal for consumers and particularly when the amount to be paid in future is unknown and has the potential to be impacted by an increase in underlying property values or possible future changes in the rates of tax levied.

The potential promotion of higher levels of consumer debt is in our view offset by the benefits of the PT policy outlined in "Our general approach".

2. Mortgage issue – reduced amount lent

While mortgage lenders will respond in varying ways to borrowers opting to incur the ongoing property tax, it is likely many will take the expense into account when determining how much a borrower can borrow and their capacity to meet the repayments going forward. This may have the opposite effect to making it easier for consumers to buy, because serviceability is likely to be impacted and the reduced loan amount may exceed the cash saving by not paying stamp duty up front.

3. Mortgage issue – concern about prior charge

Although the discussion paper contemplates that government will not force consumers to sell because of outstanding property tax, because the tax effectively ranks in priority to lenders' mortgages, lenders may take default action sooner (including exercising power of sale) if the arrears are significant in order to protect their position.

Recommendation 1: Government should undertake to notify any mortgagee noted on the title:

- **once PT is in arrears by five years; and again before taking any action to recover PT or enforce the government's charge over the property.**

4. Responsibility for advising consumers

Deciding whether to opt into the PT will be an important decision for consumers. The decision is complex and requires consideration of many variables, including amongst others:

- the impact of future tax payments;
- the risk of variation in the tax amount arising from UCV or tax rate changes;
- whether the purchaser is an owner occupier or investor;
- whether the previous purchaser elected to pay PT;
- whether the purchaser is buying free-standing property or an apartment;
- what the purchaser's liquidity position is;
- the period for which the property is likely to be held;
- if they are an investor whether they are over the land tax threshold or likely to exceed it in future;
- how long the purchaser intends holding the property for;
- the purchaser's marginal tax rate for deductibility purposes.

Generally, lawyers, conveyancers, real estate agents, lenders, and brokers are not qualified or insured to give such advice. In addition, many buyers do not deal with mortgage brokers, and in any event the majority of brokers are likely to be disqualified from giving advice because such advice amounts to financial advice for which an Australian Financial Services Licence is required.

We recommend that government needs to develop a free publicly available online service (decision tool) which is sufficiently sophisticated to be able to take all the variables into account. Lawyers and conveyancers should be obliged to tell buyers about this service and strongly recommend its use before deciding which option to select. ASIC's comparison site for reverse mortgages is an example of how such a service could work. See <https://moneysmart.gov.au/retirement-income/reverse-mortgage-and-home-equity-release> and section 133DB(1) of the *National Consumer Credit Protection Act 2010 (Cth)*.

The alternative is to simplify the structure requiring PT to be paid by everyone (with grandfathering for those that have paid stamp duty); although we acknowledge that this may have impacts on short term state government revenue.

Recommendation 2: Conveyancers and lawyers acting on purchases for natural persons should be required to either provide a copy of the print-out from a government provided comparison web site or obtain confirmation from purchasers that they have reviewed the service and understand the output.

5. Limits on increases in PT

There are concerns that borrowers' ability to pay their home loan without hardship may be adversely affected if the amount of duty increases significantly suddenly.

Recommendation 3: There should be a cap on the amount by which PT can increase annually resulting from a change in the rate of tax or value of land or any other factor.

6 Protections for elderly and disadvantaged

There should be suitable arrangements to minimise hardship on the disadvantaged and elderly. For example, a person aged (say) 75 or more who has owned a home for (say) 30 years or more and paid PT throughout that period of ownership should be excused (perhaps on a means test basis) from

further payment. It is insufficient for PT to be capitalised and recovered from the estate because this may cause concern to the elderly.

The finance available to elderly, principally reverse mortgages, is already in short supply and the spectre of additional concerns from capitalising PT could further limit the supply.

Questions raised in the discussion paper

- 1. *Do you agree that stamp duty is out of date and is a handbrake on the economy? Is there merit in replacing it with a broad-based annual property tax?***

Yes, we consider that stamp duty is an inefficient tax that has impacts on buyer behaviour.

- 2. *The annual property tax would be based on unimproved land value, much like the way council rates are currently calculated – what do you think of this approach?***

We believe using the UCV as a base is appropriate in the absence of some other measure. We do note however that this will produce some unfair consequences because in some cases the UCV does not reflect the true value of the land (because of the methodology of setting the UCV).

- 3. *Do you agree that it would be attractive to be able to choose an annual property tax rather than paying a large lump-sum stamp duty on a purchase and, for investors, the current annual land tax?***

Yes, but the attraction of postponing a payment may be a bad decision for uninformed buyers, in the same way as taking on any other debt obligations can cause hardship. This risk underscores the need for a sophisticated online decision tool to address this risk.

- 4. *Is an opt-in and gradual approach the best way of ensuring a fair transition to the property tax?***

Yes it does seem the fairest, however the complexity of the decision may be beyond many, particularly understanding the potential impact of future increases in property values over time.

The alternative is to simplify the structure requiring PT to be paid by everyone (with grandfathering for those that have paid stamp duty); although we acknowledge that this may have impacts on short term state government revenue..

- 5. *Would you delay a home purchase if it meant you could opt-in to the property tax? Should there be a limited window for retrospective opt-in to the property tax, after it commences?***

Yes, we consider that some buyers would delay their decision, and so a limited window of retrospective opt in may be desirable in some cases. However, this may cause concern for mortgage lenders because they will have assessed the loan on the basis that stamp duty has been paid and that the borrower's ability to service the loan is not reduced by ongoing property tax.

- 6. *Should there be different property tax rates for residential owner-occupied properties, residential investment properties, farmland, and commercial properties?***

Yes, we think it is appropriate to place owner occupiers in a better position than investors. However, it does give rise to a significant risk of avoidance by unscrupulous persons structuring ownership to appear as owner occupying. However, the proposed reduced rate of PT compared to existing land tax (at least once the land tax threshold is passed) is welcome and should assist the expansion of rental stock. An appropriate balance between these two interests is appropriate.

7. Given this tax reform is an investment into our future, do you think it is worth the cost?

As noted above, the MFAA supports the initiative subject to concerns about the risk of increases in the tax being addressed.

8. Should price thresholds be used to exclude people buying the most expensive properties from being able to choose the property tax?

No comment

9. What arrangements should be made for residential and commercial tenants if their landlord chooses to pay the property tax?

This should be a matter for the individual lease contracts. It is unfair and unnecessary to prohibit residential landlords from reaching a commercial agreement with their tenants. Obviously, the agreement that the tenant is to pay the tax (or more accurately that the rent can vary in line with the PT) must be made before commencement of the tenancy.

10. What should happen for people who have chosen the property tax, but then can't afford it?

The tax should be allowed to accumulate for a period of not more than 10 years for owners other than owner-occupiers, and for life for retirees, seniors, and other disadvantaged persons. The state will recoup the tax from eventual sale. There should be a deterrent (e.g. interest to run on the debt) to maintain parity with those that elect to pay.

11. What is the best way of ensuring that the property tax remains affordable for taxpayers, while generating the same amount of long-run revenue as stamp duty and land tax?

This is exceptionally difficult but also exceptionally important. There are many in our community who struggle to meet current living expenses without a further ongoing impost. Property prices increases are unlikely to mirror a taxpayer's ability to pay a tax linked to the value of property. Limiting increases to the increase in average incomes may be more appropriate – either way there needs to be a limitation.

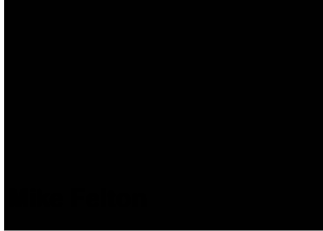
12. Is there a specific aspect of our proposed reform you would change to help make the proposal better?

A key requirement will be a sophisticated online free decision tool to allow a comprehensive comparison of the options as discussed in paragraph 4 of our principal comments.

The MFAA extends its thanks to NSW Treasury for the opportunity to respond to the NSW Treasury property tax proposal Consultation Paper.

Should you require further information, please do not hesitate to contact me on [REDACTED] or by emailing [REDACTED]

Yours sincerely



Chief Executive Officer
Mortgage & Finance Association of Australia