



## THE TAX INSTITUTE

15 March 2021

Tax Reform Taskforce  
NSW Treasury  
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Dear Treasurer,

### NSW Property Tax Proposal

The Tax Institute welcomes the opportunity to make a submission in response to the New South Wales (NSW) Government's proposal to replace stamp duty and land tax with an annual property tax, contained in its consultation paper, The NSW Budget 2020-2021; Buying in NSW, Building a Future; Creating Jobs and Securing Our Future (**Consultation Paper**).

We have consulted with our technical committees in the development of our submission and we recognise a diverse range of views on the merits of an annual property tax throughout our committees and the broader membership of The Tax Institute. Our submission seeks to provide feedback on further issues which should be considered on the basis the NSW Government proceeds with the proposal. The detail of our submission and responses to certain questions posed in the Consultation Paper can be found at **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

### Summary

We have set out below a summary of the key items contained in our submission:

- The Tax Institute broadly supports the proposed tax reforms introducing a new property tax to replace stamp duty and (where applicable) land tax.
- Analysis on the impact of the proposed property tax on property prices and the way in which it may be ameliorated by standard banking assessment rules should be communicated.
- We consider that the choice to opt-in to the proposed new regime is fundamental to ensuring fairness though we acknowledge complexities that may arise by having a dual system.

- Balancing the need for to protect the NSW revenue and ensure levels of debt incurred to fund the transition remain serviceable, we consider that the use of thresholds for both residential and commercial properties should be a temporary measure and the choice to opt-in a property should be with the relevant purchaser.
- The timing and way in which additional costs related to the new property tax may be passed on from landlords to tenants must be carefully considered to ensure that it is fair and reasonable for both parties.
- The availability of concessions and other reliefs equivalent to those under the existing regimes should be carefully assessed to ensure ongoing fairness to affected parties and to prevent deterrence from the proposed new system.
- Fair and equitable hardship measures must be clearly defined and implemented to ensure that those who cannot afford to pay are adequately supported.
- Education for potential purchasers and practitioners advising such purchasers will be critical to ensuring the successful implementation and administration of the proposed system.

Please refer to **Appendix A** for our detailed analysis supporting this submission.

If you would like to discuss any of the above, please contact either myself or Scott Treatt, General Manager, Tax Policy & Advocacy, on (02) 8223 0008.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Godber', with a stylized flourish at the end.

**Peter Godber**

President

## APPENDIX A

### Consultation Process

The Tax Institute commends the NSW Government on the process it has undertaken to consult with stakeholders on the proposed property tax reforms. We welcome reforms that improve the efficiency, fairness and sustainability of the tax system overall.

The Tax Institute is grateful to have had the opportunity to engage with representatives of the NSW Treasury and its advisors on several occasions since the Consultation Paper was released. The Tax Institute has represented the interests of its members in these forums and would be pleased to continue an ongoing dialogue with the NSW Treasury as the proposal progresses.

We commend the NSW Treasury and its advisors on their broad engagement across the spectrum of stakeholders, and their candour throughout the consultation process. From our discussions, we understand that extensive research, analysis and modelling has been undertaken to assess the impact of the proposed property tax. We look forward to the release of further guidance by the NSW Treasury including relevant modelling and analysis demonstrating the long-term impact of the proposal.

Should the proposed reforms proceed to be legislated, The Tax Institute considers that it will be important to undertake a comprehensive review of all aspects of the regime including its implementation, administration and immediate impacts, within six months from its start date. Among other things, this will assist the Government to gather accurate feedback on its actual initial impact and to identify areas where further guidance may be required.

### Scope & Transition

In relation to the initial scope and transition into the proposed property tax regime, we make the following comments.

#### *Housing affordability*

There are some concerns about an increase in housing prices in the short to medium term, in respect of those properties brought into the new regime. The increase is expected to potentially reflect the stamp duty liability that otherwise would have arisen. It is broadly understood that financial lenders intend to take into account the ongoing cost of the proposed property tax in determining a borrower's capacity to service a loan. This is expected to reduce a person's borrowing capacity (due to the reduced after-tax income position resulting from the annual property tax cost), compared to their borrowing capacity in the case of a property liable to stamp duty. The overall effect of this should be that a stamp duty purchaser and a property tax purchaser should be able to borrow equivalent amounts with neither category of purchaser worse off in that regard. It is acknowledged though that this requires lenders to take into account certain assumptions, and in the context of property tax, particularly in respect of a person's holding period.

The Tax Institute considers that it is important for the outcome of any analysis undertaken on the impact of the proposed property tax on property prices and the way in which it may be ameliorated by standard banking assessment rules to be communicated.

#### *Application to landholdings other than residential properties*

Most of the discussion in the Consultation Paper, and the rationale for a change in the tax system, relates to the taxation of residential property. This is appropriate since the vast majority of landholdings in New South Wales, by number of titles, comprise residential property. However, some of the key considerations applying to residential property such as the impact of taxation on mobility, do not apply to other kinds of property, such as agricultural, commercial and industrial land. Accordingly, careful consideration needs to be given to the specific situation of each particular sector in designing a tax system applying to property.

#### *Election*

Providing taxpayers with optionality between paying stamp duty on the one hand and annualised land tax on the other, is fundamental to the viability of a transition to the proposed property tax. This will allow taxpayers to determine which pathway will be most suitable for their circumstances, depending on a range of factors including their intentions with respect to the holding period of the relevant property and their financial position.

It is recognised that a right of election may result in a more complex two-tiered tax system that will require greater effort to administer. Optionality may also create distortions in the market as some buyers may price assets based on paying stamp duty and others may price assets based on paying property tax. However, if the alternative is an immediate transition to a property tax that leaves sectors of the community without the means to pay, it is submitted that, despite its complexity, a two-tier system remains a preferable outcome.

Given the small proportion of properties that transact in a given year relative to the total number of properties in NSW, we envisage that a two-tiered system is unlikely to be a significant outcome in the early stages of the proposed system. Based on the survey results available on the NSW Treasury's website and comments in the Consultation Paper, it is expected that not all properties that transact in a given year will be opted-in, noting that some properties will not be eligible due to the threshold condition, (considered below) and others may not be opted-in for other reasons.<sup>1</sup> While this proportion would be expected to gradually increase, the combination of the ability to make an election and the requirement of a transaction in respect of the relevant property in order for the choice to opt-in to arise, mean that the changeover is likely to occur over several decades.

With the existence of a system with an opt-in mechanism, the need for transparency is key. Purchasers should have full and free access to data regarding the status of properties under such a system. Such information should not be contingent on the purchaser making the right enquiries of a vendor, nor limited to a disclosure in a contract. Early access to such information is critical for purchasers in how they will determine which properties they will inspect. It will be incumbent on the Government to maintain a register of those properties which have been 'opted-in' to the property tax and make such information freely available to the community in a timely manner, and possibly compel disclosure when properties are advertised for sale.

#### *Threshold*

The proposal indicates that only properties with a market value underneath a threshold would be able to opt-in to the property tax and it is expected that, in the case of residential properties, up to approximately 80% will be able to opt-in at the outset.<sup>2</sup> We understand that there will be separate thresholds for commercial and residential properties which we consider is appropriate.

We understand that there is a need to protect the NSW revenue in any transition into a new system. However, it is our opinion that the use of such thresholds should be a legislated temporary transition to prevent any attempts by a future government to delay that transition. Further, The Tax Institute considers that the drafting of aggregation and disaggregation rules will be critical to ensuring the integrity of any such thresholds. The use of thresholds for this purpose introduces a complex third layer to the two-tiered system noted above. Complexity arises in relation to the movement of property values suburb by suburb as they transition and shift between eligibility and ineligibility as market prices fluctuate. It may also create a distortionary impact on those properties otherwise nearing the said threshold. This may arise, for example, in the context of lending approvals in respect of properties at the margins of the relevant threshold.

It remains The Tax Institute's view that there should be no delay in bringing all properties, particularly high-cost properties, into the property tax model.

#### *Landlords and tenants*

Should a new property tax apply to owners of land that is leased, the question arises as to how the added cost will be borne as between tenant and landlord. Typical non-residential leases allow for a pass through of outgoings including taxes levied in respect of land, by the landlord to tenants. If a new property tax comes into effect, what is likely to follow, absent statutory provisions to the contrary, is a pass through of that extra cost to tenants.

The Consultation Paper recognises the issue, noting that protections 'would apply so that the property tax does not result in rent increases without a tenant's agreement'.<sup>3</sup> How such protections will be guaranteed requires clarification. A simple pass through will result in higher rents for a tenant, unanticipated at the time of making of the lease. Prohibiting a pass through will burden the landlord with the cost, diminishing the return on its investment. Neither outcome is fair or reasonable.

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<sup>1</sup> NSW Government, *The NSW Budget 2020-2021; Buying in NSW, Building a Future; Creating Jobs and Securing Our Future* (Consultation Paper, November 2020) (**Consultation Paper**) pp 18, 21.

<sup>2</sup> Consultation Paper pp 16, 20.

<sup>3</sup> Consultation Paper p 16.

One solution may be to adopt a solution like the 'review opportunity' concept that was enacted with the introduction of the GST in 2000. This was intended to protect taxpayers bound by pre-existing agreements (such as leases) from absorbing the cost of the GST with no ability to pass it on to tenants. In the present context, a similar concept could work as follows:

- Where a lease or agreement for lease is in place as at the start date of the new property tax, the relevant land will not be subject to the new property tax for the term of the lease, or a designated period of time (for example, 10 years) if the lease exceeds that period.
- Options for lease in place as at the start date will also be protected in the same way.
- Such arrangements will cease to be protected when an opportunity arises for the parties to re-negotiate the terms.
- New arrangements entered into after the start date of the new property tax will not be so protected, such that the parties will need to negotiate terms including the amount of rent, factoring in any property tax.

#### *Other interests in land*

Questions also arise as to how the new property tax will apply where a lesser interest such as a lease, life estate or mining tenement is carved out of a fee-simple interest that has been opted-in to the new system. The first question is whether the new property tax would apply only to the owner of the fee-simple interest or whether it applies alternatively or additionally to any person who acquires a lesser interest carved out of the fee-simple interest. For example, if a person acquires a mining tenement, should the property tax simply apply in respect of the underlying fee simple interest as a liability of the owner with no impact on that liability as a result of the carve out of a lesser interest? Alternatively, does the person who acquires the lesser interest also then acquire part or all of the liability for property tax? Where the land in question is not subject to property tax, presumably the stamp duty regime will apply in the usual way, meaning that the acquirer of a mining tenement or other lesser interest may be subject to duty. This may result in a segmented market where some interests, for example mining tenements, will be subject to duty on acquisition (where property tax does not apply) but others not (where property tax does apply). We consider that these matters of detail require consideration and clarification, particularly in any draft legislation.

### **Rates & Exemptions**

#### *Revenue neutrality*

The Consultation Paper indicates that the outcome of the proposed property tax regime is intended to be revenue neutral over the long term.<sup>4</sup> Questions arise as to how a neutral outcome will be achieved.

The Consultation Paper indicates that if the proposal proceeds, the Government will incur a loss of revenue in the initial years of the proposed property tax regime. In the long term, the revenue generated is expected to be no more or less than that which is generated under the current system of stamp duty and land tax (that is, revenue neutral). The Consultation Paper also indicates that the ultimate objective is to bring all NSW properties into the property tax regime.<sup>5</sup>

To the extent that the revenue position needs to remain neutral, stamp duty forgone should be recovered by means of property tax collected at a higher rate than under the current land tax regime, in the absence of any other re-balancing of the sources of taxation. From the taxpayers' perspective, depending on how long the property owner holds the relevant land and the extent of any non-realised annual valuation increases, property tax collected over a period of time may eventually exceed the amount of transfer duty otherwise payable up front. In such circumstances, a greater tax burden is levied on landowners under the proposed new system, in respect of the same property.

To the extent that the acquirer of the relevant land retains ownership for a long period of time (this may typically be the case with homeowners as well as investors who acquire property in order to receive a rental yield over a long period of time), the outcome could be a significant increase in the overall tax cost. This is because a quantified upfront lump sum paid as stamp duty is easily ascertainable and finite. However, a property tax by its nature cannot be quantified with certainty and the liability not only continues indefinitely, but is liable to increase over time, regardless of the owners' financial circumstances.

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<sup>4</sup> Consultation Paper pp 16, 19, 22.

<sup>5</sup> Consultation Paper p 18.

To the extent that the end result is greater fiscal pressure on landowners, revenue neutrality will not have been achieved on the part of taxpayers. It follows that revenue neutrality will not have been achieved by the Government either, as the receipt of greater, ongoing revenue would give rise to an ultimately revenue positive position for the Government, acknowledging that it may take several decades to get to that stage.

A right of election will provide protection for current purchasers, especially those who intend a long term hold of land, from an unforeseen increase in the tax they ultimately pay. However, the freedom to choose the regime that best suits a particular taxpayer's circumstances will gradually decrease as more properties are opted-in to the property tax system, given that the choice, as it applies to a particular property, is irrevocable.

There is some suggestion, even at this early stage, that investors and other purchasers acquiring land for a long term hold will, for the above reasons, prefer to pay stamp duty rather than the proposed new property tax where the cost of property tax over the holding period is estimated to exceed the duty liability that otherwise would have been payable. However, taxpayers of the future purchasing their 'forever' homes and long term investors will not have the same flexibility and are therefore more likely to incur a greater tax cost overall.

If the ultimate objective is to bring all NSW properties into the property tax regime, and for the system to be revenue neutral as compared to the status quo, perhaps greater consideration and justification of the proposed rates is required to ensure the tax paid and collected under the new system is revenue neutral.<sup>6</sup> We expect that close ongoing attention will be paid by both taxpayers and commentators on collections from the property tax and that Governments would be expected to reduce rates over time, to ensure increasing property prices do not result in excessive burdens on households.

#### *Mixed use properties*

A difficulty arises in determining the rate of tax applicable to a property where that property has a mixed use. This is further complicated where such mixed use changes over time. Clarity is needed in relation to how the classification of a property will be determined and how, and when, such classification may change to account for a change in use of the property over time.

#### *Concessions and exemptions*

A significant issue for consideration in the development of a property tax will be whether the regime should contain any concessions or exemptions like those already contained within the existing land tax and stamp duty systems.

In this regard consideration should be given to specific industries or entity types, some of which we have set out further below, property transfers resulting from bequests or other intergenerational transfers, and transfers occurring in corporate reorganisations. With regard to the latter two categories of transfer, consideration should be given as to whether such events should result in an opt-in event for the transferee. We note that, under the *Duties Act 1997* (NSW), various exemptions apply for certain types of transactions, including transfers within a corporate group under the rules applying to corporate reorganisations as well as transfer of property from an outgoing trustee to an incoming trustee upon a change of trustee.<sup>7</sup> A question arises as to whether the proposed right of election arises or should arise upon any transfer of land including exempt transfers or only for transfers of land by way of sale to a third party for consideration.

We further note that the current duties legislation applies not only to transfers of land but also to the acquisition of certain landholding entities. The way in which the landholder rules will interact with the proposed property tax system requires clarification. For example, if landholdings will not be counted for the purposes of landholder duty where subject to the new property tax, this should be clarified.

#### *Primary production land*

The Tax Institute recognises that the circumstances of farmers and primary production businesses are unique and their ability to pay an annualised tax may vary from year to year depending on external factors. We recommend that consideration is given to the enactment of nuanced averaging measures to support those farmers who choose to opt-in to the property tax regime.

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<sup>6</sup> Consultation Paper pp 19.

<sup>7</sup> *Duties Act 1997* (NSW) ch 11 pt 1 and ss 54 and 54A.

## *Charities*

Charities generally enjoy certain longstanding broad exemptions from land tax and somewhat narrower exemptions from stamp duty. An important question is whether an exemption of similar scope to land tax will be available in respect of the property tax. If it is proposed that charities are not to obtain any exemption from the property tax, this could have serious ramifications for a range of charities including religious, educational and welfare focused charities.

It would not be desirable to impose a new tax cost on such charities on policy grounds that have been longstanding. A particular issue arises out of the distinction between exemptions available under the duties law and in respect of land tax. While a wide exemption for land tax applies for which any registered charity in the ordinary sense potentially qualifies, duty exemptions for charities are more limited, in general applying only to charities that are for the relief of poverty, promoting education in Australia or promoting the interest of Aborigines<sup>8</sup>. An important question therefore is whether the new property tax scheme will follow that of the existing land tax regime allowing for a broad exemption for charities or whether it will be more restrictive following the model for stamp duty.

The Tax Institute recommends that the NSW Treasury engage with key charitable stakeholders, particularly those whose charitable purposes fall outside the scope of the stamp duty exemption and would be most adversely affected were any property tax exemption to follow the stamp duty model rather than the land tax regime. Alternatively, if there is no specific exemption from property tax for charities, we encourage the NSW Treasury to consider concessional rates for such landowners. Given the significant property holdings by certain charities, this will be important to achieving the ultimate objective of bringing all NSW properties into the property tax regime.<sup>9</sup>

## *Local governments*

Increases in land values result in increases in rates payable to local governments. A similar impact is expected in respect of property tax. This may result in the State Government and the various local governments competing over the same tax base.

Certain sectors of society receive relief from rates under longstanding arrangements for those in need (for example, pensioners). The Tax Institute is of the view that the underlying policy for such relief should apply equally to any proposed property tax (see also our comments below in respect of hardship). If the rates regime is intended to be bolted on to the property tax regime this will become a technical question as to how that will work in practice and how the legislation should be drafted to give this effect. If the two regimes do not operate consistently, we recommend that clear guidance is published to clarify the rationale for any discrepancies and to outline the support available in respect of property tax to those to whom relief from rates is provided.

## *Other considerations*

As noted above, it is The Tax Institute's preference for all properties to be permitted to transition into any new regime as soon as practical. As a consequence of this, any new proposal should also have consideration to the following aspects:

- Premium properties – whether a rate premium is introduced for properties over a certain price similar to principle applied to premium properties under the existing stamp duty regime.
- Premium for non-residents – whether a rate premium is introduced for properties acquired by a foreign person similar to the surcharge applied to such properties under the existing stamp duty regime.
- Depending on the extent of the passage of time between its announcement and the enactment of relevant legislation, retrospective transitional provisions should apply to allow purchasers who have acquired property from the time of the announcement and paid (or became liable to pay) stamp duty to retrospectively opt-in to the property tax regime instead.

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<sup>8</sup> *Duties Act 1997* (NSW) sub-s 275(3).

<sup>9</sup> Consultation Paper p 18.

## **Hardship & Disputes**

There may be circumstances where a property owner elects to pay the property tax (or in later years acquires a property which has already been opted-in) and subsequently cannot afford to do so, for example, due to change in financial circumstances. The Tax Institute considers that in such cases, it is appropriate and indeed incumbent on the Government to make provision for relief for such taxpayers. The Tax Institute envisages that arrangements for relief, such as a deferral of obligations to pay tax, should be allowed though such circumstances may need to be determined by reference to eligibility criteria or on a case by case basis.

### *Revenue administration*

Apart from the social equity and economic issues arising, in the context of hardship, important considerations also arise in the area of revenue administration. Stamp duty is easy to collect and must be funded upfront by a taxpayer seeking to buy a dutiable asset. Revenue collection is, therefore, generally straight forward, given that the tax 'follows the money'. This is not necessarily the case with land tax, especially where the taxpayer is unable to pay and similar issues may arise in the context of the proposed property tax.

The Consultation Paper provides that a 'hardship scheme would recognise that taxpayers' financial situations can change over time and ensure that no one facing hardship needs to sell their home to meet property tax liabilities'. To provide greater assurance to prospective purchasers considering opting-in to the new regime, The Tax Institute recommends that the way in which any such scheme will be administered should be set out in detail. This should include, in particular, the way in which the Commissioner will exercise any discretions to provide relief to taxpayers. We also recommend that nuanced hardship provisions are crafted to take into account the unique circumstances of hardship resulting from the COVID-19 pandemic which are likely to have a lasting effect for years to come.

Assuming that interest will accrue on unpaid property tax, we recommend that the relevant rates are clearly published and, importantly, are reasonable so as to compensate the Government for the loss of revenue without being excessive or unduly onerous. We recommend that a similar approach is taken to penalties if contemplated.

A further possibility is to allow a charge upon land for unpaid property tax, although a question arises as to how long unpaid tax could be allowed to accumulate. It is noted that in the case of land tax, a similar charge arises under current law.

Any proposal to allow for such a charge should also provide for purchasers of the property, acquiring in good faith and without notice of any tax default, to be protected from liability for unpaid taxes of the vendor. To this extent, a provision for a clearance certificate (as in the case of the current land tax) is essential. Failure to allow for such a clearance procedure could result in difficulties for purchasers on a number of matters including raising finance.

Where unpaid tax accumulates over a long period of time and is ultimately realised from the estate of a deceased taxpayer, the tax may effectively work in the manner of a death duty. Such an outcome, of course, raises a range of wide issues, but this is beyond the scope of this submission.

### *Dispute Resolution*

Any new property tax system should have properly considered and well-formed dispute resolution mechanisms which provide easy-to-access, low cost and timely dispute resolution for areas of conflict. At a minimum, dispute resolution processes should be set out regarding valuations, property use classifications, and decisions pertaining to hardship and debt collection.

## **Education**

The Tax Institute considers that it will be critical to ensure that practitioners operating in this space are provided with adequate support to be able to advise their clients appropriately on the impact of the new property tax regime. We consider that, especially in the initial years (due to the operation of thresholds), the proposed property tax is likely to affect families and middle income earners, rather than high net worth individuals or larger corporates. It follows that the practitioners most likely to be engaged to advise on the operation of the new regime will be sole legal practitioners and smaller law and conveyancing firms. These practitioners may be tasked with a range of responsibilities including assisting purchasers to determine whether a property is above or below the relevant threshold, undertaking the conveyance of a property including navigating issues with existing systems (for example, Property Exchange Australia (**PEXA**)) which currently only contemplate the liability to and payment of stamp duty, verifying whether a property has been opted-in and assisting lease parties in the negotiation of the burden of the new costs.



The Tax Institute would be pleased to partner with NSW Treasury and Revenue NSW to develop guidance and products to assist practitioners in this work and to ensure they are provided with appropriate protection from liability where issues arise in the rollout of the new property tax system.

## **Responses to select questions posed in the Consultation Paper**

To the extent we have not addressed the issues raised in our submission above and considered that it was necessary to do so, we have set out below our answers to certain questions raised in the Consultation Paper.

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

The Tax Institute acknowledges that stamp duty is a barrier to a range of activities which otherwise encourage labour mobility and economic productivity. The additional costs imposed by stamp duties discourage people moving into housing which may better suit their needs. Stamp duty also distorts decision making in a number of choices related to a person's residential circumstances including deciding between buying and renting, and moving home or renovating. From a broader perspective, stamp duty can discourage competition by deterring prospective purchasers from acquiring (dutiable) assets.

An important factor that contributes to the inefficiency and detriment of stamp duty is that the regimes of each of the States are nuanced, and the rules (and reliefs) vary, in some cases, significantly, from State to State. This plays a part in compounding complexity though we acknowledge that this aspect is not resolved by a single State solution.

We agree that there is merit in replacing it with a broad-based annual property tax, subject to the considerations outlined above. Particular consideration should also be given to the changes in economic conditions over the last year and the impact of recent global and national events on the ability to increase taxes.

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

Using the unimproved value as the tax base has the merit of excising from the duty base value attributable to improvements. It is preferable to a tax base being the improved value for the reasons set out in the Consultation Paper.<sup>10</sup>

To the extent that the values currently maintained by the Valuer-General will form the initial tax base, this has the advantage of the use of an existing data base.

However, valuation methodologies may differ and dispute resolution mechanisms must be implemented to address potential conflicts.

Particular concerns arise where property values increase at a rate greater than the rate of increase of salary and wages. This may lead to a greater amount being paid as tax as a proportion of salary and wages which can result in potential hardship, especially for low and middle income earners.

An alternative may be to benchmark increases in the property tax base against increases in CPI or salary and wages, rather than increases in land value that outstrip the ability of taxpayers to pay.

### **3. Should there be different property tax rates for residential or owner-occupied properties, residential investment properties, farm land, and commercial properties?**

Differential property tax rates for residential or owner-occupied properties and other relevant categories are desirable. In particular, it is desirable to allow the lowest rate for owner-occupied residential properties. This is because, given the pivotal importance of ensuring that taxes are levied at a rate within the means of the taxpayer, it is appropriate that the lowest rates should apply to residential owner-occupiers.

A similar approach is desirable for primary production land on account of the historical reasons for exemption for land tax for primary production land that still remain valid. Given the volatility of rural incomes, where there may be years in which a rural business earns little or no income, a lower tax rate is desirable.

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<sup>10</sup> Consultation Paper p 17.

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

One challenge associated with an annualised property tax is that it will continue to apply whether or not the taxpayer has the means to pay the tax. While The Tax Institute recognises that the current Government may not bind future Governments, we consider that it would be preferable for the rates to be legislated for a minimum prescribed period. We also consider that it is important for the Government to be as transparent as possible about the manner in which the proposed rates have been determined, in order to eliminate opportunities for unnecessary changes where particularly issues have already been considered.

While hardship provisions do not of themselves ensure affordability, as outlined above, The Tax Institute considers that such measures are critical to ensure the viability of the proposed new system.

**5. Is there a specific aspect of our proposal for reform you would like changed to help make the proposal better?**

The Tax Institute appreciates that much of the detail may only be known when draft legislation is available for consideration and comment by stakeholders. However, we have sought to raise a number of matters in this submission for further consideration by the NSW Treasury as many of such matters go to the overarching design and workability of the new property tax.

## **APPENDIX B**

### **About The Tax Institute**

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.