

CORRECTED VERSION ONLY

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Subcommittee

Inquiry into the State Taxation Acts Amendment Bill 2015

Melbourne — 15 June 2015

Members

Mr Joshua Morris — Chair

Mr Philip Dalidakis

Mr Khalil Eideh

Mr Nazih Elasmr

Ms Colleen Hartland

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Witnesses

Mr Michael Brennan, Deputy Secretary, Economic, and

Ms Trudy Hart, Director, Tax and Intergovernmental Relations, Department Of Treasury and Finance; And

Mr Vasko Nasteovski, State Revenue Office.

The CHAIR — I declare open the Legislative Council Economy and Infrastructure Committee public hearing. This hearing is in relation to inquiry into the State Taxation Acts Amendment Bill 2015. I welcome the State Revenue Office and the Department of Treasury and Finance.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders, therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. All evidence is being recorded, and you will be provided with proof versions of the transcripts in the next couple of days.

We have allowed 45 minutes for this session. To ensure there is sufficient time for the questions, the committee asks that any comments be kept to around 10 minutes. Finally, I remind you that this inquiry is only obtaining evidence in relation to how the measures in this bill will impact on housing affordability and housing supply in Victoria, so please consider your evidence to ensure that it addresses the committee's terms of reference.

Having both organisations here, Mr Brennan, would you like to begin, and we can follow through.

Mr BRENNAN — I have a brief opening statement prepared. Thank you very much to the committee for having us here today. The State Taxation Acts Amendment Bill, as you know, essentially does four things. It proposes a new land transfer duty surcharge on foreign purchases of residential real estate; it introduces a land tax surcharge on absentee landowners; and then in addition to that it introduces a motor vehicle duty exemption for vehicles classified as mobile plant or plant-based special-purpose vehicles; and a number of small changes to landholder duty legislative provisions. The committee's inquiry obviously is principally focused on the housing affordability issue, so I will confine my remarks to the first two of those initiatives, which are most relevant.

The bill proposes the imposition of a land transfer duty of 3 per cent of a property's market value on foreign investors and temporary residents who purchase residential property. The land tax surcharge is 0.5 per cent on the unimproved value for absentee landowners, including for residential and commercial land. Absentee landowners are here defined by three key characteristics: it is those who do not ordinarily reside in Australia, who are also either absent as of 31 December in any preceeding tax year, or for more than six months of the year in the current year before the year of the land tax assessments — that is, before 31 December of the relevant land tax year. However, citizens of Australia and New Zealand and permanent residents of Australia are excluded from the land tax surcharge.

Although the focus of these committee hearings is essentially on housing affordability, it probably bears repeating that the primary motivation for these measures and the stated rationale for these measures as set out in budget paper 2 is really, if you like, an equity measure. It is largely about ensuring that foreign investors who gain the benefit of the capital appreciation and price growth, particularly pursuant to state government investment in services and infrastructure, pay their fair share for those things. It obviously does have some bearing on housing affordability.

Both surcharges aim to ensure that foreign buyers are contributing fairly to the provision of government services. In Victoria government services are obviously funded by a wide range of commonwealth and state own source revenue lines, and local property owners contribute to many of these tax bases over an extended period of time and therefore carry a greater weight of the tax burden required to develop and maintain government services. Conversely, foreign buyers of real estate are generally limited to property-based taxes such as land transfer duty, land tax and, at the commonwealth level, capital gains tax and any tax on income earned in Australia, which may well be limited.

Just turning to the housing affordability issues, I think it is worth mentioning that the link between foreign investment in residential real estate and housing affordability is not necessarily straightforward. Under the national rules of the Foreign Investment Review Board, foreign investment in residential real estate generally must increase the level of the housing stock, so it generally occurs by the acquisition of new dwellings, off-the-plan properties under construction, or yet to be built or vacant land for redevelopment.

In recent years the number of approvals for residential real estate granted to foreign buyers has increased sharply. In the medium to long term this should increase the supply of housing and add to the housing stock and, importantly, when those properties are eventually on-sold, they must be sold to Australian permanent residents or citizens under FIRB rules. Additional supply therefore can improve housing affordability for local

buyers in the long run. However, in the short run, the stock of new houses can be relatively fixed due to planning processes or construction time lines or just to some extent a limit on the capacity of the construction industry to respond to new demand. So it is likely, given these constraints, that very strong demand from foreign investors can also in the short term bid up the price of a given stock of houses depending on the price responsiveness or elasticity, and that can have a negative effect particularly in the short term.

Not all foreign investment approvals necessarily result in sales, and that is a weakness in the FIRB data and part of the data limitations with which we deal. The *Report on Foreign Investment in Residential Real Estate* published by the Standing Committee on Economics for the House of Representatives in 2014 noted that approval data does not reflect actual purchases and:

There can often be a lag of several years between the time a certificate is granted to a developer and the time the development is constructed and individual dwellings in it are sold.

That does dilute the impact of foreign investment on housing affordability.

Also worth noting is that for purchases of residential property by temporary residents, the impact is more straightforward, because FIRB permits temporary residents to purchase established dwellings for the purpose of a residence as well as new properties that increase the housing stock. In either case temporary residents are likely to add to the demand for housing while not necessarily changing supply, at least in the short run, so the additional demand can add to pressure on house prices and reduce affordability.

Both of the surcharges aim to ensure that foreigners and temporary residents contribute a fairer share to the provision of services that increase their capital growth. To the extent that either surcharge corrects for the implicit transfer from local taxpayers to foreign investors, this may remove some of the incentives at the margin for foreign investors to buy residential property in Victoria, and it may make local Victorian buyers relatively more competitive in the housing market. There may be, for example, a reduction in incentives for foreign individuals purchasing single investment properties or temporary residents purchasing homes.

I am happy, Chair, to leave it at that, noting perhaps just one other thing by way of opening statement — that the government has already committed in the 2015–16 budget to a broader review of housing affordability and the release of the terms of reference and further discussion on that review will be a matter for the government. But, as I think was alluded to both in budget paper 2 and in the second-reading speech of this bill, the measures in this bill are, if you like, part of the government's broader suite of policy or policy direction in relation to housing affordability, but not the sum total of it.

The CHAIR — Certainly. Thank you, Mr Brennan. Ms Hart, did you have any opening remarks you would like to make? All right then, we might zip along the panel and ask a few questions. I might kick off with one. In terms of the new taxes that are being described as modest by the Treasurer, will these new taxes achieve their intended outcomes of housing affordability, due to the modest nature of the tax?

Mr BRENNAN — I will have a go at that one, if it is all right, Chair.

The CHAIR — Please.

Mr BRENNAN — As I said at the outset, it is important to remember that the primary motivation is essentially the equity motivation, so it is to ensure that when foreign investors are purchasing property in Victoria and thereby moving forward over the longer term and benefiting from the investments made in services and infrastructure via capital growth, that they are effectively paying a fair share of that potential capital upside. As I say, that is the primary motivation, so it is less about discouraging foreign investment as ensuring that where foreign investment occurs, the foreign investor is adequately paying for the benefit that they will receive.

In terms of the impact on housing affordability, I make two observations. I think there is a clear, immediate impact on housing affordability when you take the instance of a domestic buyer who might be trying to purchase some housing that might also be of interest to a temporary resident who, under the FIRB rules, is allowed to invest in established property. Clearly the temporary resident who is subject to the stamp duty surcharge finds themselves at a slight comparative disadvantage relative to the domestic buyer, so to that extent I think it is a reasonably straightforward conclusion that the provisions of the bill aid housing affordability to domestic buyers in that respect.

The question as to the longer term dynamics of what will happen in terms of housing supply and affordability over the longer term are a little more complex to work through. As I mentioned in my opening remarks, leaving aside for a moment temporary residents, who are permitted to invest in established property, so taking just those who are non-residents who are restricted to purchasing only newly constructed dwellings, on the face of it I think it is taken from that that all new foreign investment effectively increases the housing stock. In one sense that is true, because that is true by law. The question is still, though: does it increase the housing stock relative to the counterfactual if you did not have the foreign investment? For example, when you see a surge in demand from offshore investors wanting to buy into the Victorian property market and it is by FIRB rules mandated that they have to invest in new property, you have in effect a dollar of new demand and you have a kind of an offset in supply.

The question is: when demand increases by a very significant amount, is supply actually expanding by exactly that amount, or are we observing that there are some constraints on the supply side that mean that the increased demand might nonetheless be bidding up the cost of even new housing, even though the FIRB rules require that this foreign demand be channelled into new housing? There is a possibility that in the short term it nonetheless bids up the price of new housing and possibly with some flow on to established housing.

Over the longer term there might be a different dynamic where you have a significant housing stock increase where the foreign investor, when they come to sell, is actually limited to selling only to an Australian. That might have some benefit to housing affordability down the track if there is an increased supply coming onto the market at some future point. But data on those points is very limited and the evidence is largely anecdotal, but for the most part the anecdotal evidence appears to be that most foreign investors are relatively long-term purchasers, so there is not necessarily an immediate augmentation of supply coming onto the market at some future date. In terms of tracing the dynamic of foreign investment through to housing affordability in general, it is quite complex and there can perhaps be a distinction between the short and long term.

I suppose the only other point I would raise, coming back to your original question, Chair, is the question of whether or not the provisions in this bill, or the new impositions in this bill, will have a material impact on the level of foreign investment. Again, the data is not going to furnish you with a really clear answer necessarily on that, but we would make the observation that we have seen significant increases in demand from foreign investors in recent times kind of irrespective of price dynamics, which suggests that what is driving it is not necessarily price — that a 3 per cent rise, for example, in stamp duty is not necessarily going to drive, of itself, a really significant change in the level of foreign investment in Victorian residential real estate.

The CHAIR — Sure. In terms of the new taxes, there have been new guidelines that will provide for exemptions to these taxes. That is correct, is it not?

Mr BRENNAN — It is.

Mr NASTEVSKI — Can I just contribute to the question?

The CHAIR — The first one or this one?

Mr NASTEVSKI — This one. The exemption is actually provided under the legislation. The guidelines are mere explanatory materials that extrapolate a bit further in terms of what the exemption in the bill provides. Just like the State Revenue Office issues many public rulings, guidance notes, bulletins and website information that explains obviously complex legislation to help and assist taxpayers in understanding those requirements, these guidelines that the Treasurer has issued have that same intent, I guess. The guidelines themselves do not provide the exemption; the exemption is provided in the bill. These explain that exemption in the bill, the mechanics of it and how it should operate.

Mr ELASMAR — Does the Treasurer have to report on the exemption every time under the Victorian tax law?

Mr NASTEVSKI — Under any state tax legislation?

Mr ELASMAR — Yes.

Mr NASTEVSKI — There is no requirement under any state tax laws for the Treasurer, or even the Commissioner for that matter, to report on exemptions or concessions. With the exception — there is a

corporate reconstruction exemption in the Duties Act, which does have a requirement for the results of that exemption to be tabled in Parliament. But in the whole suite of other legislation there is no requirement. To perhaps pre-empt another question, a lot of that aggregate sort of information is contained in the budget papers every year. But there is no breakdown of who is exempted or by how much.

The CHAIR — In terms of the guidelines that were produced after the bill had been written, do those guidelines provide for a broader suite of peoples who may be exempt from the taxes than would have been initially available? In terms of the scope of those who would be exempted from the taxes, after the advent of these guidelines, has that been broadened or has it been narrowed or is it exactly the same?

Mr NASTEVSКИ — Neither one. The first point to make there is the fact that the exemption that exists in the legislation is an exercise of a discretion, so by definition you cannot confine or pinpoint exactly who that will apply to. But the guidelines merely extrapolate on the existing principles that have been placed in the legislation and just explain a bit further in terms of what those principles are in terms of control, influence, and those sorts of issues. They do not go beyond what the legislation does, other than perhaps articulating a statement of intent that the Treasurer might have in terms of who he considers he would turn his mind to.

The CHAIR — So these guidelines are really just a way of putting down on paper what was already going to be, in effect, occurring under the act prior to them?

Mr NASTEVSКИ — That is right, but extrapolating a bit further in terms of what those principles mean, those principles that have been legislated in the bill.

The CHAIR — Was the incorporating of the guidelines into the act thought of during the drafting of the bill? I am not sure who is the best to answer this, but obviously the guidelines came out afterwards. Were they ever thought of as being added directly into the bill?

Mr NASTEVSКИ — No, and I say no on the basis that it was not deemed necessary, because the exemption has already been drafted. I think I said previously the guidelines are the explanatory materials; we do not normally legislate explanatory materials. I mean, state taxation generally is quite complicated at various levels. If you hop onto the State Revenue Office webpage, you will find a plethora of rulings and information and bulletins that try to explain a bit further what that legislation means. This is no different to that. It is a general administrative tool that we use, so in that sense, no, it did not even come to mind.

The CHAIR — In terms of lodging a request for an exemption, how does that process occur?

Mr NASTEVSКИ — In relation to this exemption?

The CHAIR — Yes.

Mr NASTEVSКИ — I will qualify this by suggesting it is not law yet, so it is not set in concrete in terms of how it might apply. My qualified answer would be: like any other provision in state taxation legislation. Given that this is in the first instance a power that is vested in the Treasurer, I suspect, without prejudice, that the Treasurer might seek advice or information from the administrator as to whether the exemption should or could apply to certain circumstances.

The CHAIR — In terms of the process of disclosing to whom exemptions are made, what is the process for that?

Mr NASTEVSКИ — Generally in state tax legislation we are prohibited from naming who has the benefit of an exemption or, alternatively, who has been taxed at a certain rate. Anybody that is delegated to administer state tax legislation is prohibited in that sense through various privacy and secrecy provisions; for example, I, myself, could not do that. Coming back to this particular exemption, there is no requirement for this exemption for the Treasurer or the Commissioner to report on who has the benefit of it. But, as I said earlier on, that is no different to any other exemption or concession.

The CHAIR — In terms of the guidelines, is the Treasurer bound by those guidelines, or could he just provide an exemption to whomever he wants without the need for that to be disclosed?

Mr NASTEVSKI — No. Well, the Treasurer is bound by the law, so what the law provides in terms of the scope, that is in the actual bill itself. He cannot, obviously, make any decisions that go beyond what is there, and, as I think I said before, all the guidelines do is merely extrapolate on what is in the law. He cannot do whatever he likes; he still has to come back to what the law says.

The guidelines themselves are obviously not binding in any sense. They do not have any legislative authority, just like any other administrative tool that we utilise to explain how provisions operate are neither binding. Having said that though, if I can draw an analogy, the Commissioner regularly puts out public revenue rulings to help taxpayers and their representatives in terms of how we would apply or interpret various provisions. If the Commissioner does put out a public ruling or any other materials, then we will tend to bind ourselves to what that public articulation is so we are not changing the goalposts halfway through.

Mr EIDEH — What is the current level of home ownership in Victoria, and has this changed over the last five years?

Mr NASTEVSKI — I might defer to my Treasury colleagues.

Mr BRENNAN — Trudy, I do not know if you want to talk.

Ms HART — I do not know if we actually have data on home ownership as such. We have some data on investment levels.

Mr BRENNAN — In rough terms, in terms of levels of home ownership, I think it is still the case that — and I will take this on notice and come back to the committee if I need to correct this — in broad terms about a third of the community are private renters, about a third own their properties outright and about a third are paying off a mortgage. I do not think those proportions have changed really significantly. What we have seen is some fall-off in the level of first home owners entering the housing market in recent years, reflecting no doubt a range of factors, most notably the general price appreciation, and that has proven a general challenge for a first home owner on an average, or perhaps a bit below average, income, if they are a bit younger in the age distribution, to gain an early foothold in the property market.

There remain a number of incentives in place to try and assist first home owners. In Victoria it is the \$10 000 grant for new construction and the 50 per cent stamp duty concession which applies across both new construction and existing housing stock. But notwithstanding those measures, I think it is fair to say that if you look at, for example, housing finance data from the ABS, the value of finance approvals to first home owners is at a relatively low level compared to historical norms.

Overall, it suggests that there are some challenges associated with housing affordability. I think the measurement of that is a challenge. There are housing affordability indicators which go to the comparison between, for example, a median income or an average income and a median house price as transacted in the general market. Whether that is a perfect indicator of the true state of housing affordability, I think it is fair to say we are not altogether convinced, because there are some very high-priced properties transacting in the market possibly a bit unrelated to the level of incomes of those transacting them, where people have got significant equity in their existing properties. But the key question is: is there a suite of affordable home ownership options for first home owners? I think there is some evidence that across the board that has become a little more difficult for first home owners at present.

Mr EIDEH — Has this figure changed dramatically in the last five years, do you think?

Mr BRENNAN — I would have to check the evidence on that. In the last five years, possibly not that much, but in the longer period, yes. But I will come back to the committee, if that is all right, with some further data on that.

Mr ELASMAR — Michael, the bill introduces 3 per cent stamp duty surcharge on foreign purchasers. Can you explain why it is 3 per cent?

Mr BRENNAN — Really just that 3 per cent was the decision that the government made. As I said at the outset, the motivation for the measure is essentially an equity motivation. It is really about making a judgement about the appropriate level of contribution which the government would be seeking from foreign investors to adequately represent the benefit that they might receive from services and infrastructure that then feed into

capital price appreciation. It is not really, I guess, for us so much to speculate about why 3 per cent as to say, 'That was the judgement that was made by government as to what an appropriate level for this surcharge would be'. It is in addition to the existing stamp duty rates, which I guess — —

The top marginal stamp duty rate is actually 6 per cent, but at high property values there is an average of 5.5 per cent, so I guess it is worth noting that 3 per cent is broadly comparable to around the mid-range of that, but I am not saying that that is necessarily the answer. I think it reflects the judgement by government about an appropriate level for this levy.

Mr EIDEH — Is it likely to increase or decrease, do you think, in the next years — this 3 per cent rate?

Mr BRENNAN — That would be a decision for government, so I would not speculate about where government policy might go in relation to that. The 3 per cent — there is no mechanism automatically by which it changes. In the law it is 3 per cent, but it is a percentage of the value transacted, so as property prices rise, then the dollar value that is paid — and that is just like normal stamp duty. For a given percentage of a rising house price, it might mean more dollars in absolute terms, but 3 per cent is fixed under the act.

Ms HARTLAND — I have got a couple of, I suppose, more technical questions. So if we took it over the last year, do we know how many foreign investors there have been? And if we took it over the last year, do we know how much revenue would be raised by that number of investors?

Mr BRENNAN — I will have a first go, and I might hand over to Trudy after that. It is worth noting that in this area data limitations reign supreme — or not quite supreme, but they are perennial. There are two primary data sources that we use. One is in relation to the reporting that is done by the Foreign Investment Review Board. The FIRB puts out essentially an annual report which illustrates both the number and the value of approvals which have been sought and granted by the FIRB for investment in residential real estate, and we do have a breakdown at the state level and a breakdown by new dwellings, existing property et cetera.

In the 13–14 year, which is the most recent year for which data is available, for new dwellings in Victoria there was about \$2.85 billion of approvals to foreigners for new dwellings. For existing properties — this would be predominately going to temporary residents buying up property for their own purposes for the time that they are in Australia — \$3.2 billion, which is the highest of any state. There is a small amount explicitly for redevelopment, and that is \$0.38 billion. For vacant land, \$0.79 billion, and then there is a category described as 'developer', which is larger still, which is \$6.78 billion.

I will talk to two elements of the limitations on the data. The first is particularly in respect of existing properties. It is not clear, necessarily, that every successful application culminates in a purchase, because a temporary resident, for example, might be wishing to bid at an auction. They will seek a FIRB approval in relation to a specific property. They miss out at that auction. They might end up with multiple approvals and eventually secure a house. So it is possible that both the number and the value could be slightly overstated there. In relation to the large amount that is attributable to developers, it is worth noting that they are very small in number and very large in value, and what that reflects is that you can, as a developer, seek and secure a kind of blanket approval when you are going to sell some property off the plan for your development as a whole, noting that you are going to be selling some properties off the plan potentially to foreigners.

You can get a one-stop approval for that, so that will count as one approval but with a large value. But it is quite possible that much of the stock that you are ultimately selling will not actually be sold to foreigners, even though you have sought approval for the whole amount. I think our domestic financial institutions would tell you that when they are financing the construction particularly of a new, large-scale residential development they will often require that a certain amount be sold into the domestic market rather than being 100 per cent foreign sold. So it is possible that those developer numbers are also slightly exaggerated in terms of defining how much actual activity there is.

The only other data that is really available comes from the NAB, who also have a survey that roughly reflects the percentage of activity in the market that is represented by foreign buyers — or offshore investors. My understanding of that data is that in the March quarter of 2015, so a little bit more up-to-date than the FIRB data, overseas investors were about 20 per cent of the new property market — that is newly constructed dwellings — and for the established property market more like about 8.5 per cent. I would have to go back and check the record as to how that compares with history, but those numbers are reasonably significant.

In terms of the amount that the levy would raise, my gut feeling is if it were in place, for example, in the 14–15 year, I think our estimate would be similar to the estimate that we have got in the budget papers — in budget paper 3 — for the 15–16 year. I do not know if you want to comment further on that.

Ms HART — I do not think I need to add anything more. The reality is, as Michael presented, the FIRB data is one of the inputs that we use in our modelling to come up with the revenue forecasts. So we take account of that. We take account of information from the SRO in terms of activity in the market. We take account of many economic sources, all publically available. So, as Michael says, the forecasts are based on our best estimates of all of that material combined.

Ms HARTLAND — I have another question. A property developer purchased land 10 years ago and is now at the stage of developing it, but because they have purchased it 10 years ago, will they now be subject to this tax?

Ms HART — They would not be subject to the tax in terms of the purchase, because that occurred prior to the proposed implementation date.

Ms HARTLAND — So even though they will be developing and selling, that will not be —

Mr BRENNAN — No. The subsequent sale of the properties will attract the surcharge. So they would not be retrospectively charged on the original purchase of a site, but — correct me if I err — to the extent that they enter into a contract of sale post 1 July to an offshore purchaser who is covered by the surcharge, then the surcharge would be payable on that transaction.

Ms HARTLAND — But if they have sold to a local buyer, then they would not pay that tax for that particular year.

Mr BRENNAN — No, they would pay the orthodox land transfer duty. Land transfer duty, as a transaction tax, hits at each stage in the production process, so to speak. Notwithstanding that the surcharge was not in place when the original site might have been purchased, to the extent that there are dutiable transactions that occur post 1 July, if they are going to foreigners, they would attract the surcharge.

Mr DALIDAKIS — On that point, can I just clarify that we are actually talking about non-residents, because you can have a foreign national who is a resident. Is that correct? That is my understanding; we are talking about non-residents, not foreign nationals. A foreign national could still have a residency in Australia.

Mr NASTEVSKI — It depends on which surcharge we are making reference to, so for example, the absentee owner land tax surcharge. That, in the first instance, carves out people who are Australian citizens, New Zealand citizens and permanent residents. But then in a second layer to that it carves out anybody who would be ordinarily residing in Australia. In relation to the stamp duty non-resident duty surcharge, there is a definition there that defines who the foreign purchaser can be. In defining who the foreign purchaser is, it carves out Australian citizens, permanent residents and New Zealand citizens.

Mr DALIDAKIS — I think Ms Hartland raises a very important point with one of her questions. If a non-resident, a foreign national, purchased a block of land to develop, in and of itself that does not attract the 3 per cent surcharge unless they sell it to non-residents. Can you tease that out for me and explain that aspect of the legislation?

Mr BRENNAN — I will start, and I will hand to Vasko after that. That is the policy intent, as identified in the guidelines distributed by the Treasurer to the extent that you have acquisitions undertaken by someone who would notionally fit the description of not being a permanent resident or an Australian citizen.

Mr DALIDAKIS — Use ABC Pty Ltd property developer as an example.

Mr BRENNAN — Yes, but the purchase of that land for the purposes of development and expanding supply would be the sort of transaction for which the Treasurer's exemption would apply — the exemption under the law, I should say, would apply.

If I turn to the Treasurer's guidelines, the fifth paragraph states that:

The persons that are intended to be exempted from the non-resident duty surcharge from 1 July 2015 are those whose commercial activities add to the supply of housing stock in Victoria (either through new developments or through redevelopment, where such development is primarily residential). All other duties that are usually imposed will remain in place. The intention to exempt from the non-resident duty surcharge remains at the discretion of the Treasurer

That is, if you like, an indication of the policy intent which is that it is really the final sale to a foreign purchaser of a unit or a house that would be captured by the 3 per cent.

Mr DALIDAKIS — Did you want to add to that?

Mr NASTEVSKI — No, I do not need to at this stage.

Mr DALIDAKIS — One of the points on the back of that response that I want to understand is that you referred to the guidelines, but in Mr Nastevski's evidence he made it very clear that the Treasurer is bound by the legislation, and the guidelines are only indications to the general public. I just want to clarify: is it the guidelines or the legislation that the Treasurer is bound by, that he adheres to, or are you using the guidelines in response to my question purely to provide that supporting evidence for, I guess, people to be comfortable about the operation of the legislation?

Mr BRENNAN — That is right, the illustration of the policy intent. But I might hand over to Vasko on the question of the legislation.

Mr NASTEVSKI — Certainly in the first instance, prima facie, the Treasurer would be bound by what the legislation articulates. As a second point, and I have said this previously, the guidelines have been issued by way of acting as explanatory material, so explaining what the Treasurer is bound by under the legislation. They merely extrapolate. As I said earlier, I think there are about four or five matters or principles that the Treasurer needs to take into account under the legislation. All the guidelines do is, firstly, articulate the policy rationale behind the mechanics of the exemption and who that might capture, but also further explain, again, what the legislation is supposed to do.

Mr DALIDAKIS — In the previous testimony from Mr Parker — and I am happy for my colleagues to correct me if they feel I am verballing him, which is not the intention — he raised the concern of transparency, I think, before you arrived or as you arrived to hear. He was concerned about the level of transparency by the Treasurer having the ability to make this exemption. So I am keen to understand in terms of its application, given that you said that the Treasurer is bound by the legislation and not the guidelines, whether or not the Treasurer can simply grant an exemption to anybody, or what the Treasurer is bound to by the legislation, as distinct from the concern that Mr Parker raised about the application of the guidelines.

Mr NASTEVSKI — In exercising the discretion under the legislation the Treasurer will have to give account or turn his mind to those matters that are listed in the legislation. They are the matters he needs to consider in exercising that particular — —

Mr DALIDAKIS — So an exemption can only be granted in keeping with that legislation, not because he likes Philip Dalidakis's cousin, who turns up and asks for an exemption because he is trying to get his money out of Greece in case they default. I am happy to use my family as an example so I do not smear anybody else; again, I am just making it quite clear that — —

Mr NASTEVSKI — Whatever the circumstances might be, he would need to actually exercise his discretion as it is vested to him under the legislation.

Mr DALIDAKIS — Not that I think my cousins in Greece would do that, by the way; I am just putting that on the record too. In relation to the evidence that you gave, I think, Mr Brennan, about FIRB dollars and money coming into the country, in terms of the money in the forward estimates put towards this piece of legislation — this measure being implemented; the revenue measure — as distinct from the total dollars within the FIRB bucket, what are we talking in terms of that comparison or a measurement? Are we talking about a significant amount of foreign investment review money coming into Victoria, or are we talking about a comparatively minor sum, a drop in the ocean, so to speak?

Mr BRENNAN — I would refer you to budget paper 3. We outlined the revenue that is estimated to be raised, for example, in the 15–16 year, which is the first year of operation of the surcharge from that particular

measure, the 3 per cent surcharge, at \$39.5 million rising to a number more like \$65.5 million as the initiative takes full effect.

I take your point to be, if you compared that, for example, to the kind of levels of investment formally being approved under the FIRB process in the 13–14 year, it was in the order of \$10.4 billion for Victoria in terms of residential real estate, and that may climb yet further in 14–15 and 15–16, I guess. Given the current trajectories, that remains to be seen, but yes, I guess it would be really, to your question, a juxtaposition of an aggregate level of approval in Victorian residential real estate of 10 and a bit billion, and revenue in this instance of, call it 40 to 60 million.

Mr DALIDAKIS — My last question, Chair: if we are looking at the actual cost of the 3 per cent charge to the non-resident off the \$1 million property, for example, we are talking about an additional cost of \$30 000 over and above the property. Do you have any experience in terms of the modelling and having a look at that 3 per cent charge how you got to the 3 per cent charge in the first instance and also whether or not in your own modelling you thought that the 3 per cent charge would either reduce competition within the marketplace — in which case it reduces the cost of housing to residents and/or citizens — or if your view is that it has been targeted at 3 per cent because at that percentage it does not distort the market greatly in terms of competition or competitive neutrality; in fact what it does is that it says that for non-residents competing to purchase, then that additional money can go towards great infrastructure spend and the like, in terms of the services it is providing to citizens et cetera.

Mr BRENNAN — In a moment I will hand over to Trudy for anything I leave out in terms of the technicality of how the initiative was costed. The broad issue in terms of the choice of the level, 3 per cent, referring back to the previous question, I guess that just reflects the judgement of the government given its equity motivation in ensuring that there is an appropriate share of services and infrastructure being, as it were, funded by this initiative. Three per cent was the level that the government arrived at.

In terms of costing it then, it requires a degree of judgement about what the price responsiveness in this particular market might be and whether there would be a significant demand reaction to a new impost of 3 per cent. Again data limitations mean that it requires a level of judgement to come to a view about that. Our view would be that the revenue projections we have made are accurate within the kind of data limitations we face, but reasonably conservative.

It is worth noting, just in terms of how elastic or inelastic — that is, how responsive demand actually is to price — that in the House of Representatives inquiry into foreign activity in the Australian residential real estate industry it noted that, particularly for higher level investors, the kinds of existing penalties that one might face under the FIRB rules, which can go up to about \$85 000, were in some instances sort of regarded as the cost of doing business. That probably puts the kinds of surcharges that we are talking about here in some perspective. In addition to which the Commonwealth also has its new application fees as well for FIRB applications. So taking an example of, say, a \$500 000 property, the stamp duty surcharge on that would be 15 000. I think the FIRB application would be 5000. The core stamp duty — I would have to remind myself of what the core stamp duty would be on that. It would probably be around 15 000 — —

Mr NASTEVSKI — Maybe a bit more.

Mr BRENNAN — A bit more. In general our judgement would be that we do not anticipate a really significant demand response pursuant to this 3 per cent impost. As we noted earlier, the level of activity or the level of demand from foreign investors is sufficiently variable and has grown by such a strong amount in recent times due to factors completely obviously unrelated to price. That kind of puts in perspective, I guess, what level of response you might see from a 3 per cent surcharge, which we would anticipate would be reasonably small. I am not sure, Trudy, if you want to add anything further to that.

Ms HART — The only thing I would add is that in terms of the starting question around the proportion of our budget forecasts in relation to the FIRB approvals, it is important to remember the lag. So when Michael was talking about a number in the order of 10.4 billion, that is 13–14 FIRB approvals. And we are comparing it now to budget estimates for 15–16, so it is very difficult. You cannot look at FIRB approvals and take a percentage and make an assumption about what that will generate through this measure.

Mr DALIDAKIS — But it is fair to say that the base analysis provided by presumably DTF is that that 3 per cent margin or that 3 per cent figure is set at a price point that should not distort the market in terms of being competitive but at the same time should provide a level of revenue returned to the Victorian government to provide for services and infrastructure that otherwise may not be the case.

Ms HART — I think that is a very good description.

The CHAIR — I have just got two quick ones just to finish on. There were a couple of property groups that described the publishing of the guidelines as dodging a bullet and a major win for homebuyers. Were they misguided in making those statements insofar as there was no in effect change to where we were once the guidelines were published as opposed to when we just had the bill, as it were, prior to the guidelines?

Mr BRENNAN — I do not think I can comment on those particular perceptions. I just note that the bill provides a mechanism for the Treasurer to exercise the discretion to provide an exemption. The guidelines to an extent really follow on naturally from that in terms of putting some descriptors or flesh on the bones as to when that discretion will be exercised. So I think there is probably a natural chronology in these things. Beyond that, I would not seek to comment on the views of these players in the market.

The CHAIR — Just one final question in terms of the application of the law within this bill for the Treasurer to only be able to provide exemptions that are provided for within the law. If there is no openness in terms of who is exempted from that, how can the community be assured that the law is being followed by the Treasurer within this particular act?

Mr DALIDAKIS — I think Mr Brennan probably misunderstood your first question. If I understood your question right, your first question was that if people have put out a release welcoming the release of the guidelines, whether or not they have been misled because the intent of the legislation has not changed. Is that right?

The CHAIR — Yes, whether or not they have been misguided in making that statement because there has in effect been no change in the application of the law.

Mr DALIDAKIS — I have understood what you said.

The CHAIR — You have understood what I was trying to say.

Mr BRENNAN — I think I would nonetheless stand by the answer. I did misunderstand the question slightly, but I think the response is still apposite in as much as I guess the point is not for us to make a judgement about whether or not bullets have been dodged. It is just — —

The CHAIR — And so the question — —

Mr BRENNAN — There is a policy intent embodied in the fact that the bill provides the Treasurer with the ability to provide an exemption. The guidelines describe the circumstances under which that policy intent would be actioned. I could not possibly comment on the accuracy or otherwise of — —

The CHAIR — No, it was not about that statement; it was more about was there a material change to, in effect, the way the law was going to be applied once the guidelines had been published.

Mr DALIDAKIS — Or did the guidelines provide some level of certainty or understanding of how it was to be applied?

Mr NASTEVSKI — Based on lived experience, I guess, when we do issue public rulings or bulletins or guidelines or website information or anything to that effect, taxpayers and their representatives tend to appreciate that further piece of information that does provide them with greater levels of certainty in terms of how the very complex legislation would be applied in a consistent manner, I guess.

The CHAIR — Okay.

Mr DALIDAKIS — Sorry to interrupt you, Chair.

The CHAIR — No, thank you, Mr Dalidakis. I think that was quite worthy. My final question was around the openness in terms of the application of the exemptions by the Treasurer. How can the community have certainty that the law will be applied appropriately without any question that it is being applied? What is the check and balance?

Mr NASTEVSKI — The first point I would make is that, like anybody else, the Treasurer is also subject to what the law says. It would be doubtful that he would be acting outside of that. The next point I would make is that in exercising his discretion, as is normally the case with any minister, I guess, they would seek advice from their experts in the department, which is appropriate, in terms of how that legislation can be applied, so I would anticipate that there will be some form of advice sought from the department or the relevant agency in terms of applying the provisions.

But I think I mentioned earlier as well, just like any other exemption or concession in state taxation, there are no reporting requirements per se to itemise who has the benefit of any exemption or how much they have benefited from that exemption. There is reporting in the annual budget papers on an aggregate level. There might be a line item against this particular exemption in terms of how much has been issued. But if I can draw another analogy, under the Financial Management Act whenever a Treasurer, for example, provides ex gratia relief to a taxpayer for whatever reason, similarly that is not reported anywhere in terms of there is no notification as to who receives that ex gratia relief. But again it is reported, I think, in the annual budget documents in terms of the aggregate numbers that have been provided in that financial year.

The CHAIR — Excellent. Wonderful. If there are no further questions — my apologies, I did run us a little bit over time there — thank you very much for your attendance today and for answering our questions.

Witnesses withdrew.