Tasmania

Explore the possibilities

Response to Commission Position Paper CGC 2008/07:

Stamp Duty on Conveyances

Department of Treasury and Finance

January 2009

Summary

- Tasmania agrees with the use of actual tax base data to measure the tax base.
- Tasmania agrees with assessing a Value Distribution Adjustment.
- Tasmania considers the VDA should be determined according to the value levels at which average tax rates change (effectively the 2004 Review method), rather than the proposed ‘simplified’ VDA.

Measuring the Tax Base

1. Tasmania welcomes the Commission’s Position to assess the tax base for Stamp Duty on Conveyances by using the actual tax base data provided by states.

2. As Tasmania argued in its response to the Staff Discussion Paper in 2007, there are a number of reasons why actual tax base data are superior to the initial Staff proposal to use Secured Housing Finance Commitments data.

3. While actual tax base data are not perfect in terms of comparability, Tasmania is of the view that any significant issues can be overcome using adjustments and judgement, and will still produce a more reliable and robust outcome than SHFC data.

Value Distribution Adjustment

4. Tasmania welcomes the Commission’s Position to make an assessment that recognises the differing capacities of the states to raise duty according to the universal policy to use a progressive tax structure.

5. However, Tasmania does not agree with the ‘simplified’ Value Distribution Adjustment the Commission intends to apply. The basis for the ‘simplified’ VDA is contested from both a principle and practical application perspective.

Simplification Principle

6. While Tasmania supports the top-down, clean-slate approach to simplification, the application of this approach should not be generalised to the extent whereby a current robust approach, which requires little if any additional effort on the part of the Commission, is replaced by something more simple, for the sake of simplicity alone.

7. The Terms of Reference for the Review do instruct the Commission to simplify its assessments and to aggregate categories, *inter alia*. However, if after applying a top-down, clean-slate approach, the Commission were to end up with a category assessment that is the same as the 2004

Review method, this would not be a failure on behalf of the Commission to simplify.

8. Rather, such an outcome would effectively acknowledge that a number of existing categories are already simple to assess and explain. While the Commission should look for opportunities to simplify them further if possible, it should not pursue this if it results in a material deterioration in the equalisation outcome.

9. Tasmania does not consider that any meaningful simplification is achieved by having fewer value ranges in a VDA assessment. There is no additional work required to collect and present information and there is no greater complexity in understanding the assessment. The only simplification is a cosmetic one – fewer lines in a workbook.

10. However, this cosmetic change has material redistributive consequences, as discussed below.

11. Tasmania is concerned that the Commission may be basing its position to introduce a 'simplified' VDA on the basis that it feels it must simplify something in the Conveyance Duty assessment, given that other proposals for simplification have failed due to not being robust to satisfy a reliable assessment being made.

12. From Tasmania's perspective, the decision as to whether a VDA is applied should be based on whether it is average policy and whether the application of a VDA is material (based on a $10 per capita test). Once these two tests have been satisfied (together with data reliability tests), the VDA should be applied according to the average policy of states (which is based on the value levels at which average rates of tax change).

13. To apply a secondary test, using a $10 per capita threshold for each and every step in a potential VDA, seems to be excessive given a $10 per capita test is already applied to determine the materiality of a VDA as a disability in aggregate.

14. This can be demonstrated when comparing the outcome with that which is produced if taking an approach that reflects the levels at which average rates of tax change. Tasmania's estimates, shown in the following table, indicate that the difference is material for five states.

Table 1: Difference between 'simplified' VDA outcome and VDA based on average policy, 2006-07

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
$pc	- 2.62	23.36	- 15.02	- 6.72	- 8.48	-10.39	- 17.01	- 11.57
$'m	- 17.96	120.73	- 62.13	- 14.00	- 13.37	- 5.11	- 5.73	- 2.46

Note: Estimate is based on replacing assessed revenue for 2006-07 from the 2008 Update with the assessed revenue in Table 6, Commission Position Paper 2008/07.

15. The Commission justifies its position on the basis that the Terms of Reference instruct it to determine what states do in a broad way. However, in this instance the approach leads to an assessment that is further distant from what states actually do, compared with the Commission simply reflecting in its assessments the value ranges in which average rates of tax change.

16. Tasmania acknowledges that there is a range of policy differences which mean that reflecting the average of what states do results in an assessment tax structure that does not closely reflect the tax structure of any one state. However, this approach is uncontroversial and broadly accepted because the Commission simply reflects the average, regardless of the divergence in each state's tax arrangements. On the other hand, the position the Commission has proposed for the 2010 Review requires a level of unnecessary judgement to set the intervals at which different rates of tax apply.

Practical application

17. Accepting for the moment the legitimacy of a 'simplified' VDA, Tasmania considers that there are a number of ways in which the materiality test can be applied. The outcome appears sensitive to which test is used. For example, the following table depicts the financial impact by value range from the 2008 Update, as shown in Table 3 of the Commission Position Paper, but using a dollar per capita presentation rather than a dollar million presentation.

Table 2: Financial impact by value range, 2008 Update

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Value range	$pc	$pc	$pc	$pc	$pc	$pc	$pc	$pc
$0 to $0.1m	5.1	-2.2	-1.5	-2.0	-4.7	-15.9	5.9	-2.3
$0.1m to $0.15m	6.2	-2.6	-2.5	-3.3	-4.4	-11.4	5.3	-4.2
$0.15m to $0.2m	6.5	-2.5	-3.6	-1.3	-6.3	-10.2	4.8	-4.2
$0.2m to $0.3m	8.9	-4.9	-4.7	0.8	-7.9	-8.3	1.2	-8.5
$0.3m to $0.5m	2.1	-0.1	-2.9	1.6	-0.8	0.0	-11.3	-2.3
$0.5m to $1.0m	3.5	-1.1	-2.2	-1.5	-2.2	-2.8	-1.5	-3.3
$1.0m to $2.0m	3.1	-1.1	-1.5	-0.8	-2.5	-2.6	-5.9	-3.3
$2.0m plus	6.7	-4.0	-5.8	7.2	-5.8	-11.0	-3.9	-1.9
Total	42.2	-18.5	-24.7	0.6	-34.6	-62.2	-5.3	-30.1

18. Table 2 shows that the financial impact for the first three value ranges is material for Tasmania. The fourth value range is not quite material if using a $10 per capita test. The fifth value range is material for the Northern Territory and the last value range is material for Tasmania. If materiality were tested on this basis, it would suggest the appropriate number of value ranges would be seven – the first five (the fourth value range would have to stand alone, given the third and fifth value ranges are material in

their own right); the sixth and seventh combined; and the eighth standing alone.

Which materiality test should apply?

19. Tasmania also considers that the application of the $10 per capita test for each potential step in a VDA is not appropriate.

20. Tasmania notes the explanation provided by Commission Staff following the Staff meeting with states on 22 and 23 October 2008. This explanation stated that:

> *"The Commission has also used the $10 threshold to decide if more disaggregation of a disability is required in an assessment. For example, the Commission has used this threshold to decide if more than one or two age, location, socio-economic status or value distribution groups should be used in an assessment."*

21. What matters, however, is that materiality is applied in relation to whether the VDA as a mechanism is warranted or not. If the Commission is determined to test the materiality of individual value ranges, then Tasmania considers the Commission should at least apply a less stringent threshold for such a secondary test.

22. If a $3 per capita test were applied to the Commission's proposed approach, then according to Table 4 in the Commission Position paper, the redistribution at the four value range is material for both Tasmania and the ACT. Further testing would be needed to ascertain whether materiality exists at five value ranges, and so on.

23. Alternatively, applying the $3 per capita test to Table 2 above, indicates that the existing eight value ranges, based on the levels at which average tax rates change, are all material.

Adjustments to Tax Base for Policy Differences

24. Tasmania notes the '*Draft Report on Conveyance Duty Differences Between States and Territories'*, prepared for the Commission by Blake Dawson.

Land rich duty/landholder duty

25. In relation to the recommendation to make a downward policy adjustment for New South Wales, Victoria, the ACT and the Northern Territory because of lower levels of acquisition (20 per cent) in relation to unit trusts (compared with 50 per cent in other states), Tasmania questions whether the lower level of acquisition is in fact the average policy given it is applied by four states, including the two largest in population. If it is average policy, the appropriate adjustment would in fact be an upward adjustment for the other states. Tasmania acknowledges, however, that data are unlikely to be available to allow the Commission to make an upward adjustment for those states that apply a 50 per cent threshold.

Corporate reconstructions

26. Tasmania does not agree with the consultant's statement that"

    "In our experience, the availability of reconstruction relief will often be a decisive factor in whether or not the reorganisation of a group proceeds. An absence of reconstruction relief simply results in fewer reconstructions rather than significantly increased revenue."

27. While Tasmania does not have data to show the aggregate level of corporate reconstruction activity, it is known that corporate reconstructions do proceed in the absence of relief. While in very limited circumstances, ex-gratia relief in Tasmania has been provided in the past, applicants for this relief must first pay the required duty before a request for ex-gratia relief is considered. In other words, the corporate reconstruction proceeds before the organisation has any information as to whether ex-gratia relief will be forthcoming.

28. Tasmania does not consider that the absence of duty relief is a decisive factor in the decision as to whether a corporate reconstruction proceeds. An organisation will consider a corporate reconstruction for a number of reasons, but generally these all relate to the organisation achieving some material benefit or purpose. The liability to pay duty will generally only be a marginal consideration, which is far outweighed by these other drivers. It is only where the benefits of a corporate reconstruction are marginal that the liability for duty may be a larger consideration in the decision.

29. Tasmania notes the consultant's suggestion that, before recommending a policy adjustment for Tasmania, there should be an investigation of the circumstances in which Tasmania has raised revenue from corporate reconstructions. Tasmania has examined its data but unfortunately, because duty is imposed on corporate reconstructions at the same rate as other dutiable transactions, there is no need to identify these transactions separately and, as such, there is no system 'flag' to capture this information.

30. Tasmania also notes the consultant expects that Tasmania's difference in relation to corporate reconstructions could be 'significant' but not 'highly significant'. Tasmania considers that this is a reasonable assumption and, in the absence of data, there is a question of whether such an adjustment would be material. With the abolition of duty on non-residential, non-real property, it is likely that corporate reconstructions subject to duty in Tasmania will decline, which would make Tasmania's differences less likely to be material.

31. Nevertheless, Tasmania will consider an attempt to collect data to determine the prevalence of corporate reconstruction activity in the State.

Payment of duty within 14 days

32. Tasmania does not agree with the consultant's statement that: "*...if the proposed change to the Victorian payment period passes, we consider that this would create a highly significant difference between Victoria and other States*."

33. The Victorian proposal to reduce the payment period to 14 days (from the current three months) would not result in a greater capacity to earn revenue on revenue collected on the basis that it will have access to the revenue earlier than a state with a longer period to pay duty.

34. Although arrangements differ from jurisdiction to jurisdiction, the Victorian proposal would not necessarily result in the payment of duty on a transaction occurring significantly before it would in other jurisdictions.

35. For example, Tasmania charges duty on either the agreement to transfer dutiable property or on the transfer of the dutiable property. In Tasmania's case, duty must be paid (either on the agreement or the transfer instrument) within three months of entering into the agreement.

36. Rather than charging duty on either the agreement to transfer or the transfer or dutiable property, Victoria charges duty only on the transfer of dutiable property and, under the proposal, duty would be payable within 14 days of that transfer. After taking into account the typical settlement period of 30 to 90 days and the proposed 14 day duty payment period from the transfer of the property, duty would typically be paid in Victoria between 1 1/2 months and 3 1/2 months after the parties enter into the agreement.

37. On this basis, the Victorian proposal would not result in the payment of duty consistently sooner after an agreement for sale is entered into than it would in Tasmania (and other jurisdictions), and would not result in a significantly greater capacity to earn revenue on revenue collected.

38. Tasmania, therefore, considers that the grounds for the consultants recommended downward policy adjustment require further consideration by the Commission.

Size of Policy Adjustment

39. Availability of reliable data will be a significant issue for the Commission in considering the size of policy adjustments. For example, the consultant suggests collecting a sample of data from those states where the transfer of goodwill is dutiable, to allow judgement to be made regarding the revenue lost in those States where the transfer is not dutiable. While the consultant is correct that SRO’s should hold information based on taxpayers’ own apportionment between goodwill and other assets in a contract for sale, the reliability of these data, in Tasmania’s experience, is questionable. This is because the same rate of duty applies to all components of a sale and, hence, there is no incentive for the taxpayer to

accurately record the apportionment (eg they may simply list the total transaction amount in one component) and there is no reason for the SRO to audit the split.

40. However, at least in Tasmania, data in more recent years should be more reliable as effort has been made to improve the reliability of taxpayer apportionment. This has occurred because of the need to have better information about the split between non-residential real property and non-residential, non-real property, in the lead up to the abolition of duty on the latter on 1 July 2008.

41. Nevertheless, the general point is that SRO data may be limited in terms of its reliability when attempting to examine fine levels of detail, particularly where there are not strong reasons for SROs to capture reliable information.