Article Information

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Are you aware of the Stamp Duty Changes to Commercial Property in South Australia?

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In an unexpected move, South Australian Treasurer Tom Koutsantonis has given the green light for the abolition of stamp duty on commercial property transactions in South Australia.

Stamp duty will be phased out over three years with the first stage being a reduction of a one-third in stamp duty, effective from 1 July 2016.

A further one-third reduction will take effect from 1 July 2017, before complete abolition of stamp duty on commercial transactions effective from 1 July 2018.

By way of example, from 1 July 2018, the abolition of stamp duty will save $48,830 on a $1m acquisition, $268,830 on a $5m sale and a $10m investment will result in a $543,830 stamp duty saving.

The change has received widespread support from the South Australian property sector with Daniel Gannon, Executive Director at the Property Council of Australia (South Australia) commenting that the abolition of stamp duty is *"a green light for investment", "sends a strong signal to boards across the country"* and *"gives South Australia an instant and powerful, competitive advantage over other jurisdictions".*

With an increasing competitive market and tightening yields in the eastern States of Australia in recent years, South Australia may become a prime opportunity for investment from large corporate developers, institutional retail trusts (both Australian based and overseas) and syndicates who in the past have traditionally looked to the eastern states for real estate opportunities.

It remains to be seen whether other States will follow suit and abolish stamp duty on commercial properties in their respective jurisdictions, although the revenue loss to State Governments in the eastern states would be significantly greater than in South Australia and without a replacement source of revenue those State Governments may be reluctant to implement such a change.

If other States do not follow suit, it will result in commercial property in South Australia becoming a much more attractive proposition for investors and developers.

The phasing out of stamp duty over three years adds extra complexity from a legal perspective. Prospective buyers will look to reduce their stamp duty costs by looking at option agreements or contractual provisions that permit the buyer to delay settlement. However, it is important to note that the *Statutes Amendment and Repeal (Budget 2015) Bill 2015* (**the Bill**) states that the reduction in stamp duty for each relevant period applies "to a conveyance or transfer of an interest that arises from a contract of sale **or other transaction**". The words "or other transaction" may prevent the use of option agreements where the purchaser is given the right to enter into a contract for the sale of land on agreed terms at a later

date that might otherwise seek to reduce stamp duty during the “phase out” period.

The Bill also includes wide reaching anti avoidance provisions that seek to deter any attempt to artificially structure transactions in order to take advantage of a lower rate of stamp duty in the future and gives the Commissioner significant powers to determine the appropriate rate of stamp duty and apply penalties and interest in certain circumstances.

As always, the devil will be in the detail once the Bill passes through parliament and becomes law.

We recommend that investors, developers and other property consultants proceed with caution and consult their lawyer to ensure that the structuring of any transaction not only achieves the best possible outcome from a stamp duty perspective but also ensures that the anti-avoidance provisions are not breached.