

Regulatory Change Measurement Report

State Taxation Acts Amendment Act 2008

Duties Act 2000

March 2010



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SUMMARY

Savings to businesses following changes to the 'off the plan' duty concession provisions in the *Duties Act 2000* amount to \$326,151 per annum.

Introduction

Name of regulatory instrument	State Taxation Acts Amendment Act 2008
Type of regulatory instrument	Act
Sections	3, 4

The *State Taxation Acts Amendment Act 2008* was assented to on 17 June 2008 and amends the *Duties Act 2000* (the Duties Act).

The *State Taxation Acts Amendment Act 2008* makes amendments that are relevant to this report. It amends sections 21(3) and 21(4) of the Duties Act which provide a duty concession for an 'off the plan' purchase. The amendment inserts sections 21(4A), and 21A to 21E into the Duties Act. The amendments, effective from 1 October 2008, provide for changes in the operation of the 'off the plan' duty concession, the main changes being:

- Removal of an information obligation – less information is required to satisfy the requirements for the 'off the plan' duty concession and, subsequently, fewer calculations are required when completing the vendors statutory declaration; and
- Enhanced compliance through new record keeping, investigation and compliance powers, and joint and several liability for underpaid duty if there is evidence that the information supplied by any party is incorrect.

The 'off the plan' concession provides a duty concession to purchasers of 'off the plan' land and building packages or refurbishments, which are yet to be constructed or are partially complete, at the date of the contract. The dutiable value provided by sections 21(3) and (4) of the Duties Act is determined by deducting the purchasers' cost of any construction or refurbishment (inclusive of GST) occurring after the date of the contract of sale from the contract price (inclusive of GST).

The calculation of the duty concession is based on information supplied by the vendor, often at settlement. This can be some time after the date of the contract. The process requires the vendor to provide certain information to the purchaser in a statutory declaration. This information includes the construction component of the contract and the percentage of construction, or

refurbishment completed, as at the date of the contract. The purchaser is liable for any underpaid duty which may arise if the vendor's information is incorrect.

Prior to the amendments made by the *State Taxation Acts Amendment Act 2008*, all vendors were required to provide the information and complete complex calculations for the statutory declaration to enable the purchaser to benefit from a duty concession. From 1 October 2008, vendors complete a simplified statutory declaration which:

1. requires less detailed information to satisfy the requirements for the concession;
2. provides, as an option, deemed figures for the fixed percentage of construction component of the contract; and
3. requires the vendor to complete only one calculation.

Vendors were previously required to retain the records upon which their calculations were based. However a penalty was introduced for vendors who do not satisfy the requirement to retain relevant records and provide to the Commissioner of State Revenue if requested, full details of the relevant calculations. The compliance power, included as an incentive to ensure responsible action on the part of the vendor/developer when calculating percentage of works completed, can only be exercised if there is an investigation. Therefore there is no material change in the information obligation to retain records.

Background

Under the *Reducing the Regulatory Burden* initiative, the Victorian Government made a commitment to reduce both the administrative and compliance burden of regulation. The commitment aims at ensuring that production and service delivery activities of business and not-for-profit organisations are not hampered by unnecessary regulatory impositions. In this context, 'regulation' means all legally enforceable obligations imposed by state government departments and agencies through legislation, formal statutory rules, mandatory codes and guidelines, or other instruments.

The Government recently announced a new target in regulatory reform, a \$500 million reduction in regulatory burden by 2012. The new target will include all regulatory costs imposed on businesses, not-for-profit organisations and local government.

Progress towards achieving targeted reductions in the administrative burden can be measured using particular methodologies adopted by the Victorian Government. Initially the Standard Cost Model (SCM) was used. The SCM was developed by the Dutch Government to provide a consistent method for estimating the administrative cost imposed on business by government. The SCM was designed to produce indicative estimates of burdens, and to develop a strong understanding of the drivers of these costs. It was not designed to provide statistically robust data.

The Victorian SCM Manual provides that a SCM measurement is only required where there is *prima facie* evidence that the relevant legislation will have a material impact on the administrative burden i.e. a change of more than \$250,000.

The SCM was replaced as of 1 January 2010 by the Victorian Regulatory Change Measurement. However, changes to the 'off the plan' duty concession commenced from 1 October 2008 and all work regarding the measurement of material change since that date has been undertaken within the SCM framework. Due to the nature of the operation of the duty concession, the concession forms are usually not completed until some time after the date of the contract. Deferral of this report, as approved by the Treasurer, provided businesses with the opportunity to assess their material red tape savings (if any) once some new concession forms had been completed. As such, although this report has been finalised after 1 January 2010 it has been prepared under the SCM framework.

Overview of the burden

Net results of the changes in the administrative burden

The SCM measurement exercise, a project conducted by the Policy and Legislation Branch of the State Revenue Office, measured the costs for vendors and their representatives, solicitors, accountants, conveyancers, to complete and lodge a statutory declaration to enable a purchaser to claim the 'off the plan' duty concession. The changes made by the *State Taxation Acts Amendment Act 2008* have modified the administrative burden of completing a complex, multi-page statutory declaration involving many calculations in relation to type of building to be constructed and percentage of construction complete at the date of the contract.

Prior to the changes, vendors and their representatives already faced an administrative burden in completing complex Land and Building Packages, or Refurbished Lots, Statutory Declarations. They were required to obtain the correct information, provide the data for the mandatory calculations and maintain records.

In the case of multi-lot refurbishments, vendors were also required to calculate a percentage of construction or refurbishment completed at the date of the contract for an individual unit. This was an unrealistic expectation and in reality they were preparing percentages based on 'whole of project' and taking into account works necessary for the entire building eg. common areas, stairwells, security etc.

The raw data, being of a commercially sensitive nature and sourced from different areas of the building industry, is difficult to collect and is time consuming. The range of information required was an unnecessary administrative burden and due to its complexity was often an estimate or incorrectly presented resulting in underpaid duty by the purchaser.

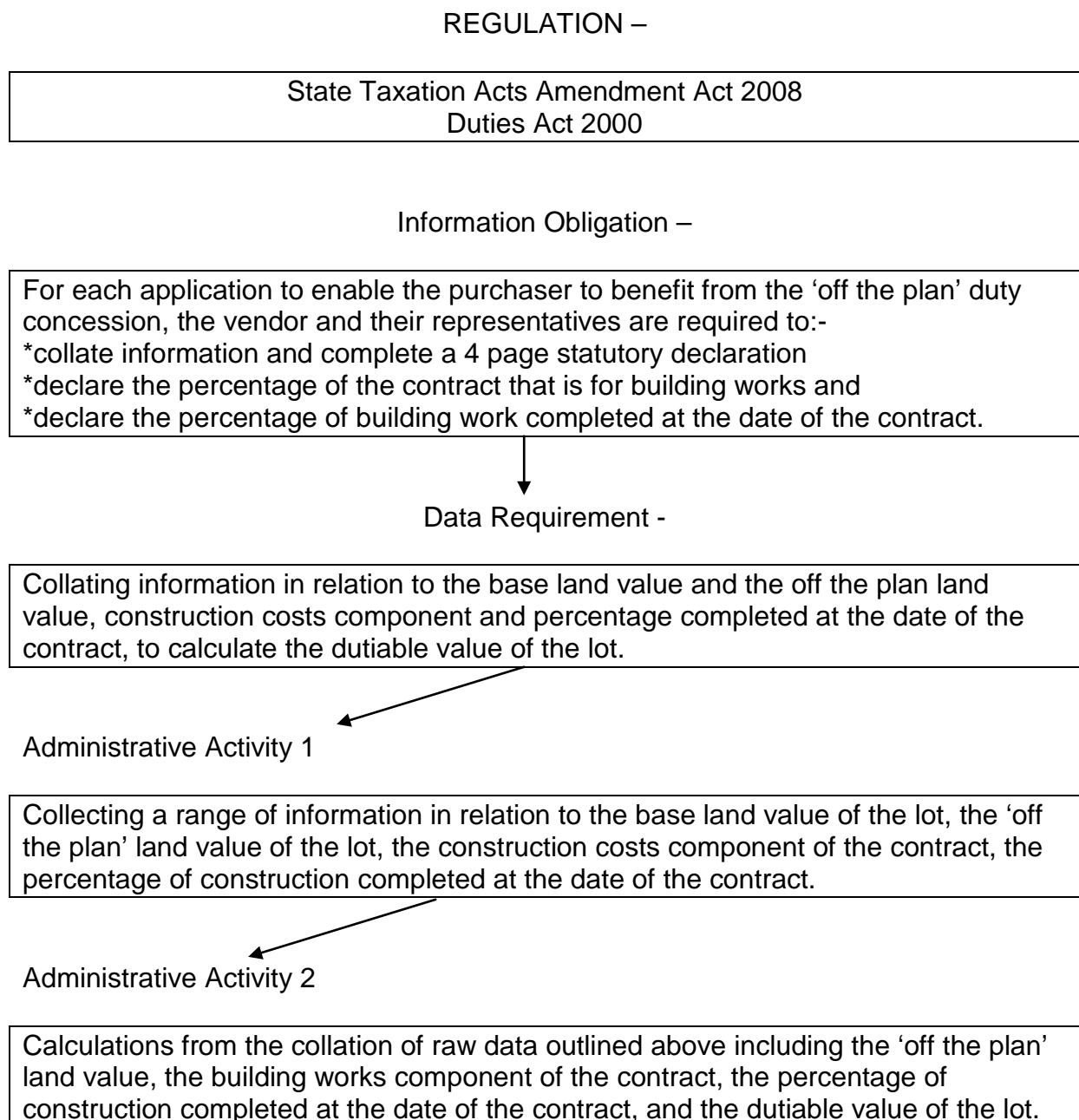
Purchasers were solely liable for any underpaid duty as a result of incorrect calculations about the value of the concession.

The changes provide vendors with the option of collating less information and performing only one calculation by using a deemed 'fixed percentage' method of calculation for the building works component of the contract. The vendors who opt for this method are, therefore, only required to complete one calculation – that of percentage of construction complete at the date of the contract.

Mapping the Burden

The amount of information the vendor is required to collate and the number of calculations the vendor is required to make (by providing an optional deemed fixed percentage method that is for the construction component of the contract) has been reduced. As such the information obligation requiring vendors and their representatives to complete a statutory declaration to enable a purchaser to benefit from the 'off the plan duty' concession has been simplified.

FIGURE 1 – Mapping the Regulation prior to the amendments:



Producing a statutory declaration previously required vendors to collate information, from diverse and complex sources including land valuations, building surveyors, draw down statements against financial accommodation, third party completion of works claims, certificates of occupancy showing mandatory inspection stages and any other relevant records.

The information was usually collated by the vendor's accountant and presented to their solicitors who completed the statutory declaration forms, either themselves or by employing the services of a paralegal, for the vendor to sign. Some legal firms, under instructions by large property developers, who submitted many statutory declarations for one multi-rise development, had developed their own computer programs and utilised the program to calculate the percentages required and complete the forms on-line.

The administrative activities that arise from the data requirements can be divided into two categories: the collation of the raw data and the calculation of the percentages required to calculate the dutiable value for an 'off the plan' purchase.

Collation of Data

Vendors are required to collate sufficient information to form the basis of calculations required for their statutory declaration. This data consists of monetary amounts for: -

- the base land value,
- the 'off the plan' land value of the lot, and
- the total construction costs.

The vendor's representatives, an accountant, solicitor, conveyance or paralegal, gather and collate the information from sources described above.

Calculation of percentages

The other administrative activity is to complete the calculations required. These are complex and depend on the robustness of the collected raw data for their veracity.

The calculations are:-

- *base land value*, which is the market value of the land to be subdivided and takes into consideration unit entitlement ratio,
- '*off the plan*' *land value*, which is the base land value plus 25% infrastructure value,¹

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- ¹ Includes legal costs associated only with the permit or bringing the building to completion, surveyors or consultants fees, payment of charges in relation to connection of utilities, building permit or planning permit or other similar type fees approval of regulatory bodies such as Vic Roads, electricity gas company, required road access for utilities works, and acceptance by the neighborhood thereby eliminating contentious issues.

- *construction works component of the contract*, which is the total construction cost minus the 'off the plan' land value plus the non-deductibles,²
- percentage of construction completed at the date of the contract, and
- dutiable value for the purposes of the 'off the plan' duty concession.

Once this information is collated and the calculations performed, the information is presented in a statutory declaration signed by the vendor and presented to the purchaser applying for the 'off the plan' duty concession

The information obligation removed by the amending Act is the collation of extensive information outlined above that is required to determine the base land value, the 'off the plan' land value and the construction works component of the contract. Since 1 October 2008 vendors are only required to provide information and make one calculation in relation to percentage of construction costs completed at the date of the contract.

In summary, vendors who opt to use the deemed 'fixed percentages' method to determine the construction works component of the contract are no longer required to calculate the base land value, the 'off the plan' land value or the construction works component of the contract. The changes are set out in Table 1 below

- ² Costs which are not regarded as being integral to the physical construction or refurbishment of the building such as legal or other expenses in selling the property, advertising or promotional expenses, agents commission and goods including furniture packages.

**Table 1: State Taxation Acts Amendment Act 2008
Net impact on the administrative burden**

Information Obligation	Previous Administrative Burden	Change to the Burden (net impact)
Information Obligation	<p>Vendors are required to collate complex information of a commercially sensitive nature from a range of sources, and perform five calculations using the raw data.</p> <p>Vendors provide the information required to determine the dutiable value of an 'off the plan' purchase in a multi-page statutory declaration presented to the purchaser at settlement.</p> <p>The completed statutory declaration is required to determine the dutiable value of an 'off the plan' purchase.</p>	<p>Vendors are required to provide less detailed information and perform one calculation only if they opt to use the deemed fixed percentage method.</p> <p>Vendors provide the information required to determine the dutiable value of an 'off the plan' purchase in a simplified statutory declaration presented to the purchaser at settlement.</p> <p>The completed statutory declaration is required to determine the dutiable value of an 'off the plan' purchase.</p>

Table 2: Regulatory Change Measurement Certificate

Cost Category	Sectors: Business and NFP
Administrative costs	\$643,167 per annum

Summary of SCM measurement exercise

The estimated reduction in the administrative burden is **\$326,151** per year for all of the businesses that submit 'off the plan' statutory declarations on behalf of the vendor, to the purchaser, in order for the purchaser to apply for the 'off the plan' duty concession.

In order to measure the administrative cost and saving of the regulation, the SCM required a number of cost parameters to be identified, as discussed below. The measurement process required, amongst other things, some empirical data collection. This was achieved by surveying a representative sample of businesses that would complete the requirements for the 'off the plan' duty concession.

The sample included large businesses which prepare over 500 statutory declarations per year through to smaller business which prepare less than 50 statutory declarations per year. The sample also included businesses which employ solicitors, accountants, conveyancers and paralegals to prepare the forms.

Cost parameter assumptions

Estimation of the cost parameters was used to calculate the cost of administrative regulation under the SCM. These cost parameters provide the basis for the SCM formula of:

$$\text{ADMINISTRATIVE COST} = \text{PRICE} \times \text{QUANTITY}$$

The cost parameters of price (tariff X time) X quantity (population X frequency) are used to calculate the estimate of the total reduction in costs that has occurred with the reduction in the regulatory burden. The SCM equation multiplies the four parameters together to obtain this estimation. The calculations are shown below.

PRICE

The price component of the SCM formula is the *tariff* multiplied by the *time* taken to perform the administrative activity plus external tariff and other significant costs.

(a) Tariff

The tariff comprises the following:

- Internal tariff – the cost of employees who undertake administrative activities comprising an hourly rate and any overhead costs,
- External tariff – the cost of contracting out administrative activities, and
- Other significant costs

Preparation of 'off the plan' statutory declaration

Internal and External Tariff

Price is calculated as internal price (tariff x time). The usual components of internal price + external tariff + other significant costs do not apply here.

The SCM report uses the average of the hourly wage rates based on the respondent's assessment of the wages of the employees who prepare the 'off the plan' statutory declaration multiplied by the overhead costs to calculate tariff.

The wage rate was consistent at an average of **\$60/hour** with overheads added using the standard rate of 75%, giving a total of **\$105/hour**.

Preparation costs were provided as an overall cost and were incorporated into the tariff rate. In some instances, a fee for service was charged by external professionals such as an accountant or solicitor. These external tariff costs have been subsumed into the overall (internal) tariff figure because some businesses utilise the services of other professionals but this practice is not across the board and is discretionary. Those surveyed preferred to include all costs together. As such, there is no separate external tariff.

The practice of using external professionals by some businesses resulted in a large deviation in price between individual businesses, ranging from \$120/hour using a solicitor or accountant to \$20/hour using the services of a paralegal or administrative officer.

Some businesses pay higher preparation costs because they use professional services to collect and prepare the information required. For example, an accountant may be used to collect and collate the information which is then presented to the solicitor to complete the statutory declaration. These businesses used higher cost professionals to prepare and complete the 'off the plan' statutory declaration often because of the size and complexity of the development.

By comparison, other businesses rely on a paralegal or administrative officer to collect the information from the builder/developer and then complete the form as an administrative activity.

No other significant costs were listed.

(b) Time

The time relates to the internal time that it takes a normally efficient business to perform an administrative activity.

Preparation of the 'off the plan' statutory declaration

- Preparation of the 'off the plan' statutory declaration was provided as an overall period of time involving different levels of professional staff at different hourly rates
- No specific assumptions were made in regards to the time parameters for internal activities
- Time parameters varied across surveys. Some businesses spent a longer period of time whilst other businesses used a small amount of preparation time.
- Those businesses that spent a large number of hours preparing the statutory declaration averaged 1 hour and 48 minutes preparing the old forms and 1 hour and 8 minutes preparing the revised forms.
- Those businesses spending a limited time on the preparation of the statutory declaration averaged 1 hour and 7.5 minutes preparing the old forms and 47.6 minutes preparing the revised forms.
- The businesses with higher preparation costs also spent an average of 1.8 hours per form.

Conclusion

The price to prepare one 'off the plan' statutory declaration under the existing burden is **\$153.86** compared to **\$102.89** per form following the changes to the administrative practice (see Attachment 2).

QUANTITY

The quantity component of the SCM comprises the *population* the information obligation applies to, multiplied by the assumed compliance rate, multiplied by the *frequency* of the information obligation per annum.

(a) Population

For the purposes of the SCM, population is a general indication of how many businesses are affected by the relevant legislation. Measurement of population in this instance is of forms completed by the vendor rather than businesses which may complete one to 500 forms per year.

Any vendor, who contracts to sell a property where construction has yet to commence, or is partially complete at the date of the contract, and the vendor's representatives, such as accountants and solicitors, are subject to the amended legislation. The regulation requiring completion of the statutory declarations is related to 'off the plan' sales only and is not, for example, a yearly or recurrent requirement for a business.

Therefore population is dependent upon number of vendor sales and, as such, is not a measure of the number of businesses affected by the legislation.

(b) Frequency

The frequency component of the SCM is the number of times that a business delivers an information obligation.

The requirement to complete the 'off the plan' statutory declaration applies to each transaction where a vendor contracts to sell a property where construction has yet to commence or construction is partially complete. Therefore frequency is dependent upon number of vendor sales only.

Conclusion

The quantity component of the cost parameter is deduced from an average figure of 'off the plan' statutory declarations prepared by vendors over three years. This average figure is 6,300 per year.

Reduction in Administrative Cost

The next step in the SCM process is to calculate the reduction in the administrative cost by using the standard cost model equation. The total costs are calculated as follows:

PRICE X QUANTITY		
tariff X time	population X frequency	administrative burden
existing burden \$153.86 ³	6,300	\$969,318 per annum
new burden \$ 102.09 ⁴	6,300	\$643,167per annum
Reduction in Administrative Cost		\$326,151 per annum

³ See Attachment 1 for calculation of these figures.

⁴ See Attachment 1.

Empirical data collection methodology

Data Collection Strategy

- A member of the Policy and Legislation Branch at the State Revenue Office facilitated the survey process with five businesses after initial consultation with survey respondents by telephone.
- The selection process was based on obtaining random samples under specific criteria. These criteria required that businesses chosen be representative of the different sectors of the industry which prepare 'off the plan' statutory declarations.
- The criteria used included:
 - Representation of different professional bodies such as solicitors and conveyancers.
 - Large, medium and small businesses measured in terms of number of statutory declarations prepared per year.

Empirical data standardisation process

The results of the empirical data collection were varied and can be summarised as follows:

- The businesses that used a small amount of internal preparation time used an average of 47.6 minutes per form.
- The businesses that because of their professional staff, quoted a higher hourly rate of \$120/hour.
- The businesses that used a large amount of internal preparation time used an average of 69 minutes per form
- The businesses that quoted a lower average rate of \$40/hour.
- The segments were then aggregated by adding the cost of preparation time multiplied by the average tariff across each segment.

As such these figures were standardised to provide an estimate for a normally efficient business.

Attachment 1: SCM Survey Spreadsheet

Regulation:	State Taxation Acts Amendment Act 2008 Duties Act 2000 Reduce information obligation and number of calculations required to complete vendor's statutory declaration to enable purchaser to benefit from 'off the plan' duty concession.
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Average internal wage rate \$105.00 (including overheads)

	Existing Burden		
	Price	Quantity	Cost of existing burden per annum
Total information obligation - High internal preparation time	\$189.58	6,300	\$1,194,354
Total information obligation – Low internal preparation time	\$118.14	6,300	\$744,282
Average Total information obligation	\$153.86	6,300	\$969,318

	New Burden		
	Price	Quantity	Cost of existing burden per annum
Total information obligation – High internal preparation time	\$120.76	6,300	\$760,788
Total information obligation – Low internal preparation time	\$ 83.42	6,300	\$525,546
Average Total information obligation	\$102.09	6300	\$643,167

Attachment 2: SCM Standardisation Spreadsheet

Regulation:	State Taxation Acts Amendment Act 2008 Duties Act 2000 Reduce information obligation and number of calculations required to complete vendor's statutory declaration to enable purchaser to benefit from 'off the plan' duty concession.
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	Existing Burden					
	Survey1	Survey 2	Survey 3	Survey 4	Survey 5	Standardised figure
	Price (tariff X time)	Price (tariff X time)	Price (tariff X time)	Price (tariff x time)	Price (tariff x time)	Price (tariff X time)
information obligation – (high preparation time)	115 x 105 /hr = \$201.25	110 X 105/hr = \$192.50			100 x 105/hr = \$175.00	\$189.58
information obligation – (low preparation time)			65 X 105/hr = \$113.75	70 X 105/hr = \$122.50		\$118.14
Total Information Obligation						\$153.86

	New Burden					
	Survey1	Survey 2	Survey 3	Survey 4	Survey 5	Standardised figure
	Price (tariff X time)	Price (tariff X time)	Price (tariff X time)	Price (tariff x time)	Price (tariff x time)	Price (tariff X time)
information obligation – (high preparation time)	78 x 105 /hr = \$136.50	60 X 105/hr = \$105				\$120.75
information obligation – (low prep time)			45 X 105/hr = \$78.75	50 X 105/hr = \$87.50	48 X 105/hr = \$84	\$ 83.42
Total Information Obligation						\$102.08