

**PROPERTY TAXES AS A POLICY RESPONSE TO FOREIGN INVESTMENT AS A PERCEIVED CAUSE OF HOUSING UNAFFORDABILITY**

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**ABSTRACT**

Housing is commonly unaffordable in the world's most successful cities, including Auckland, Hong Kong, Melbourne, Singapore, Sydney and Vancouver. Both real property ownership and renting in these cities lies beyond the means of many residents, especially young adults working in metropolitan central business districts. In extreme, but not uncommon cases, unaffordability of accommodation leads to homelessness. Conversely, investment properties may be left vacant. Foreign investors are commonly blamed for exacerbating housing unaffordability, and taxes have been raised to remedy this perceived mischief. Drawing initiatives introduced by jurisdictions around the Pacific Rim, this article considers behaviour-modifying property taxes as a policy response to the perceived exacerbating effect of foreign investment on housing unaffordability.

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## I INTRODUCTION

The world's most successful cities 'face extraordinarily high and increasingly unaffordable housing prices'.<sup>1</sup> In analysing the conditions of this 'new urban crisis', Richard Florida specifically has United States cities in mind, but similar observations can be made about major Australasian cities, including Auckland, Melbourne and Sydney, and locations in the wider Pacific Rim, such as Hong Kong, Singapore and Vancouver. Residential property ownership in these, some of the world's most liveable cities,<sup>2</sup> has become unaffordable for many residents, especially the young.<sup>3</sup> Furthermore, renting decent accommodation lies beyond the means of many working people.<sup>4</sup> In extreme, but not uncommon, cases, unaffordability of accommodation leads to homelessness.<sup>5</sup> Conversely, if foreign buyers and speculators treat housing as an investment asset, rather than a place to live, not only may prices increase but residential properties may be left vacant.

As homeownership rates fall because of housing unaffordability, increasing numbers of people are excluded from the benefits of owner-occupation. They do not enjoy the welfare advantages arising from the owned home as a shelter from the market.<sup>6</sup> Due to relatively weak tenancy protections in Australia and New Zealand, they are denied the psychological benefits that security of tenure provides.<sup>7</sup> Tenure insecurity is an element of multifactorial poverty,<sup>8</sup> and is thought to have particularly deleterious effects on children.<sup>9</sup> Furthermore, certain tax benefits, such as capital gains tax (CGT) concessions and local rates relief, can only be claimed by property owners.

Gentrification and pricing-out of long-term residents by well-paid new arrivals, as seen in the extreme example of San Francisco,<sup>10</sup> are thought to stoke urban unaffordability. Furthermore, the emergence of the sharing economy, manifest in the Airbnb phenomenon, is commonly blamed for a shrinking supply of long-term tenancies in tourist-destination cities. But, in a globalised economy, investment in residential property

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<sup>1</sup> Richard Florida, *The New Urban Crisis: How Our Cities Are Increasing Inequality, Deepening Segregation, and Failing the Middle Class – And What We Can Do About It* (Basic Books, 2017) 6.

<sup>2</sup> See Economist Intelligence Unit, *The Global Liveability Report 2017* (2017) <[https://www.eiu.com/public/topical\\_report.aspx?campaignid=liveability17](https://www.eiu.com/public/topical_report.aspx?campaignid=liveability17)>; Mercer, *2017 Quality of Living Rankings* (2017) <<https://mobilityexchange.mercer.com/Insights/quality-of-living-rankings>>.

<sup>3</sup> See, for example, Shamubeel Eaqub and Selena Eaqub, *Generation Rent: Rethinking New Zealand's Priorities* (Bridget Williams Books, 2015).

<sup>4</sup> When people in jobs as socially respected as nursing and teaching risk homelessness, Florida's claims for a new urban crisis seem pressingly plausible. See Barbara Ellen, 'If Our Nurses Are Homeless, We've Crossed the Line', *The Guardian* (United Kingdom), 17 December 2017, 15.

<sup>5</sup> See, for example, Felicity Prance and Andrew Beer, 'Affordable Housing and Homelessness: The Link for Local Government' (2013) 26(9) *Parity* 26.

<sup>6</sup> See Tony Fahey and Michelle Norris, 'Housing' in Herbert Obinger et al (eds), *The Oxford Handbook of the Welfare State* (Oxford University Press, 2010) 479, 491.

<sup>7</sup> Dan Andrews and Aida Caldera Sánchez, 'The Ownership of Homeownership Rates in Selected OECD Countries: Demographic and Policy Influence' (2011) *OECD Journal: Economic Studies* 207, 210–11.

<sup>8</sup> See Human Development Reports, United Nations Development Programme, *Multidimensional Poverty Index (MPI)* (2016) <<http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi>>; Ministry of Social Development, *The Social Report 2016* (2016) 15 <<http://socialreport.msd.govt.nz/documents/2016/msd-the-social-report-2016.pdf>>.

<sup>9</sup> Andrews and Sánchez, above n 7, 210–11.

<sup>10</sup> See Rebecca Solnit, *Hollow City: The Siege of San Francisco and the Crisis of American Urbanism* (Verso, 2002).

by non-residents is widely perceived to be a principal cause of housing unaffordability for residents of the most desirable cities. This perception appears to attract most attention from tax policy and lawmakers. Taxes are commonly proposed as ‘silver bullet’ solutions to urban housing problems.<sup>11</sup> They are not, but may help to alleviate these problems in various ways. Property taxes, which were traditionally revenue-raising instruments, may be used to modify behaviour. For example, high levels of stamp duty may be introduced to discourage non-resident investors and speculators.

This article explores the use of property taxes, mostly at a subnational level, to influence the behaviour of foreign investors in order to promote housing affordability. These taxes may also seek to modify the behaviour of domestic speculators and property owners granting short-term Airbnb leases. Regulatory taxes do, of course, have a revenue element but are distinguished by an express purpose of modifying taxpayer behaviour. Windfall taxes, including traditional betterment taxes,<sup>12</sup> value capture levies,<sup>13</sup> or tax increment financing,<sup>14</sup> will not therefore be considered in this article, as they are principally revenue-raising instruments.<sup>15</sup> After this introduction, the article identifies what housing unaffordability means, and considers its causes. The article then reviews property tax measures introduced around the Pacific Rim to cool residential housing markets and thereby promote affordability. The principal research aim of this article is to assess whether these taxes have been effective, and to consider whether other measures would be preferable.

## II HOUSING UNAFFORDABILITY: ITS CAUSES AND CONSEQUENCES

This part of the article defines housing unaffordability, and considers its causes.

### *A What is housing unaffordability?*

A universally shared vision, expressed in the United Nations *New Urban Agenda*, includes ‘just, safe, healthy, accessible, *affordable*, resilient and sustainable cities’.<sup>16</sup> But, reflecting ‘the accelerating trend of housing-related household expenses rising faster than salary and wage increases in many urban centres around the world’, a global urban housing affordability crisis is evident.<sup>17</sup> A broadly used measure of affordability is the ratio of median house price to median income (‘the Median Multiple’). This ratio is a ‘driving force indicator’ for states in terms of the United Nations Commission on Sustainable

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<sup>11</sup> See Jonathan Barrett, ‘A Property Transfer Tax is Not a “Silver Bullet” for Housing Affordability in Auckland’ (2016) 101 *Taxation Today* 4.

<sup>12</sup> See Patrick Fensham and Brendan Gleeson, ‘Capturing Value for Urban Management: A New Agenda for Betterment’ (2003) 21(1) *Urban Policy and Research* 93.

<sup>13</sup> See Rob Dossor, Parliament of Australia, *Financing Infrastructure by Value Capture* <[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook45p/ValueCapture](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/ValueCapture)>.

<sup>14</sup> See David Schleicher, ‘City Unplanning’ (2013) 122 *Yale Law Journal* 1670.

<sup>15</sup> Andrew Coleman and Arthur Grimes, ‘Betterment Taxes, Capital Gains and Benefit Cost Ratios’ (2010) 109 *Economic Letters* 54.

<sup>16</sup> See United Nations, *New Urban Agenda* (2016) 5 <<http://habitat3.org/wp-content/uploads/NUA-English.pdf>> (emphasis added).

<sup>17</sup> Steffen Wetzstein, ‘The Global Urban Housing Affordability Crisis’ (2017) 54(14) *Urban Studies* 3159, 3159.

Development Agenda 21,<sup>18</sup> and is considered by the World Bank to be '[p]ossibly the most important summary measure of housing market performance, indicating not only the degree to which housing is affordable by the population, but also the presence of market distortions.'<sup>19</sup> Nevertheless, because methodological flaws in the Median Multiple have been shown, particularly as used by the widely cited Demographia surveys,<sup>20</sup> it should be considered illustrative, rather than authoritative.

According to the International Monetary Fund, New Zealand has the most extreme Median Multiple.<sup>21</sup> Traditionally the country's ratio was around 3:1, but had risen in the major markets to a ratio of 8.8:1 by 2017.<sup>22</sup> The corresponding ratio for Australia was 6.6:1.<sup>23</sup> (A Median Multiple of 3:1 indicates affordability, whereas a ratio in excess of 5:1 indicates severe unaffordability.<sup>24</sup>) Even with a more favourable national ratio, domestic properties in major Australian cities are extremely unaffordable. Indeed, Sydney is reportedly second only to Hong Kong as the world's most unaffordable city.<sup>25</sup>

Steffen Wetzstein observes 'a considerable number of homeowners, investors and speculators have materially benefited from these conditions'.<sup>26</sup> In Australia, despite a significant fall in the last decade, 'overall household ownership rates ... have not changed substantially since the 1960s, hovering around 70 per cent over the past 50 years'.<sup>27</sup> Indeed, for many older Australasians, homeownership has been a lucrative investment: for example, between 2014 and 2017, the average Auckland house price increased by 46 per cent.<sup>28</sup> However, for younger adults, ownership rates have fallen considerably. In Australia of the early 1960s, homeownership among the 35–44 age group was 72 per cent, the same as the rate for the overall population; by 2011, while the overall rate had fallen to 67 per cent, the rate for those aged 35–44 had fallen to 64 per cent.<sup>29</sup> In comparison, over the same period the rate for people older than 65 dropped only marginally from 81

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<sup>18</sup> See Voula Mega, 'Urban Dimensions and Sustainable Development' in Saskia Sassen (ed), *Human Development* (Eoloss Publishers, 2009) vol 4, 1, 32.

<sup>19</sup> Caroline Moser, Michael Gatehouse and Helen Garcia, *Urban Management and Poverty Reduction: Urban Poverty Research Sourcebook* (1996) <<http://documents.worldbank.org/curated/en/816091468331864427/text/484110WP0v20ur10Box338903B01PUBLIC1.txt>>.

<sup>20</sup> Peter Phibbs and Nicole Gurran, 'Demographia Housing Affordability Surveys: An Assessment of the Methodology' (Shelter Brief 35, Shelter NSW, Sydney, October 2008) <<https://shelternsw.org.au/sites/shelternsw.org.au/files/public/documents/rpt08demographia-sb35.pdf>>.

<sup>21</sup> International Monetary Fund, *Global Housing Watch* (2017) <<http://www.imf.org/external/research/housing>>.

<sup>22</sup> Demographia, *14<sup>th</sup> Annual Demographia International Housing Affordability Survey: 2018, Rating Middle-Income Housing Affordability* (2018) <<http://www.demographia.com/dhi.pdf>>.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Melissa Davey, 'Housing "Severely Unaffordable" as Sydney Price to Income Ratio Worsens', *The Guardian* (online), 25 January 2016 <<https://www.theguardian.com/money/2016/jan/25/housing-severely-unaffordable-as-sydney-price-to-income-ratio-worsens>>.

<sup>26</sup> Wetzstein, above n 17, 3159.

<sup>27</sup> Parliament of Australia, Parliamentary Library, *Trends in Home Ownership in Australia: A Quick Guide* (28 June 2017) <[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/Quick\\_Guides/TrendsHomeOwnership](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/TrendsHomeOwnership)> (emphasis added).

<sup>28</sup> See Auckland Council, *Updated Auckland Property Values Available* (2017) <<http://ourauckland.aucklandcouncil.govt.nz/articles/news/2017/11/45-per-cent-average-increase-for-auckland-properties>>.

<sup>29</sup> Parliamentary Library, above n 27.

per cent to 79 per cent, whereas the rate for those aged 25–34 fell dramatically from 60 per cent to 47 per cent.<sup>30</sup>

In New Zealand, where owner-occupation has fallen in recent years, Māori and Pacific peoples experience exclusion more than others. In 1986, the overall homeownership rate was 75.2 per cent (78.9 per cent for Europeans, 53.9 per cent for Māori and 50.8 per cent for Pacific people) but had fallen to an overall rate of 63.7 per cent in 2013 (70.1 per cent for Europeans, 43.1 per cent for Māori, and 33.1 per cent for Pacific people).<sup>31</sup>

### **B Why is residential property unaffordable?**

This section considers possible causes of housing unaffordability in Australasian cities.<sup>32</sup>

#### *1 Demand outstrips supply*

An abnormally high Median Multiple may indicate ‘severe supply-side restrictions’.<sup>33</sup> Overall, Australia and New Zealand have fewer dwellings per capita relative to other Organisation for Economic Co-operation and Development (OECD) members.<sup>34</sup> However, since overall homeownership has been fairly stable for decades, it may be inferred that the market traditionally satisfies the demands of the majority of consumers of private housing. The current shortage of affordable housing is disproportionately experienced by the young and lower-income groups seeking accommodation in the inner and middle ring suburbs of the major cities.<sup>35</sup> This phenomenon can be seen as a consequence of the economic success of Auckland, Melbourne, Sydney, and other cities. Non-tax factors that cause demand to outstrip supply include prolonged economic growth and low interest rates; strong population growth led by immigration; and service jobs being created in metropolitan central business districts.<sup>36</sup> The obvious policy response, albeit one that is problematic and only fully realisable in the long-term,<sup>37</sup> is to build or encourage construction of denser housing in the urban areas where people need to live.<sup>38</sup> However, the model developed by Ben Phillips and Cukkoo Joseph indicates that Australia has a surplus of housing, even in the inner-cities.<sup>39</sup> Supply-solutions can only be effective,

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<sup>30</sup> Ibid. Increasing levels of student debt may be a significant barrier to young people accumulating sufficient savings for a loan deposit. See Sarah Holder, ‘How Student Loans Are Killing Homeownership’, *CityLab* (25 January 2018) <[https://www.citylab.com/equity/2018/01/student-loans-are-killing-homeownership/551300/?utm\\_source=citylab-daily&silverid=Mzc5OTAzNjk3NTA1S0](https://www.citylab.com/equity/2018/01/student-loans-are-killing-homeownership/551300/?utm_source=citylab-daily&silverid=Mzc5OTAzNjk3NTA1S0)>.

<sup>31</sup> Alan Johnson, Philippa Howden-Chapman and Shamubeel Eaqub, *A Stocktake of New Zealand’s Housing* (New Zealand Government, 2018) 15.

<sup>32</sup> For a discussion of the concept of affordable housing, specifically in an Australian context, see Peter Abelson, ‘Affordable Housing: Concepts and Policies’ (2009) 28(1) *Economic Papers* 27.

<sup>33</sup> Moser et al, above n 19.

<sup>34</sup> See OECD, *HM1.1 Housing Stock and Construction* (2017) <<http://www.oecd.org/els/family/HM1-1-Housing-stock-and-construction.pdf>>.

<sup>35</sup> John Daley, ‘Look to Sydney on Affordable Housing’, *The Age* (Melbourne), 5 March 2018, 19.

<sup>36</sup> Ibid.

<sup>37</sup> See, for example, New Zealand Productivity Commission, *Housing Affordability Inquiry* (March 2012) <[https://www.productivity.govt.nz/sites/default/files/Final%20Housing%20Affordability%20Report\\_0\\_0.pdf](https://www.productivity.govt.nz/sites/default/files/Final%20Housing%20Affordability%20Report_0_0.pdf)>.

<sup>38</sup> For example, New Zealand’s Labour-led government has undertaken to build 4000 houses in Mount Albert, a middle ring suburb of Auckland. See Phil Twyford, Minister of Housing and Urban Development, New Zealand Government, ‘Unitec Deal Marks Major Kiwibuild Milestone’ (Media Release, 25 March 2018) <<https://www.beehive.govt.nz/release/unitec-deal-marks-major-kiwibuild-milestone>>.

<sup>39</sup> B Phillips and C Joseph, ‘Regional Housing Supply and Demand in Australia’ (Working Paper No 1/2017, Centre for Social Research & Methods, Australia National University, 2017) 18.

therefore, if people can afford the houses that are actually built.<sup>40</sup> In this regard, Steven Rowley et al argue:

The housing market is simply unable to deliver housing that is affordable to those on lower (and, increasingly, moderate) incomes because there is a minimum cost of delivering housing that meets minimum community standards. This is made up of the land price, the physical construction costs of the dwelling, and the profit required for taking on the development risk.<sup>41</sup>

## 2 Policy settings

The Henry Report noted that 'Government policies have traditionally treated owner-occupied housing as a preferred housing tenure.'<sup>42</sup> John Daley et al identify four policy settings that for decades have stoked demand for homeownership in Australia. These are: exemption of the family home from the capital gains tax (CGT) net, and non-taxing of imputed rents; exclusion of the family home from Age Pension asset tests; exemption of residential property from state land taxes; and government assistance to first-home buyers.<sup>43</sup> As Peter Davidson and Ro Evans observe, negative gearing and CGT concessions 'encourage over-investment in existing properties and expensive inner city apartments which lift housing prices and does little to promote construction of affordable housing.'<sup>44</sup> These policy preferences do not only have deleterious social and economic effects, they are also unnecessary. In the light of 'the non-financial benefits of home-ownership, it is highly likely that many people would buy a home even without these policies'.<sup>45</sup> The principal non-financial benefit owner-occupiers enjoy is 'ontological security', which Anthony Giddens defines as 'a sense of continuity and order in events'.<sup>46</sup>

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<sup>40</sup> On meeting need, see generally, Steven Rowley, Chris Leishman, Emma Baker, Rebecca Bentley and Lawrence Lester, 'Modelling Housing Need in Australia to 2025' (AHURI Final Report 287, Australian Housing and Urban Research Institute, August 2017) <<https://www.ahuri.edu.au/research/final-reports/287>>.

<sup>41</sup> Steven Rowley, Nicole Gurran and Peter Phibbs, 'Australia's Almost a World Leader in Home Building, So That Isn't a Fix for Affordability', *The Conversation* (online), 7 March 2017 <<http://theconversation.com/australias-almost-a-world-leader-in-home-building-so-that-isnt-a-fix-for-affordability-73514>>.

<sup>42</sup> Ken Henry et al, Australian Government, *Australia's Future Tax System: Report to the Treasurer* (Australian Government Publishing Service, 2010) [6.2].

<sup>43</sup> J Daley, B Coates and T Wiltshire, *Housing Affordability: Re-imagining the Australian Dream* (Grattan Institute, 2018) 35–6. In New Zealand, no general CGT is levied and imputed rent is not taxable; New Zealand Superannuation is a universal benefit with no means testing; there are no land taxes, other than local authority rates; and, since stamp duty is not levied on transfers of land, no duty concessions can be given. However, local authorities, such as Wellington, may grant rates concessions for first-time homeowners: see Wellington City Council, *\$5000 Rates Discount for New First Homes Extended to Apartments* (14 March 2017) <[https://wellington.govt.nz/your-council/news/2017/03/\\$5000-rates-discount-for-new-first-homes-extended-to-apartments](https://wellington.govt.nz/your-council/news/2017/03/$5000-rates-discount-for-new-first-homes-extended-to-apartments)>.

<sup>44</sup> Peter Davidson and Ro Evans, *Fuel on the Fire: Negative Gearing, Capital Gains Tax & Housing Affordability* (Australian Council of Social Service, 2015) 4 <<https://search.informit.com.au/documentSummary;dn=518019364364949;res=IELHEA>>.

<sup>45</sup> Daley et al, above n 43, 35.

<sup>46</sup> See Anthony Giddens, *Modernity and Self Identity: Self and Society in the Late Modern Age* (Stanford University Press, 1991) 243. On the debate whether homeownership is necessary for ontological security, see Rosemary Hiscock, Ade Kearns, Sally MacIntyre and Anne Ellaway, 'Ontological Security and Psycho-Social Benefits from the Home: Qualitative Evidence on Issues of Tenure' (2001) 18(1–2) *Housing, Theory and Society* 50, 51.

### 3 *Non-resident investors*

Non-resident investment is commonly perceived to be a principal cause of house price inflation and consequent unaffordability.<sup>47</sup> Thus Jack Favilukis and Stijn van Nieuwerburgh argue that capital inflows from non-resident investors ‘affect housing affordability, the spatial distribution of residents, construction, labor income, wealth, and ultimately welfare’.<sup>48</sup> From their survey of 900 Sydney residents, Dallas Rogers et al found:

The most commonly identified factor [for rising house prices] was foreign investment, which twice as many survey participants selected compared to domestic factors such as negative gearing and the purchase of one’s own home. The majority of participants did not believe foreign investment should be permitted in Sydney, and more than three in four agreed that foreign investment was driving up house prices in Sydney.<sup>49</sup>

Despite this common perception, there is scant evidence that foreign investment really does have a significant impact on housing affordability in Australia.<sup>50</sup> Treasury researchers, Chris Wokker and John Swieringa conclude:<sup>51</sup>

Only a small proportion of the strong property price growth over the study period [2010–15] can be attributed to foreign demand. It is also the case that the majority of foreign investment approvals are for new dwellings, consistent with Australia’s foreign investment policy for residential real estate which, in part, aims to increase the total supply of dwellings.

Nevertheless, new housing built for foreign investors might not be of the type needed by aspiring homeowners with low incomes or may not be made available to renters.<sup>52</sup>

At the time of writing, New Zealand was in the process of enacting Australian-style restrictions before the commencement of the Comprehensive and Progressive Trans

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<sup>47</sup> In the absence of Australian-style investment restrictions, Canadian perceptions of overseas buyers fuelling, in particular, the Vancouver housing market may have more substance. See Joanne Lee-Young, ‘Chinese Buyers Responsible for One-Third of Value of Vancouver Home Sales: National Bank’, *Vancouver Sun* (online), 24 March 2016 <<http://www.vancouversun.com/business/chinese+buyers+responsible+third+value+vancouver+home+sales+national+bank/11804486/story.html>>.

<sup>48</sup> Jack Y Favilukis and Stijn van Nieuwerburgh, ‘Out-of-Town Home Buyers and City Welfare’ (1 August 2017) <<http://dx.doi.org/10.2139/ssrn.2922230>>. The authors specifically consider North American cities but their conclusion appears broadly generalisable.

<sup>49</sup> Dallas Rogers, Alexandra Wong and Jacqueline Nelson, ‘Public Perceptions of Foreign and Chinese Real Estate Investment: Intercultural Relations in Global Sydney’ (2017) 48(4) *Australian Geographer* 437, 451.

<sup>50</sup> The dearth of reliable data on the effects of foreign investment in the residential housing market is not restricted to Australia and New Zealand. Contemplating the United States, Emily Badger notes, ‘the true extent of the phenomenon is maddeningly hard to measure’. See Emily Badger, ‘When the (Empty) Apartment Next Door Is Owned by an Oligarch’, *The New York Times* (online), 21 July 2017 <<https://www.nytimes.com/2017/07/21/upshot/when-the-empty-apartment-next-door-is-owned-by-an-oligarch.html>>.

<sup>51</sup> Chris Wokker and John Swieringa, ‘Foreign Investment and Residential Property Price Growth’ (Treasury Working Paper 2016-03, Australian Treasury, December 2016) 25 <[https://static.treasury.gov.au/uploads/sites/1/2017/06/TWP\\_FI\\_Residential\\_Property\\_Price\\_Growth.pdf](https://static.treasury.gov.au/uploads/sites/1/2017/06/TWP_FI_Residential_Property_Price_Growth.pdf)>.

<sup>52</sup> See R Ong et al, ‘Housing Supply Responsiveness in Australia: Distribution, Drivers and Institutional Settings’ (AHURI Final Report 281, Australian Housing and Urban Research Institute, 2017) <<https://www.ahuri.edu.au/research/final-reports/281>>.

Pacific Partnership Agreement.<sup>53</sup> Yet, there is little to suggest that foreign buyers have driven up house prices in New Zealand. Indeed, the first reliable data analysis shows that in the March 2018 quarter, only 3.3 per cent of home transfers were to people who were neither New Zealand citizens or resident-visa holders.<sup>54</sup> In the previous quarter, the corresponding figure was 2.9 per cent – the inter-period increase may have arisen from people seeking to invest before restrictions come into effect.

#### 4 *Short-term leases*

Short-term leases, notably for Airbnb stays, are often blamed for having reduced the availability of affordable housing and rental stock in tourist-destination cities. Consequently, cities such as Berlin and New York have banned short-term leases, whereas Queenstown and Dunedin are considering ways of using their limited powers as local authorities to combat the perceived social costs of Airbnb.<sup>55</sup> However, the effect of Airbnb on housing affordability is unclear because of the lack of fully independent research. (Research tends to be sponsored either by Airbnb or the hotel industry.<sup>56</sup>) Nevertheless, Kyle Barron et al plausibly conclude:

Home-sharing 1) raises local rental rates by causing a reallocation of the housing stock; 2) raises house prices through both the capitalization of rents and the increased ability to use excess capacity; and 3) induces market entry by small suppliers of short-term housing who compete with traditional suppliers.<sup>57</sup>

Even with these negative effects, Airbnb may provide broader benefits for tourist towns.<sup>58</sup>

### III PROPERTY TAXATION

This part of the article surveys taxes on residential property in selected Pacific Rim countries, which were introduced or amended to counter the perceived role of foreign investment, in particular, in exacerbating housing unaffordability.

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<sup>53</sup> See Overseas Investment Amendment Bill 2017 (NZ) (5-1). The restrictions will not apply to investors from Australia or Singapore.

<sup>54</sup> Statistics NZ, *Property Transfer Statistics: March 2018* (7 June 2018) <<https://www.stats.govt.nz/information-releases/property-transfer-statistics-march-2018-quarter>>. Land Information New Zealand previously collected data on the tax residency of house purchasers but did not keep a register of foreign ownership of residential property: see LINZ, *Property Transfers and Tax Residency Data* (2018) <<https://www.linz.govt.nz/land/land-registration/prepare-and-submit-your-dealing/property-tax-compliance-requirements/property-transfers-and-tax-residency-data>>.

<sup>55</sup> Queenstown has sought to prevent short-term leases through its resource consenting process. See Queenstown and Lakes District Council, *Further Clarification on Proposed Visitor Accommodation Rules* (9 November 2017) <<http://www.qldc.govt.nz/news/show/1871/further-clarification-on-proposed-visitor-accommodation-rules>>. Dunedin is contemplating a differentiated rate for short-lease properties. Tim Miller, 'Rates Rise for Short-Term Rentals Proposed', *Otago Daily Times* (online), 16 March 2018 <<https://www.odt.co.nz/news/dunedin/rates-rise-short-term-rentals-proposed>>.

<sup>56</sup> See, for example, Airbnb Citizen, *Economic Impact Report New York City* <<https://new-york-city.airbnb-citizen.com/economic-impact-reports/data-on-the-airbnb-community-in-nyc>>.

<sup>57</sup> See Kyle Barron, Edward Kung and Davide Proserpio, 'The Sharing Economy and Housing Affordability: Evidence from Airbnb' (21 July 2017) 24 <<https://ssrn.com/abstract=3006832>>.

<sup>58</sup> See Louise Grimmer, Maria Massey and Oskaras Vorobjovas-Pinta, 'Airbnb Is Blamed for Tasmania's Housing Affordability Problems, But It's Actually Helping Small Businesses', *The Conversation* (16 February 2018) <<https://theconversation.com/airbnb-is-blamed-for-tasmanias-housing-affordability-problems-but-its-actually-helping-small-businesses-91566>>.

### ***A Local land taxes (rates)***

Rating – a local tax on the value of real property – is the principal source of income for local government in British heritage jurisdictions.<sup>59</sup> The base adopted primarily distinguishes different rating systems.<sup>60</sup> While rates are designed to raise revenue, they have the capacity to modify behaviour. In particular, when rates are levied on the unimproved value of land, they might prompt its most efficient use.<sup>61</sup> Unusually, Singapore differentially treats owner-occupied and rented residential dwellings. The policy purpose of this distinction is to encourage people to own and live in their own homes. Tax is levied at progressive rates on the annual value (estimated rental value) of the property. Rates range from 0 per cent for the first SGD8000 (AUD7575)<sup>62</sup> to 16 per cent on the annual value exceeding SGD130 000 (AUD123 000).<sup>63</sup> For non-owner-occupied residential properties, property tax rates range from 10 per cent for the first SGD30 000 (AUD28 400) to 20 per cent on the annual value in excess of SGD90 000 (AUD85 200).<sup>64</sup> Rating could be used to distinguish between foreign and locally owned properties as a behaviour-modifying instrument, but this is not a current practice.

### ***B Stamp duty (property transfer duty)***

With the notable exception of New Zealand,<sup>65</sup> British heritage countries typically raise a stamp or property transfer duty, often at a state level in federations.<sup>66</sup> Traditionally stamp duty has been viewed purely as a revenue-raising instrument, but more recently it has been used as a tool for modifying behaviour, specifically deterring non-resident and speculative investment in residential property. Traditionally, conveyance stamp duty has been levied at progressive but low rates. In contrast, behaviour-modifying surcharges are typically charged at relatively high, flat rates. For example, a foreign speculator investing in Hong Kong, would pay 30 per cent aggregate duty on purchasing a property and as much as 20 per cent if selling it shortly afterwards. Table 1 below summarises standard and deterrent stamp duty rates in various Pacific Rim jurisdictions.

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<sup>59</sup> See, for example, Australian Local Government Association, *Facts and Figures on Local Governments in Australia* <<https://alga.asn.au/?ID=59>>; Local Government New Zealand, *Local Government Funding Review: A Discussion Paper* (December 2015) <<http://www.lgnz.co.nz/assets/Uploads/Our-work/Local-Government-Funding-Review.pdf>>.

<sup>60</sup> For basic information on rating in Australia and New Zealand, respectively, see Australian Local Government Association, *Current Financial Arrangements* <<https://alga.asn.au/?ID=14855&Menu=44,60,611>> and Local Government New Zealand, *Local Government Finance* (2017) <<http://www.lgnz.co.nz/nzs-local-government/new-section-page>>.

<sup>61</sup> See Rolland O'Regan, *Rating in New Zealand* (Baranduin Publishers, 2<sup>nd</sup> ed, 1985) 9. This proposition can be situated in broader Georgist land tax theory. See Henry George, *Progress and Poverty* (Hogarth Press, first published, 1879, 1953 condensed ed). See also Norman Gemmill, Arthur Grimes and Mark Skidmore, 'Do Local Property Taxes Affect New Building Development? Results from a Quasi-Natural Experiment in New Zealand' (Working Papers in Public Finance 08/2016, Victoria University of Wellington, 2016).

<sup>62</sup> The exchange rates used in this article were accessed on 25 January 2018 from XE <<http://www.xe.com>>.

<sup>63</sup> Inland Revenue Authority of Singapore, *Lower Property Tax Rates for Owner-Occupied Residential Properties* (2017) <<https://www.iras.gov.sg/irashome/Property/Property-owners/Working-out-your-taxes/Property-Tax-Reliefs/Lower-Property-Tax-Rates-for-Owners-Occupied-Residential-Properties>>.

<sup>64</sup> *Ibid.*

<sup>65</sup> Conveyance duty was abolished by s 6 of the *Stamp Duty Abolition Act 1999* (NZ).

<sup>66</sup> For a discussion of the scrapping of stamp duty by the Australian Capital Territory, see John A McLaren, 'The Australian Capital Territory Has Adopted Measures to Abolish Stamp Duty and Imposes a Land Tax on All Real Property: Will This Approach Be Adopted by Other States in Australia?' (2013) 8(1) *Journal of the Australasian Tax Teachers Association* 101.

**Table 1: Comparison of duties on residential property transfers**

Jurisdiction	Tax	Rate
British Columbia	Property transfer tax	1–3% <sup>67</sup> 15% (foreign investors in Greater Vancouver Regional District) <sup>68</sup> – to be increased to 20% <sup>69</sup>
Hong Kong <sup>70</sup>	Ad valorem stamp duty	<4.5% (HK residents for sole residential property) <sup>71</sup> 15% (others) <sup>72</sup>
	Buyer's stamp duty	15% (non-residents) <sup>73</sup>
	Special stamp duty	10–20% (sellers of a property within three years) <sup>74</sup>
Singapore	Buyer's stamp duty	1–3% <sup>75</sup>
	Additional buyer's stamp duty <sup>76</sup>	15% (non-citizens who are not residents) 7% (citizens for a second property) 10% (citizens for a third and subsequent property) 5% (resident non-citizens) 10% (resident non-citizens for second and subsequent properties)

<sup>67</sup> The tax currently applies to transfers of legal interests in land. The British Columbian government is considering extending the tax to transfers of beneficial interests in land. See Noah Sarna and Zheting Su, 'Subjecting Transfers of Beneficial Ownership to PTT Is Not as Simple as It Might Seem' (Thorsteinssons LLP, 19 February 2018) <<https://www.thor.ca/blog/2018/02/subjecting-transfers-of-beneficial-ownership-to-ptt-is-not-as-simple-as-it-might-seem>>.

<sup>68</sup> Government of British Columbia, *Additional Property Transfer Tax* <<https://www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/understand/additional-property-transfer-tax>>.

<sup>69</sup> Government of British Columbia, *Budget 2018: Working for You* (2018) <[http://bcbudget.gov.bc.ca/2018/highlights/2018\\_Highlights.pdf](http://bcbudget.gov.bc.ca/2018/highlights/2018_Highlights.pdf)>.

<sup>70</sup> See *Stamp Duty Ordinance 1981* (HK), as amended.

<sup>71</sup> *Stamp Duty (Amendment) (No 2) Ordinance 2014 (2014 (No 2) Amendment Ordinance)* (HK), gazetted on 25 July 2014; Hong Kong Government, *Stamp Duty Rates* (2016) <[http://www.gov.hk/en/residents/taxes/stamp/stamp\\_duty\\_rates.htm](http://www.gov.hk/en/residents/taxes/stamp/stamp_duty_rates.htm)>.

<sup>72</sup> *Stamp Duty (Amendment) Ordinance 2018 (2018 Amendment Ordinance)* (HK), gazetted on 19 January 2018. Retroactive changes to stamp duty appear to be normal in Hong Kong. See Jianlin Chen, 'The Yet-to-be Effective but Effective Tax: Hong Kong's Stamp Duty as a Critical Case Study of Legislation by Press Release' (2014) 10 *University of Pennsylvania East Asia Law Review* 1.

<sup>73</sup> Inland Revenue Department of Hong Kong, *Buyer's Stamp Duty (BSD)* (2017) <<http://www.ird.gov.hk/eng/faq/bsd.htm>>.

<sup>74</sup> Inland Revenue Department of Hong Kong, *Special Stamp Duty (SSD)* (2017) <<http://www.ird.gov.hk/eng/faq/ssd.htm>>.

<sup>75</sup> Inland Revenue Authority of Singapore, *Buyer's Stamp Duty (BSD)* (2017) <<https://www.iras.gov.sg>>.

<sup>76</sup> Inland Revenue Authority of Singapore, *Additional Buyer's Stamp Duty (ABSD)* (2017) <<https://www.iras.gov.sg>>.

	Seller's stamp duty <sup>77</sup>	12% (property sold within 12 months) 8% (property sold between 1 and 2 years) 4% (property sold between 2 and 4 years)
New South Wales	Transfer duty	1.25–7% <sup>78</sup>
	Surcharge	8% (non-residents) <sup>79</sup>
Queensland	Transfer duty <sup>80</sup>	0–5.75% <sup>81</sup>
	Additional foreign acquirer duty	3% <sup>82</sup>
South Australia	Stamp duty <sup>83</sup>	1–5.5%
	Foreign ownership surcharge	7% <sup>84</sup>
Tasmania	Property transfer duty <sup>85</sup>	Minimum \$50 – 4.5% <sup>86</sup>
	Foreign investor duty surcharge	3% (from 1 July 2018) <sup>87</sup>
Victoria	Land transfer duty <sup>88</sup>	1.4–5.5% <sup>89</sup>
	Foreign purchaser additional duty	7% <sup>90</sup>
Western Australia	Transfer duty <sup>91</sup>	1.9–5.15% <sup>92</sup>

<sup>77</sup> Inland Revenue Authority of Singapore, *Seller's Stamp Duty (SSD) for Residential Property* (2017) <<https://www.iras.gov.sg>>.

<sup>78</sup> Revenue New South Wales, *Transfer Duty (Stamp Duty)* <<http://www.revenue.nsw.gov.au/taxes/transfer>>.

<sup>79</sup> Revenue New South Wales, *Surcharge Purchaser Duty* (2017) <<http://www.revenue.nsw.gov.au/taxes/spd>>.

<sup>80</sup> See *Duties Act 2001* (Qld).

<sup>81</sup> Queensland Government, *Transfer Duty Rates* (2018) <<https://www.qld.gov.au/housing/buying-owning-home/transfer-duty-rates>>.

<sup>82</sup> Business Queensland, *Additional Foreign Acquirer Duty Residential Land Interactive* (2018) <<https://www.business.qld.gov.au/industries/service-industries-professionals/professional-financial-services/transfer-duty/self-assessors/interactive-help/afad>>.

<sup>83</sup> *Stamp Duties Act 1923* (SA).

<sup>84</sup> Revenue South Australia, *Foreign Ownership Surcharge* (2018) <<https://www.revenuesa.sa.gov.au/taxes-and-duties/foreign-ownership-surcharge>>.

<sup>85</sup> See *Duties Act 2011* (Tas).

<sup>86</sup> State Revenue Office of Tasmania, *Rates of Duty* (2018) <<http://www.sro.tas.gov.au/property-transfer-duties/rates-of-duty>>.

<sup>87</sup> State Revenue Office of Tasmania, *Property Transfer Duties* (2018) <<http://www.sro.tas.gov.au/property-transfer-duties>>.

<sup>88</sup> See *Duties Act 2000* (Vic).

<sup>89</sup> State Revenue Office of Victoria, *Land Transfer Duty* <<http://www.sro.vic.gov.au/land-transfer-duty>>.

<sup>90</sup> State Revenue Office of Victoria, *Foreign Purchasers of Property* <<http://www.sro.vic.gov.au/foreignpurchaser>>.

<sup>91</sup> *Duties Act 2008* (WA).

<sup>92</sup> *Ibid* sch 2 (general rate).

	Foreign buyers surcharge <sup>93</sup>	7% (from 1 January 2019) <sup>94</sup>
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### C Land taxes

All Australian states levy a land tax.<sup>95</sup> (Western Australia also levies a related and supplementary Metropolitan Regional Improvement Tax.<sup>96</sup>) The Northern Territory does not currently operate a land tax but consideration has been given to introducing such a tax to supplement or replace stamp duty.<sup>97</sup> Land taxes usually exempt a person's principal residence from the tax base. However, ACT, which is phasing out land transaction taxes,<sup>98</sup> includes residential property in its land tax base.<sup>99</sup> A foreign owner of residential land in New South Wales must pay a surcharge of 0.75 per cent for the 2017 land tax year and 2 per cent from the 2018 land tax year onwards.<sup>100</sup> ACT will introduce a 0.75 per cent surcharge to its land tax for foreign owners, with effect from 1 July 2018.<sup>101</sup>

### D Vacant property taxes

The idea of taxing vacant land to encourage optimal development is not new.<sup>102</sup> However, the phenomenon of optimally developed land being both unoccupied and withheld from the rental market may be a more recent phenomenon.<sup>103</sup> The first tax on vacant properties

<sup>93</sup> The stated purpose of the Foreign Buyers Surcharge is 'to pay for a freeze on TAFE fees and assist in the difficult task of Budget repair', rather than discouraging foreign purchases. Ben Wyatt (Treasurer), Government of Western Australia, 'Foreign Buyers Surcharge another Component to Budget Repair' (Media Statement, 7 September 2017) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2017/09/Foreign-Buyers-Surcharge-another-component-to-Budget-repair.aspx>>.

<sup>94</sup> Gary Adshead, 'WA Budget 2018: Higher WA Property Surcharge to Hit Foreign Buyers', *The West Australian* (online), 10 May 2018 <<https://thewest.com.au/politics/budget/wa-budget-2018-higher-wa-property-surcharge-to-hit-foreign-buyers-ng-b88830337z>>.

<sup>95</sup> For a comprehensive survey and analysis of land taxes in Australia, see Vince Mangioni, *Land Tax in Australia: Fiscal Reform of Sub-national Government* (Routledge, 2015).

<sup>96</sup> Department of Finance Western Australia, *What Is Land Tax?* <[https://www.finance.wa.gov.au/cms/State\\_Revenue/Land\\_Tax/What\\_is\\_Land\\_Tax\\_.aspx](https://www.finance.wa.gov.au/cms/State_Revenue/Land_Tax/What_is_Land_Tax_.aspx)>.

<sup>97</sup> Ashley Manicaros, 'Land Tax May Be Introduced to Broaden NT's Revenue Base', *NT News* (online), 14 November 2017 <<http://www.ntnews.com.au/news/northern-territory/land-tax-may-be-introduced-to-broaden-nts-revenue-base/news-story/88e574afe3deeda0e1f1651f9d1c2ed7>>.

<sup>98</sup> Conveyancing duty, with a top marginal rate of 5.01 per cent for residential properties, is still payable but will be phased out. See 'Chapter 6 Revenue' in Treasury, ACT Government, *Australian Capital Territory Budget 2017-18: For a Better Canberra: Budget Paper 3: Budget Outlook* (Pub No 17/0494, 2017) 219-46 <[https://apps.treasury.act.gov.au/\\_data/assets/pdf\\_file/0010/1069921/08\\_BP3-2017-18-Budget-Chapter-6.pdf](https://apps.treasury.act.gov.au/_data/assets/pdf_file/0010/1069921/08_BP3-2017-18-Budget-Chapter-6.pdf)>.

<sup>99</sup> Prosper Australia, *The First Interval: Evaluating ACT's Land Value Tax Transition* (2016) <<https://www.prosper.org.au/wp-content/uploads/2016/09/The-First-interval-Evaluating-ACTs-Land-Valur-Tax-Transition.pdf>>.

<sup>100</sup> Revenue New South Wales, *Land Tax Surcharge* (2018) <<http://www.revenue.nsw.gov.au/taxes/land-tax-surcharge>>.

<sup>101</sup> Treasury, ACT Government, *Australian Capital Territory Budget 2017-18: For a Better Canberra* (2017) 65 <[https://apps.treasury.act.gov.au/\\_data/assets/pdf\\_file/0017/1163321/2017-18-Budget-Review.pdf](https://apps.treasury.act.gov.au/_data/assets/pdf_file/0017/1163321/2017-18-Budget-Review.pdf)>.

<sup>102</sup> For example, in 1658, when New York was still New Amsterdam, taxes were levied on vacant plots until they were built upon. See John Christopher Schwab, 'History of the New York Property Tax' (1890) 5(5) *Publications of the American Economic Association* 17, 24.

<sup>103</sup> But see A J van der Walt, 'Property and Marginality' in Gregory S Alexander and Eduardo M Peñalver (eds), *Property and Community* (Oxford University Press, 2009) on squatting in vacant buildings in the Netherlands the 1970s.

appears to be the 1998 French *taxe sur les logements vacants* (tax on empty apartments).<sup>104</sup> British Columbia has also enacted an Empty Homes Tax (also known as the Vacancy Tax) for metropolitan Vancouver with an aim of prompting owners to put their unoccupied properties on the rental market.<sup>105</sup> Net revenues from the Empty Homes Tax will be reinvested into affordable housing initiatives.<sup>106</sup> Most properties are exempt, notably principal residences, occupied for at least six months a year, and properties rented for at least six months of the year, in periods of 30 or more consecutive days. Short-term, Airbnb-style leases would not therefore be excluded.<sup>107</sup> In its 2018 Budget, the British Columbian government announced a so-called speculation tax, which will apply province-wide.<sup>108</sup> This tax will be similar to Vancouver's Vacancy Tax, inasmuch as property owners who do not pay provincial income tax, and do not reside in or rent out the property, will have an annual liability of 0.5 per cent of the property's value in 2018, increasing to 2 per cent a year from 2019.

Australia has sought to control non-resident investment by restricting purchases of existing properties to residents. However, since overseas students may buy an existing property (provided they sell it within three months of completing their studies), the country's expanded tertiary education market has seen a significant increase in the number of students (presumably their families) purchasing existing houses and flats in the inner and middle ring suburbs of university cities.<sup>109</sup> On 9 May 2017, the Commonwealth Government announced the introduction of a fee on foreign owners of residential property where the property is not occupied or genuinely available on the rental market for at least six months of each year. However, the fee, which falls under the purview of the Foreign Investment Review Board, does not apply to properties bought before the date of the announcement. While the fee may be a petty measure, the government announced significant tax changes to promote housing affordability.<sup>110</sup>

**Table 2: Comparison of selected vacant property taxes**

Jurisdiction	Affected area	Vacancy period	Rates of tax
Australia	National (only applies to non-resident)	6 months	Fee equivalent to, e.g., 0.55% for property <\$1 million value; 1.12% for \$9–10 million value

<sup>104</sup> Sébastien Ménard, 'Should We Tax Vacant Dwellings? A Search Equilibrium Model Applied to the Rental Housing Market' (2012) 117(1) *Economics Letters* 88; Laura Kane, 'As Vancouver Grapples with Housing Crisis, How Europe Has Tackled Vacant Homes', *Vancouver Observer* (online), 14 December 2015 <<https://www.vancouverobserver.com/news/vancouver-grapples-housing-crisis-how-europe-has-tackled-vacant-homes>>.

<sup>105</sup> See 'City of Vancouver Approves Empty Homes Tax', *CBS News*, 16 November 2016 <<http://www.cbc.ca/news/canada/british-columbia/city-of-vancouver-approves-empty-homes-tax-1.3853542>>.

<sup>106</sup> City of Vancouver, *Will Your Home Be Taxed?* (2018) <<http://vancouver.ca/home-property-development/will-your-home-be-taxed.aspx>>.

<sup>107</sup> *Ibid.*

<sup>108</sup> British Columbia, *Budget 2018: Working for You* (2018) <[http://bcbudget.gov.bc.ca/2018/highlights/2018\\_Highlights.pdf](http://bcbudget.gov.bc.ca/2018/highlights/2018_Highlights.pdf)>.

<sup>109</sup> Stephen Anthony and Gary Lu, 'Discussion Paper: Assisting Housing Affordability' (Industry Super Australia, November 2017) 20 <<http://www.industrysuperaustralia.com/assets/Reports/Assisting-Housing-Affordability-ISA-Discussion-Paper-FINAL-2017.pdf>>.

<sup>110</sup> Australian Government, *Budget 2017-18: Guaranteeing the Essentials for Australians* (2017) <<https://budget.gov.au/2017-18/content/glossies/essentials/download/Budget2017-18-Essentials.pdf>>.

	investments made after 9 May 2017) <sup>111</sup>		
British Columbia <sup>112</sup>	Designated urban areas	9 months (2018) 6 months (2019)	0.5% (2018) 2% foreign investors; 1% non-BC Canadians; 0.5% BC Canadians (2019)
Victoria	Inner/middle ring Melbourne <sup>113</sup>	6 months	1% 1.5% surcharge for absentees' unimproved land <sup>114</sup>

#### IV DISCUSSION

After noting reservations about comparisons, this part of the article considers the effectiveness of measures introduced, then sketches other tax measures that might be used as part of a multi-faceted approach to housing unaffordability.

Despite sharing a history of colonialism, the common law, and open economies, the British heritage states discussed in this article have substantively different tax systems. These differences suggest caution when drawing comparisons. (However, all use rating-like local taxation.) Hong Kong and Singapore are distinguished by minimalism. They have source-based, low-rate incomes taxes, and no CGT. Therefore, stamp duty may be the only extant tax instrument available for dampening demand for investment in housing. In contrast, Canada has a complex, multi-level tax system that incorporates income tax, CGT and value-added tax (VAT). At subnational levels, Canadian provinces raise income tax, sales tax (harmonised with federal VAT) and land transfer tax.<sup>115</sup> Canada, therefore, has several existing tax instruments for engaging with housing problems. Nevertheless, the principal fiscal actions have been taken at a provincial level, in British Columbia (and later Ontario), although focus has been on specific metropolitan areas. Significantly, unlike Australia,<sup>116</sup> Canada has not imposed direct restrictions on non-resident investment in residential property.<sup>117</sup>

The New Zealand tax system lies between the minimalism of Hong Kong and Singapore, and the complexity of Australia and Canada. As a unitary state, it has no state or

<sup>111</sup> Australian Government, *Residential Real Estate – Annual Vacancy Fee (Guidance Note 48)* (20 December 2017) <<https://cdn.tspace.gov.au/uploads/sites/79/2017/12/171221-GN48-RRE-Annual-Charge.pdf>>.

<sup>112</sup> See *Vancouver Charter* [SBC 1953] ch 55 pt XXX: Vacancy Tax; Vacancy Tax By-law No 11674.

<sup>113</sup> State Revenue Office of Victoria, *Vacant Residential Land Tax* (2017) <<http://www.sro.vic.gov.au/vacant-residential-land-tax>>.

<sup>114</sup> State Revenue Office of Victoria, *Absentee Owner Surcharge* (2017) <<http://www.sro.vic.gov.au/node/1870>>; State Revenue Office of Victoria, *Vacant Residential Land Tax*, above n 113.

<sup>115</sup> See, generally, Geoffrey Loomer and David G Duff, *Taxation of Business Organizations in Canada* (LexisNexis, 2015).

<sup>116</sup> See Australian Government, *Residential Real Estate – Foreign Non-Residents: Guidance Note 3* (1 July 2017) <[https://cdn.tspace.gov.au/uploads/sites/79/2017/07/03\\_GN\\_FIRB.pdf](https://cdn.tspace.gov.au/uploads/sites/79/2017/07/03_GN_FIRB.pdf)>.

<sup>117</sup> Richard Cullen, 'Real Estate Price Inflation: Lessons from Hong Kong' (TLRP Tax Comments No 3, Faculty of Law, University of Hong Kong, June 2016) 8 <[http://www.law.hku.hk/aiifl/wp-content/uploads/file/TLRP-TaxComments-No\\_3.pdf](http://www.law.hku.hk/aiifl/wp-content/uploads/file/TLRP-TaxComments-No_3.pdf)>.

provincial-level taxes.<sup>118</sup> Neither a general CGT nor a stamp duty is levied. Speculative gains may constitute taxable revenue,<sup>119</sup> but, of course, in the absence of a disposal, no income tax liability arises. New Zealand may therefore have the least scope, among the jurisdictions considered, for using taxes to combat foreign investment if it is thought to cause housing unaffordability. A property transfer tax could be introduced but is most unlikely since such taxes have previously been rejected as inefficient and unfair.<sup>120</sup> To reiterate, New Zealand intends to emulate Australia in requiring non-resident investors in residential property to build rather than purchase an existing property.<sup>121</sup>

### ***A Effectiveness of current measures***

If we assume that foreign investment in residential property is a social mischief deserving government intervention, we may ask whether the taxes introduced have been effective in remedying that mischief. Furthermore, do these taxes have undesirable consequences? Focus in this section lies with stamp duty. Behaviour-modifying rating is a minor issue,<sup>122</sup> and it is too early to tell whether vacant property taxes might be effective.<sup>123</sup> The latter taxes might have some impact on house prices,<sup>124</sup> but the reasons why properties are left empty can be complex, although speculation may be one of them,<sup>125</sup> particularly in times of uncertainty.<sup>126</sup> Besides, looking at the bigger picture of unaffordability, as Hal Pawson observes, 'empty homes represent just a small element of our increasingly inefficient and wasteful use of housing'.<sup>127</sup>

#### ***1 High rates of stamp duty***

While conceding that other factors could have been at play, Richard Cullen concludes that Hong Kong's stamp duty tax manipulation has been effective in dampening speculative demand in the territory, albeit after a time lag of four to five years for special stamp duty,

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<sup>118</sup> Subnational government taxes in New Zealand amount to only 2.2 per cent of GDP. See OECD, *Revenue Statistics – OECD Countries: Comparative Tables* (2016) <<https://stats.oecd.org/Index.aspx?DataSetCode=REV>>.

<sup>119</sup> See *Income Tax Act 2007* (NZ) ss CB 6–CB15B.

<sup>120</sup> VUW Tax Working Group, *A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, January 2010) 16.

<sup>121</sup> In terms of the New Zealand-China Free Trade Agreement (NZCFTA), New Zealand can retain existing restrictions on foreign investment in real property under the *Overseas Investment Act 2005* (NZ). However, the restrictions at the time the NZCFTA was negotiated focused on farmland, rather than typically sized residential properties. Nevertheless, under the NZCFTA, New Zealand retains the right to introduce a land tax.

<sup>122</sup> New Zealand's restricted tax options may lead to differential rating (for example, in relation to Airbnb leases) becoming a more common policy choice in the future.

<sup>123</sup> A model constructed by Ménard, above n 104 indicates that a vacant property tax should reduce empty apartments but also has the long-term effect of reducing the supply of rentable properties.

<sup>124</sup> Cameron Murray estimates that if all vacant properties became occupied, the housing market would fall by no more than 2 per cent. See Cameron Murray, Domain Real Estate, *Empty Homes: The Economic Reasons behind Investors Keeping Properties Vacant* (4 April 2017) <<https://www.domain.com.au/news/empty-homes-the-economic-reasons-behind-investors-keeping-properties-vacant-20170404-gvdc7l>>.

<sup>125</sup> For calculations showing why a speculator may find it more advantageous to keep an apartment or plot of land empty, see *ibid*.

<sup>126</sup> See Sheridan Titman, 'Land Prices under Uncertainty' (1985) 75(3) *American Economic Review* 505.

<sup>127</sup> Hal Pawson, 'Taxing Empty Homes: A Step towards Affordable Housing, But Much More Can Be Done', *The Conversation* (online), 17 July 2017 <<https://theconversation.com/taxing-empty-homes-a-step-towards-affordable-housing-but-much-more-can-be-done-80742>>.

and two to three years for buyer's stamp duty.<sup>128</sup> But, after Cullen drew this conclusion, Hong Kong found it necessary to make significant hikes to ad valorem duty in a further attempt to cool demand. This development raises several questions, including: will governments have the political nerve to keep raising the rates of stamp duty beyond their already exceptional levels; will investors simply factor in such increases into the already astronomical prices of property in the most desirable cities; and does control of foreign investment in residential property lie beyond the control of governments in open economies?<sup>129</sup>

Some unintended if expectable effects were observed in Vancouver arising from the hikes in property transfer tax, notably a surge in non-resident investment before the date of implementation and, afterwards, possible collusion between residents and non-residents.<sup>130</sup> Toronto experienced a property boom immediately after the tax came into effect in Vancouver. In response, Ontario introduced its own non-resident speculation tax, a 15 per cent surcharge, payable in addition to standard land transfer tax.<sup>131</sup> The British Columbian surcharge may have had no long-term impact on housing affordability in Vancouver. An article in *The Australian* reported that Vancouver's house prices fell by 18.9 per cent between January 2016 and January 2017.<sup>132</sup> Indeed, prices do appear to have fallen sharply in the first year of the surcharge,<sup>133</sup> but, by March 2017, the market was booming once more.<sup>134</sup> And, as noted, the provincial government considered it necessary to increase property transfer tax for foreign purchases of residential property to 20 per cent in its 2018 budget. According to Juwai, a website aimed at Chinese property investors, this latest increase in stamp duty 'is likely to have minimal impact on wealthy Chinese buyers seeking to purchase in Vancouver or elsewhere in the B.C. province'.<sup>135</sup> In short, it seems that swingeing rates of stamp duty may have minimal long-term effect on foreign investment or, indeed, domestic speculation. State coffers may swell but government reliance on that revenue flow may have the effect of entrenching an inefficient and inequitable tax.

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<sup>128</sup> Cullen, above n 117, 13.

<sup>129</sup> Truly effective control over mainland investment in the territory may lie with the Chinese government's policy on outbound investment. See Ben Bland, 'China Developers Retreat from Hong Kong Property Market', *Financial Times* (online), 7 February 2018 <<https://www.ft.com/content/f70b4c50-0bc5-11e8-8eb7-42f857ea9f09>>.

<sup>130</sup> See Sam Cooper, 'Foreign Buyers Still Investing in Metro Vancouver Real Estate Despite B.C. Tax', *Vancouver Sun* (online), 28 June 2017 <<http://vancouver.sun.com/news/local-news/foreign-buyers-still-investing-in-metro-vancouver-real-estate-despite-b-c-tax>>.

<sup>131</sup> Ministry of Finance, Government of Ontario, *Non-Resident Speculation Tax* (2017) <<https://www.fin.gov.on.ca/en/bulletins/nrst>>.

<sup>132</sup> See Robert Montgomery, 'NSW and Victoria Foreign Buyer Taxes Come as House Prices Soften', *The Australian* (online), 10 June 2017 <<http://www.theaustralian.com.au/business/wealth/nsw-and-victoria-foreign-buyer-taxes-come-as-house-prices-soften/news-story/f2680b0a28c42483fa7f41f78878f2db>>.

<sup>133</sup> 'B.C. Real Estate Data Show Sharp Decline in Foreign Investment after Tax', *The Canadian Press* (online), 6 January 2017 <<https://globalnews.ca/news/3166198/sharp-decline-but-growth-in-bc-real-estate>>.

<sup>134</sup> See, for example, Joanne Lee-Young, 'Impact of B.C.'s Foreign Buyer Tax Wanes as March Sales Surge Almost 50 Per Cent', *Vancouver Sun* (online), 18 April 2017 <<http://vancouver.sun.com/business/local-business/impact-of-b-c-s-foreign-buyer-tax-wanes-as-march-sales-surge-almost-50-per-cent>>.

<sup>135</sup> Juwai, 'How Will B.C.'S New 20% Tax Sway Chinese Buyers in Canada?', 1 March 2018 <<https://list.juwai.com/news/2018/03/will-bc-new-20%25-tax-sway-chinese-buyers-in-canada>>.

### **B Broad-based land tax as an alternative to stamp duty**

According to the Henry Report, conveyance stamp duties, which are 'volatile and highly inefficient' and 'inequitable', discourage,

transactions of commercial and residential property and ... discourage people from changing their place of residence as their personal circumstances change or discourage people from making lifestyle change that involve a change in residence. It is also inequitable, as people who need to move more frequently bear more tax irrespective of their income or wealth.<sup>136</sup>

Furthermore, because duty thresholds tend to be static, stamp duty is particularly prone to bracket creep (fiscal drag) in a rising market. Robert Carling and Michael Potter provide the example of New South Wales, whose average rate of stamp duty doubled between 1986 and 2015.<sup>137</sup>

The Henry Report and the Australian Productivity Commission,<sup>138</sup> among many others, have recommended the incremental replacement of stamp duties with a broad-based land tax. A massive body of literature exists on the effectiveness of land taxes.<sup>139</sup> For current purposes, it is sufficient to note that, notwithstanding the absence of conclusive evidence,<sup>140</sup> proponents of land taxes claim that they deliver the most efficient use of land. For example, they predict that a developer will not land bank; rather they will develop their land most efficiently, temporally and use-wise, provided the rate of tax is set sufficiently high.<sup>141</sup> A land tax should apply to all land. 'Levying higher taxes on larger holdings discourages land-based investment by institutional investors, such as in rental housing. As owner-occupied housing is exempt, land tax on residential investment properties is probably passed through to renters as higher rent.'<sup>142</sup>

ACT is widely considered to have made the 'right' policy choice in phasing out stamp duty in favour of a land tax. But the tax only applies to residential property,<sup>143</sup> and includes significant exemptions, notably parcels of rural land.<sup>144</sup> Rather than exemptions, relief should be provided through deferral options, for example for asset rich, income poor

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<sup>136</sup> Henry et al, above n 42, [6.2].

<sup>137</sup> Robert Carling and Michael Potter, 'Exposing the Stealth Tax: The Bracket Creep Rip-off' (CIS Research Report 8, Centre for Independent Studies, 2015) 6 <<https://www.cis.org.au/app/uploads/2015/12/rr8.pdf>>.

<sup>138</sup> Productivity Commission, 'Shifting the Dial: 5 Year Productivity Review' (Report No 84, Productivity Commission, Government of Australia, 2017) <<https://www.pc.gov.au/inquiries/completed/productivity-review/report>>.

<sup>139</sup> For a potted review of issues in land taxation, see Richard F Dye and Richard W England, 'Assessing the Theory and Practice of Land Value Taxation' (Lincoln Institute of Land Policy, 2010).

<sup>140</sup> See A M Woodruff and L L Ecker-Racz, 'Property Taxes and Land-Use Patterns in Australia and New Zealand' in Arthur Becker (ed), *Land and Building Taxes: Their Economic Effect on Development* (University of Wisconsin Press, 1969) 147, cited by Mary E Edwards, 'Site Value Taxation in Australia: Where Land Is Taxed More and Improvements Less, Average Housing Values and Stocks Are Higher' (1984) *American Journal of Economics and Sociology* 481, 486.

<sup>141</sup> Florida, above n 1, 194 notes: '[Henry] George in fact suggested that the less developed land is, the higher it is taxed. George in fact suggested that underdeveloped land be taxed at a rate of 100%, minus improvements to it. Absent such improvement, he argued, all of the land's value should return to the public commons.'

<sup>142</sup> Henry et al, above n 42, [6.2].

<sup>143</sup> *Land Tax Act 2004* (ACT) s 9.

<sup>144</sup> *Ibid.*

taxpayers, who are often elderly.<sup>145</sup> Nevertheless, the ACT experience indicates the political difficulties faced in implementing a pure land tax.

### ***C Considerations for government***

#### *1 Multiple policy measures*

As the Henry Report recognised, ‘a range of non-tax policies have a more significant impact on housing supply and affordability’ than do tax policies.<sup>146</sup> Vancouver’s policy-makers did not envisage increases in property transfer tax as a silver bullet, more like one arrow in a quiver of policy options. The city’s focus lies with protecting the existing rental stock and increasing the supply of affordable housing, especially condominiums. Technology, such as the use of modular housing, is expected to play a role, as are mass transit initiatives, government subsidies and land deals.<sup>147</sup> Similarly, the United Kingdom’s Department for Communities and Local Government recommends a multi-pronged approach to vacant properties, including a potential ‘empty homes premium’, payable on the Council Tax.<sup>148</sup>

#### *2 Political attraction of taxing foreigners*

Since foreign investors cannot vote and are unlikely to find a champion in their own governments, which have agreed to investment restrictions under free trade agreements,<sup>149</sup> imposing swingeing property taxes on non-residents may be politically attractive. Following Favilukis and van Nieuwerburgh, taxing non-resident investors ‘can turn welfare losses into gains when tax revenues finance a local public good’,<sup>150</sup> if, for example, stamp duty surcharges are hypothecated for public housing. Nevertheless, for Australia and New Zealand, which have histories of Sinophobia,<sup>151</sup> taxes implicitly aimed at Chinese investors should give pause for thought.<sup>152</sup> If foreign investment is not the major cause of housing unaffordability – as appears to be the case in Australia and New Zealand – increasingly heavy taxes on non-residents take on the appearance of scapegoating.

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<sup>145</sup> I am grateful to the reviewer who noted that such a deferral option may resemble in practice a CGT.

<sup>146</sup> Henry et al, above n 42, [6.2].

<sup>147</sup> See an interview with Mukhtar Latif, Vancouver’s then Chief Housing Officer: Radio New Zealand, *Interview with Mukhtar Latif: Do Taxes on Foreign Buyers Work?* (Radio Interview, 17 January 2017) <<http://www.radionz.co.nz/national/programmes/ninetonoon/audio/201831017/do-taxes-on-foreign-buyers-work>>.

<sup>148</sup> HM Government, *Laying Foundations: A Housing Strategy for England* (November 2011) 76 <<https://assets.publishing.service.gov.uk/government/uploads/system/.../2033676.pdf>>.

<sup>149</sup> See, for example, the *Free Trade Agreement between the Government of Australia and the Government of the People’s Republic of China*, art 9.5.

<sup>150</sup> Favilukis and van Nieuwerburgh, above n 48.

<sup>151</sup> On the notorious poll taxes payable by Chinese immigrants and sojourners, see ‘Chinese’ in AH McLintock (ed), *An Encyclopaedia of New Zealand* (Te Ara - the Encyclopedia of New Zealand, originally published 1966) <<http://www.TeAra.govt.nz/en/1966/national-groups/page-13>>.

<sup>152</sup> See Laura Walters, ‘Labour’s “Half-Baked” Property Data Turns Chinese Buyers into “Scapegoats”’, *Stuff* (online), 14 July 2015 <<https://www.stuff.co.nz/business/money/70155168/labours-halfbaked-property-data-turns-chinese-buyers-into-scapegoats>>.

Focusing on foreign investors allows government to give the impression of combatting housing unaffordability, without taking measures that might alienate voters. Joannah Connolly observes of the latest British Columbian tax measures:<sup>153</sup>

this tax affects all non-local-tax-paying home owners, not just speculators. But it has been cynically named a 'speculation tax' because the [governing New Democratic Party] knows tax-paying voters believe real estate speculation is a leading cause of high home prices, and this way the party is seen to be doing something about it.

Likewise, in Australia, Nicole Gurran and Peter Phibbs consider,

the ways in which government responses to housing problems have come to resemble 'busy work', exhibiting and absorbing policy energy while at the same time constraining the suite of policy options and tools able to really address the housing affordability problems affecting low-income renters and aspiring owners in Australia.<sup>154</sup>

Laurence Murphy makes similar observations about the Auckland housing crisis.<sup>155</sup> No government in a property-owning democracy would seek to engineer a crash in the residential housing market in order to promote housing affordability. As the global financial crisis demonstrated, '[a] major fall in house prices can create chaos across an economy ... [causing] widespread business failures, job losses and a broader economic recession.'<sup>156</sup> Conversely, a responsible government should not foster property speculation by either foreign or domestic speculators.

## V CONCLUSION

A crisis in housing affordability is evident in the world's major cities, including those in Australasia. But the precise nature of the crisis and its causes are less clear. Paradoxically, Australia appears to have a surplus of housing, including vacant properties in the inner ring suburbs of Melbourne and Sydney where demand can be expected to be most intense. Foreign investment is commonly portrayed as a main driver of unaffordability, yet when reliable evidence exists, non-resident investment appears to contribute minimally to housing inflation. Notwithstanding uncertainty about the causes of housing unaffordability, ostensibly remedial taxes have been introduced to remedy what may be a nugatory social mischief. The article set out to assess whether these taxes have been effective, and to consider whether other measures would be preferable. It is concluded that these taxes are unlikely to have been effective in combatting foreign investment in residential property but this outcome is not fatal for housing affordability since its contribution is almost certainly minimal.

Stamp duties are commonly criticised for introducing frictions into the housing market, and for obviating augmentation or replenishment of the housing stock by discouraging investment. Wide consensus holds that a broad-based land tax, as a substitute for stamp duty, would be most effective – in the long-term, at least – in ensuring the most efficient

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<sup>153</sup> Joannah Connolly, 'Editorial: Why New Speculation Tax Is Not a Speculation Tax', *Vancouver Courier* (online), 26 February 2018 <<http://www.vancourier.com/real-estate/editorial-why-new-speculation-tax-is-not-a-speculation-tax-1.23185372>>.

<sup>154</sup> Nicole Gurran and Peter Phibbs, 'Are Governments Really Interested in Fixing the Housing Problem? Policy Capture and Busy Work in Australia' (2015) 30(5) *Housing Studies* 711, 715.

<sup>155</sup> Laurence Murphy, 'The Politics of Land Supply and Affordable Housing: Auckland's Housing Accord and Special Housing Areas' (2016) 53(12) *Urban Studies* 2530.

<sup>156</sup> Shamubeel Eaqub, 'Property: A House of Cards?', *Sunday Star Times* (New Zealand), 6 August 2017, D12.

use of land. ACT has shown that a broad-based land tax can include a surcharge for foreign-owned properties – even if that additional charge serves no real purpose other than to exact an additional charge for the privilege of investment. But the flow of revenue into State treasuries from thinly disguised xenophobia expressed in foreign purchaser surcharges may be too attractive for governments to surrender.

Australia's policy on foreign investment in residential property, which requires new accommodation to be built, if effectively enforced,<sup>157</sup> directly engages with the possibility of non-residents denying residents access to the stock of housing. Perhaps more direction could be given: for example, a person wishing to make a direct property investment of AUD1.5 million might be required to build two affordable units rather than one unit that might be unaffordable for potential tenants. Requiring foreign investors to build seems mutually beneficial for the investor, who obtains indefeasible ownership of real property in a common law jurisdiction, and the host state, whose housing stock is augmented or replenished. New Zealand seems well advised to follow Australia in this regard rather than seeking solutions in discriminatory taxes.

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<sup>157</sup> Anthony and Lu, above n 109, 20 observe: 'there was significant rorting by non-residents purchasing existing real estate prior to 2016, with the tacit assistance of real estate agents, mortgage brokers and banks'.

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