



# Windfall Gains Tax

Managing the impact of the new tax for your clients

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November 2022

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# *Windfall Gains Tax*



Tax of up to **50%** when there is a value uplift of more than \$100,000 due to a rezoning of the land (other than an excluded rezoning)

To commence from **1 July 2023**

# What land will be subject to WGT?

Any land in Victoria that is rezoned, other than under an excluded rezoning

## Excluded rezonings



Rezoning between schedules in the same zone



Rezoning to the GAIC contribution area



First rezoning after 1 July 2023 of land that was in the GAIC contribution area



Rezoning to public land zone or between different public land zones



Other rezoning declared by the Treasurer

# Who is liable for WGT?

The **owner** of the land at the time the rezoning takes effect



## Multiple owners

Joint and several liability



## Land held on trust

Trustee



## Land held by related corporations and trusts

Broad grouping rules

Joint and several liability

# How is WGT calculated?



**Aggregated  
value uplift**

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**Allowable  
deductions**

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**Relevant  
WGT rate**

**Calculate** aggregated  
value uplift

The difference between  
the CIV immediately before  
and after rezoning of all  
property of the landowner or  
group that is rezoned by the  
same event

**Deduct** allowable  
deductions

To be set out in  
the Regulations if the  
Government commits to a  
deductions regime

**Multiply** by the  
relevant WGT rate

# *How is the taxable value uplift determined?*



**Pre-rezoning CIV taken from general rating valuation** immediately before rezoning event



**Post-rezoning CIV determined under supplementary valuation**



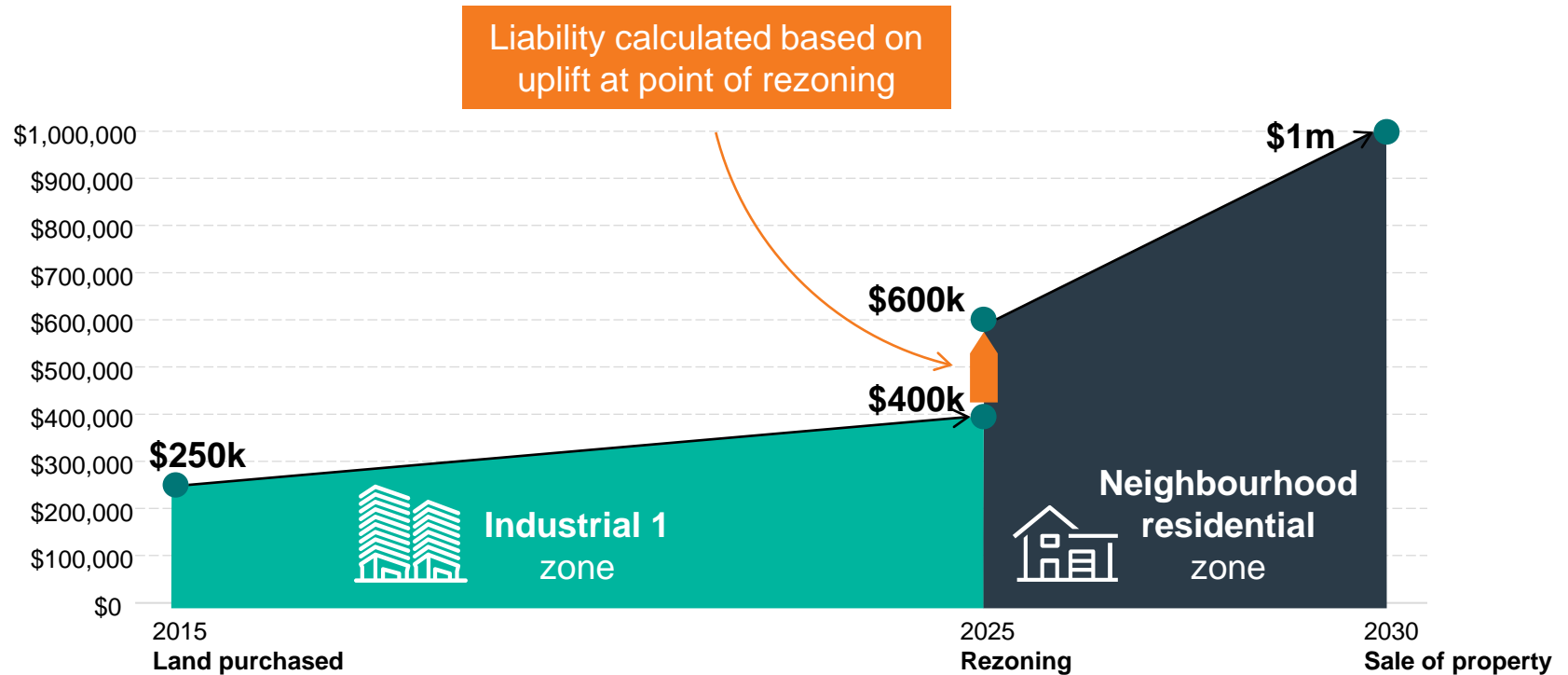
**Post-rezoning CIV determined as at the same date as the pre-zoning CIV** was determined

# WGT Rate

Taxable value uplift	Tax payable
\$0 to \$100,000	Nil
\$100,001 to \$499,999	62.5% of uplift above \$100,000
\$500,000 or more	50% of total uplift



# Working out the uplift



Source: Factsheet – Windfall gains tax for high-value landholdings, Department of Treasury and Finance Victoria (October 2021)

# When will WGT be payable?

Liability **triggered** at the time of rezoning

Landowner issued notice of assessment by Commissioner of State Revenue



**Pay by due date  
on notice**

Generally within 30 days of issue of assessment



**Elect by due date on notice to defer  
payment in full or in part**

No other allowance for extension of time  
for payment or payment instalments

# How does the deferral work?

Payment of WGT deferred until one of the following (whichever occurs first)



**Dutiable transaction**  
other than an **excluded**  
**dutiable transaction**



**Relevant acquisition**  
other than an **excluded**  
**relevant acquisition**



**30 years**

Interest at 10-year Treasury Corporation of Victoria bond rate



## *What happens once deferral ceases?*

Payment of WGT and accrued interest must be paid to the Commissioner of State Revenue within 30 days of cessation event

**Excluded dutiable transactions and excluded relevant acquisitions** do not cease the deferral period



# Excluded dutiable transactions



**Acquisition of an economic entitlement** in relation to the land



**Transfer to deceased's legal personal representative**



**Dutiable transaction** which occurs for **no consideration**

Transferee must elect to assume liability for deferred WGT and interest



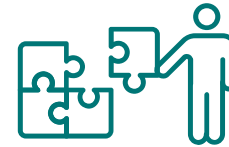
**Certain transfers of land** by a charity to another charity

Transferee must elect to assume liability for deferred WGT and interest

# Excluded relevant acquisitions



**Acquisitions solely due to a pro rata increase** in interests of all unitholders or shareholders



**Relevant acquisition** of a further interest

**What about acquisitions for no consideration?**

E.g. deceased estate transfer of shares, in-specie transfer of units

# Rights of objection

Taxpayers have the right to object to



**The value of the land** on which  
the WGT has been assessed



**The imposition of WGT or  
the amount of the liability**

E.g. on the basis that an exemption applies

**Must lodge valuation objection within two months of receiving notice of  
assessment**

Commissioner does not have discretion to allow late valuation objections

# *Transitional exemptions*

## *Prior to 15 May 2021 – rezonings in train*



### **Rezonings underway prior to 15 May 2021**

Landowner approached Council or Planning Minister to request rezoning

Council created and registered an amendment request in Amendment Tracking System or Planning Minister agreed to prepare the amendment

Landowner performed relevant work or paid for relevant costs in relation to rezoning with a total minimum value of 1% of the pre-zoning CIV or \$100,000 (whichever is less)

Planning scheme amendment prepared by Council or by or at the request of Planning Minister



# ***Transitional exemptions***

## ***Prior to 15 May 2021 – contracts of sale or options***



### **Pre-existing contract of sale**

Contract entered into before 15 May 2021

Transfer of land not completed before relevant rezoning

### **Land subject to an option to enter into a contract of sale**

Option entered into before 15 May 2021

Terms of contract settled at the time option was granted

Option not exercised or transfer of land not completed before rezoning event

# Other exemptions and waivers



## Residential land exemption

Exemption on up to 2 hectares of residential or primary production land

Land includes residence fit for occupancy or other requirements met



## Rezoning errors



## Charitable land

Must be used and occupied by charity exclusively for charitable purposes for 15 years

# Example 1

## Sale of land subject to rezoning

In **2021** Susan sold 40 hectares of land in Shepparton to a property developer, **subject to the land being rezoned to residential**

In **2024** the land is rezoned and the contract settles (after the WGT event)



### Considerations

**Transitional protection?**

**Deferral?**

**Cash-flow issue?**

Land value pre-rezoning	\$5m
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Land value Post-rezoning	\$40m
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<b>Value Uplift</b>	<b>\$35m</b>
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<b>WGT</b>
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<b>Contract of sale post-15 May 2021</b>	<b>\$17.5m</b>
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## Example 2

### *Application of WGT to Development Agreements*

- Land owner and Developer enter into DA in 2022
- Proposed subdivision and sale of 500 lots in Geelong subject to rezoning of farm land to residential and relevant planning approvals
- Developer entitled to Development Fee plus 25% of profit
- Land rezoned in 2024
- DA needs to deal with following issues
  - Impact of WGT liability on profit and return to both parties
  - Election to defer WGT liability upon rezoning event
  - Progressive payment of liability as lot settlements occur
  - WGT as a development cost (holding cost)

## Example 3

### ***Structuring options post WGT rezoning event***

- Land owner has a commercial site in Dandenong held in a unit trust
- Land is rezoned to mixed use residential and commercial in Dec 2023
- Land owner elects to defer 100% of WGT liability
- Investor is sought to assist with funding the redevelopment
- Structuring options (and WGT implications) –
  - Investor comes on title
  - Investor takes units in unit trust
  - Investor takes profit share via Development Agreement
  - Investor provides loan funding
  - Combination of the above?

# Watch-outs for LPLC members



- Impact on contracts of sale, option deeds, development agreements, joint venture agreements and other agreements
- Acting for the Vendor:
  - Awareness of and planning for potential WGT liability
  - Who should bear the WGT cost?
  - Is a WGT special condition required?
  - Objection right and time limit
  - Deferral election and time limit
  - Identification and protection of transitional contracts and options

# Watch-outs for LPLC members



- Acting for the Purchaser:
  - Review of WGT special condition
  - Is Vendor seeking to pass on WGT cost?
  - Impact on Purchaser's stamp duty position
  - Factoring a future WGT liability into the price
- Acting for a Developer:
  - Awareness of and planning for potential GST liability
  - Inclusion as development cost in agreement
  - Ensuring the land owner elects to defer the WGT liability
  - Preventing the land owner from crystallising a liability early
  - Ensuring the land owner makes required payments to SRO

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- Superannuation planning and advice
- Estate planning
- Valuations

***For more information please contact Claire Henderson – [cpn@pitcher.com.au](mailto:cpn@pitcher.com.au) or view our website - <https://www.pitcher.com.au/about-us/critical-point-network/>***



# Q&A



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