# Windfall gains tax — Contract of sale risk management

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00.15 Welcome James.

00.16 Thanks, Phil.

00.17 I'm looking forward to hearing your comments about things to consider in relation to contracts of sale of real estate in WGT.

00.26 Clearly we'd love there to be a boilerplate special condition on windfall gains tax that could be slotted into a contract. And then we've discharged all our obligations.

00.36 However, unfortunately there's no such boiler plate for the time being. We're going to need bespoke drafting tailored to the facts of the particular matter.

00.46 What the starting point is in the analysis is, well, when do we think this rezoning might occur? Could it occur pre-settlement? Could it occur post-settlement? And who, who is the taxpayer going to be?

00.56 As far as the State Revenue Office is concerned, the registered proprietor of the land at the time of the rezoning is the taxpayer. So they're the one, they're the one that are going to receive the assessment from the State Revenue Office and they're the one that are going to be pursued by the revenue office if they don't pay the bill.

1.15 Now, in the context of a contract of sale there's a few uncertainties. Well, how much is this gain going to be? How much is the taxable gain going to be? What's the tax liability going to be?

1.26 No one knows with certainty, because it depends on a valuation that's yet to be undertaken. So the parties need to agree who's economically going to bear that risk.

1.53 And then they, if we have the situation where a party other than the owner of the land at the time, the rezoning is the party to bear the cost, how does the contract manage that? How do the parties work together to, for example, make an objection to a windfall gains tax assessment? How do they make a deferral election? Can settlement be brought forward to predate rezoning?

2.04 So then the purchaser is the relevant taxpayer and the purchaser can make its deferral and away they go.

2.10 So there's some, there's some of the key issues that need to be picked up in the contractual mechanics between the parties.

2.19 Now it almost goes without saying, but I'll say it anyway. From a risk perspective, the practitioner will take detailed file notes of, of the position that they've landed on. And they should follow that up with written confirmation to their client to make sure the client is aware of what this tax is, how it's calculated, and how it's dealt with in the contract.

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