# Windfall gains tax — Exemptions

**22 June 2023 Video transcript**

0.15 Welcome James.

0.16 Thanks, Phil.

0.18 I'm looking forward to hearing your comments on land that is exempt from the WGT.

0.23 If you, you are not excluded, you have a windfall gains tax event, and you are going to be paying windfall gains tax if your increase in value is sufficient, unless you have an exemption.

0.37 Now, a couple of the exemptions are very targeted. I won't go into them. For example, there's ones for universities and charities if they meet certain criteria and maybe one, one of the main ones I want to focus on is the transitional exemptions.

0.55 Now, the transition transitional exemptions revolve around the date of 15 May, 2021, and that is the date when the Victorian government announced the introduction of the windfall gains tax regime. So the legislation recognises that parties may have come to a certain process, come to a certain point in their rezoning process, prior to that date, and if they meet a series of criteria, and they're very narrow, it's very difficult to satisfy them and the devil is in the detail. But, if you meet those criteria, you're eligible for exemption.

1.30 So there's two transitional exemptions. One is if you have a contract for sale of land or an option, for land, that's been entered into prior to 15 May, 2021, you may have the ability to be, to get an exemption and to give you a vanilla example if the contract is dated. Prior contract of sale is prior, is dated prior to 15 May 21, and, it hasn't settled yet, there's a post, one July, 2023 rezoning that goes through, and then there's settlement, as a general rule that rezoning should be exempt from windfall gains tax.

2.09 The second of the transitional exemptions focused on rezoning processes underway prior to 15 May, 2021. Now, there's a series of hurdles that need to be met, but in very broad terms, it requires the rezoning process with council or the planning minister to achieve a certain point prior to 15 May 21. And also, a certain threshold of, expenditure must have been incurred on, on certain, elements of the rezoning process prior to that date.

2.41 So, as I say, the devil's in the detail, it's a question of fact, and you need to work through what exactly happened prior to 15 May 21 to see if you've got a chance of that exemption.

2.54 If a practitioner, um, establishes that there is pre-15 May 21 activities that have gone on, they've got a, they might need expert advice. They do not want to jeopardise a client's chances of availing themselves at one of those exemptions.

3.09 The temptation might be to rush in and amend a contract or assign a contract, for example. Before doing anything, they've got to think about, well, would any amendment to the preexisting arrangements affect the eligibility for a transitional exemption?

3.25 On general exemptions, the one that I see as being the very likely to be the most common is, rezonings of residential land. Now, we have different meanings of residential land in various different legislative contexts, and this is no different.

3.40 The Windfall Gains Tax Act sets out a specific definition of residential land. It's quite long and will be painful to work through on some matters. However, as a general rule, you'd need a house on it, on the land for it to be residential land. And the land need as a general rule, needs to be, primarily used for residential purposes.

4.04 So if you meet that criteria, you, should generally be able to avail yourself of the exemption. Importantly, the exemption or the benefit of the exemption is only for a maximum of two hectares.

4.18 So, if you're dealing with a larger size parcel of land, you can still, you're still eligible for the exemption, but only a partial exemption, which effectively is limited to two hectares.

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