

Victoria's Development Windfall Whip: New Tax Targets Landowners from 1 July 2023 – are you ready?

By Brett Marshall

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Property Alert - Windfall Gains Tax (WGT)

Do you own land subject to a rezoning? Will there be a significant uplift in the value upon rezoning? If so, the State Revenue Office (SRO) may come knocking...

As part of the 2021-2022 budget, the Victorian Government announced the introduction of the Windfall Gains Tax (WGT) regime, which will tax landholders on the increase in value of the land upon a planning scheme amendment (i.e. a rezoning event). This includes situations where a developer or other landowner subdivides land for residential development, following the land being rezoned by the relevant council and approved and gazetted by the Minister of Planning. Importantly, this tax will apply on land that is rezoned from 1 July 2023 onwards, which is fast approaching.

It is stated that the revenue received by the Victorian Government from the WGT is intended to be used for infrastructure spending; however, as the WGT will be paid into consolidated revenue, it is uncertain whether the resulting spending will be directly in the areas in which it was levied, and if so, in what timeframe.

How will the tax be calculated?

The WGT payable by the owner of the land at the time of the rezoning is calculated on the taxable value uplift (TVU) from the rezoning of the land. This is the increase in the Capital Improved Value of the land (i.e. the value of the land after rezoning less the value of the land immediately before the rezoning), as determined by the Valuer-General Victoria. The rate of tax is then calculated based on the following table:

| Taxable Value Uplift | Rate of WGT |
|------------------------|--|
| \$0 to \$100,000 | Nil |
| \$100,000 to \$499,999 | 62.5% of taxable value uplift in excess of \$100,000 |
| \$500,000 or more | 62% of taxable value uplift |

Following is a practical example of how the determination will apply:

During the 2024 financial year, a landowner obtains permits to rezone and subdivide a 5-hectare property to build residential houses. The rezoning results in a windfall gain of \$400,000 (uplift in value). WGT will be calculated as: $\$400,000 - \$100,000 * 62.5\% = \$187,500$.

Exemptions and excluded rezoning:

The following are exemptions and exclusions in which WGT does not apply

1. Residential land exemption / Principal place of residence (only up to 2 hectares of land is exempt)
2. A rezoning between schedules in the same zone (e.g. a change from Neighbourhood Residential Zone Schedule 1 to Neighbourhood Residential Zone Schedule 2)
3. Land rezoned to or from the Urban Growth Zone within the Growth Areas Infrastructure Contribution (GAIC) are
4. Charitable and university land (WGT waived if the land continuously used as a charitable land for 15 years after the rezoning event)
5. Land rezoned to a Public Land Zone or between Public Land Zones
6. Land rezoned to correct an obvious or technical error
7. Land rezoned to a Rural Zone (other than the Rural Living Zone)
8. A rezoning declared by the Treasurer to be an excluded rezoning in the Government Gazette
9. Contracts of sale and options of land rezoning entered before 15 May 2021, but remains uncompleted

Timing of payments

Payment of the WGT must be made before the due date stated in the assessment notice.

However, payment can also be deferred until one of the following events happens (whichever comes first)

- A dutiable transaction or acquisition in relation to the land; or
- 30 years after the WGT event.

The deferral of WGT will accrue interest at the 10-year Treasury Corporation of Victoria bond rate (4.55% as at 28 Feb 2023), and the full amount is payable within 30 days of the deferral arrangement ceasing.

An objection can be made to a valuation used in the calculation of WGT; this must be lodged within 2 months of receiving the assessment.

What impacts will the tax have?

The introduction of the WGT is likely to have a significant impact not only on the developer but also on the end consumer. For developers, WGT will need to be factored into any feasibility assessment of a project. Consumers will no doubt feel the flow-on effect of WGT via increased property prices.

In addition, if margins are reduced then it may be more difficult for the developer to obtain funding in an already challenging financing environment. To the extent that developers are able

to arrange funding, they may nevertheless need to borrow more to cover the increased costs, which in turn will further increase their costs and put pressure on the pricing of their product

The other key development to note is that the government have not allowed developers to claim deduction to apply against the value uplift for costs incurred in relation to and prior to the rezoning. This may encourage landowners to avoid the risks/costs involved in preparing a site for rezoning altogether.

Finally, it is often the case that land is sold subject to a rezoning event occurring. From 1 July 2023, contracts will need to address the potential WGT liability from the rezoning occurring; as the WGT is not quantifiable until the Valuer General's has made an assessment, it will be a challenge to draft provisions in contracts that will protect and satisfy all relevant parties.

Are there any actions you can take to reduce the impact of WGT?

It is important that landowners are aware of the additional costs involved with rezoning from 1 July 2023 and are planning ahead. Some items to consider include:

- What actions can be taken to fast track the rezoning, so that it is completed prior to 1 July 2023?
- Consider whether development opportunities exist in exempt zones, so that the WGT cost is avoided and there is more certainty with margins.
- Speak with your legal advisor regarding contracts for acquisitions subject to future rezonings adequately deal with the potential WGT, to ensure that your commercial requirements are met;
- Review your cashflow requirements. Do you have adequate cash in the bank should one of your land holdings be rezoned? Is it feasible to hold onto this land, or is a divestment worth considering prior to the introduction of WGT?

What should I do?

If you are considering a rezoning, or own land that is likely to be rezoned in the future, and you want to obtain more information regarding the impact of the WGT, or other taxes and issues relating to your development project, please do not hesitate to contact Fordham as follows:

Brett Marshall, Partner, Fordham Group

bmarshall@fordhamgroup.com.au or 03 9611 6636

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