



WINDFALL GAINS TAX INSIGHT

OCTOBER 2022

Since the announcement of the Windfall Gains Tax (WGT) in May 2021, the discussions within the property industry have led to more questions being asked than answers available.

The team at M3 Property has come together to address the most common questions we receive from the industry through a Valuer's lens.

WHAT IS THE WINDFALL GAINS TAX?

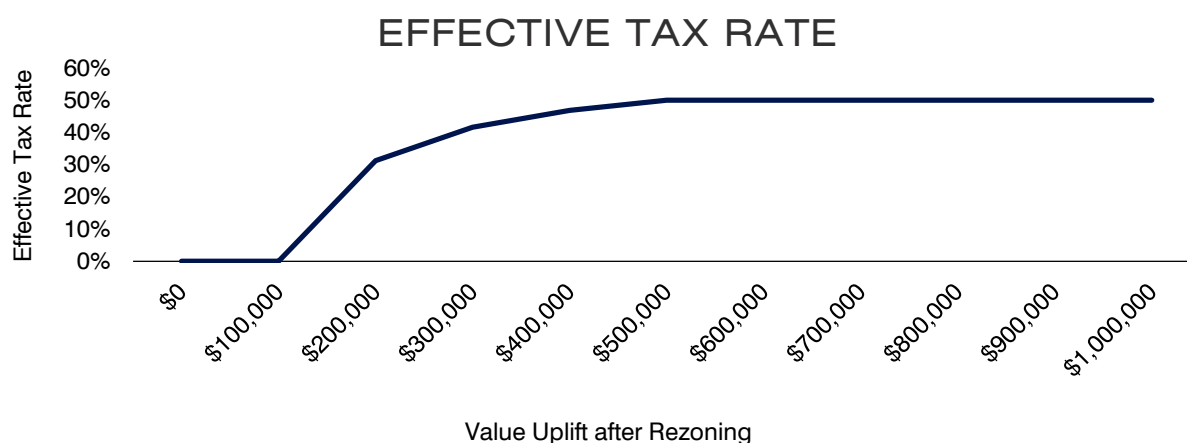
- A Victorian tax on land that arises when a government rezoning leads to an uplift in value above \$100,000.
- Announced in 2021-22 Victorian State Budget, with the relevant legislation being the Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021 (Vic) (the Act).
- Commencement date postponed by one year to 1 July 2023.
- The taxable value uplift will be assessed on a Capital Improved Value (CIV) basis when the rezoning event occurs.

HOW IS THE VALUE UPLIFT ASSESSED?

- The difference between CIV1 (pre-rezoning value) and CIV2 (post-rezoning value), with both values having the same relevant date (1 January of the same year).
- Tax-free threshold of \$100,000 (only for uplifts below \$500,000).
- All uplifts over \$500,000 are taxed at a flat rate of 50% on the total uplift.

Value Uplift	Tax Payable
<\$100,000	\$0
\$100,000 to <\$500,000	62.50% of uplift above \$100,000
\$500,000 and over	50.00% of total uplift

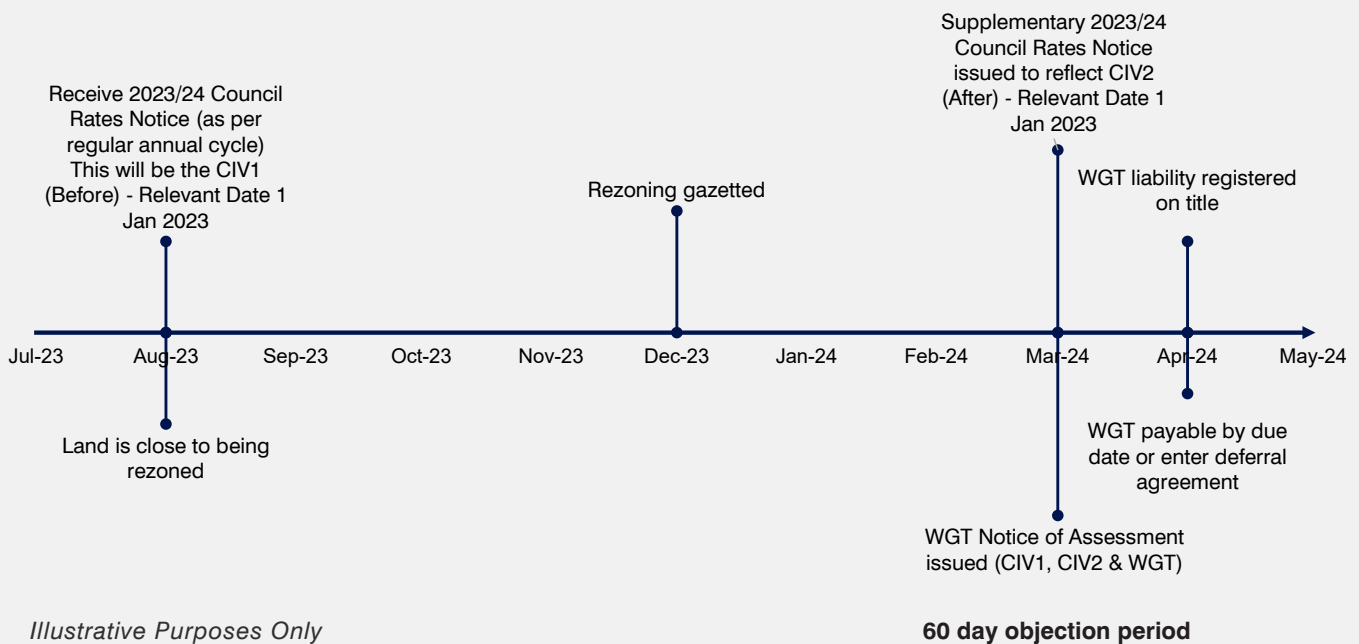
Value Uplift	How Tax is calculated	Tax Payable	Effective Tax Rate
\$200,000	$(\$200,000 - \$100,000) \times 62.50\%$	\$62,500	31.25%
\$400,000	$(\$400,000 - \$100,000) \times 62.50\%$	\$187,500	46.88%
\$1,000,000	$\$1,000,000 \times 50\%$	\$500,000	50.00%



WHO IS LIABLE TO PAY FOR WGT AND CAN YOU OBJECT TO THE ASSESSMENT?

- In accordance with the Act, the owner of the land at the time the rezoning takes effect is liable for WGT.
- We have sighted clauses within Contracts of Sale outlining how the vendor and purchaser will treat the WGT liability.
- Landowners will have the right to object to pre-rezoning and post-rezoning valuations

WINDFALL GAINS TAX TIMELINE EXAMPLE



WHEN DOES THE WINDFALL GAINS TAX BECOME PAYABLE?

Landowner must pay WGT liability by the due date or may enter into a deferral agreement.

- Payments can be deferred for up to 30 years or until the next dutiable transaction.
- Economic entitlement transactions and no consideration dutiable transactions are classified as excluded dutiable transaction and will no trigger WGT payment.
- Deferred payments to be requested typically 60 days from Date of Assessment. The deferral will accrue interest daily, calculated at the Treasury Corporation of Victoria 10-year bond rate applying from time to time.

WHAT ARE THE EXEMPTIONS?

- Charitable land (where the land continues to be used for charitable purposes for 15 years after the rezoning).
- Rezoning to a Rural Zone, other than the Rural Living Zone.
- Rezoning requests initiated by the landowner that were well underway prior to announcement (15 May 2021). The following criteria applies:
 - Approached Council to request rezoning before 15 May 2021.
 - Paid for or was liable to pay for relevant work in relation to the rezoning prior to 15 May 2021 (professional analysis or assessment i.e. survey, engineering, traffic, master planning, Aboriginal cultural heritage, architectural and environmental).
 - The value of relevant work and costs must not be less than the threshold amount before 15 May 2021, being the lesser of
 - a) 1% of CIV of land immediately before rezoning OR
 - b) \$100,000.
- Residential land that incorporates a dwelling (irrespective of whether it is a Principal Place of Residence or an investment property), up to 2 hectares in land.
- If residential land exceeds 2 hectares, the taxable value uplift of the land is to be adjusted with the following formula (Part 5, Division 1, Section 37 of the Act). This is essentially a pro-rata calculation on the WGT liability for properties that meet the criteria for Residential Land.

EQUATION FOR CALCULATING ADJUSTED TAXABLE VALUE UPLIFT

$$AVU = VU \times (RL - 2 / RL)$$

AVU = Adjusted taxable Value Uplift

RL = total Residential Land area

VU = taxable Value Uplift

EXAMPLE

Land Area (ha)	Value Uplift	WGT payable (50%) before 2ha exemption	How Tax is calculated	WGT payable (50%) after 2ha exemption	% of WGT exemption
10	\$1,000,000	\$500,000	$\$500,000 \times (10\text{ha} - 2\text{ha}) / 10\text{ha}$ $= \$500,000 \times 80\%$	\$400,000	20%
50	\$5,000,000	\$2,500,000	$\$2,500,000 \times (50\text{ha} - 2\text{ha}) / 50\text{ha}$ $= \$2,500,000 \times 96\%$	\$2,400,000	4%
100	\$10,000,000	\$5,000,000	$\$5,000,000 \times (100\text{ha} - 2\text{ha}) / 100\text{ha}$ $= \$5,000,000 \times 98\%$	\$4,900,000	2%



WHAT ARE THE POTENTIAL ISSUES?

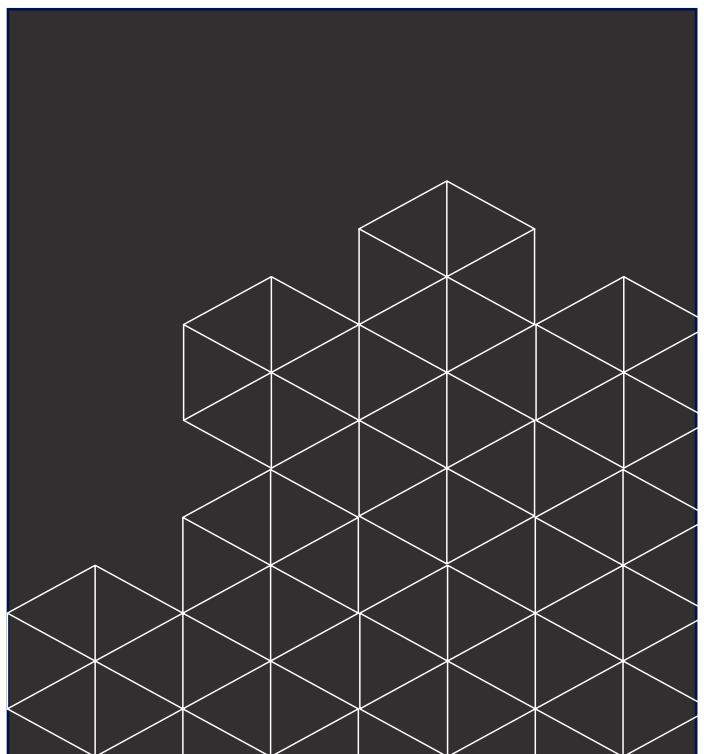
- CIV1 is likely to be low and not reflective of the planning progress/relevant work (background studies) done to date.
- WGT liabilities for properties that are under contract may impact on the valuation depending on the commercial agreement/WGT clause within the Contract of Sale.
- May adversely affect purchasers' ability to obtain finance.
- Commercial viability of development projects, particularly where the tax is payable at the start of the development cycle.
- Transactions will have to be treated with caution – whether tax is payable by purchaser or vendor.
- Development Agreements executed prior to 15 May 2021 are not exempt impacting on the expected returns after allowing for WGT.
- No guidance on how CIV1 will be assessed and owners should be seeking independent advice to ensure levels of value reflect the appropriate CIV in each instance.

HOW ARE CIV1 AND CIV2 TO BE ASSESSED?

- In most instances, properties that are undergoing rezoning generally reflect underlying land value (not in all cases) and the buildings are considered of no added value, considering the highest and best use of the land. On this basis, the CIV will be equivalent to Site Value and in accordance with the Valuation of Land Act 1960 (Vic), consideration needs to be given to the highest and best use and actual/potential capacity of the land to yield a monetary return.
- In our opinion, CIV1 should be reflective of the rezoning status, planning progress and costs expended at the relevant date. Rezoning of properties take numerous years and are often costly, with the value of the property increasing overtime. The market would be privy on the status of the rezoning and transactions will be reflective of this. In our view the difference in value between CIV1 and CIV2 will be the uncertainty in respect of rezoning timing and the risk associated with a rezoning.

WHEN SHOULD LANDOWNERS OBJECT?

- Objections should be lodged upon receipt of the WGT assessment.
- Landowners will have 2 months from the issue date of the notice to object to both the pre-rezoning (CIV1) and post-rezoning (CIV2) valuations.
- Objections must be lodged in the prescribed form with the Commissioner of State Revenue.



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