IPTI Xtracts
Property Tax and Assessment News from Around the World

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Windfall Gains Tax - implications of yet another new property tax

Developers, landowners and charities must be aware of another approaching tax which will have significant impacts on land which is rezoned in Victoria, subject to a few narrow exemptions – the Windfall Gains Tax. It is a new tax on a windfall that a landowner is deemed to have enjoyed in relation to a rezoning of their land.

As part of the Victorian Budget 2021/22, the government announced the concept of a new windfall gains tax. The aim of the tax is to capture a share of the profits currently enjoyed by landowners when their land is rezoned.

The proposed legislation to impose the tax has now been introduced to Parliament. It is not yet law, and is still a Bill. There have been a number of changes from the original proposal when the concept was flagged in the budget.

Summary of Key Details

- Subject to some narrow exemptions, the tax applies to land that increases in value by more than $100,000 as a result of rezoning.It is incurred by the land owner at the time of the rezoning.
- Where the increase is between $100,000 and $500,000, a phenomenal tax rate of 62.5% will apply on the value uplift above $100,000. Where the increase is $500,000 or more, a tax rate of 50% will apply to the total value uplift.
- The tax will come into operation from 1 July 2023; 12 months later than initially planned.
- The trigger for the tax liability will be the day the Minister for Planning's notice of approval of the amendment to rezone land is published in the Victoria Government Gazette.

Valuation

The value uplift will be calculated as the difference in the capital improved value of the land (changed from site value) before and after the rezoning takes effect. The former value being the most recent valuation in force for the land and the latter determined through a supplementary valuation certified by the Valuer-General.

Further clarification is required on the considerations that will be made when valuing the land. For example, whether the impact the tax has on the market will be factored into the valuations and what deductions will be allowed, such as any costs incurred in a rezoning process or remediation of land before rezoning. The proposed legislation refers to allowable deductions but the details are not yet known.

Exemptions

A number of exemptions apply as follows:

- rezonings relating to land which is within an area to which the Growth and Infrastructure Contribution applies and land which is rezoned to a public land zone are excluded from the scope of the tax;
- residential land up to two hectares that includes a dwelling fit for occupancy at the time of the rezoning is exempted, regardless of whether the dwelling is the landowner’s principal place of residence;
- charities are exempted, provided the relevant land continues to be used for charitable purposes for a 15-year period after the rezoning;
- land that is subject to a contract of sale, or an option to enter a contract of sale, entered into before 15 May 2021 and not completed before the rezoning event occurred is exempt;
- rezonings that were underway before 15 May 2021 (some conditions apply); and
- land that is rezoned to a Rural Zone, other than the Rural Living Zone, is exempted.

Payment Deferral

Landowners may, before the date that the tax is payable, elect to defer payment for up to 30 years or until a dutiable transaction in respect of the land occurs.

When the rezoning occurs, a valuation and assessment of liability will be undertaken. Once the taxpayer receives notice of the assessment, they will have until the due date, typically 60 days from the date of assessment, to request that the liability be deferred. Interest will be incurred on any assessed liability at the Victorian Treasury Corporation’s 10-year bond rate.

Some dutiable transactions will not cease the deferral arrangement, including an acquisition of an economic entitlement and a no consideration dutiable transaction.

Grouping and Aggregation Provisions

Grouping provisions apply which provide for grouping of related corporations and trusts. Members of a group will be jointly and severally liable to pay any tax assessed in relation to land owned by the group.

It is also important for owners of multiple properties to be aware that the tax will be calculated based on the total value uplift of all land owned by a group, as opposed to the $100,000 threshold applying to each individual property.

Implications and Conclusion

This tax will have significant consequences, particularly for owners of large blocks of land that will be rezoned for residential development purposes. Landowners and speculators could lose a substantial portion of any expected profits from a rezoning of the land.

The provisions of the legislation are not yet finalised and there may be some changes made to the finer detail of the scheme. However, the tax in some form is inevitable and it is important landowners are aware of its potential effect.

The wait is over: Victoria implements the new windfall gains tax regime

On 12 October 2021, the Victorian Government introduced the *Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021* (Bill).
The Bill implements the state's new windfall gains tax regime, build-to-rent (BTR) land tax and absentee owner surcharge concessions, which were announced in the 2021-22 and the 2020-21 State Budgets respectively.

Despite some positive, and not-so-positive, aspects of the Bill – after a long period of uncertainty for the property sector, visibility over the details of the proposed windfall gains tax regime and eligibility criteria for Victoria's BTR land tax concessions are certainly welcomed.
How the windfall gains tax regime and the BTR land tax concessions will operate is set out below.

Windfall gains tax
Pushing back the commencement date of the windfall gains tax by a year to 1 July 2023, the Bill provides that windfalls associated with the rezoning of land from one zone type to another will be subject to a new tax at the following rates:

Taxable value uplift	Tax payable
$0 – $99,999	$0
$100,000 to $499,999	62.5% of the uplift above $100,000
$500,000 and over	50% of the total uplift

A liability will arise when a 'WGT event' occurs, being when a land rezoning takes effect under the *Planning and Environment Act 1987* (Vic). The tax liability will rest with the owner of the land at the time the WGT event occurs.

Windfall gains tax liability will be assessed against the 'aggregated taxable value uplift' of all the land owned by the taxpayer that is rezoned by a WGT event. The uplift amount will be the difference between the pre-rezoning value and the post-rezoning value of the affected land, and the Bill provides that such calculations will be made on a 'capital improved value' basis (and not on a 'site value' basis).
Payment of up to 100% of the windfall gains tax may be deferred until the earlier of a dutiable dealing in respect of the land or the landholder (other than certain excluded transactions), or 30 years. Interest will accrue against deferred amounts at a rate defined with reference to the 10-year yield on Treasury Corporation of Victoria bonds. To seek a payment deferral, an election must be made to the Commissioner prior to the date on which the windfall gains tax would have otherwise been payable.

Unpaid windfall gains tax, together with any accrued interest and penalties will be a first charge on the land with priority over all other encumbrances to which the land is subject.

The Bill also specifically provides:

- **Land subject to multiple occupancies:** Where a single parcel is subject to multiple occupancies, the Commissioner may assess windfall gains tax liability with reference to a valuation which determines the value of each occupancy;
- **Jointly held land:** Joint owners of land are generally to be jointly assessed as if the land was owned by a single person;
- **Land held on trust:** If the affected land is held on trust, the trustee is to be assessed for windfall gains tax on the aggregated taxable value uplift of all the land that is subject to the trust. This is without regard to any land held by the trustee for the benefit of another trust or in the trustee's personal capacity; and
- **Assessments against members of a group:** Members of related corporations and related trusts will be assessed for windfall gains tax on the aggregated taxable value uplift of all the land owned by members of the group that is rezoned by a WGT event. Each member of the group will be jointly and severally liable to pay the windfall gains tax assessed in relation to the group.

A number of exemptions from windfall gains tax will be available. This includes:

- **Growth Areas Infrastructure Contribution areas:** A rezoning that causes land to be brought into the Growth Area Infrastructure Contribution areas will be excluded from windfall gains tax;
- **Land rezoned to a Public Land Zone**: Properties that are rezoned to a Public Land Zone will be excluded from the windfall gains tax;
- **Land previously zoned as residential land with a dwelling fit for occupancy:** If prior to rezoning the land was residentially zoned land, and it was occupied by a dwelling fit for occupation, the landowner will be exempt from windfall gains tax. However this exemption will only apply to up to the first two hectares of land that are subject to a WGT event. This exemption will apply regardless of whether the dwelling was the landowner's principal place of residence;
- **Land rezoned to rural land:** Windfall gains tax liability will not arise where land is rezoned to the Rural Zone (other than the Rural Living Zone);
- **Land owned by charities:** Windfall gains tax liability will not be incurred with respect of 'charitable land' (being land that is owned by a charity and that is used and occupied by a charity exclusively for charitable purposes). This is so long as the land continues to be used for charitable purposes for a 15 year period following the rezoning event; and
- **Transitional relief:** Liability to windfall gains tax will not arise where the land is subject to a contract of sale or an option to enter into a contract of sale that was entered into (or granted in the case of an option) before 15 May 2021, and that had not been completed by the transfer of the land before the WGT event occurred. Additionally, liability will not arise where, as at 15 May 2021, the affected land was subject to a planning scheme amendment that had obtained a tracking number or where the Minister of Planning had agreed to prepare the rezoning – provided significant costs have been incurred by the landowner to support the amendment (being the lesser of $100,000 or 1% of the capital improved value of the land immediately before the WGT event).

Build-to-rent concessions

From the land tax year commencing 1 January 2022, land (or part of land) that is used solely for eligible build-to-rent purposes will attract a 50% land tax discount, together with a full exemption from the absentee owner surcharge.

Representing a notable extension to what was announced in the 2020-21 State Budget, the Bill provides relief for a period of 30 years from when the land (or part of the land, as the case may be) is first occupied for an eligible build-to-rent purpose. This is in contrast to the previous announcement to provide relief through to 1 January 2040. However, relief will only apply where the land is first suitable for occupation for build-to-rent purposes between 1 January 2021 and 31 December 2032.

Specifically, the land tax concession and absentee owner surcharge exemption will only apply to 'BTR developments', which the Bill defines to mean one or more buildings that are constructed, or substantially renovated, for the purpose of providing at least 50 self-contained dwellings for lease under residential rental arrangements. The lessor must offer a fixed rental term of at least three years (however a renter may elect to enter into a shorter term). It is also a requirement that these dwellings be fixed to the same parcel of land, that they be owned by one owner or owned collectively, and that the dwellings be managed by a single management entity (other than affordable housing or social housing).

Additionally, to attract relief, the land (or part of the land, as the case may be) must be intended to be used solely for eligible build-to-rent purposes for a continuous period of 15 years from the initial occupancy date of the eligible BTR development.
A BTR special land tax may apply if the 15-year use requirement is not satisfied. The special land tax is in effect a clawback of the BTR benefits received in respect of the land, plus interest.

Final comments
The windfall gains tax is a new state tax and will bring layers of complexity to Victorian property transactions. Vendors are no stranger to thinking about federal taxes like CGT and GST on a sale of property, but will now also need to be thinking about the potential impact of state taxes going forward – both in the direct application of the windfall gains tax, and also to ensure that dutiable events (generally on the minds of a purchaser or acquirer) do not inadvertently trigger an obligation to pay a deferred windfall gains tax liability.

For the build-to-rent sector, the Bill provides much needed clarity around the eligibility criteria for concessions, in addition to a notable extension in tax relief.

NSW councils fear rates rises if developer contribution fee reforms are adopted

Key points:

The NSW government is proposing to collect fees from developers, taking over from local councils
Currently, developers pay a fee to local councils which forms a large part of their annual budgets

Local councils fear the proposal will lead to rate increases and abandoned community projects

The peak body for local councils is concerned rates could increase and community projects would be abandoned if the NSW government goes ahead with proposed reforms to the way developer contribution fees are distributed.

Currently, fees are paid directly to councils and are used for maintenance and infrastructure improvements, but under the government's proposal it wants the money to go into its own coffers instead.

Local Government NSW president Linda Scott said the NSW government had tried to sneak the changes through parliament during budget week earlier this year to avoid scrutiny, but the lobby group had successfully pushed back and the legislation was sent back to an Upper House committee for review.

She said she was concerned the fees made up a significant portion of council budgets and local communities would lose out if the money went to the government.

"We know the NSW government is intent on taking developer contributions from regions in NSW that have coped with new apartments, new growth and new residents and putting them in a centralised pool," Ms Scott said.

"Local governments are deeply concerned about the reforms to both the collection and allocation of developer contributions in this state.

"We know that communities don't want their rates to increase especially during these times with COVID-19," she said.

'No council will be worse off'

NSW Planning Minister Rob Stokes said under the proposed reforms, councils could still collect contributions from developers to invest in local infrastructure.

"No council will be worse off under our proposal," Mr Stokes said.

"The current system restricts the ability of local government to deliver the infrastructure growing communities need.

"Our reforms will give councils the money they need from development, while providing certainty to make NSW the best place to invest in jobs and new homes, unlocking up to $12 billion in productivity gains for the state," he said.

Councils not convinced

Shellharbour Mayor Marianne Saliba described the minister's belief that local councils would be no worse off as "rubbish".

She said if the NSW government redirected the fees, it would take away the ability of local councils to consult with their communities about what they needed.

She also said there were a number of projects in Shellharbour that currently relied on contribution fees from developers including the community's new $60 million civic centre.

"We built our brand new civic centre and in working out the finances for that, we planned to continue to collect developer contributions until that project is paid for over approximately 20 years," Cr Saliba said.

"If they change the developer contributions and we're no longer collecting it, then council would have to find the money to make up that difference.

"That will have a huge financial impact on our local community."

According to Local Government NSW, more than 50 per cent of NSW councils have opposed the reforms.

Mr Stokes said a detailed package of reforms would be released for feedback in the coming weeks and the government would work closely with stakeholders to get the settings right.

Property and Taxes: land tax and principal residence - grey nomads beware

We have had a number of enquires recently about how the "principal residence" exemption for land tax applies when you are away from home on 30 June (the date land tax is assessed in Western Australia), and you have rented out the home in your absence.

Some years ago, we assisted a couple in a similar position who took the case to the WA Supreme Court. They were ultimately successful, but their situation is a warning for everybody who vacates their home on 30 June.

The husband and wife were a retired couple who had lived in their Bicton home for 25 years.

Like many others in a similar position, during the winter months, they headed north to Broome living in a caravan on their own Vacation Village site. While they were away from early June to early September, they rented out the Bicton property on a fully furnished basis, mainly for security reasons. They always intended to return to their Bicton home after their holiday.

Shortly after their return, they were issued with a land tax assessment in respect of three items of taxable land, one of which was the Bicton property. This assessment followed OSR's conclusion that the Broome Vacation Village was their principal residence at 30 June (a strange conclusion). They objected to the assessment and the Commissioner overruled the objection. They sought a review in State Appeals Tribunal and were successful. Undaunted, the Commissioner appealed to the WA Supreme Court contending that the State Appeals Tribunal Senior Member was wrong. The appeal was dismissed.

The Commissioner based his view on a number of contentions, one of which was that the owners of the home were precluded from using the property for the term of the lease by virtue of the fact that the property was subject to a lease which involved a grant of a legal right of exclusive possession to the tenant.

The Law

Land tax in Western Australia (and other Australian states and territories) is payable each financial year for all land except land that is exempt for the assessment year. The Act exempts private residential property if, at midnight on 30 June in the financial year before the assessment year, it is owned by a husband and wife, at least one of whom uses it as his or her primary residence.

A primary residence in relation to an individual means the individual's sole or principal place of residence. A private residence is a building occupied and intended by the owner to be occupied, as a place of residence, except a building or part of a building that is ordinarily used for holiday accommodation.

The court noted that it was apparent that the Act is concerned with actual use at midnight on 30 June in the financial year before the relevant assessment year. The nature and extent of the use of the private residential property which is required to constitute use as an individual's primary residence was the issue in this case.

Conclusion

As the WA Supreme Court noted in its decision, in determining the issue, the governing principle is that the answer is a question of fact and degree. That is, the decision was based on the particular facts and circumstances of the case.

It seems that Revenue WA (formerly the Office of State Revenue) are active in looking at the "use" of a principal residence on 30 June to determine whether land tax should apply. If you are away from your home on the date, beware of the implications of it not being considered your principal residence.

House price rises race ahead of units

The price of houses is growing at a faster rate than apartments, making it harder for those with growing families to upgrade to a larger property with a backyard.

Figures from property researcher CoreLogic show the gap between median house and unit values reached a record high in September, with typical capital city house values 34.4 per cent higher than units.

"Looking at the change in unit values as a portion of housing over time shows apartment owners in the current market would be able to put less towards a house than they could five years ago," says Eliza Owen, CoreLogic's head of research. "This would be particularly frustrating for those looking to start families, or seeking more space," she says.

CoreLogic analysis shows more expensive property markets, particularly those close to CBDs and in areas where there are high numbers of units relative to houses, tend to have the biggest price gaps.

The long-term trend has been for the gap between house and unit prices to widen, but it has broadened further during COVID-19 amid increased buyer demand for detached houses.

Angie Zigomanis, director of property services firm Charter Keck Cramer's research team, says land scarcity in the capital cities tends to be a driver of house values, with the price gap likely to be widest between houses and generic, high-rise apartment developments.

While there may be brief periods of catch-up, Zigomanis expects the gap to continue to widen as the number of detached houses available in established locations dwindles, as they are demolished and replaced with apartments or townhouses.

CoreLogic's analysis shows Sydney's Strathfield has the biggest gap from among local council areas. A typical unit there is worth 23 per cent of a typical house. In 2016, a typical unit in the area was worth 31.1 per cent of the value of a typical house.

Melbourne's Stonnington has the biggest gap in the southern capital, with a typical unit worth 25.9 per cent of a typical house, compared to 29.6 per cent five years ago.

Even though unit prices are rising at a slower rate than houses, their value is still increasing significantly.

CoreLogic data show that for the 12 months to September 30, Sydney house prices rose by 28.9 per cent to a median value of $1.3 million. Units climbed 11.6 per cent to $825,000.

Melbourne house prices rose 18 per cent to $962,000 and units by 8.3 per cent to $619,000.

CoreLogic's Owen says units could become more popular due to affordability constraints across the detached housing sector.

Investors currently favour houses, but that could change, as they usually prefer to invest in units, market commentators say.

Louis Christopher, founder of SQM Research, says unit prices were falling in both Sydney and Melbourne CBD locations in the early part of the pandemic, as vacancy rates rose because of a lack of overseas immigration and international students.

Concerns over construction defects in newly built apartment towers, particularly in Sydney, also put off some potential buyers, he says.

However, Christopher says the re-opening of Australia's border as COVID-19 concerns ease, and worsening house price affordability, would see more buyers look to units, with the gap between unit and house prices likely to narrow.

Housing stock gains $1 trillion in value even as businesses shed staff

Australia's residential housing stock has gained $1 trillion in value in just five months, even as the number of people in work falls back to pre-coronavirus levels with lockdowns in NSW and Victoria dragging down the national jobs market.

Record-low interest rates, reduced spending opportunities for cashed-up Australians and government grants to first home buyers have contributed to the fastest increase in property values on record.

CoreLogic data shows just how quickly the property market has appreciated over recent years.

It estimates the total value of residential property reached $9 trillion in September. It had climbed to $8 trillion in April.

Despite the biggest economic downturn since the 1930s due to the pandemic, the value of Australian property has climbed by more than $2 trillion in about 14 months.

"This puts housing values around 28.2 per cent higher than the estimated value of superannuation, the ASX and commercial real estate combined," CoreLogic head of research Eliza Owen said.

Data released on Friday by the federal government shows its first home loan deposit scheme is bringing more people into the market.

In its first 18 months of operation, the scheme has helped almost 6000 essential workers – of which 35 per cent were nurses – into their first home. Almost 60 per cent of those using the scheme were aged under 30, bringing forward their purchase by an average of 4 years.

The Australian Prudential Regulation Authority this week announced a tightening of bank lending standards due to growing concerns about the state of the financial system related to the surge in house prices.

Banks must test whether new customers could manage their repayments at an interest rate 3 percentage points higher than the actual rate on the loan. Until now, banks have added 2.5 percentage points – known as a "serviceability buffer" – onto the rate of the loan when assessing a customer.

APRA said it believed its actions would reduce new customers' borrowing capacity by about 5 per cent.

Treasurer Josh Frydenberg said APRA's move was well-targeted, arguing it was likely to affect investors more than other borrowers.

"What has been pleasing in this cycle compared to previous cycles is that more first homeowners, more owner-occupiers are coming into the market. And this move will affect investors more than it will affect first home buyers," he told the Seven Network.

As NSW, Victoria and the ACT approach key dates for their re-opening out of COVID-19 lockdowns, payroll figures from the Australian Bureau of Statistics released on Thursday showed the total number of people on business payrolls has fallen below its pre-virus levels, with women and young workers again suffering the most from the pandemic restrictions.

The number of people on business payrolls fell by 0.7 per cent in the fortnight to September 11, after a 1.5 per cent drop in the fortnight before that.

Victoria (down 1.8 per cent) and the ACT (down 2.3 per cent) took the biggest hits while NSW slipped another 0.3 per cent.

Since going into lockdown, there has been a 9.2 per cent drop in the number of people on NSW business payrolls. There's been a 10.2 per cent drop in NSW women on the state's payrolls while people aged between 15 and 19 have suffered a 28 per cent fall.

It's s similar story in Victoria with its lockdown, which started several weeks after NSW. Total jobs on payrolls are down by 7.2 per cent, with women (minus 8 per cent) doing worse than men (minus 6 per cent).

The worst-hit area has been the ACT where jobs have tumbled by 12.2 per cent.

Westpac senior economist Justin Smirk said small and medium-sized businesses were taking a bigger hit to jobs than previous lockdowns.

"There clearly is a lot of pressure on small businesses in NSW and Victoria but overall the recovery has a strong base to build on given the strength of larger firms," he said.