

LEGISLATIVE COUNCIL

WINDFALL GAINS TAX AND STATE TAXATION AND OTHER ACTS FURTHER
AMENDMENT BILL 2021

(Suggested amendments to be proposed in Committee by Mr DAVIS)

1. **Suggested amendment to the Legislative Assembly—**
Clause 1, lines 4 to 6, omit paragraph (a).
2. **Suggested amendment to the Legislative Assembly—**
Clause 1, page 3, lines 6 and 7, omit subparagraph (vi).
3. **Suggested amendment to the Legislative Assembly—**
Clause 1, page 3, lines 8 and 9, omit paragraph (h).
4. **Suggested amendment to the Legislative Assembly—**
Clause 9, line 4, before "The rate" insert "(1)".
5. **Suggested amendment to the Legislative Assembly—**
Clause 9, before line 6 insert—
 - "(2) Despite subsection (1), the amount of windfall gains tax payable on land in regional Victoria that is rezoned by a WGT event cannot exceed the amount of the growth areas infrastructure contribution that would have been payable in relation to the land under Part 9B of the **Planning and Environment Act 1987** if—
 - (a) the land were in the contribution area within the meaning of section 201RC of that Act; and
 - (b) a GAIC event within the meaning of section 201R of that Act occurred in relation to the land at the same time that the WGT event occurred.
 - (3) In this section—

regional Victoria has the same meaning as in section 18(8) of the **First Home Owner Grant and Home Buyer Schemes Act 2000**."
6. **Suggested amendment to the Legislative Assembly—**
Clause 10, lines 8 to 10, omit all words and expressions on these lines and insert—

"The ***taxable value uplift*** of land is the value uplift of the land less any of the following deductions that are applicable—

 - (a) any remediation costs incurred by the owner of the land in relation to the land;
 - (b) any holding costs incurred by the owner of the land in relation to the land;
 - (c) any deductions prescribed by the regulations."

7. **Suggested amendment to the Legislative Assembly—**
 Clause 27, after line 29 insert—

"property developer has the meaning given by section 29A;"

8. **Suggested amendment to the Legislative Assembly—**
 Clause 27, page 21, after line 4 insert—

"relevant property developer means a transferee who makes an election under section 30A(2);

relevant property development transaction has the meaning given by section 30A;"

9. **Suggested amendment to the Legislative Assembly—**
 Clause 27, page 21, line 10, after "30(2)" insert "or a relevant property developer has elected to assume under section 30A(2)".

NEW CLAUSE

10. **Suggested amendment to the Legislative Assembly—**
 After clause 29 insert—

"29A Meaning of *property developer*

- (1) For the purposes of this Part, a *property developer* is—
- (a) an entity that carries on a business mainly concerned with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit; or
 - (b) a person who is a close associate of an entity referred to in paragraph (a).
- (2) For the purposes of subsection (1), any activity engaged in by an entity for the dominant purpose of providing commercial premises at which the entity, or a related body corporate of the entity, will carry on business is to be disregarded for the purpose of determining whether the entity is a property developer unless that business involves the sale or leasing of a substantial part of the premises.
- (3) In this section—
- close associate* means—
- (a) in relation to an entity that is a corporation, any of the following—
 - (i) a director or officer of the corporation or the spouse or domestic partner of such a director or officer;
 - (ii) a related body corporate of the corporation;
 - (iii) a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse or domestic partner of such a person;

- (iv) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to that stapled security;
 - (v) if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust);
 - (vi) in relation to a corporation that is a property developer referred to in subsection (1)(a)—a person in a joint venture or partnership with the property developer for the purpose of carrying out residential or commercial development; and
- (b) in relation to an entity that is an individual, means any of the following—
- (i) the spouse or domestic partner of the individual;
 - (ii) in relation to an individual who is a property developer referred to in subsection (1)(a)—a person in a joint venture or partnership with the property for the purpose of carrying out residential or commercial development;

domestic partner of a person means a person with whom the person is in a domestic relationship;

domestic relationship means—

- (a) a registered domestic relationship; or
- (b) a relationship between two persons who are not married to each other but who are living together as a couple on a genuine domestic basis (irrespective of gender);

officer has the same meaning as in the Corporations Act;

related body corporate has the same meaning as in the Corporations Act;

stapled entity means an entity the interests in which are traded along with the interests in another entity as stapled securities and (in the case of a stapled entity that is a trust) includes any trustee, manager or responsible entity in relation to the trust;

voting power has the same meaning as in the Corporations Act.

- (4) For the purposes of the definition of ***domestic relationship*** in subsection (3)—
- (a) ***registered domestic relationship*** has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered domestic relationship are in a domestic relationship, all the circumstances of their relationship are to be taken into account, including any one or

more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case."

NEW CLAUSE

11. **Suggested amendment to the Legislative Assembly—**
After clause 30 insert—
- "30A Meaning of relevant property development transaction**
- (1) For the purposes of this Part, a dutiable transaction is a *relevant property development transaction* if—
- (a) the transaction relates to land in respect of which a WGT event has occurred before the transaction; and
- (b) the transferee under the transaction is a property developer; and
- (c) the transferee under the transaction makes an election under subsection (2).
- (2) The transferee may elect to assume the liability to pay the whole of the deferred windfall gains tax and any accrued interest payable under this Part by making the election to the Commissioner in a form approved by the Commissioner.
- (3) An election under subsection (2) must be made on or before the date of completion of the dutiable transaction.
- (4) On completion of the dutiable transaction and acceptance by the Commissioner of an election under subsection (2)—
- (a) the transferee becomes liable to pay the whole of the deferred windfall gains tax and any accrued interest payable under this Part; and
- (b) the liability of the transferor to pay the deferred windfall gains tax and any accrued interest payable under this Part is extinguished."
12. **Suggested amendment to the Legislative Assembly—**
Clause 31, line 30, after "transferee" insert "or relevant property developer".
13. **Suggested amendment to the Legislative Assembly—**
Clause 32, page 25, line 2, after "transaction" insert "or a relevant property development transaction".
14. **Suggested amendment to the Legislative Assembly—**
Clause 32, page 25, line 16, after "transaction" insert "or a relevant property development transaction".
15. **Suggested amendment to the Legislative Assembly—**
Clause 32, page 25, after line 24 insert—
- "(3) A relevant property developer must pay to the Commissioner the rolled over windfall gains tax and any accrued interest payable under this Part, within 30 days after—

- (a) a dutiable transaction occurs in relation to the WGT land; or
 - (b) a relevant acquisition occurs in respect of a landholder who is the registered proprietor of the WGT land; or
 - (c) the day that is 30 years after the WGT event—
- whichever occurs first."

16. **Suggested amendment to the Legislative Assembly—**
Page 27, after line 12 insert the following Part heading—

"Part 4A—Work-in-kind agreements".

NEW CLAUSES

17. **Suggested amendment to the Legislative Assembly—**
Insert the following New Clauses to follow clause 35 and the heading proposed by amendment number 16—

"35A Definitions

In this Part—

Victorian Planning Authority means the Victorian Planning Authority established under section 4 of the **Victorian Planning Authority Act 2017**;

work-in-kind agreement means an agreement entered into in accordance with section 35B and includes that agreement as amended in accordance with section 35F.

35B Treasurer may enter into agreements

- (1) The Treasurer may, in accordance with this Part, enter into an agreement with a person for the provision by that person of land or works or a combination of land and works to meet the whole or part of that person's liability or expected liability to pay windfall gains tax (a *work-in-kind agreement*).
- (2) A work-in-kind agreement may be entered into with other parties in addition to the person liable to pay the windfall gains tax.

Note

Other parties may include another Minister or a public authority or an owner of land affected by the work-in-kind agreement.

- (3) The land or works to be provided under a work-in-kind agreement must be of the following type—
 - (a) capital works for State funded public transport infrastructure;
 - (b) works for transport infrastructure including walking and cycling but excluding major public transport infrastructure;
 - (c) works for community infrastructure including health facilities, education facilities, regional libraries, neighbourhood houses and major recreation facilities;

- (d) works for environmental infrastructure including regional open space, trails and creek protection;
 - (e) works for economic infrastructure including providing access to information and technology and infrastructure supporting the development of commerce and industry;
 - (f) land and works for other infrastructure necessary or required for the establishment or maintenance of any infrastructure referred to in paragraphs (a) to (e).
- (4) A work-in-kind agreement relating to windfall gains tax must be entered into before the day on which the tax is payable.
 - (5) A work-in-kind agreement relating to windfall gains tax may be entered into in conjunction with the deferral of that tax under Part 4.
 - (6) Before agreeing to enter into a work-in-kind agreement, the Treasurer must consult with any other Minister that the Treasurer considers has a relevant interest in the subject matter of the agreement.

35C Matters to be included in a work-in-kind agreement

- (1) A work-in-kind agreement must include the following matters—
 - (a) a description of any works to be carried out under the agreement;
 - (b) a description of the land on which any works are to be carried out under the agreement;
 - (c) a description of any land to be transferred under the agreement;
 - (d) the due date by which the agreement or any stage of the agreement is to be performed;
 - (e) the agreed value of any land to be transferred under the agreement or the agreed value of any works to be carried out under the agreement or the agreed value of the combination of both of those things (as the case requires) (the *value of the work-in-kind agreement*);
 - (f) the method or methods for calculating the value of works to be carried out under the agreement if they are only partly carried out;
 - (g) dispute resolution procedures;
 - (h) any other matters that the Treasurer thinks appropriate.
- (2) A work-in-kind agreement may include provisions setting out the circumstances in which the agreement is ended wholly or as to any part of the land affected by the agreement.

35D Work-in-kind agreement may contain restriction on land dealings

- (1) A work-in-kind agreement may contain a term that restricts a person, who has entered into the agreement to meet a liability to pay windfall gains tax or another person who is a party to the agreement, from any dealing or dealings with the following land unless the person has obtained the consent of the Treasurer—
 - (a) land that is to be transferred under the agreement;

- (b) land on which works are to be carried out under the agreement (other than Crown land);
 - (c) the whole or part of the land in respect of which the windfall gains tax is imposed.
- (2) In this section, *dealing*, in relation to land, includes entering into any sale, transaction or arrangement, or obtaining or granting any lease, licence or approval, with respect to the land, or making any improvements of a durable nature to the land, but does not include any of the following—
- (a) a sale of any of the land to the person to whom the land is to be transferred under the work-in-kind agreement;
 - (b) any approvals relating to a plan of subdivision of the land to enable a sale of land for the purposes of paragraph (a);
 - (c) any works required to be carried out on the land under the work-in-kind agreement or approvals relating to those works;
 - (d) the discharging of the whole or any part of the land from any mortgage affecting that land.

35E Copy of work-in-kind agreement must be given to Commissioner and Victorian Planning Authority

The Treasurer must give the Commissioner and the Victorian Planning Authority a copy of a work-in-kind agreement entered into under this Part.

35F Amendment of work-in-kind agreement

- (1) The Treasurer may, with the agreement of the person who has entered into a work-in-kind agreement to meet a liability to pay the windfall gains tax and all other parties to the agreement, amend the agreement to vary the terms of, or the parties to, the agreement.
- (2) The Treasurer must give to the Commissioner and the Victorian Planning Authority a copy of a work-in-kind agreement amended under subsection (1).

35G Ending of work-in-kind agreement

- (1) The Treasurer may, with the agreement of the person who has entered into a work-in-kind agreement to meet a liability to pay the windfall gains tax and all other parties to the agreement, end a work-in-kind agreement.
- (2) The Treasurer must notify, in writing, the Commissioner and the Victorian Planning Authority of the ending of a work-in-kind agreement under subsection (1).
- (3) The power to end a work-in-kind agreement under subsection (1) is in addition to any other right that the Treasurer has to end a work-in-kind agreement in accordance with the agreement or at law.

35H Work-in-kind agreements to be recorded by Registrar of Titles

- (1) The Treasurer must apply to the Registrar of Titles to record a work-in-kind agreement on any folio of the Register relating to the following land (the *land affected by the work-in-kind agreement*)—
 - (a) land that is to be transferred under the agreement;
 - (b) land on which works are to be carried out under the agreement (other than Crown land);
 - (c) the whole or part of the land in respect of which the windfall gains tax relating to the agreement is imposed.
- (2) An application must—
 - (a) be in a form approved by the Registrar of Titles; and
 - (b) be accompanied by a copy of the work-in-kind agreement.
- (3) The Registrar of Titles, on receiving an application that complies with subsection (2), may make a recording on each folio of the Register relating to land affected by the work-in-kind agreement.
- (4) After the making of a recording in the Register—
 - (a) the burden of any covenant in the work-in-kind agreement runs with the land affected by that burden; and
 - (b) the Treasurer may enforce the covenant against any person deriving title from any person who entered into the covenant as if it were a restrictive covenant despite the fact that it may be positive in nature or that it is not for the benefit of any land of the Crown.
- (5) The Treasurer must apply to the Registrar of Titles—
 - (a) if an amendment is made to the work-in-kind agreement, for the Registrar of Titles to remove the existing agreement from each folio of land on which the agreement is recorded and record the amended agreement on each folio of the Register relating to land affected by the work-in-kind agreement; or
 - (b) if a work-in-kind agreement is ended wholly or as to any part of the land, for the Registrar of Titles to, as appropriate, remove in whole or in part the recording of the agreement from any folio of the Register on which the agreement is recorded.
- (6) An application under subsection (5) must—
 - (a) be in a form approved by the Registrar of Titles; and
 - (b) in the case of a work-in-kind agreement that has been amended, be accompanied by a copy of the agreement in its amended form.
- (7) The Registrar of Titles, on receiving an application that complies with subsection (6), may (as the case may be)—
 - (a) remove the existing agreement from each folio of land on which the agreement is recorded and record the amended agreement on each

folio of the Register relating to land affected by the work-in-kind agreement; or

- (b) as appropriate, remove in whole or in part the recording of the agreement from any folio of the Register on which the agreement is recorded.

35I Restrictions on dealings with land

- (1) A person, who is subject to a restriction on dealing with land that has been specified in a work-in-kind agreement in accordance with section 35D, must not, without the consent of the Treasurer, enter into or effect such a dealing with that land (within the meaning of section 35D) while the agreement is in force.
- (2) Nothing in this section prevents—
 - (a) a mortgagee from exercising a power of foreclosure or sale in respect of the whole or any part of land that is subject to a restriction referred to in subsection (1); or
 - (b) an application to the Registrar of Titles for the registration of a charge in respect of unpaid tax (within the meaning of the **Taxation Administration Act 1997**) over the whole or any part of land that is subject to a restriction referred to in subsection (1).

35J Entering into a work-in-kind agreement does not discharge liability for windfall gains tax

The entering into a work-in-kind agreement by a person to meet the whole or part of a liability to pay the windfall gains tax does not discharge the person from that liability.

Note

It is not until the person performs their obligations in accordance with the work-in-kind agreement that the value of the land or works provided can be taken to be a payment towards the windfall gains tax owed (see section 35M).

35K Person must notify the Victorian Planning Authority of performance of agreement

A person who has entered into a work-in-kind agreement to meet a liability to pay windfall gains tax must, without delay, notify the Victorian Planning Authority in writing of the following—

- (a) the performance of the agreement;
- (b) the performance of any stage of the agreement that must be performed by a due date specified in the agreement;
- (c) if the agreement is not wholly performed by the due date for performance, how much of the agreement has been performed.

35L Victorian Planning Authority must determine whether agreement has been performed

- (1) The Victorian Planning Authority acting on behalf of the Treasurer must, after receiving notification under section 35K, determine the following—

- (a) whether a work-in-kind agreement or a stage of a work-in-kind agreement, which has an agreed value under the agreement, has been performed by the due date for performance;
 - (b) if a work-in-kind agreement has only been partly performed by the due date for performance or before it has been ended in accordance with section 35G(1), the value of the land or works provided in accordance with the agreement.
- (2) The Victorian Planning Authority must, without delay, notify the Commissioner in writing of any determination made under subsection (1).

35M Performance of work-in-kind agreement taken to be payment of windfall gains tax

- (1) A person who has entered into a work-in-kind agreement to meet the whole or part of a liability to pay windfall gains tax is taken to have paid an amount of that tax that is equivalent to—
- (a) if the agreement is wholly performed, the agreed value of the agreement; or
 - (b) if a stage of the agreement is wholly performed, the agreed value of that stage; or
 - (c) if the agreement is partly performed, the value of the land or works provided under the agreement as determined by the Victorian Planning Authority.
- (2) A person is taken to have paid an amount of windfall gains tax under subsection (1) at the time at which the Commissioner receives a notice from the Victorian Planning Authority under section 35L(2) of its determination of the relevant matter referred to in subsection (1)(a), (b) or (c).

35N Person in default if work-in-kind agreement not performed by due date

- (1) If—
- (a) a person liable to pay windfall gains tax has entered into a work-in-kind agreement to meet the whole or part of that liability and fails to perform that agreement or a stage of that agreement in accordance with the terms of the agreement by the due date for performance; and
 - (b) the windfall gains tax has been deferred under Part 4—
- the whole of the windfall gains tax becomes immediately payable as if the tax had never been deferred.
- (2) Despite subsection (1), a person remains liable under the work-in-kind agreement to perform the obligations under the agreement."

18. **Suggested amendment to the Legislative Assembly—**
 Clause 39, lines 1 and 2, omit "**contracts of sale and options**" and insert "**arrangements**".

19. **Suggested amendment to the Legislative Assembly—**
 Clause 39, lines 5 to 17, omit paragraphs (a) and (b) and insert—
- "(a) the land is subject to a contract of sale entered into before 12 October 2021; or
 - (b) the land is subject to an option to enter into a contract of sale granted before 12 October 2021; or
 - (c) the land is subject to a legally binding agreement for development of the land entered into before 12 October 2021."
20. **Suggested amendment to the Legislative Assembly—**
 Clause 40, line 19, omit "15 May" and insert "12 October".
21. **Suggested amendment to the Legislative Assembly—**
 Clause 40, lines 25 to 28, omit paragraph (b) and insert—
- "(b) the owner of the land has substantially commenced the process for rezoning the land before 12 October 2021; and".
22. **Suggested amendment to the Legislative Assembly—**
 Clause 40, line 29, omit "15 May 2021 the owner of the land" and insert "12 October 2021 the owner of the land or a person on behalf of the owner".
23. **Suggested amendment to the Legislative Assembly—**
 Clause 40, page 34, line 14, omit "15 May" and insert "12 October".
24. **Suggested amendment to the Legislative Assembly—**
 Clause 40, page 34, line 16, omit "15 May 2021 the owner of the land" and insert "12 October 2021 the owner of the land or a person on behalf of the owner".
25. **Suggested amendment to the Legislative Assembly—**
 Clause 40, page 34, lines 31 to 34, omit all words and expressions on these lines.
26. **Suggested amendment to the Legislative Assembly—**
 Clause 40, page 35, line 18, omit "analysis—" and insert "analysis; and".
27. **Suggested amendment to the Legislative Assembly—**
 Clause 40, page 35, lines 19 and 20, omit all words and expressions on these lines and insert—
- "(h) works done to the land itself, such as remediation and land clearing;".

NEW CLAUSE

28. **Suggested amendment to the Legislative Assembly—**
 Insert the following New Clause to follow clause 43—
- "43A Proceeds of windfall gains tax to be applied in municipal district**
- (1) It is the intention of Parliament that the proceeds of windfall gains tax paid to the Commissioner in respect of land are applied to the provision of outputs in the municipal district in which the land is located or paid to the

Council of that municipal district for the provision of works or services in that municipal district.

(2) In this section—

Council has the same meaning as in the **Local Government Act 1989**;

municipal district has the same meaning as in the **Local Government Act 1989**;

outputs has the meaning given by section 3 of the **Financial Management Act 1994**."

29. **Suggested amendment to the Legislative Assembly—**
Clause 52, page 50, after line 19 insert—

"6A.4A.10A Proceeds of tax to support mental health

(1) It is the intention of Parliament that the proceeds of keno tax paid to the Commissioner be spent on the provision of outputs that are consistent with and promote the objectives of the **Mental Health Act 2014** and the mental health principles.

(2) In this section—

mental health principles has the same meaning as in the **Mental Health Act 2014**;

outputs has the meaning given by section 3 of the **Financial Management Act 1994**."

NEW CLAUSE

30. **Suggested amendment to the Legislative Assembly—**
Insert the following New Clause to follow clause 90—

'90A Time for lodging objections

(1) In section 99(1) of the **Taxation Administration Act 1997**, for "An objection" **substitute** "Subject to subsection (1A), an objection".

(2) After section 99(1) of the **Taxation Administration Act 1997** insert—

"(1A) An objection on the ground referred to in section 96(1)(cb) must be lodged with the Commissioner within 180 days after the date of service of the notice of the assessment on the taxpayer, except as provided by section 100."!

31. **Suggested amendment to the Legislative Assembly—**
Clause 100, line 29, after "land tax" insert "or within 180 days after receiving the notice of assessment of".