

TAX BULLETIN

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FOR OUR CLIENTS

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VICTORIA'S GROWTH AREAS TAX TO PROCEED

The Bill to implement the Growth Areas Infrastructure Contribution ("GAIC") in Victoria has been re-introduced into Parliament and is expected to become law soon. Following an agreement reached between the Government and industry bodies, the Government has now obtained the support of the Opposition to the Bill in an amended form.

When the Bill does become law, it will be accompanied by the law that will expand Melbourne's Urban Growth Boundary ("UGB") to include an additional 24,500 hectares of developable land.

The main amendments that have been made to the GAIC Bill are as follows:

- The threshold below which land with a dwelling on it is not subject to the GAIC when it is sold has been increased from 2.03 hectares to 10 hectares;
- The threshold below which land without a dwelling on it is not subject to the GAIC when it is sold has been increased from 2.03 hectares to 5 hectares;
- Purchasers of Type A land (included within the UGB between 28 November 2005 and 31 December 2006) under a transaction that has already occurred or that will occur before the commencement date of the legislation, can elect to defer up to 100% of the contribution.
- Purchasers of all other land can elect to defer up to 70% of the contribution.
- The deferral period now runs until the issue of a statement of compliance relating to a plan of subdivision or the making of an application for a building permit, whichever occurs first. Previously, a subsequent sale of the land would have crystallized the liability to pay the deferred amount.
- Where Jim buys land that is subject to the GAIC, elects to defer 70% of the contribution and then sells the land to Sally during the deferral period, the liability for the deferred contribution (plus any interest payable) will pass to Sally and Jim's deferred liability will be extinguished.
- The Treasurer's approval is no longer required for the deferral of a contribution that exceeds \$2 million.
- Deferred contributions will be indexed according to the consumer price index (previously the construction index) and interest will be payable at the Treasury 10 year bond rate (previously the tax default rate which is 5% higher than the bond rate).
- It will still be possible to make an application to the Minister for approval of staged payments once the subdivision or application for a building permit occurs. However, the Minister is no longer required to obtain the approval of the Treasurer where the amount of the contribution exceeds \$2 million.

The remainder of this Bulletin summarises the key workings of the GAIC.

Which land will be subject to the GAIC?

Any land that is within the GAIC 'contribution area' will potentially be subject to the GAIC. The contribution area consists of the following:

- (a) Land that was brought within the UGB between 28 November 2005 and 31 December 2006 and which is within an urban development area on or after 2 December 2008;



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- (b) Land that is within any of the 7 investigation areas for the expansion of the UGB and which is brought within a growth area, the Urban Growth Boundary and an Urban Growth Zone on or after 2 December 2008 or 19 May 2009 (depending on the investigation area); and
- (c) Land that is brought within a growth area and an Urban Growth Zone on or after the commencement date of the GAIC legislation.

The amount of GAIC payable will be \$80,000 per hectare for land described in (a) above and \$95,000 per hectare for land described in (b) and (c) above. These rates of GAIC will be subject to an annual adjustment from 1 July 2011 onwards based on the consumer price index.

Land within the GAIC contribution area will have a notice recorded on the title advising that the GAIC may be payable. This notice will be removed once the GAIC has been paid, or the land is no longer subject to the GAIC.

What will be the trigger for the GAIC liability?

For land within the GAIC contribution area, the GAIC liability will be triggered upon the occurrence of the first of the following ‘GAIC events’ –

- (a) The occurrence of a dutiable transaction relating to the land;
- (b) The issue of a statement of compliance relating to a plan of subdivision of the land; or
- (c) The making of an application for a building permit to carry out building work on the land.

Any dutiable transaction in respect of land for stamp duty purposes will be caught, other than a grant, transfer or assignment of a lease over land. Sub-sales of land and acquisitions in land rich landholders that are subject to stamp duty will also trigger a GAIC liability.

The GAIC will be imposed once only in respect of any land in the contribution area.

If land in respect of which the GAIC has been paid ceases to be in the contribution area within 3 years after the liability to pay the contribution arose, the person who paid the contribution is entitled to a refund.

Who is liable to pay the GAIC and when is it payable?

The person who is liable to pay the GAIC will depend upon the relevant GAIC event, as set out in the following table –

GAIC event	Person liable to pay the GAIC
Dutiable transaction	Transferee for stamp duty purposes
Statement of compliance for plan of subdivision	Owner of land immediately after statement issued
Application for building permit	Owner of land immediately after application made
Sub-sale of dutiable property	Transferee of property (subsequent purchaser)
Significant acquisition (in land rich landholder)	Person who makes acquisition and land rich landholder (joint and several liability)



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The GAIC must be paid to the State Revenue Office. The time for payment depends upon the relevant GAIC event, as set out in the following table –

GAIC event	Time for payment of GAIC
Dutiable transaction	Within 3 months of the date the stamp duty liability arises (subject to deferral option)
Statement of compliance for plan of subdivision	Within 3 months of the date the statement is issued (subject to staged payment approval option)
Application for building permit	Before the building permit is issued (subject to staged payment approval option)

A person who is liable to pay the GAIC imposed in respect of dutiable transaction relating to land can elect to defer the payment of the GAIC for a period. The GAIC must be paid on or before the first of the following to occur –

- (a) the issue of a statement of compliance relating to a plan of subdivision in respect of the land; or
- (b) the making of an application for a building permit to carry out building work on the land.

Furthermore, as a result of submissions from developers and industry bodies expressing concern about the cash flow implications of the GAIC for developments, any person who is liable to pay the GAIC in relation to a subdivision or application for a building permit may apply to the Minister of Planning for approval of a staged payment of the contribution. If the Minister gives approval, the GAIC will be payable in instalments according to the stages of the development.

Interest will be charged on any deferral of the GAIC liability under either of the mechanisms referred to above. However, where the GAIC liability which is deferred arises as a result of a dutiable transaction and that transaction occurs prior to the land becoming subject to a precinct structure plan, the interest only accrues from the date the land becomes part of a precinct structure plan area.

The deferred GAIC and any accrued interest will be a charge on the land, which will have priority over all other encumbrances affecting the land.

What are the exemptions?

The Bill contains a number of exemptions from the GAIC. Included within the exemptions are:

- a dutiable transaction relating to land if the agreement relating to that transaction was entered into before 2 December 2008 (for the majority of land in the contribution area);
- a dutiable transaction relating to land that is made for no consideration;
- certain transactions that are exempt from stamp duty, including transactions relating to a change in trustee, transfers to and from a trustee or nominee, transfers between superannuation funds, transfers to beneficiaries of deceased estates, and transfers as a result of marriage breakdowns;
- a transfer of land by the owner to a complying superannuation fund, or a transfer of land from the trustee of a complying superannuation fund to a beneficiary;
- any land that is the subject of a GAIC event if the land has a total lot area of 0.41 hectares or less;



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- any land that is the subject of a dutiable transaction, where the land has a total lot area of between 0.41 hectares and 10 hectares and there was an habitable dwelling on the land at the commencement date of the legislation;
- a subdivision to create a lot not exceeding 2 hectares for the purpose of excising an existing dwelling on the land;
- an application for a building permit for the construction of a single dwelling; and
- an application for a building permit for work with a value less than \$1 million.

Transitional provisions

The draft legislation contains an important transitional measure that applies to certain sale contracts.

For any contract of sale of land:

- (a) that was entered into after 1 December 2008 and before 1 December 2009;
- (b) that contains a term requiring the vendor to pay any GAIC that may be imposed; and
- (c) under which the land is to be transferred after the date of commencement of the GAIC legislation,

the purchaser will be entitled, at settlement, to deduct from the purchase price the amount of the GAIC they are liable to pay. This right will be available to the purchaser irrespective of any term of the contract between the vendor and the purchaser.

Accordingly, for contracts of sale that were entered into after 1 December 2008 and before 1 December 2009, but in respect of which the transfer does not occur until after the commencement date of the GAIC legislation, the GAIC liability will effectively be borne by the vendor and not the purchaser.

Current owners and prospective purchasers of land in Melbourne's growth areas should now be considering their exposure to the GAIC prior to the commencement of the legislation.

FURTHER INFORMATION

Please contact either your regular Pitcher Partners tax contact or Craig Whatman on (03) 8610 5617 for further details on the issues raised in this Tax Bulletin.

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