

Growth Areas Infrastructure Contribution (GAIC) Practitioner's Guide

GAIC 2/12 - March 2012



GAIC 2/12

This guide contains general information on the Growth Areas Infrastructure Contribution (GAIC) which applies to certain land in the growth areas of Melbourne.

This guide is designed to give a summary of the provisions and how they are administered.

This publication may be of assistance to you but the State Revenue Office does not guarantee that this publication is without flaw of any kind or is appropriate for your legal purposes. This publication should be read in conjunction with the relevant legislation and, if necessary, appropriate professional advice should be sought.

Contents

- 03 | What is GAIC?
- 03 | Who administers GAIC?
- 03 | What land is subject to GAIC?
- 04 | How does a GAIC liability arise?
- 06 | When does a GAIC liability arise?
- 07 | How is GAIC calculated?
- 07 | Who is liable for GAIC?
- 09 | When is GAIC due?
- 09 | Deferral of GAIC
- 12 | Staged payment approval
- 13 | Work-in-kind agreements
- 15 | GAIC exemptions
- 17 | Lodgment of instruments and statements
- 17 | Certificates and notices
- 19 | GAIC and TAA
- 20 | Payment options and contact details

What is GAIC?

On 2 December 2008, the Victorian Government announced in *Melbourne 2030 - Melbourne @ 5 Million* that a Growth Areas Infrastructure Contribution (GAIC) charge would be introduced to fund essential infrastructure in specified growth areas in Melbourne.

GAIC is administered under Part 9B of the *Planning and Environment Act 1987* (PEA) and the *Taxation Administration Act 1997* (TAA).

Who administers GAIC?

Role of Growth Areas Authority (GAA)

The GAA was established in 2006 and is an independent statutory body responsible for managing and planning the development of Melbourne's growth areas. It has the main responsibility of administering the GAIC legislation and determining GAIC related policy.

Role of State Revenue Office (SRO)

The TAA provides the Commissioner of State Revenue (Commissioner) with the ability to collect the GAIC which will be paid into the Growth Areas Public Transport Fund and Building New Communities Fund.

The SRO collects the GAIC and assists purchasers and landowners including their representatives to meet their obligations to pay a GAIC liability. In doing that, the SRO has the power under the TAA to:

- issue the relevant certificates and notices
- process GAIC payments and deferrals
- instigate recovery of unpaid GAIC, if necessary
- provide advice on applications for some GAIC exemptions
- assess unpaid GAIC
- process objections to GAIC assessments and subsequent appeals
- process refund of overpaid GAIC
- conduct compliance activities, and
- liaise with the GAA and Department of Planning and Community Development (DPCD) on relevant GAIC matters.

What land is subject to GAIC?

GAIC applies to land in the contribution area, which consists of type A, B-1, B-2 and C lands.

- **Type A land** is any land that:
 1. was brought within an urban growth boundary (UGB) between 28 November 2005 and 31 December 2006 (inclusive of those days), and
 2. is within an urban development area (UDA) on or after the first announcement day (i.e. 2 December 2008).

- **Type B-1 land** is any land in investigation areas 1 to 6 that is brought within a growth area, UGB and an Urban Growth Zone (UGZ) on or after 2 December 2008.
- **Type B-2 land** is any land in investigation area 7 that is brought within a growth area, UGB and UGZ on or after the second announcement day (i.e. 19 May 2009).
- **Type C land** is any land (that is not type A, B-1 or B-2 land) that is brought within a growth area and UGZ on or after commencement day (i.e. 1 July 2010).
- **Type B-1 and B-2 land** were brought into the contribution area on 30 August 2010 as a result of Amendment VC 68 to the Victoria Planning Provisions.

If any Type A land ceases to be in an UDA, or if type B-1, B-2 or C land ceases to be in an UGZ at any time, it immediately ceases to be in the contribution area and is no longer subject to the GAIC.

Terminology

The UGB is defined as a boundary that is specified or is to be specified as an urban growth boundary in a fringe planning scheme.

The UGZ is defined as land that is designated in a planning scheme as an Urban Growth Zone.

The UDA is land that is within a growth area and that is zoned under a planning scheme for residential, industrial or business purposes, or as a Comprehensive Development Zone, a Priority Development Zone or an Urban Growth Zone.

Growth area

Some land in the following municipalities may fall within the contribution area:

1. Cardinia
2. Casey
3. Hume
4. Melton
5. Mitchell
6. Whittlesea
7. Wyndham

For further information on land in the contribution area, please contact the GAA. The GAA has maps of the UGB and areas that are zoned as part of the UGZ on its website at www.gaa.vic.gov.au

Additional information or copies of the maps, reports and supporting information may also be obtained from the DPCD's web site at www.dpcd.vic.gov.au or from the information line on 1800 090 789.

How does a GAIC liability arise?

GAIC events

The liability to pay GAIC arises when the first of the following trigger events (GAIC event) occurs in respect of land in the contribution area:

1. the issue of a statement of compliance for a plan of subdivision
2. the making of an application for a building permit to carry out building works, or
3. the occurrence of a dutiable transaction relating to the land.

Dutiable transaction relating to land is defined in the PEA as:

- a dutiable transaction within the meaning of section 7(2) of the *Duties Act 2000* relating to dutiable property in s10(1)(a) & (ab) of that Act (most commonly, the transfer of an estate in fee-simple or a life estate)
- a sub-sale of dutiable property referred to in section 10(1)(a) of the *Duties Act 2000* (see page 8 of this Guide) or
- a significant acquisition.

Significant acquisition includes an acquisition of an interest in a land rich landholder that is a relevant acquisition under the *Duties Act 2000* and any subsequent acquisition after the relevant acquisition is made.

Land rich landholder is defined in section 71 of the *Duties Act 2000* as a private company, a private unit trust scheme or a wholesale unit trust scheme which has land holdings in Victoria with an unencumbered value of \$1 million and its land holdings within or outside Australia comprise 60 per cent of the unencumbered value of all its property.

Relevant acquisition means a relevant acquisition within the meaning of section 79 of the *Duties Act 2000* which is not an exempt acquisition. Generally a relevant acquisition occurs where a person and/or associated person acquires 50% or more of shares in a private company or 20% or more of the units in a private unit trust scheme.

For further information in relation to dutiable transactions and significant acquisitions within the meaning of the *Duties Act 2000*, please refer to the SRO website.

Once-off nature of GAIC

GAIC is only imposed once on the occurrence of the first GAIC event on the land in the contribution area. If GAIC has been paid for a GAIC event, there should be no GAIC payable on a subsequent GAIC event so long as the GAIC liability has been fully discharged. A deferral, a

staged payment approval or a work-in-kind agreement does not discharge a GAIC liability.

Example 1

Land in the contribution area is jointly owned by A (30%) and B (70%). A transfers her 30 per cent interest in the land to C. The transfer of land is the first GAIC event in relation to that 30 per cent interest in the land. C is liable to pay 30 per cent of the GAIC in respect of the land.

B and C then subdivide the land. The issue of a statement of compliance for a plan of subdivision becomes the first GAIC event relating to the remaining 70 per cent interest in the land. B is liable to pay GAIC in respect of the 70 per cent interest in the land.

B and C then apply for a building permit for work to be carried on the land. Since GAIC has been fully discharged in respect of the land, no further GAIC liability will be imposed.

Excluded events

GAIC is not payable on excluded events relating to land in the contribution area.

Excluded events include the following events:

1. **An excluded subdivision of land which is carried out:**
 - a. to solely create a lot for utility installation, e.g. transmission or distribution of gas, oil or power
 - b. to provide land for transport infrastructure or for any public purpose e.g. a park
 - c. to solely provide a lot for a school or a proposed school (for subdivisions from 15 February 2012 in accordance with the *Planning and Environment Amendment (Schools) Act 2012*)
 - d. by a public authority or a municipal council and no additional lots are created
 - e. by a public authority or a municipal council and additional lots that are created have no road access and are retained or sold to the owner of abutting land to be consolidated with that land
 - f. to align the common boundary between two lots and the area of either lot after the alignment is reduced by no more than five per cent of its original area e.g. alignment to accord with existing fence lines
 - g. to create a lot not exceeding two hectares for the purposes of excising an existing dwelling on the land or
 - h. to create two lots, for land not wholly in the contribution area, so that one resulting lot is entirely inside the contribution area and the other is not in the contribution area.

Example 2

Mrs Brown owns a 60 hectare property consisting of type A land, which is also her residence (PPR). Mrs Brown decides to subdivide her property into two portions: 1.8 hectares surrounding her PPR and the remaining 58.2 hectares as a separate parcel of the land. This is an excluded subdivision for which Mrs Brown is not liable for any GAIC.

2. Excluded building work which includes:

- a. demolition of a building or part of a building
- b. construction of a single dwelling
- c. repair or reinstatement of an existing building
- d. building works relating to a school or proposed school including purposes ancillary to a school (for building works from 15 February 2012 in accordance with the *Planning and Environment Amendment (Schools) Act 2012*), or
- e. building works below the statutory threshold. The threshold for the 2010-2011 financial year is \$1 million, and for the 2011-2012 year is \$1,031,890. The threshold is indexed for each financial year using the Consumer Price Index (All Groups Index) for Melbourne.

3. A dutiable transaction relating to land that involves a dutiable lease under the *Duties Act 2000*.

4. Arrangements that occurred before the relevant day consisting of a:

- a. subdivision of land where a planning permit relating to that subdivision was granted before the relevant day and had not expired at the time a statement of compliance was issued
- b. building permit application where the planning permit relating to the building work was granted before the relevant day and had not expired at the time that application was made
- c. dutiable transaction where a contract relating to that transaction was entered into before the relevant day, or
- d. significant acquisition that occurred or a contract for that acquisition was entered into, before 1 July 2010.

Relevant day

1. for type A land or type B-1 land is the first announcement day, i.e. 2 December 2008
2. for type B-2 land is the second announcement day, i.e. 19 May 2009, and
3. for type C land is the day on which the land became type C land.

GAIC and schools

The *Planning and Environment Amendment (Schools) Act 2012* (the Amending Act) received Royal Assent on 14 February 2012 and takes effect from 15 February 2012.

The Amending Act introduces the following amendments:

1. A subdivision of land carried out solely to provide land for a school or proposed school is an excluded event which is not subject to the GAIC.
2. An application for a building permit for building works relating to a school or proposed school including purposes ancillary to a school is an excluded event which is exempt from the GAIC.
3. The term 'school' is defined to have the same meaning as in section 1.1.3 of the *Education and Training Reform Act 2006*. As such the exemption will apply to primary and secondary schools but not to preschools or tertiary education facilities.
4. The term 'construction' is defined to have the same meaning as in the *Building Act 1993*. This is to determine whether a construction of a single dwelling qualifies as an excluded building work under Part 9B of the *Planning and Environment Act 1987*.

Ancillary building works

The term 'ancillary' is not defined in the Amending Act. Building work ancillary to a school is also excluded because ancillary work is important to the operation of a school but not necessarily used for general teaching. Many schools have buildings that would not have previously been considered as school buildings but are now considered to be part of a modern school or part of a school that is based on religious teachings. These buildings such as a school hall or chapel may also be used by the community outside of school hours and such buildings would qualify as purposes ancillary to a school.

GAIC and transfers of land to schools

Government schools generally do not have to pay the GAIC as an exemption will apply if the transfer of land to a school of this type is exempt from duty.

For non-government schools, it is expected that the school provider, for example a church that buys land in a contribution area where a GAIC liability has not been triggered to build a non-government school, will be exempt from paying the GAIC if that transfer of land is exempt from duty.

Schools, developers and owners of land in the contribution area may contact the SRO or Growth Areas Authority for further information or advice before making a decision relating to school sites in the contribution areas.

Circumstances where GAIC is not imposed

GAIC will not be imposed in the circumstances listed below.

Dutiable transactions in respect of any land if:

1. that land has a total lot area of between 0.41 and 10 hectares and immediately before 1 July 2010 had a habitable dwelling on it
2. that land has a total lot area of between 0.41 and 5 hectares, or
3. at the time the transaction occurred and on the relevant day, the land was subject to a registered restrictive covenant, or an agreement made by a responsible authority (such as municipal councils) which prohibits subdivision of the land or limits the use of that land to residential purposes.

A GAIC event in respect of any land if that land had a total lot area of 0.41 hectares or less:

4. both on the relevant day and at the time the GAIC event occurs, or
5. at the time of a GAIC event is either:
 - a lot in a plan of subdivision authorised by a planning permit referred to in section 201RB(d)(i);
 - a lot created by an excluded subdivision of land referred to in section 201RF(f) or (g).

When does a GAIC liability arise?

The liability to pay GAIC depends on three factors, namely:

- when a GAIC event occurs
- whether the land at the time the event occurred is in the contribution area, and
- the type of land.

A GAIC event occurs:

1. in the case of subdivision of land, when a statement of compliance is issued for that subdivision
2. in the case of an application for a building permit, when the application is made, or
3. in the case of a dutiable transaction relating to land:
 - a. when the dutiable transaction would be taken to have occurred under Chapter 2 of the *Duties Act 2000*, or
 - b. for a significant acquisition, the day the acquisition occurs, or if the acquisition occurs over a period of time, on the last day of that period.

GAIC event occurs on or after 1 July 2010

1. Type A, B-1, B-2 and C land in the contribution area at time of GAIC event

The liability to pay GAIC arises at the time the GAIC event occurs.

2. Type B-1 and B-2 land not in the contribution area at time of GAIC event

If the GAIC event occurs within 12 months after 1 July 2010, the liability to pay GAIC arises on the day* within the 12 months when the last of the following events has occurred:

- a. the land is brought within a growth area
- b. the land is brought within an UGB
- c. the land is brought within an UGZ.

*For type B-1 and B-2 land, the liability day is 30 August 2010.

GAIC event occurs before 1 July 2010

3. Type A land in the contribution area before 1 July 2010

If the GAIC event occurs on or after 2 December 2008, the liability to pay GAIC arises on 1 July 2010.

Example 3

E P/L obtained a statement of compliance issued on 1 March 2009 for the subdivision of 18 hectares of type A land. As E P/L's subdivision occurred after 2 December 2008 but before 1 July 2010, E P/L's liability to pay GAIC arises on 1 July 2010.

4. Type B-1, B-2 land in the contribution area on or after 1 July 2010

If the GAIC event occurs on or after 2 December 2008 for type B-1 land or on or after 19 May 2009 for type B-2 land, the liability to pay GAIC arises on the day* when the last of the following events has occurred within 12 months of 1 July 2010:

- a. the land is brought within a growth area
- b. the land is brought within an UGB
- c. the land is brought within an UGZ.

*For type B-1 and B-2 land, the liability day is 30 August 2010.

Example 4

G P/L obtained a statement of compliance issued on 1 September 2009 for the subdivision of an 18 hectare lot of land. The land was brought within the contribution area on 30 August 2010 as type B-1 land. As G P/L's subdivision occurred after 2 December 2008 but before 1 July 2010, and the land is brought into the contribution area within 12 months after 1 July 2010, G P/L's liability to pay GAIC arises on 30 August 2010.

Refer to **Appendix I** for a summary table of GAIC liability.

GAIC liability taken not to have arisen

Even though a GAIC event has occurred in relation to land in the contribution area, a GAIC liability is taken never to have arisen in the following circumstances:

1. A certificate of compliance is issued but the Registrar does not register a plan of subdivision for any reason other than that the liable person fails to obtain one of the relevant certificates for the Commissioner to issue a notice to the Registrar (see page 18 of this Guide)
2. An application for a building permit is withdrawn or the relevant building surveyor refuses to issue a building permit for any reason other than that the liable person fails to produce one of the relevant certificates required for the issue of a building permit (see page 16 of this Guide), or
3. An instrument that was intended to give effect to a transfer of land failed to give effect to that transfer within the meaning of section 260 of the *Duties Act 2000*.

If GAIC has been paid, an application for a refund of the overpaid GAIC may be made under the TAA.

Example 5

Mr White decides to subdivide a 4 hectare type A land. He is issued with a statement of compliance for the plan of subdivision. A GAIC liability arises upon this GAIC event. Mr White subsequently decides to abandon the subdivision due to personal reasons. Since the plan of subdivision is not registered, the GAIC liability is taken never to have arisen. If Mr White has already paid the GAIC amount, he can apply for a refund from the SRO.

How is GAIC calculated?

GAIC rates

GAIC is calculated on a per hectare basis. The GAIC rates for the 2010-11 financial year are:

- \$80,000 per hectare for type A land
- \$95,000 per hectare for types B-1, B-2 and C land.

The GAIC rates for the 2011-2012 financial year are:

- \$82,550 per hectare for type A land
- \$98,030 per hectare for type B-1 and B-2 land
- \$98,030 per hectare for type C land

The GAIC rates for each subsequent financial year will be indexed annually based on the Consumer Price Index (All Groups Index) for Melbourne. The indexed GAIC amount for each financial year will be published by 1 June of the preceding financial year in the Government Gazette and will be available on the DPCD website.

Who is liable for GAIC?

Dutiable transactions other than a significant acquisition

For dutiable transactions relating to the land (other than a significant acquisition), the transferee is liable to pay the GAIC.

Special circumstance where purchaser may deduct GAIC from purchase price

For a contract for sale of land (with a GAIC recording) which has been entered into on or after the relevant day for that land and before 1 December 2009, if

1. the land is to be transferred after 1 July 2010
2. a GAIC liability is to be imposed, and
3. the contract contains a term requiring the vendor to pay GAIC;

the purchaser may deduct the GAIC liability from the purchase price - see section 50 of the *Sale of Land Act 1962*.

Fractional interest transfer

The most common form of dutiable transaction involves the transfer of an estate in fee-simple. Such a transfer may at times be for a partial interest in the estate. A transfer of a partial interest in an estate is commonly known as a 'fractional interest transfer' and may include the following scenarios:

- land is owned by multiple owners and there is only a transfer of interest in the land by one land owner
- a single land owner who may transfer only a partial interest in the land to one purchaser, or
- a single land owner who may transfer all their interest in land to different purchasers in equal or proportional interest.

A person who acquires a fractional interest in land is liable to pay GAIC in proportion to the interest acquired unless that transfer is exempt from GAIC (see GAIC exemptions). If an exemption applies, GAIC is payable on the subsequent GAIC event, unless an exemption applies to that event.

The remaining GAIC is payable at the indexed GAIC amount (if applicable) by the acquirer proportionate to the interest acquired.

Example 6

A P/L and B P/L each own 50 per cent of 30 hectares of Type A land in the contribution area. Both companies sold their entire interest in the land in July 2009 to C P/L. The GAIC for Type A land is \$80,000 per hectare.

C P/L is liable to pay GAIC of \$2,400,000 imposed on that land (\$80,000 x 30).

Example 7

A P/L and B P/L each own 50 per cent of 30 hectares of Type A land in the contribution area. A P/L sold its 50 per cent interest to C P/L in July 2009. C P/L is liable to pay \$1,200,000 of GAIC on the interest acquired ($\$80,000 \times 30 \times 50\%$).

C P/L sold its 25 per cent interest to T P/L in July 2010. However, since C P/L has already discharged the GAIC liability in respect of the 50 per cent interest it acquired from A P/L, the subsequent sale from C P/L to T P/L relating to that interest does not trigger a GAIC liability.

B P/L sold its 50 per cent interest to D P/L in October 2011. Assuming the indexed GAIC rate is \$88,000 per hectare, D P/L is liable to pay \$1,320,000 of GAIC on the interest acquired ($\$88,000 \times 30 \times 50\%$).

Sub-sales

Generally, a sub-sale occurs when a vendor enters into a contract for the sale of land with a first purchaser but transfers the land to a subsequent purchaser who has obtained the right of transfer for the land. Part 4A of the *Duties Act 2000* charges duty on these transactions as separate and distinct transactions in three situations:

- transfers involving additional consideration
- transfers involving land development, and
- certain transfers resulting from options.

GAIC is payable by the ultimate subsequent purchaser to whom the land is transferred (i.e. the person registered on title).

For further information on duty relating to sub-sales within the meaning of *Duties Act 2000*, please refer to the SRO website.

Example 8

A P/L entered into a contract to purchase land (20 hectares) in the contribution area from Seller P/L for \$20 million. A P/L decided to sell that land to B P/L for \$22 million. A P/L nominated B P/L to take the land transfer from Seller P/L.

Since B P/L has paid additional consideration (\$2 million) for the land, Part 4A of the *Duties Act 2000* applies to treat these transactions as two dutiable transactions where A P/L and B P/L have to pay duty on each dutiable transaction. B P/L being the subsequent purchaser registered on title is also liable to pay GAIC for the land acquired from Seller P/L.

Significant acquisitions

A significant acquisition is an acquisition of an interest in a land rich landholder that is a relevant acquisition within the meaning of s 79 of the *Duties Act 2000* which is not an

exempt acquisition within the meaning of Part 2 of Chapter 3 of the *Duties Act 2000*. Any subsequent acquisition of the remaining interest(s) in the landholder after a relevant acquisition has occurred is also a significant acquisition.

GAIC is payable in proportion to the interest acquired.

The GAIC liability rests both jointly and severally on:

1. the person who makes the acquisition
2. the land rich landholder or trustee of the landholder, and
3. if the significant acquisition results from an aggregation of acquisitions by the person referred to in paragraph (1) and other persons – each of those other persons.

Example 9

XYZ P/L owns 30 hectares of Type A land in a contribution area. A P/L and B P/L each own 50 per cent of the shares in XYZ P/L (a land rich landholder). Both entities are not associated to each other.

A P/L sold its 50 per cent interest in XYZ P/L to C P/L. C P/L has made a relevant acquisition and hence it is liable to pay \$1,200,000 of GAIC ($\$80,000 \times 30 \times 50\%$).

C P/L subsequently sold its shares to PIT P/L. However, PIT P/L is not liable to pay GAIC on the acquired interest since C P/L has already paid the GAIC on its acquisition.

The acquirer of B P/L's interest will be liable for the remaining 50 per cent GAIC when the acquisition occurs.

Example 10

XYZ P/L (a land rich landholder) owns 30 hectares of Type A land which was brought into the contribution area. The shares in XYZ P/L are held by A P/L (30%), B P/L (30%), C P/L (20%) and D P/L (20%).

S P/L acquired A P/L's shares in October 2010.

This acquisition is not a relevant acquisition and hence no GAIC is payable.

In July 2011, HUGO P/L acquired B P/L's shares, and GIG P/L acquired C P/L's shares. S P/L, HUGO P/L and GIG P/L are associated persons. Hence there is a relevant acquisition and these entities together acquired 80 per cent of the interests in XYZ P/L. Assuming the indexed GAIC rate is \$83,000 per hectare, they are liable to pay \$1,992,000 of GAIC ($\$83,000 \times 30 \times 80\%$).

M P/L acquired D P/L's shares in September 2012.

Even though M P/L is not associated with any of the acquirers, it is liable to pay GAIC as this acquisition follows a relevant acquisition. Assuming the indexed GAIC rate is \$86,000 per hectare, M P/L is liable to pay \$516,000 of GAIC ($\$86,000 \times 30 \times 20\%$).

Example 11

XYZ P/L (a land rich landholder) holds 50 hectares of Type A land. A P/L, B P/L and C P/L respectively hold 25 per cent, 25 per cent and 50 per cent of shares in XYZ P/L.

In July 2010, A P/L transferred 25 per cent shareholding to S P/L. This is not a relevant acquisition and hence no GAIC is payable.

In October 2010, B P/L sold its 25 per cent shareholding to T P/L. S P/L and T P/L are associated persons. This is a relevant acquisition because together S P/L and T P/L acquired a 50 per cent interest in XYZ P/L and therefore they are liable to pay \$2,000,000 of GAIC (\$80,000 x 50 x 50%).

In December 2011, XYZ P/L sold the land to EGO P/L. EGO P/L being the purchaser of the land is liable for GAIC in respect of a 50 per cent interest in the land. Assuming the indexed GAIC rate is \$83,000. The GAIC payable by EGO P/L is \$2,075,000 (\$83,000 x 50 x 50%).

Subdivision or building permit

For a subdivision of land or an application for a building permit, the person liable for GAIC is the land owner immediately after the compliance statement is issued or the application is made.

When is GAIC due?

Dutiable transaction

For dutiable transactions relating to land, GAIC must be paid within three months after the liability arises, unless the GAIC is deferred (see Deferral of GAIC) or subject to a staged payment approval (see Staged Payment Approval).

Subdivision of land

For subdivisions of land, GAIC must be paid within three months after the liability arises, unless there is a staged payment approval.

Building permit

For building permit applications, GAIC must be paid:

- before a building permit is issued for the building works, if liability to pay GAIC arises upon the making of the application, or
- within three months after the liability arises, if a liability to pay GAIC arises after the making of the application, unless there is a staged payment approval.

Note that the due date may be extended by an application to Governor in Council or Hardship Relief Board (note this only applies to a person whose GAIC liability arose on or after 30 June 2011).

If the liable person has made an application to the Governor in Council or Hardship Relief Board (see page 16 of this Guide), GAIC must be paid either by the due dates stated above, or within 14 days after receiving a notice of determination for their relief application, whichever is the later.

GAIC is to be paid to the SRO. For payment options, refer to page 20 of this Guide.

Deferral of GAIC

Election to defer

A person liable to pay a GAIC payment in respect of a dutiable transaction relating to land may elect to defer:

- if the GAIC liability arose before 30 June 2011
 - up to 100% of GAIC if the land is Type A land and the transaction occurred before 1 July 2010, or
 - up to 70% of GAIC in any other case,
- if the GAIC liability arose on or after 30 June 2011, up to 100% of GAIC.

The liable party must lodge an election form with the SRO before the day on which the GAIC is payable. A Growth Areas Infrastructure Contribution Consolidated Form (GAIC Form-02) can be accessed, completed and lodged from the SRO website. The election to defer takes effect from the date the liability to pay the GAIC arises.

For a significant acquisition, an election to defer the GAIC will be taken to have been made by all persons who are jointly and severally liable for the GAIC for that acquisition.

See also – Subsequent dutiable transactions and deferral

Liability to pay non-deferred portion of GAIC

A person who has deferred the payment of a GAIC must pay the non-deferred part of the GAIC by the due date. Failure to do so constitutes a tax default under the TAA and the whole of the GAIC will become immediately payable as if the election to defer had never been made. The person will be liable to pay interest under the TAA, which will apply from what would have been the last day for payment of the whole GAIC amount (i.e. three months after the liability arises). Penalty tax may also be imposed under the TAA.

Indexation and interest applying to deferred GAIC liability

A deferred GAIC liability is subject to indexation and/or a payment of interest (see cases 1-5 below). Also refer to **Appendix II** for illustrative diagrams.

A. Liability to pay GAIC arising before 30 June 2011

1. Type A land – if a dutiable transaction occurs before 1 July 2010

The deferred GAIC (up to 100%) is to be indexed from the day the liability arises until the earlier of the following:

- the deferred GAIC liability is paid by the due date – see page 11 for due date for payment of deferred GAIC, or
- approval is given for staged payment.

2. Type A land – if a dutiable transaction occurs on or after 1 July 2010 and before the land becomes part of a precinct structure plan (PSP) area

The deferred GAIC liability (up to 70%) is to be indexed from the day the liability arises until the earlier of the following:

- the land becomes part of the PSP area, or
- the deferred GAIC is paid by the due date.

Further, if the deferred GAIC is not paid, the deferred GAIC, as indexed, is subject to the payment of interest from the time the land becomes part of a PSP until the earlier of the following:

- the deferred GAIC is paid by the due date, or
- approval is given for staged payment.

3. Type A land – if a dutiable transaction occurs on or after 1 July 2010 and after the land becomes part of a PSP area

The deferred GAIC liability (up to 70%) is subject to the payment of interest from the time the liability arises until the earlier of the following:

- the deferred GAIC liability paid by the due date, or
- approval is given for staged payment.

4. Type B-1, B-2 and C land – if a dutiable transaction occurs before the land becomes part of a PSP area

The deferred GAIC liability (up to 70%) is to be indexed from the day the liability arises until the earlier of the following:

- the land becomes part of the PSP area, or
- the deferred GAIC is paid by the due date.

Further, if the deferred GAIC is not paid, the deferred GAIC, as indexed, is subject to the payment of interest from the time the land becomes part of a PSP until the earlier of the following:

- the deferred GAIC is paid by the due date, or
- approval is given for staged payment.

5. Type B-1, B-2 and C land – if a dutiable transaction occurs on or after the land becomes part of a PSP area

The deferred GAIC liability (up to 70%) is subject to the

payment of interest from the time the liability arises until the earlier of the following:

- the deferred GAIC is paid by the due date, or
- approval is given for staged payment.

PSP in relation to land means a precinct structure plan which has been incorporated by the planning scheme applying to that land. **PSP area** means an area to which a PSP applies.

B. Liability to pay GAIC arising on or after 30 June 2011

6. If a dutiable transaction occurs before the land becomes part of a PSP area

The deferred GAIC liability (up to 100%) is to be indexed from the day the liability arises until the earlier of the following:

- the land becomes part of the PSP area, or
- the deferred GAIC is paid by the due date.

Further, if the deferred GAIC is not paid, the deferred GAIC, as indexed, is subject to the payment of interest from the time the land becomes part of a PSP until the earlier of the following:

- the deferred GAIC is paid by the due date, or
- approval is given for staged payment.

7. If a dutiable transaction occurs on or after the land becomes part of a PSP area

The deferred GAIC liability (up to 100%) is subject to the payment of interest from the time the liability arises until the earlier of the following:

- the deferred GAIC is paid by the due date, or
- approval is given for staged payment.

Indexation of deferred GAIC

Indexation of a deferred GAIC is to be calculated at the end of each financial year after the GAIC liability arose based on the Consumer Price Index.

Interest payable on deferred GAIC

The payment of interest is calculated on a daily basis for the period that the interest is payable on the deferred GAIC liability at the 10-year bond rate applying from time to time. The 10-year bond rate is available on the SRO's website.

The Commissioner may remit interest payable by any amount in such circumstances as he considers appropriate.

Subsequent dutiable transaction and deferral of GAIC liability

Liability rolls over to subsequent transferee

When a person (relevant person) has deferred the payment of a GAIC in whole or in part, and a

subsequent dutiable transaction occurs in relation to the land prior to the land being subdivided or developed, the deferred GAIC as indexed (plus any applicable interest [roll-over GAIC]) rolls over to the subsequent transferee(s), being:

1. the transferee in the case of a land transfer
2. the subsequent purchaser registered on title in the case of a sub-sale, or
3. all the acquirers (and the land rich landholder) in the case of a significant acquisition.

The roll-over of a deferred GAIC liability to a subsequent transferee extinguishes that GAIC liability for the relevant person.

If the subsequent dutiable transaction occurs in relation to less than the whole of the interest in the land or in a land rich landholder that owns the land:

1. the roll-over liability of the subsequent transferee will be proportionate to that interest, and
2. the relevant person remains liable to pay the remaining part of the deferred GAIC.

Note: GAIC exemptions do not apply to exempt the subsequent transferee from paying a roll-over GAIC liability.

Due date to pay roll-over GAIC (no election of a subsequent deferral)

The liability of a subsequent transferee to pay the roll-over GAIC arises at the time the subsequent dutiable transaction occurs.

The subsequent transferee must pay the roll-over GAIC within three months after the liability arises, unless the subsequent transferee elects to defer the payment of the deferred GAIC liability (see Election of a subsequent deferral), or enters into a staged payment arrangement. Also note that the due date may be extended if a relief application has been made (see page 16 of this Guide).

Election of a subsequent deferral of GAIC

The subsequent transferee may elect to defer the payment of the roll-over GAIC by lodging the Election to Defer before the due date.

To allow for an immediate roll-over, an election to defer by the subsequent transferee takes effect from the time the subsequent transferee's liability arises (i.e. the occurrence of the subsequent dutiable transaction).

Note: the deferred roll-over GAIC continues to be subject to indexation and/or interest, whichever is applicable.

Due date for payment of deferred GAIC liability and interest

For dutiable transactions other than significant acquisitions, the liable person must pay the deferred GAIC liability (including deferred roll-over GAIC) and any interest charged on or before the first of the following events:

1. the issue of a statement of compliance relating to all or any part of the land (other than a subdivision relating to a work-in-kind agreement), or
2. the making of a building permit application relating to all or any part of the land.

For significant acquisitions, the liable person must pay the deferred GAIC and any interest on or before the first of the following events:

1. the issue of a statement of compliance relating to all or any part of the land, in the contribution area, held by the land rich landholder, or
2. the making of a building permit application relating to all or any part of the land, in the contribution area, held by the land rich landholder.

Note: if the liable person has been granted an approval for staged payment, then the above due date does not apply (see Staged Payment Approval). Also note that the due date may be extended if a relief application has been made (see page 16 of this Guide).

Default on deferred GAIC

A failure to pay the deferred GAIC liability (including deferred roll-over GAIC) and any interest charged by the due date constitutes a tax default under the TAA. The deferred GAIC will then become immediately payable as if the election of deferral or a subsequent deferral had never been made. The person will be liable to pay interest and penalty tax, if any, under the TAA.

In the case of a first deferral, the interest and penalty tax will apply to the original amount of the GAIC that was to be deferred. The interest will apply from what would have been the last day for payment of the whole GAIC amount (i.e. three months after the GAIC liability arises).

In the case of a subsequent deferral, the interest and penalty tax will apply to the amount of the roll-over GAIC for which the subsequent transferee became liable. The interest will apply from what would have been the last day for payment of the roll-over GAIC (i.e. three months from the occurrence of the subsequent dutiable transaction).

GAIC extinguished if land ceases to be in contribution area

If land, which has a deferred GAIC liability, ceases to be in the contribution area within three years after the

GAIC liability arose, the liability is extinguished to the extent that it relates to land that has ceased to be in the contribution area.

If a person had paid any non-deferred amount of GAIC for that land, the person may apply for a refund of GAIC paid under the TAA.

Deferred GAIC becomes a charge on land

A deferred GAIC liability including any interest that is not paid by the due date is a charge on the land for which the GAIC is imposed and the Commissioner may register that charge. The charge will only be removed when the deferred GAIC, including any interest payable, is fully paid or the liability to pay GAIC for the GAIC event is extinguished.

Example 12 – fractional interest transfers and deferral of GAIC

A, B and C each own, respectively, a 30 per cent, 30 per cent and 40 per cent interest in land in the contribution area.

A sells her 30 per cent interest in the land to X in October 2010. X is liable to pay 30 per cent GAIC on the land but elects to defer the GAIC payment.

B sells his 30 per cent interest in the land to Y in 2011. Y is liable to pay 30 per cent GAIC on the land but also elects to defer the GAIC payment.

X then sells her 30 per cent interest in the land to P in 2012. P becomes liable for the deferred GAIC as indexed and any applicable interest. X's GAIC liability is extinguished. P must either pay or make an election to defer paying the GAIC. P elects to defer the GAIC payment.

P, Y and C decide to subdivide the land. Y and P have to pay the deferred GAIC and any applicable interest (subject to staged payment approval). C is liable to pay GAIC in respect of the remaining 40 per cent interest in the land (subject to staged payment approval).

Example 13 – significant acquisitions and deferral

Cerise P/L (a land rich landholder) owns land in the contribution area. A, B and C respectively hold 30%, 30% and 40% shares in Cerise P/L.

A sells her shares in Cerise P/L to X in October 2010. The transfer is not a significant acquisition, hence X is not liable for GAIC.

B sells his shares in Cerise P/L to Y in 2011. Since X and Y are associated persons, the acquisition by Y triggers a significant acquisition of 60% shares in the land. X, Y and Cerise P/L are jointly and severally liable for 60% of the GAIC in respect of the land. X, Y and Cerise P/L

together elect to defer paying the GAIC (first deferral by X and Y).

P acquires both X and Y's shares in Cerise P/L in 2012. A subsequent significant acquisition occurs in relation to 60% of the deferred GAIC. P and Cerise P/L become jointly and severally liable to pay that 60% of the deferred GAIC as indexed and any applicable interest. X and Y are relieved of their deferred GAIC which has 'rolled over' to P. Subsequently P elects to defer the GAIC.

Cerise P/L then applies for a building permit for works to be carried on the land. Subject to a staged payment approval, Cerise P/L is liable to pay 40% GAIC in respect of the land; Cerise P/L and P are jointly and severally liable to pay 60% of the deferred GAIC as indexed and any applicable interest.

Staged payment approval

Who may apply?

A person may apply to the Minister for Planning (Minister) for approval of the staged payment of GAIC if that person is liable to pay a GAIC in respect of:

1. a subdivision of land
2. an application for a building permit
3. a dutiable transaction relating to land which has been deferred and the land is to be subdivided, or
4. a dutiable transaction relating to land which has been deferred and a building permit application is to be made.

In the case of 3 and 4, while all liable persons may apply for approval of staged payments, for administrative efficiency, the land rich landholder should apply for approval of a single staged payment arrangement for the total GAIC payment, including any deferred GAIC, relating to the whole land.

Example 14 – significant acquisitions, deferral and staged payment approval

In Example 13, Cerise P/L applies for a staged payment approval in respect of 100 per cent of GAIC.

When to apply?

A staged payment arrangement application form must be lodged with the GAA or the SRO before the day on which the GAIC is payable. A Staged Payment Application form can be downloaded from the GAA website.

Grant of approval by Minister

The SRO will forward the staged payment arrangement application to the Minister for consideration. The Minister, on giving approval to the application, will issue the applicant a staged payment approval notice.

Conditions of staged payment approval

A staged payment arrangement is subject to a number of conditions including the following:

1. the GAIC is to be paid to the SRO in stages
2. each stage must relate to a specified subdivision of land in the case of a plan of subdivision
3. each payment must be paid by a specified due date with a final date for payment of the whole GAIC, and
4. any other conditions specified in the staged payment arrangement.

Strict adherence to any conditions specified in the staged payment approval is required. If there is a failure to comply with a condition including a failure to make a staged payment and any interest payable by the due date, the whole amount of the GAIC and any interest payable will become immediately payable as if the approval had never been given.

Roll-over to subsequent owner of land

If ownership of the whole of the land is transferred to a subsequent owner as a result of a dutiable transaction relating to land, the staged payment approval granted to the former owner will be 'rolled over' to the subsequent owner.

From the time that the dutiable transaction occurs:

1. the GAIC liability will be imposed on the subsequent owner
2. the GAIC liability of the former owner will be extinguished
3. the subsequent owner is taken to have been granted the same staged payment approval subject to the same conditions
4. the former owner must notify the Minister in writing within 10 days of the occurrence of the dutiable transaction
5. the subsequent transferee must lodge an application for a staged payment approval, and
6. the subsequent owner has to apply for a staged payment approval and the Minister will notify them of his approval.

Note: the roll-over of a staged payment does not apply to fractional interest transfers or to significant acquisitions.

Staged payment of GAIC liability subject to interest

A GAIC liability payable under a staged payment arrangement is subject to interest calculated on a daily basis at the 10-year bond rate applying from time to time. The 10-year bond rate is available on the SRO's website.

If the approval:

1. does not relate to a deferred GAIC, interest applies from three months after the issue of a statement of

compliance or the making of the building permit application, or

2. relates to a deferred GAIC, interest applies from the day the approval is granted.

GAIC subject to staged payment approval becomes a charge on land

A GAIC liability subject to a staged payment approval that has not been paid by the due date, including any interest payable, is a charge on the land for which the GAIC is imposed. The SRO may register the charge on the land. The charge will only be removed when the GAIC, including any interest payable, is fully paid.

Work-in-kind agreements

What is a work-in-kind agreement?

A work-in-kind agreement is an agreement entered into by a person liable to pay the GAIC and the Minister, under which the liable person agrees to provide land and/or works (construction of State infrastructure) instead of a cash payment, to meet the GAIC liability in whole or in part.

Other parties to a work-in-kind agreement may include another Minister, a public authority or a landowner affected by the agreement.

The land or works must be situated in a growth area and be of a type that may be funded from the Growth Areas Public Transport Fund or the Building New Communities Fund.

A work-in-kind agreement also includes an amended work-in-kind agreement.

Entering into a work-in-kind agreement

1. A work-in-kind agreement must be entered into before the GAIC is payable.
2. A work-in-kind agreement may be entered into regardless whether the GAIC liability arose before or after 30 June 2011.
3. A work-in-kind agreement may be entered into in conjunction with a deferral or a stage payment approval.
4. The Minister must consult with any other Minister before entering into a work-in-kind agreement, and obtain approval from the Treasurer if the value of the agreement exceeds \$2 million.

Matters included in a work-in-kind agreement

A work-in-kind agreement must include the following matters:

1. a description of any works to be carried out, and of the land on which the works are to be carried out;
2. a description of any land to be transferred;

3. the due date by which the agreement or any stage of the agreement is to be performed;
4. the agreed value of any land to be transferred and/or works to be carried out;
5. the method(s) of calculating the value of works if they are only partly carried out;
6. dispute resolution procedures; and
7. any other appropriate matters that the Minister thinks appropriate.

Restrictions on land dealings

A work-in-kind agreement may contain a condition that restricts certain dealings in respect of:

1. land that is to be transferred, or
2. land on which works are to be carried out (other than Crown land).

A dealing in relation to land includes entering into any sale, transaction, or arrangement, or obtaining or granting any lease, license or approval in respect of the land, or making any improvements of a durable nature to the land.

The following are not considered land dealings:

1. a sale of any land pursuant to the work-in-kind agreement,
2. any approvals relating to a plan of subdivision to enable a sale of land for the purposes of (1),
3. the carrying out of any works or approvals relating to the works pursuant to the work-in-kind agreement,
4. any approvals relating to the plan of subdivision of the land or building works to be carried out on the land in respect of the GAIC imposed, and
5. the discharging of the land from any mortgage.

The liable person, or any other party to the agreement, is bound by the restrictions on land dealings and must not enter into a restricted dealing unless the Minister gives consent.

However, the restrictive dealing does not prevent a mortgagee foreclosure or a registration of a charge of unpaid tax by the SRO.

Performance of work-in-kind agreements

Entering into a work-in-kind agreement does not automatically discharge the GAIC liability. It is the performance of the agreement that discharges the GAIC.

Determining performance of a work-in-kind agreement

The liable person must notify the GAA in writing of:

1. the performance of the agreement,
2. the performance of any stage of the agreement, or
3. the partial performance of the agreement, if it is not wholly performed by the due date.

The GAA must determine the following and notify the SRO:

1. whether a work-in-kind agreement or a stage of it has been wholly performed by the specified due date, or
2. the value of the partially completed work-in-kind agreement.

Value taken to be payments

At the time the SRO receives the notice from the GAA, the liable person is taken to have paid to the SRO an amount that is equivalent to:

1. the agreed value of the agreement or the stage, if the agreement or a stage of the agreement is wholly performed, or
2. the value determined by the GAA, if the agreement is partially completed.

Default under a work-in-kind agreement

If a liable person fails to perform a work-in-kind agreement or a stage of that agreement in accordance with its terms by the due date, and the GAIC has been deferred or is subject to a staged payment approval, the whole of the GAIC becomes immediately payable as if it had never been deferred or the approval had never been given.

A tax default will occur under the TAA in respect of the whole GAIC liability. The liable person will be liable to pay interest and penalty tax under the TAA.

Despite the tax default, the liable person remains liable to perform the obligations under the work-in-kind agreement. Paying the outstanding GAIC will stop the interest from accruing under the TAA, but it will not relieve the liable person from specific performance of the agreement. If the liable person completes the agreement, they may apply for a refund of overpaid tax under the TAA.

Administration of work-in-kind agreements

The Minister must give the GAA and the SRO a copy of a work-in-kind agreement.

Ending or amending of a work-in-kind agreement

The Minister may, with the agreement of the parties to a work-in-kind agreement, amend the terms or the parties to the agreement, or end the agreement.

The Minister must notify the SRO and the GAA of any amendment or termination of a work-in-kind agreement and, in the case of an amendment, provide the SRO and the GAA a copy of the amended agreement.

Recording of a work-in-kind agreement on title

The Minister must apply to the Registrar of Titles to record a work-in-kind agreement on the title of land:

1. to be transferred under the agreement,
2. on which works are to be carried out under the agreement, and
3. in respect of which the GAIC relating to the agreement is imposed.

The Minister must also apply to the Registrar of Titles to record an amended work-in-kind agreement if the agreement is amended, or to remove the recording if the agreement is ended. The Minister must provide a copy of the amended agreement to the Registrar.

Reporting of work-in-kind agreement

The DPCD and the GAA are required to report annually on the details and value of all work-in-kind agreements determined to have been performed or partly performed for each growth area.

Example 15 – work-in-kind agreement

ABC Pty Ltd purchases a land (land A) in the contribution area and is liable for \$1 million GAIC. ABC Pty Ltd elects to defer 100% of the GAIC before the payment is due.

ABC Pty Ltd then enters into a work-in-kind agreement with the Minister and VicRoads. Under the agreement, ABC Pty Ltd will perform the following obligations by a specified due date to meet 40% of its GAIC liability:

1. carry out capital works on another land it owns in a growth area (land B), and
2. transfer land B to VicRoads;

The agreed value of the above is \$400,000.

The Minister provides a copy of the work-in-kind agreement to the SRO. The Minister also applies to the Registrar of Titles to have the agreement recorded on the title of both land A and land B. As the agreement contains a restriction on land dealings, all parties to the agreement are bound not to enter into such dealings.

ABC Pty Ltd informs the GAA that it has completed the agreement. The GAA, after verifying the works, determines that the agreement has been wholly performed by the due date. The GAA then sends a notice to the SRO, upon which ABC Pty Ltd is taken to have paid \$400,000 towards its deferred GAIC liability.

As the work-in-kind agreement has ended, the Minister applies to the Registrar of Titles to have the recording of the agreement removed from the title of both land A and land B.

Note: For more information relating to work-in-kind agreements please refer to the GAA's website at www.gaa.vic.gov.au.

GAIC exemptions

Exemptions administered by SRO

Certain dutiable transactions relating to land in the contribution area are exempt from GAIC. These exemptions only have the effect of postponing the GAIC liability to a subsequent GAIC event – unless an appropriate exemption applies to that event.

The following transactions are exempt from the GAIC:

1. A dutiable transaction relating to land if it is made for no consideration ('consideration' is defined in the *Duties Act 2000* to be the amount of a monetary consideration or the value of a non-monetary consideration).
2. A dutiable transaction exempt from duty under specific exemptions provided under the *Duties Act 2000*. Examples include: transfers of land resulting from a change in trustees, marriage breakdown, or of family farms between relatives. For a full list of applicable duty exemptions see **Appendix III**.
3. Land is vested in or held by a public authority or a municipal council and the land is:
 - a. surrendered by that authority or council to the Crown
 - b. transferred by that authority or council to another public authority or council, or
 - c. exchanged by that authority or council for land vested in or held by another public authority or council.
4. Land is vested in or held by the Director of Public Transport and the land is:
 - a. transferred by the Director on behalf of the Crown to a public authority or a municipal council, or
 - b. exchanged by the Director on behalf of the Crown for land vested in or held by a public authority or a municipal council.
5. Land compulsorily acquired by a public authority or municipal council under Part 2 of the *Land Acquisition and Compensation Act 1986*.
6. A transfer of land in the contribution area by the land owner to the trustee of a complying superannuation fund or from the trustee of a complying superannuation fund to the beneficiaries of that fund.

In order to apply for a GAIC exemption a written application, accompanied by relevant supporting documentation, must be made to the SRO. An applicant may use the Growth Areas Infrastructure Contribution Consolidated Form (GAIC Form-02) to apply for an exemption and/or the Certificate of Exemption. The form can be accessed, completed and lodged from the SRO website.

Note: where a GAIC payment has been deferred or is subject to a staged payment approval, GAIC exemptions do not apply to a subsequent dutiable transaction, where the liability for the prior dutiable transaction rolls over to the subsequent transferee.

Example 16 – charity exemption

A owns 100 per cent of 30 hectares of Type A land in a contribution area. A sells 50 per cent of the land to B in December 2010.

B is a charity. The transfer of the 50 per cent interest is exempt from duty under the *Duties Act 2000*, and hence exempt from GAIC.

A and B decide to subdivide the land. They are issued with a statement of compliance for subdivision of the land in January 2011. No exemption applies to this GAIC event. Both A and B are liable to pay GAIC.

GAIC exemptions and reductions granted by the Governor in Council or Hardship Relief Board

Governor in Council

A person liable for GAIC may make a written application to the Minister, via the GAA for a reduction of the whole or part of the liability or for an exemption of the whole of the liability. Such an application must be made before the day on which the GAIC is payable (i.e. three months after the liability arises).

A person may not apply for a reduction or exemption for a GAIC liability that has been deferred.

Failure to comply with a condition will cause the whole of any unpaid GAIC liability plus interest to be immediately payable.

The Minister may make a recommendation to the Governor in Council as to the appropriate relief to be given, The Governor in Council may grant a reduction or exemption of GAIC in exceptional circumstances on the recommendation of the Minister.

If a reduction or exemption of GAIC is granted, the Governor in Council will issue a notice of reduction or exemption and may specify conditions in respect of that reduction or exemption. Failure to comply with

a condition will cause the whole of any unpaid GAIC liability plus interest to be immediately payable. If an application is refused, the Minister will issue a notice of determination stating that the application is refused.

If a person is granted an exemption from the GAIC for a GAIC event, liability may be imposed on a subsequent GAIC event unless an appropriate exemption applies to that subsequent GAIC event.

For guidelines on applications to the Governor in Council, please refer to the GAA's website at www.gaa.vic.gov.au.

Hardship Relief Board

The Hardship Relief Board (Board) may grant relief to a person who suffers financial hardship from the imposition of a GAIC liability.

A person liable to pay GAIC may make a written application to the Board for relief from the liability, either directly to the GAA or via the SRO. The application form is available from the GAA website. For guidelines on applications to the Hardship Relief Board, please refer to the GAA's website.

The application must be made before the day on which the GAIC is payable, which is three months after the liability arises. The Board may accept late applications relating to a subdivision or a building permit if it is warranted in the circumstances. A person cannot apply for a reduction or exemption for a GAIC that has been deferred.

Applications to the Board are generally not accepted from vendors except in instances where a sale commenced in the transitional period (see page 7 - special circumstances where purchaser may deduct GAIC from purchase price).

The Board may make any one of the following determinations to:

- refuse the application
- reduce the GAIC liability wholly or in part
- exempt the person from the whole of the liability to pay GAIC, or
- extend the period within which GAIC must be paid.

The Board will issue a notice of determination on the relief application and may specify conditions for relief to apply. If there is a failure to comply with a condition, the relief will be taken never to have been granted and the whole of any unpaid GAIC and any applicable interest will become immediately payable.

If a person is exempted from paying a GAIC liability for a GAIC event, liability may be imposed on a subsequent GAIC event unless an appropriate exemption applies to that subsequent GAIC event.

Lodgment of instruments and statements

A person who is liable to pay GAIC for a dutiable transaction relating to land must lodge with the SRO within three months after the liability to pay GAIC arises:

- a. any written instrument that effects the transaction, or
- b. if there is no written instrument that effects the transaction, a written statement as required under section 14 of the *Duties Act 2000*.

However, if a written instrument or a section 14 statement has already been lodged for the purposes of the *Duties Act 2000*, there is no need to lodge another one for GAIC purposes.

For significant acquisitions relating to land in the contribution area, a GAIC Acquisition Statement must be completed and lodged with the SRO within 3 months after the date of the acquisition. The acquirer is required to complete and lodge the Statement. If the land rich landholder has prepared and lodged the Statement, the acquirer need not lodge the Statement again. Note that Lodgment of the Statement is required even if a Section 80 Land Rich Acquisition Statement has been lodged for the same acquisition under the *Duties Act 2000*.

Certificates and notices

Since GAIC is imposed once on a GAIC event relating to land in the contribution area, it is important that any person involved in any dealing with the land is aware of the potential GAIC liability. In this regard, there is a GAIC recording placed on the land by the Registrar of Titles indicating a GAIC liability on the land. This recording will only be removed when the Registrar is notified to do so by the Commissioner or the GAA in certain circumstances (see GAIC recording on land).

To facilitate transactions or dealings on the land and the removal of the GAIC recording once the liability for GAIC is fully discharged, the SRO issues various certificates (free of charge) and notices so that the transacting parties may present the relevant certificates and notices to ensure their transaction relating to the land is given effect.

GAIC Certificate

The GAIC Certificate shows the amount of GAIC that:

- is due and unpaid,
- has been deferred,
- is subject to a staged payment approval,

- is affected by a work-in-kind agreement, or
- would be imposed if a proposed GAIC event

The GAIC Certificate only provides information relevant at the time of issue of the certificate.

A person may apply to the SRO, in an approved form, for this certificate. No fee applies.

Certificate of no GAIC liability

A certificate of no GAIC liability confirms that there is or will be no liability to pay GAIC for an excluded event or circumstance where GAIC is not imposed. This certificate facilitates the registration of a land transfer or subdivision of land.

Certificate of exemption

A certificate of exemption confirms that a person is exempt or has been exempted from the liability to pay GAIC. This certificate facilitates a transfer or a subdivision of land to be registered.

Certificate of deferral

A certificate of deferral confirms that the GAIC liability on the land has been deferred. This certificate facilitates the registration of a land transfer.

The SRO issues this certificate when an Election to Defer the GAIC (see Deferral of GAIC) is lodged.

Certificate of staged payment approval

A certificate of staged payment approval confirms that a staged payment approval has been given. This certificate enables a staged subdivision of land to be registered.

Certificate of release

This certificate confirms that:

1. the liable person has paid the whole GAIC and any applicable interest or penalty
2. if the person has deferred the GAIC payment:
 - a. the person has paid the deferred GAIC and any applicable interest or penalty
 - b. the person has been granted a reduction by the Governor in Council and has paid the remaining GAIC and any applicable interest or penalty, or
 - c. the liability of the person has been extinguished (upon a subsequent dutiable transaction or land ceasing to be in the contribution area within three years), or
3. if the person has been given a staged payment approval:
 - a. the person has paid the whole GAIC and any applicable interest or penalty, or
 - b. the liability of the person has been extinguished (upon a change of the ownership of the whole land).

This certificate facilitates the registration of a land transfer or subdivision of land and the removal of a GAIC recording on the land.

Certificate of partial release

A certificate of partial release confirms that a GAIC liability has been partially paid. It is issued when a liable party has been given a staged payment approval relating to a plan of subdivision and has paid the GAIC amount including applicable interest for one of the stages. It also facilitates the removal of a GAIC recording that relates to the stage for which the staged payment is made.

Vendor's Statement

In a sale of land that has a GAIC recording, the vendor is required to insert the following in the Vendor's Statement as part of the contract of sale:

1. a warning that the purchaser may be liable for a GAIC [see *Sale of Land Act 1962* section 32(2)(da)];
2. any certificate of release, certificate of deferral, certificate of exemption or certificate of no GAIC liability issued by the SRO;
3. any notice issued by the Governor in Council or the Board;
4. if no certificate or notice is provided, a GAIC certificate relating to the land.

Relevant certificates required for building permit application

If an applicant applies for a building permit to carry out work on land that has a GAIC recording, the building surveyor must not issue a building permit unless the applicant produces one of the following certificates:

1. Certificate of Release
2. Certificate of Exemption
3. Certificate of No GAIC Liability, or
4. Certificate of Staged Payment Approval

Notices issued by the SRO to Registrar of Titles

When the SRO has issued to a person any of the following certificates for a transfer of land or a subdivision of land:

1. Certificate of Release
2. Certificate of Exemption
3. Certificate of No GAIC Liability
4. Certificate of Deferral (in the case of a transfer of land that is a GAIC event, or a subsequent dutiable transaction that rolls over a deferred GAIC), or
5. Certificate of Staged Payment Approval (in the case of a plan of subdivision that is a GAIC event, or a subsequent dutiable transaction that rolls over a GAIC subject to a staged payment approval);

the SRO will issue a notice to a person, that notifies the Registrar of Titles that a land transfer or subdivision of

land may be registered, even though there may be a GAIC recording on the land.

GAIC recording on the land

The GAA will apply to the Registrar of Titles to record a GAIC liability on the land. A GAIC recording can only be removed through an application lodged by the GAA or the SRO to the Registrar of Titles in certain circumstances.

1. The GAA must apply to the Registrar of Titles to remove a GAIC recording on the land, if:
 - a. the land is no longer in the contribution area
 - b. a wrong notification of a GAIC recording has been made on the land, or
 - c. the land is not subject to liability for a GAIC.
2. The SRO must apply to the Registrar of Titles to remove a GAIC recording on the land if:
 - a. the SRO issues a certificate of partial release or a certificate of release relating to the land, and
 - b. the SRO is satisfied that a GAIC liability relating to the land has been fully discharged.

The application for the removal of a GAIC recording on the land must be made in a form approved by the Registrar of Titles.

Example 17

H P/L owns a 78 hectare type A land, and decides to subdivide the land for residential development. The potential GAIC liability is \$6.24 million (78 hectares x \$80,000 per hectare). H P/L applied to the Minister to pay GAIC in five payments at the commencement of each stage of subdivision.

The Minister issues H P/L a notice of approval of the staged payment and forwards a notice to the SRO. Upon H P/L's application, the SRO issues H P/L a certificate of staged payment approval. This enables H P/L to register the plan of subdivision with the Registrar of Titles.

Following each GAIC payment, the SRO issues H P/L a certificate of partial release. The SRO also lodges an application to the Registrar of Titles to remove the GAIC recording for each stage of the subdivision that has been paid.

When H P/L makes the final staged payment, the SRO issues a certificate of release upon H P/L's application. The SRO also notifies the Registrar of Titles and applies to remove the GAIC recording off the land.

GAIC and TAA

GAIC will be administered in accordance with the TAA in terms of assessments, refunds, interest and penalty tax, objections and appeals, disclosure of information, investigation powers, recovery and other administrative provisions.

Objection/appeal rights

The objection, review and appeal provisions in Part 10 of the TAA establish an exclusive code for dealing with review of assessments including GAIC assessments.

A taxpayer dissatisfied with a GAIC assessment may lodge an objection to the assessment in writing with the SRO within 60 days of the date of service of the assessment, stating fully the grounds of the objection.

The grounds on which taxpayers can object to a GAIC assessment are limited to the following:

1. the land was incorrectly recorded as land in a contribution area
2. GAIC should not have been imposed because the GAIC event is an excluded event pursuant to section 201RB or the land was not subject to GAIC liability pursuant to section 201SA
3. the GAIC assessment has been incorrectly calculated, or
4. in the case of a GAIC imposed for a dutiable transaction, the land is exempt from GAIC pursuant to an exemption under Subdivision 2 of Division 3 (exemptions administered by the SRO).

If the SRO makes a decision not to grant a person a duty exemption, that person has the right to object to the SRO's decision upon receipt of a duty assessment relating to that land transfer. If the decision not to grant the duty exemption also affects the person's entitlement to an exemption from GAIC, that person similarly has the right to object to a GAIC assessment.

Interest and penalty tax

Failure to pay GAIC by the due date constitutes a tax default where the interest and penalty tax provisions in Part 5 of the TAA apply.

Refund of overpaid GAIC

An application for refund of overpaid GAIC must be made in accordance with the refund provisions in Part 4 of the TAA.

Generally, if an applicant has overpaid an amount of tax but has another tax liability, the SRO must offset that overpaid amount against the applicant's other outstanding tax liability and only refund any surplus amount to the applicant. However, this does not apply to a refund for GAIC. The SRO must refund any overpaid GAIC amount to an applicant, regardless of whether the applicant has any other tax liability.

Conversely, if an applicant overpaid an amount of tax other than a GAIC, the Commissioner must offset the overpaid tax against any outstanding tax liability of the applicant, including any GAIC liability.

Investigation powers

The SRO has investigative powers under Division 2 of Part 9 of the TAA to ensure compliance with Part 9B of the PEA.

Recovery and payment arrangements

The SRO collects and recovers GAIC in accordance with Part 7 of the TAA. Section 49 of the TAA provides that the SRO may extend the time for payment of tax or accept payment by instalments. However, this section does not apply to a payment of GAIC as GAIC can be deferred.

Record-keeping

A person liable for the GAIC must comply with the record-keeping requirements in Part 8 of the TAA. The mandatory period of retaining a record is a minimum of five years after either the date the record was made or obtained, or the date of completion of the transaction or act to which it relates, whichever is the later.

In relation to GAIC, the 'date of completion of the transaction or act' means the later of the following:

1. the date of occurrence of the first GAIC event that triggers the GAIC liability, or
2. the date for final payment of the GAIC if a staged payment option has been granted or the GAIC has been deferred.

Disclosure/secretcy

The general prohibition on disclosure will apply to any information obtained under or in relation to the administration or execution of GAIC, subject to certain permitted disclosures. To administer GAIC, the Commissioner will need to liaise with the GAA and DPCD. Hence the GAA and the Secretary to the DPCD are authorised recipients of information from the Commissioner to facilitate information disclosures for the purposes of administering the GAIC.

Payment options and contact details

A payment for the GAIC may be made by cheque payable to the 'State Revenue Office of Victoria'.

Cheques may be forwarded to the SRO either:

- By mail (to the address listed below), or
- In person at the SRO Customer Service Centre, Level 2, 121 Exhibition Street, Melbourne.

Opening hours for the Customer Service Centre are Monday, Tuesday, Thursday and Friday: 8:30am to 4:30pm and Wednesday 8:30am to 1:00pm.

Payments made in person must be by either cash or bank cheque as credit card facilities are not available.

Payments can also be made by EFT using the following details:

BSB No: 033222

Account No: 170444

Customers should email their remittance advice to finance@sro.vic.gov.au or fax it to (03) 9628 6857.

GAA contact details

Internet: www.gaa.vic.gov.au
Email: info@gaa.vic.gov.au
Phone: 03 9651 9600
Fax: 03 9651 9623
Mail: Level 29, 35 Collins Street
MELBOURNE VIC 3000

SRO contact details

Internet: www.sro.vic.gov.au
Email: gaic@sro.vic.gov.au
Phone: 13 21 61 (local call cost)
Fax: 03 9628 6856
Mail: State Revenue Office
GPO Box 1641
MELBOURNE VIC 3001
or DX 2600090 MELBOURNE

Appendix I – When does a GAIC liability arise?

The liability to pay GAIC depends on three factors, namely:

- when a GAIC event occurs
- whether the land at the time the event occurred is in the contribution area, and
- the type of land.

The following table summarises the four scenarios on page 6.

Occurrence of a GAIC event on or after 1 July 2010				
Type of Land	Contribution area (CA)		Timing of GAIC event	When liability arises
	Where land is in the CA at time of GAIC event	Where land is not in the CA at time of GAIC event		
A/ B-1/ B-2/ C	✓			GAIC event
B-1/ B-2		Brought into the CA on 30 August 2010	Between 1 July 2010 and 29 August 2010	30 August 2010

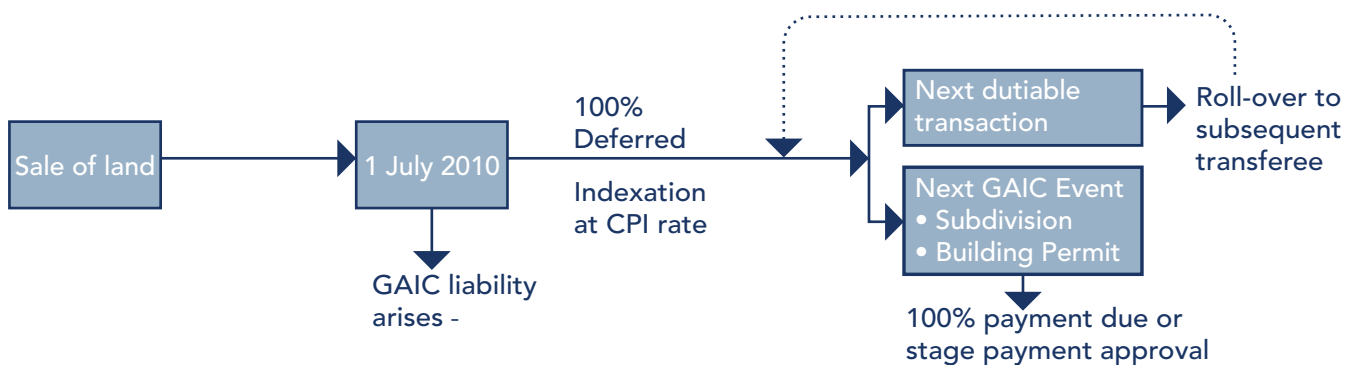
Occurrence of a GAIC event before 1 July 2010					
Type of Land	Contribution area (CA)		Timing of GAIC event		When liability arises
	Where land is in the CA before 1 July 2010	Where land is brought into the CA within 12 months on/after 1 July 2010	On and after 2/12/08	On and after 19/05/09	
A	✓		✓		1 July 2010
B-1		✓	✓		30 August 2010
B-2		✓		✓	30 August 2010

Appendix II – Indexation and interest applying to a deferred GAIC liability

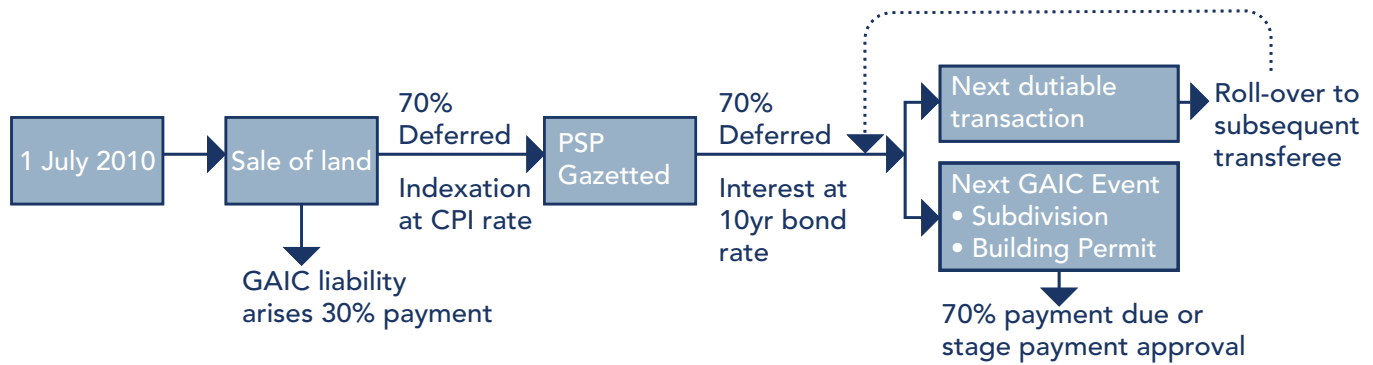
The following diagrams illustrate how indexation and interest apply to a deferred GAIC liability in different scenarios of a transfer of land (see pages 9-10). Note that the diagrams are not intended to cover all possible scenarios and the GAIC liability may arise on a day that is different to what is indicated in the diagrams (see page 6 on when a GAIC liability arises). The dotted lines in the diagrams indicate the continuation of indexation/interest in a roll-over situation.

A. Transactions occurring before 30 June 2011

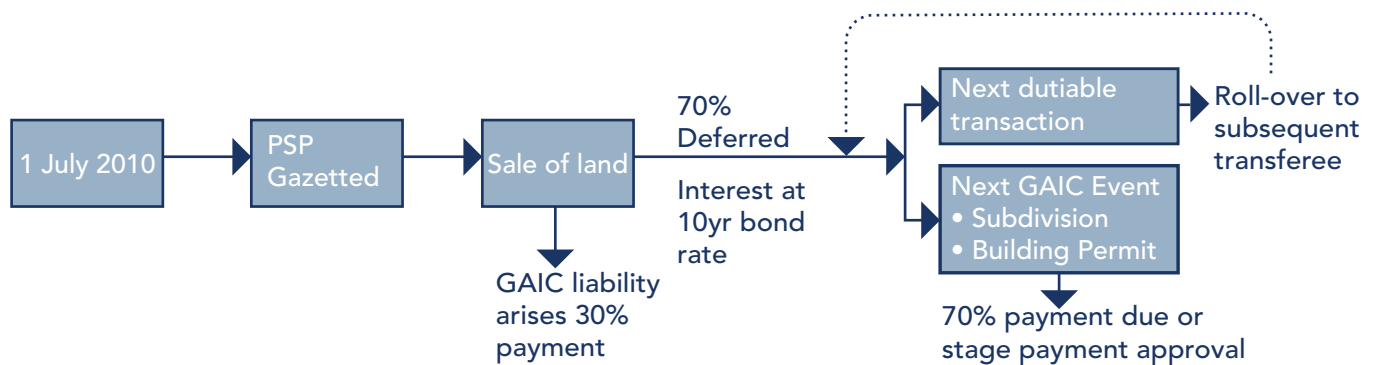
Case 1. – Type A land purchased before 1 July 2010 (on or after 2 December 2008)



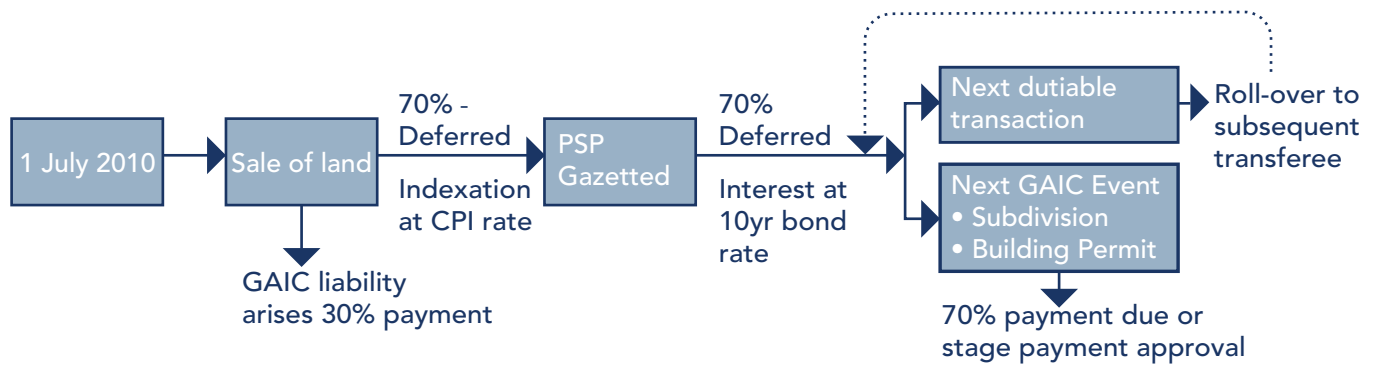
Case 2. – Type A land purchased on or after 1 July 2010 and before the land becomes part of a PSP area



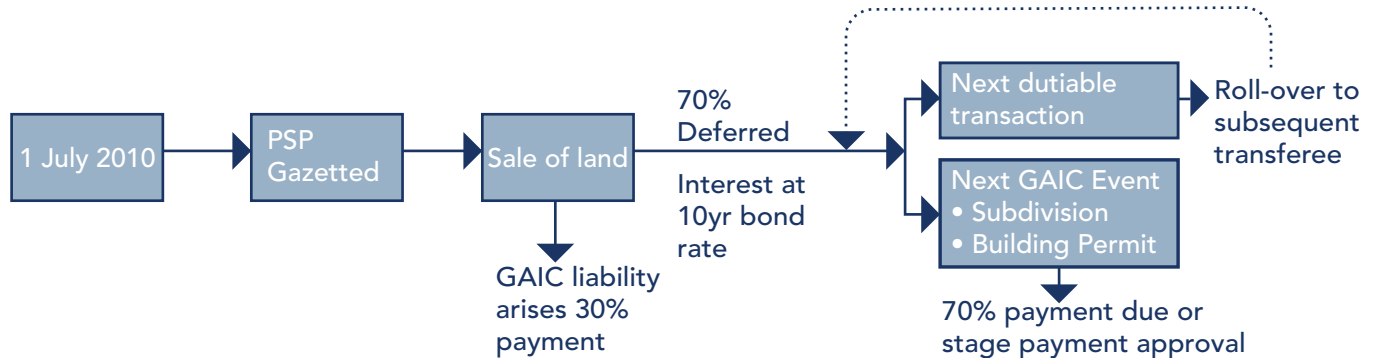
Case 3. – Type A land purchased on or after 1 July 2010 and after the land becomes part of a PSP area



Case 4. – Type B-1, B-2 and C land purchased on or after 1 July 2010 and before the land becomes part of a PSP area

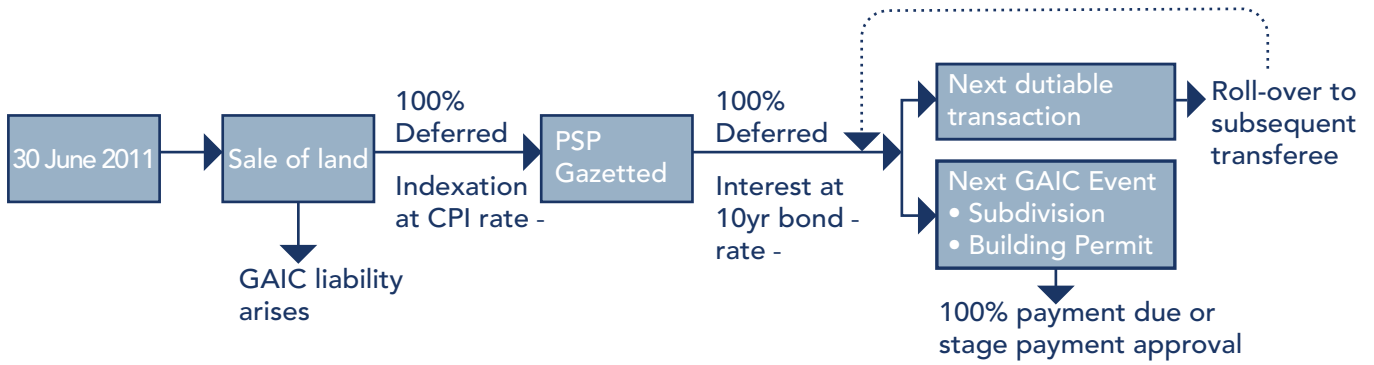


Case 5. – Type B-1, B-2 and C land purchased on or after 1 July 2010 and after the land becomes part of a PSP area

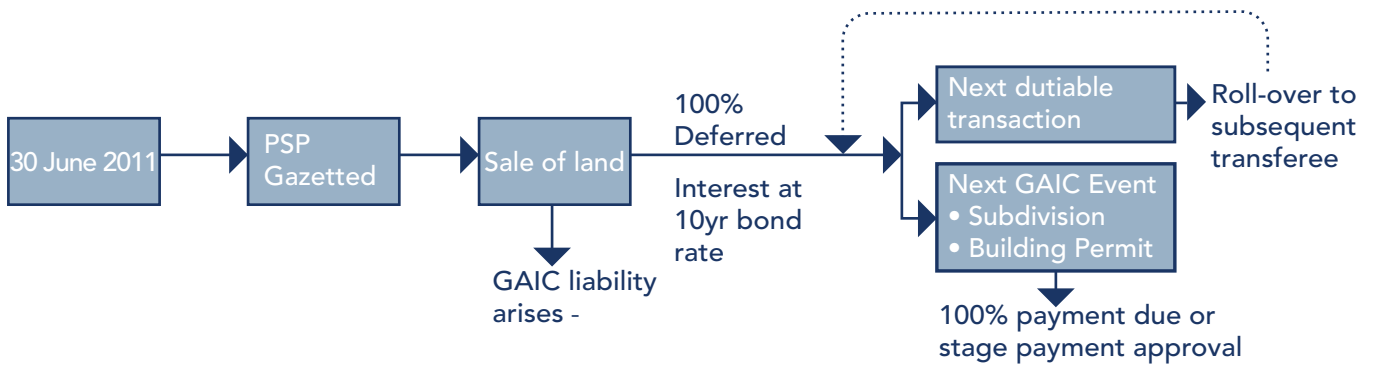


B. Transactions occurring on or after 30 June 2011

Case 6. – Land purchased before it becomes part of a PSP area



Case 7. – Land purchased on or after it becomes part of a PSP area



Appendix III – Applicable duty exemptions

Applicable Duty Exemptions - s.201 TB	
All sections referred to below relate to the <i>Duties Act 2000</i>	
s. 32 Transfers arising from mortgages on land	s. 33(2-3, 5) Change in trustees
s. 34(1)(a-b) Property vested in an apparent purchaser	s. 35(1)(a-c) Transfer to and from a trustee or nominee
s. 40 Transfer of property from one superannuation fund to another	s. 41 Transfers to trustees or custodians of superannuation funds or trusts
s. 42(1-3) Deceased estates	s. 43(3) Marriage and domestic relationship
s. 44 (1-4) Breakdown of a marriage or domestic relationship	s. 45 Charity or friendly society
s. 45A Health centres or services	s. 46(1),(2)(a-c) Co-operatives
s. 47(2) Diplomatic representatives of a foreign government	s. 48(a-d) Bankruptcies and administrations
s. 48A Amalgamation of industrial organisations	s. 50A Conversion of land use entitlements to different form of title
s. 51 Crown and public right of way	s. 52 Government bodies
s. 54 Joint tenants and tenants in common	s. 55 Equity release programs
s. 56(1) Transfer of farm to a relative or charity	