

Australian Capital Territory

Land Tax (Affordable Community Housing) Determination 2021

Disallowable instrument DI2021–18

made under the

Land Tax Act 2004, s 13A (5) (a) (Determination of eligibility criteria) and s 13A (5) (b) (Determination of maximum number of parcels of land)

EXPLANATORY STATEMENT

Update

Land Tax (Affordable Community Housing) Determination 2021 (Land Tax Determination) replaces the *Land Tax (Affordable Community Housing) Determination 2020*, DI2020-277 to increase the maximum number of parcels of land eligible for the exemption from 125 to 250, as provided in the Parliamentary and Governing Agreement, 10th Legislative Assembly, Australian Capital Territory.

There are no changes to the criteria that an owner of a parcel of land must satisfy before being eligible for a land tax exemption.

Background

The *Revenue Legislation Amendment Act 2019* amended the *Land Tax Act 2004* (Land Tax Act) to insert an exemption for land rented through a registered community housing provider. This exemption is in line with ACT Housing Strategy to provide affordable community housing to persons in the low-moderate income brackets, who may not qualify for public housing and are susceptible to housing stress in the private rental market. This scheme is administered jointly by the Environment Planning and Sustainable Development Directorate with responsibility for ACT land and housing policy, and the ACT Revenue Office with responsibility for administering the Land Tax Act.

Section 10 (1) (c) of the Land Tax Act exempts a parcel of land from land tax imposed under section 9 if it is exempt under section 13A.

Section 13A exempts a parcel of land from land tax where the owner enters into an agreement with a registered community housing provider and makes their parcel of land available to the provider for the purpose of affordable community housing. ‘Affordable community housing’ is defined at section 13A (8) as community housing that is rented at a rate that is less than the current market rent, and affordable by people on low or moderate incomes.

The exemption does not apply if the parcel of land is not rented within 3 months after the date the parcel is made available under the agreement, or if rented, stops being rented, or any part of the parcel of land is rented for a purpose other than affordable community housing under the agreement (section 13A (4)).

Section 13A (5) (a) provides that the Minister may determine by disallowable instrument the criteria that an owner of a parcel of land must satisfy before being eligible for an exemption.

Under section 13A (5) (b), the Minister may determine by disallowable instrument the maximum number of parcels of land that are entitled to an exemption, the maximum value of land tax that may be exempted, or the maximum number of parcels of land for which an owner is entitled to an exemption under section 13A.

Commencement and expiry

The Land Tax Determination commences the day after its notification, and there is no expiry. Accordingly, the Land Tax Determination will continue to be in effect in line with the operation of section 13A of the Land Tax Act, unless revoked.

Eligibility requirements

A parcel of land is deemed eligible for an exemption if the owner of that land enters into an agreement with a registered community housing provider and makes the parcel of land available for the purpose of affordable community housing.

This agreement will require the registered community housing provider to take all reasonable steps to rent the parcel of land for affordable community housing and to notify the Commissioner for ACT Revenue (Commissioner) before the first day of a quarter whether or not the parcel is rented. There are four quarters of land tax in a year: July to September quarter, October to December quarter, January to March quarter and April to June quarter. Land tax assessments are based on the first day of each quarter.

There are requirements that need to be satisfied before a parcel of land can qualify for an exemption under section 13A of the Land Tax Act.

Rental requirement

The parcel of land must be rented within three months after the date the parcel is made available under an agreement to the registered community housing provider. If rental stops, the exemption will not apply to the parcel.

Affordable community housing requirement (less than 75 per cent of market rent)

Rentals under the agreement with the registered community housing provider must be at a rate that is less than 75 per cent of current market rent.

Market rent is defined to be the rent that a lessor would charge if the land was rented by a willing lessor to a willing lessee dealing with each other at arm's length and each of whom had acted knowledgeably, sensibly and without compulsion.

Affordable community housing requirement (tenant's income threshold)

The tenant or tenants renting must also be a person or persons whose combined gross income at the time the rental agreement is entered into, is less than or equal to the income limits specified in the instrument.

There are two types of income thresholds specified in the Land Tax Determination. Specifically, the instrument provides that an owner's parcel must be rented by a tenant or tenants whose combined gross income (at the time the parcel is rented) is less than or equal to:

- \$100,000 per annum (based on the ACT Housing Strategy, October 2018), or
- the annually indexed income limits for a household (based on Commonwealth National Rental Affordability Scheme (NRAS) limits),

whichever is the greater.

Details of the NRAS thresholds may be accessed at www.dss.gov.au/our-responsibilities/housing-support/programs-services/national-rental-affordability-scheme/national-rental-affordability-scheme-nras-household-income-indexation. The NRAS income limits are adjusted annually on 1 May. The Land Tax Determination includes an indexation provision for adjusting the income limits based on NRAS (under Criterion 3, see section 4 (c) (ii) and (iii) of the Land Tax Determination).

Notification of rental requirement

A registered community housing provider is required, under each agreement they enter into with an owner, to notify the Commissioner before the first day of a quarter whether or not that parcel is rented – see section 13A (3) of the Land Tax Act.

In addition, Criterion 1 of the Land Tax Determination makes it a requirement that an owner of must provide, within 14 days of the rental of the parcel a copy of the agreement they have entered into with the registered community housing provider, as well as any other information the Commissioner may require to demonstrate that the parcel is rented in accordance with the eligibility criteria in the Land Tax Determination.

Particulars of the rental arrangement (amount of the rent, whether a tenant meets income thresholds) may be provided by the registered community housing provider where they act as the agent for the owner.

The time requirement for the provision of information ensures that the Commissioner has adequate notice of the rental arrangement to assess an owner's eligibility for the exemption.

Cap on the number of parcels

Up to 250 parcels of land will be eligible for the exemption under section 13A of the Land Tax Act.

Example

If, as at 1 July 2021, the cap of 250 parcels of land is reached and those parcels have received an exemption, no other parcel will be entitled to an exemption after that date.

The Commissioner will consult with the Director-General of the Environment Planning and Sustainable Development Directorate (with responsibility for land housing policy) on the allocation of exemptions to ensure the total number of parcels does not inadvertently exceed the maximum number determined in the Land Tax Determination.

Failure to comply with requirements

If a parcel of land ceases to be eligible for this exemption, for example a parcel is no longer rented for the purpose of affordable community housing, written notice of that change must be provided to the Commissioner by the owner, or their agent or personal representative.

This is a requirement under section 14 of the Land Tax Act that the owner tell the Commissioner of any change in a person's circumstances that would cause land tax to become payable for the parcel of land.

Revocation

This instrument revokes *Land Tax (Affordable Community Housing) Determination 2020*, DI2020-277.

Authorised by the Treasurer
Andrew Barr MLA