

Australian Capital Territory

Rates (Commercial Land) Exemption 2021 (No 2)

Notifiable instrument NI2021–575

made under the

Rates Act 2004, s 41 (Exemption from rates)

EXPLANATORY STATEMENT

Background

The Government will provide rates assistance to commercial landowners to support business, industry and our community affected by the COVID-19 pandemic for the prescribed period beginning on 1 August 2021 until 31 December 2021.

Commercial landlords who provide at least four weeks of rent reduction to business tenants significantly impacted by COVID-19 and commercial owner-operators significantly impacted by COVID-19 may be eligible for a rebate on their rates.

Rates exemptions for COVID-19 affected commercial landowners were previously provided under the Government's Economic Survival Package from quarter 4 of 2019-20 financial year until 31 January 2021.

Commencement and retrospectivity

The *Rates (Commercial Land) Exemption 2021 (No 2)* (the Rates Exemption) is taken to have commenced on 1 August 2021 to align with the beginning of the month in which lockdown restrictions came into effect and the date from which government assistance for rent reductions is to occur.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that it does not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person. This instrument provides an exemption of a determined amount of rates for eligible commercial landowners. It is non-prejudicial and promotes a purpose which will be of overall benefit to the ACT community.

Eligibility requirements

To be eligible for the Rates Exemption, commercial landowners must apply on or before 28 February 2022, and either the owner or their business tenant must operate a business on the land during the prescribed period.

Where the owners have business tenants, those tenants must have had their rent on that land reduced (and not deferred) during the prescribed period. Rent reductions are to follow good faith negotiations which include those in accordance with the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2021* (the Declaration) or earlier versions thereof.

Rent reductions must commence on or after 1 April 2020. If a rent reduction commences before 1 August 2021, it must continue to operate into the period of 1 August 2021 to 31 December 2021 (the prescribed period). Rent reductions must operate or continue to operate for at least four weeks within the prescribed period. Rent reductions commencing before 1 April 2020 are not eligible.

The Rates Exemption (and the Declaration) requires business tenants to have an annual business turnover of less than \$50 million and suffer a 30 per cent or more reduction in turnover. For not-for-profit entities, a decline in turnover of 15% or more is required.

Similarly, for commercial landowners who operate businesses on the land over the prescribed period, annual business turnover must be less than \$50 million, and those businesses must experience a 30 per cent or more turnover reduction to be eligible for the exemption. Again, for not-for-profit entities, a decline in turnover of 15% or more is required.

The reduction in turnover is determined by comparing any month in the prescribed period (an impacted month) to a comparison month. A comparison month is the same month as the impacted month in 2019 or, if the business did not carry on business in 2019, the same month as the impacted month in 2020. If the business did not carry on business in 2019 or 2020 they must satisfy the Commissioner for ACT Revenue that the business is an affected business to be eligible.

Exemption from rates—Determined amount

The ‘determined amount’ is based on whether the owner operates a business on the commercial land during the prescribed period or if they have business tenants doing so.

For those with business tenants, the eligible owners may receive an exemption equivalent to 50 per cent of the rent reduction during the prescribed period, up to a cap of \$10,000 or two quarters of rates for 2021-22 (quarters 1 and 2 are specified in the instrument for reference purposes). Only rent reductions during the prescribed period will be subject to government assistance.

For eligible owners who operate businesses on the land, they are entitled to receive an exemption equivalent to 80 per cent of rates for two quarters, up to a cap of \$10,000 (whichever is lower).

To be eligible commercial landowners cannot have received assistance or have applied for assistance and be awaiting a decision on their application under the ACT Government's COVID-19 Small Business Hardship Scheme.

If an eligible owner owns more than one property, a rates exemption can be applied to each property.

Authorised by the Treasurer
Andrew Barr MLA