

Australian Capital Territory

Land Tax (Affordable Community Housing) Determination 2023 (No 2)

Disallowable instrument DI2023–48

made under the

Land Tax Act 2004, s 13A (5) (Exemption for land provided for affordable community housing)

EXPLANATORY STATEMENT

The *Land Tax Act 2004* (Land Tax Act) provides an exemption from land tax for land rented through a registered community housing provider. This exemption is in line with the ACT Housing Strategy to provide affordable community housing to individuals in the low-moderate income brackets, who may not qualify for public housing and are susceptible to housing stress in the private rental market.

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 the parcel of land available for the purpose of affordable community housing. ‘Affordable community housing’ is defined in section 13A (7) 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.

The *Land Tax (Affordable Community Housing) Determination 2023 (No 2)* (the Determination) prescribes criteria for the owner under sections 13A (5) (a) & (b).

Update

This instrument corrects errors in the stated amounts in Table 1 of the *Land Tax (Affordable Community Housing) Determination 2023*, DI2023-34 (the previous Determination). Specifically, the combined annual gross income thresholds for a tenant/s for 2022/23 and 2023/24 values now include values for children consistent with the National Rental Affordability Scheme (NRAS).

Commencement and retrospectivity

The Determination is taken to have commenced on 1 April 2023 – that being the date of commencement of section 45 of the *Residential Tenancies Legislation Amendment Act 2023*.

Under section 76 of the *Legislation Act 2001*, a statutory instrument may provide that a non-prejudicial provision of the instrument commences retrospectively. The correction of the errors in Table 1 from the previous Determination is non-prejudicial, as the corrected values provide an additional allowance to the combined annual gross income threshold for households with children. Without the values for each child the income thresholds would only be based on adult members of a household, potentially reducing eligibility for the land tax exemption.

Eligibility requirements

A parcel of land is deemed eligible for an exemption from land tax 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 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

Under section 13A (4) of the Land Tax Act, the parcel of land must be rented within three months after the date the parcel is initially made available under an agreement to the registered community housing provider or thereafter the date a rental stops.

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, the first criterion under section 4 (a) of the Determination makes it a requirement that an owner 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 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.

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

Under section 4 (b) of the Determination, 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 would be charged by the lessor of a dwelling on a parcel of land if the land was rented by a willing lessor to a willing tenant 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 eligible tenant must also have a combined annual gross income for previous 12 months is less than or equal to the income thresholds specified section 4 (c) of the Determination.

There are two types of income thresholds specified in the Determination. Specifically, that a dwelling on a parcel of land must be rented by a tenant/s whose combined annual gross income is less than or equal to:

- \$100,000 per annum (based on the ACT Housing Strategy, October 2018); or
- the annual income limits for a household (based on Commonwealth NRAS limits),

whichever is the greater.

Details of the NRAS thresholds may be accessed at <https://www.dss.gov.au/housing-support-programs-services-housing-national-rental-affordability-scheme-living-in-an-nras-property/nras-household-income-indexation>. The NRAS income limits are adjusted annually on 1 May.

Change in tenant eligibility

Under new section 5, if the eligible tenant no longer meets the income threshold or it cannot be determined, then reasonable steps are to be made to ensure that the property is available to eligible tenants for the owner to maintain access to the land tax exemption.

This may include the existing tenant/s being given notice to vacate the property under standard residential terms 111 and 112.

- Under the Residential Tenancies Act, as amended, standard residential terms 111 and 112 provide for lessors to terminate a residential tenancy agreement on the grounds the tenant/s have not provided required information

to assess tenant/s income against the income thresholds or have stopped or will stop meeting the income thresholds.

If the existing tenant does not then vacate the property, an application has been made to the ACT Civil and Administrative Tribunal for a termination and possession order to maintain eligibility for the land tax 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 2023, 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.

Failure to comply with requirements

If a parcel of land ceases to be eligible for the land tax 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

The Determination revokes *Land Tax (Affordable Community Housing) Determination 2023*, DI2023-34.

Transitional

The Determination provides that *Land Tax (Affordable Community Housing) Determination 2021*, DI2021-18 continues to apply where residential tenancy agreements have been entered into prior to commencement of the Determination.

Authorised by the Treasurer
Andrew Barr MLA