

Rates (Commercial Land) Exemption 2021

Notifiable instrument NI2021–23

made under the

Rates Act 2004, s 41 (Exemption from rates)

1 Name of instrument

This instrument is the *Rates (Commercial Land) Exemption 2021*.

2 Commencement

This instrument is taken to have commenced on 1 January 2021.

3 Exemption from rates—amount

- (1) I declare that the eligible owner of eligible land is exempt from the payment of a determined amount of rates for a specified quarter.
- (2) If the rates for the specified quarter for that land are less than the determined amount for that specified quarter, taking into account any waivers, rebates or other exemptions applied to those rates (such as under the *Rates (Commercial Land) Exemption 2020*), any amount unused or not refunded (under part 4 of the *Taxation Administration Act 1999*) will be carried over to exempt rates for the owner of that parcel of land for following rates until the unused amount is exhausted.

4 Eligible owner

- (1) For this instrument, an eligible owner means an owner:
 - (a) who:
 - (i) has a business tenant; or
 - (ii) occupies the eligible land and operates a Category 2 or Category 3 business;but does not include an owner to the extent to which they operate, or whose business tenant operates, a Category 1 business; and
 - (b) who applies, in writing, for an exemption by 31 March 2021, and has their eligibility confirmed by the Commissioner.
- (2) Where a person has been exempted from the payment of rates for:

- (a) quarter 4 of the 2019-20 financial year and/or quarter 1 of the 2020-21 financial year under the *Rates (Commercial Land) Exemption 2020 (No 2)*; or
- (b) quarter 4 of the 2019-20 financial year, quarter 1 and/or quarter 2 of the 2020-21 financial year under the *Rates (Commercial Land) Exemption 2020 (No 3)*;

the person is not eligible for an exemption for the same quarter(s) under this instrument.

- (3) For the purposes of section 4 (1) (b), where a person applied for an exemption under the *Rates (Commercial Land) Exemption 2020 (No 3)* but the Commissioner had not confirmed or decided their eligibility before that instrument was revoked under section 7, the person will be deemed to have applied for an exemption under this instrument.

5 Definitions

In this instrument:

2020 quarter means any of the following, as relevant:

- (a) quarter 4 of the 2019-20 financial year; and
- (b) quarter 1 of the 2020-21 financial year; and
- (c) quarter 2 of the 2020-21 financial year.

2021 quarter means quarter 3 of the 2020-21 financial year.

Act means the *Rates Act 2004*.

AUV—see the Act, section 14 (3).

AUVU—see the Act, section 29 (5).

business income means GST Turnover as reported to the Australian Taxation Office on the Business Activity Statement.

business tenant means a person who:

- (a) occupies the eligible land under an agreement with the eligible owner; and
- (b) operates a Category 2 or Category 3 business on the eligible land; and
- (c) has had their rent on that land reduced (and not deferred) in accordance with the National Code as a result of the COVID-19 emergency; and
- (d) that reduced rent occurs or continues in the specified quarter.

cap means:

- (a) for each 2020 quarter, the lower of:
 - (i) the total rates for the quarter; or
 - (ii) where the determined amount includes Class B or Class D: \$8,000; or

- (iii) where the determined amount does not include Class B or Class D: \$5,000;
- (b) for the 2021 quarter, the lower of:
 - (i) one third of the total rates for the quarter; or
 - (ii) where the determined amount includes Class B or Class D: \$2,667; or
 - (iii) where the determined amount does not include Class B or Class D: \$1,667.

Category 1 business means a business who suffers less than 30 per cent reduction in business income in 2019-20 financial year compared to the same period in 2018-19 financial year as a result of the COVID-19 emergency.

Category 2 business means a business who:

- (a) suffers at least 30 per cent reduction in business income in 2019-20 financial year compared to the same period in 2018-19 financial year as a result of the COVID-19 emergency; or
- (b) otherwise satisfies the Commissioner that the business should fall within this category.

Category 3 business means a business who:

- (a) suffers at least 80 per cent reduction in business income in 2019-20 financial year compared to the same period in 2018-19 financial year as a result of the COVID-19 emergency; or
- (b) otherwise satisfies the Commissioner that the business should fall within this category.

commercial land—see the Act, dictionary.

Commissioner means the Commissioner for ACT Revenue under section 73 of the *Taxation Administration Act 1999*.

COVID-19 emergency means:

- (a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or
- (b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

determined amount means the aggregate of any of the following amounts, but not exceeding the cap:

- (a) where a business tenant operates on the eligible land:
 - (i) (**Class A**) a Category 2 business during a 2020 quarter: equal to 25 per cent of the total value of the reduction in rent for that 2020 quarter; or

- (ii) (**Class B**) a Category 3 business during a 2020 quarter: equal to 50 per cent of the total value of the reduction in rent for that 2020 quarter; or
 - (iii) (**Class A**) a Category 2 business during the 2021 quarter: equal to 8.33 per cent of the total value of the reduction in rent for the month of January 2021; or
 - (iv) (**Class B**) a Category 3 business during the 2021 quarter: equal to 16.67 per cent of the total value of the reduction in rent for the month of January 2021.
- (b) where the eligible owner occupies the eligible land and operates on that land for any length of time during any of the 2020 quarters:
- (i) (**Class C**) a Category 2 business: equal to 50 per cent of the rates for each 2020 quarter; or
 - (ii) (**Class D**) a Category 3 business: equal to 80 per cent of the rates for each 2020 quarter.
- (c) where the eligible owner occupies the eligible land and operates on that land for any length of time during the month of January 2021:
- (i) (**Class C**) a Category 2 business: equal to 16.67 per cent of the rates for the 2021 quarter; or
 - (ii) (**Class D**) a Category 3 business: equal to 26.67 per cent of the rates for the 2021 quarter.

eligible land means a parcel of land that is commercial land with an AUV or AUVU of \$2 million or less for the 2019-20 financial year.

National Code means the National Code of Conduct for SME Commercial Leasing Principles as set out in Schedule 1 of the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2)* (DI2020-283).

owner—see the Act, dictionary (a), and includes a unit owner.

parcel—see the Act, dictionary, and includes a unit.

Note Section 28 (2) of the Act provides that when applying the Act to a unit subdivision, a reference to a parcel of land in relation to the assessment or payment of rates is a reference to a unit.

rates means:

- (a) rates imposed on the eligible land by section 14 of the Act and payable by the owner of that land under sections 16 and 17 of the Act; and
- (b) where rates are described for a quarter, these rates are worked out in accordance with the payment of instalments under section 19 of the Act, whether or not the owner pays rates by instalment under section 18 (1) (c) of the Act.

unit—see the Act, dictionary.

unit owner—see the Act, dictionary.

7 Revocation

This instrument revokes the *Rates (Commercial Land) Exemption 2020 (No 3)*, NI2020-593.

Andrew Barr MLA
Treasurer

12 January 2021