

Rates (Commercial Land) Exemption 2021 (No 2)

Notifiable instrument NI2021–575

made under the

Rates Act 2004, s 41 (Exemption from rates)

1 Name of instrument

This instrument is the *Rates (Commercial Land) Exemption 2021 (No 2)*.

2 Commencement

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

3 Exemption from rates—amount

I declare that the eligible owner of eligible land is exempt from the payment of a determined amount of rates for the prescribed period.

4 Eligible owner

For this instrument, an *eligible owner* means an owner who:

- (a) applies, in writing, for an exemption on or before 28 February 2022, and has their eligibility confirmed by the Commissioner; and
- (b) either:
 - (i) has an affected business tenant; or
 - (ii) is an SME entity that occupies the eligible land and operates an affected business; and
- (c) in relation to the COVID-19 Small Business Hardship Scheme:
 - (i) has not received assistance; or
 - (ii) is not awaiting a decision on an application for assistance.

5 Definitions

In this instrument:

Act means the *Rates Act 2004*.

affected business means a business whose:

- (a) turnover for any month in the prescribed period (including August 2021) (an **impacted month**) falls short of the following (**the comparison turnover**):
 - (i) the business' turnover for a comparison month;
 - (ii) if the business did not carry on business in 2019 or 2020—otherwise satisfies the Commissioner that the business is an affected business; and
- (b) the shortfall, expressed as a percentage of the comparison turnover equals or exceeds—
 - (i) for a business operating on a not-for-profit basis—15%; or
 - (ii) for any other business—30%.

affected business tenant means a person:

- (a) who occupies the eligible land under an agreement with the eligible owner; and
- (b) who is an SME entity; and
- (c) whose business is an affected business; and
- (d) who has had their rent on that land reduced (and not deferred) for a period of at least four weeks during the prescribed period after the eligible owner has engaged in good faith negotiations with the person; and
- (e) that reduced rent arrangement:
 - (i) commences in the prescribed period; or
 - (ii) commenced during the period 1 April 2020 to 31 July 2021 inclusive and that arrangement continues into the prescribed period.

cap means, for the prescribed period, for:

- (a) an eligible owner with an affected business tenant—the lower of:
 - (i) an amount of \$10,000; or
 - (ii) an amount equal to the rates for quarters 1 and 2, 2021-22 for the eligible land;
- (b) other eligible owners—an amount of \$10,000.

commercial land—see the Act, dictionary.

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

comparison month, for an impacted month, means:

- (a) the same month as the impacted month in 2019; or
- (b) if the business did not carry on business in 2019—the same month as the impacted month in 2020.

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

- (a) where an affected business tenant operates on the eligible land an affected business for any length of time during the prescribed period—an amount equal to 50 per cent of the total value of the reduction in rent during the prescribed period; or
- (b) where the eligible owner occupies the eligible land and operates an affected business on that land for any length of time during the prescribed period—an amount equal to 80 per cent of the rates for quarters 1 and 2, 2021-22 for the eligible land.

eligible land means a parcel of land in the ACT that is commercial land.

good faith negotiations include negotiations undertaken consistent with:

- (a) section 6 of the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2021*, with the person deemed to be an impacted tenant for the purpose of applying that section to this instrument;
- (b) section 6 of the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2)*;
- (c) section 4 of the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020*.

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.

prescribed period means the period:

- (a) beginning on 1 August 2021; and
- (b) ending on 31 December 2021.

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.

SME entity means a person who:

- (a) carried on business for the whole of the financial year ending 30 June 2021 and had an annual turnover for that year of less than \$50 million; or
- (b) did not carry on a business for the whole of the financial year ending 30 June 2021 and whose annual turnover for the financial year ending 30 June 2022 is likely to be less than \$50 million.

turnover includes:

- (a) turnover from internet sales of goods or services; and
- (b) any COVID-19 business support grants from the ACT government.

Andrew Barr MLA
Treasurer

22 September 2021