

Australian Capital Territory

# Land Tax (Affordable Community Housing) Determination 2019 (No 1)

Disallowable instrument DI2019–32

made under the

*Land Tax Act 2004*, s 13A (Determination of eligibility criteria)

## EXPLANATORY STATEMENT

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### Background

This instrument commences on the day after its notification day.

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 who do not qualify for public housing and are not able to enter the private rental market. This scheme will be administered jointly by the Environment Planning and Sustainable Development Directorate with responsibility for housing, and the ACT Revenue Office with responsibility for administering the Land Tax Act.

New section 10 (1) (ba) of the Land Tax Act exempts a parcel of land under section 13A (Exemption for land provided for affordable community housing).

New section 13A of the Land Tax Act states that a parcel of land is exempt from land tax if an owner of a parcel of land enters into an agreement with a registered community housing provider and makes the parcel available under the agreement 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.

However, 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)).

An owner is required under section 14 of the Land Tax Act to tell the Commissioner for ACT Revenue of any change in the person’s circumstances in relation to the parcel that would cause land tax or a foreign ownership surcharge to become payable for the parcel, and the date of the change in circumstances. The Commissioner must be told not later than 30 days after the circumstances change.

Pursuant to section 13A (5) (a), 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.

Pursuant to 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.

Section 10 (1) (ba) and section 13A have an expiry date of 30 June 2021.

## **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 before the 1<sup>st</sup> day of a quarter whether or not the parcel is rented. There are 4 quarters of land tax in a year: July to September quarter, October to December quarter, January to March quarter and the April to June quarter.

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

### **Rental requirement**

The parcel of land must be rented within 3 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. The whole parcel must be rented for the purpose of affordable community housing.

### **Affordable community housing requirement**

The parcel, the subject of the agreement with the registered community housing provider must be rented 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 in respect of a parcel of land 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.

The parcel must also be rented by a person or persons whose combined total gross income is less than or equal to the income limits specified in the instrument, that match those provided the National Rental Affordability Scheme (NRAS) Regulations 2008 (Cth).

The income limits for a household match those provided under NRAS Regulations 2008 (Cth) for 2018-19 and 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](http://www.dss.gov.au/our-responsibilities/housing-support/programs-services/national-rental-affordability-scheme/national-rental-affordability-scheme-nras-household-income-indexation).

### **Notice of rental requirement**

A registered community housing provider is required, under each agreement for the provision of affordable community housing in respect of a parcel of land, to notify the Commissioner of Revenue before the 1<sup>st</sup> day of a quarter whether or not that parcel is rented – see section 13A(3).

In addition, under this instrument, an owner of a parcel of land must provide, in a manner required by the Commissioner, information that demonstrates they have met the eligibility criteria in this instrument.

An owner must provide this information no later than 14 days before the 1<sup>st</sup> day of the next quarter, after the parcel is rented by the registered community housing provider.

This is to ensure that the Commissioner has adequate notice of the rental arrangement before applying the exemption from the 1<sup>st</sup> day of a quarter.

### **Owner's eligibility requirements**

To be eligible, an owner –

*Criterion 1* – must have entered into an agreement with a registered community housing provider to make available the owner's parcel of land for the purpose of affordable community housing;

*Criterion 2* – must have rented the parcel at a rate that is less than 75 per cent of the current market rent;

*Criterion 3* – must have rented the parcel to a person or persons whose combined total gross income in the previous financial year is less than or equal to the income limits under the NRAS; and

*Criterion 4* – must provide the Commissioner for ACT Revenue with information that demonstrates that they have met their eligibility requirements within a specified time.

### **Cap on the number of parcels**

Only 100 parcels of land will be eligible for the exemption under section 13A for the period commencing from the commencement date of this instrument to 30 June 2021.

#### Example

As at 1 February 2021, 100 parcels of land have received an exemption. No other parcel will be entitled to an exemption after that date for the remainder of the period to 30 June 2021.

The Commissioner for ACT Revenue will consult with the Director-General of the Environment Planning and Sustainable Development Directorate on the allocation of exemptions to ensure the total number of parcels does not exceed the maximum number determined in this instrument.

### **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 or a foreign ownership surcharge to become payable for the parcel of land.

If an owner, their agent or personal representative fails to give notice to the Commissioner, the owner of the parcel may be subject to penalty tax and payment of interest in addition to the primary land tax payable.

Authorised by the Acting Treasurer  
Yvette Berry MLA  
27 March 2019