

Australian Capital Territory

Land Tax (Affordable Community Housing) Determination 2019 (No 2)

Disallowable instrument DI2019–228

made under the

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

EXPLANATORY STATEMENT

Updates

This instrument revokes and replaces *Land Tax (Affordable Community Housing) Determination 2019 (No 1)*, (DI2019-32). It commences retrospectively from 28 March 2019 and clarifies and confirms the availability of an alternate ACT Housing Strategy income threshold for tenants, as well as an owner's application requirements for this affordable community housing Scheme.

Criterion 3 is updated from the previous instrument to provide that an owner's parcel must be rented by a tenant or tenants whose combined gross income (at the time the parcel is rented) 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 National Rental Affordability Scheme (NRAS) limits),

whichever is the greater.

The update to Criterion 3 allows for an alternate threshold for determining a tenant's eligibility for affordable community housing under this instrument.

Criterion 1 is also updated from the previous instrument to specify that within 14 days of the rental of a parcel for affordable community housing, the owner (or their agent) is required to provide certain documents in support of their application for a land tax exemption under this instrument. This application requirement, previously categorised under Criterion 4 of DI2019-32, required owner's to supply information before the 1st day of the next quarter. This requirement has been altered in this instrument to better streamline its operation and allow for a community housing provider to supply particulars of rental where they act as the agent for the owner.

There are no other changes to the criteria that an owner of a parcel of land must satisfy before being eligible for a land tax exemption, or to the determination of the maximum number of parcels of land that are entitled to the exemption.

Retrospectivity

This instrument is taken to commence on 28 March 2019.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may provide that a non-prejudicial provision of an instrument commences retrospectively.

The inclusion of an alternate ACT Housing Strategy threshold will bring more households into scope for affordable community housing. In effect, this expands the pool of eligible tenants and increases the potential for participation in the scheme. The inclusion of this provision does not operate to the disadvantage of any person by adversely affecting that person's rights, or by imposing additional liabilities on that person.

The other updates in this instrument aid to improve the operation of the land tax exemption for affordable community housing participants.

Background

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 in the low-moderate income brackets, who may not qualify for public housing and are susceptible to housing stress in the private rental market. This scheme is administered jointly by the Environment Planning and Sustainable Development Directorate with responsibility for ACT land and housing policy, and the ACT Revenue Office with responsibility for administering the Land Tax Act.

Section 10 (1) (c) of the Land Tax Act exempts a parcel of land 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 their parcel of land available 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.

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.

This scheme is implemented as a pilot for two years. Accordingly, section 10 (1) (c) 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 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 the 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

The parcel of land must be rented within three 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.

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

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 a lessor would charge 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.

Affordable community housing requirement (tenant's income threshold)

The tenant or tenants renting must also be a person or persons whose combined gross income at the time the rental agreement is entered into, is less than or equal to the income limits specified in the instrument.

There are two types of income thresholds specified in this instrument, the income limits based on the ACT Housing Strategy, October 2018 and the limits based on NRAS income thresholds (Commonwealth).

Details of the NRAS thresholds 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. The NRAS income limits are adjusted annually on 1 May. This instrument includes an indexation provision for adjusting the income limits based on NRAS (under Criterion 3, see 4 (c) (ii) and (iii) of this instrument).

Notification of rental requirement

A registered community housing provider is required, under each agreement they enter into with an owner, to notify the Commissioner for ACT Revenue before the first day of a quarter whether or not that parcel is rented – see section 13A (3) Land Tax Act.

In addition, Criterion 1 of this instrument makes it a requirement that an owner of 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 this instrument.

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.

Cap on the number of parcels

Only 100 parcels of land will be eligible for the exemption under section 13A of the Land Tax Act for the pilot period, expiring on 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 (with responsibility for land housing policy) on the allocation of exemptions to ensure the total number of parcels does not inadvertently 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 to become payable for the parcel of land.

Transitional provision

This instrument revokes DI2019-32. DI2019-32 was to have commenced on 28 March 2019 and this revocation means that it was never effective.

Authorised by the Acting Treasurer
Yvette Berry MLA