

Australian Capital Territory

Rates (Commercial Land) Exemption 2021

Notifiable instrument NI2021–23

made under the

Rates Act 2004, s 41 (Exemption from rates)

EXPLANATORY STATEMENT

Background

Rates (Commercial Land) Exemption 2021 (the Extended Rates Exemption) replaces *Rates (Commercial Land) Exemption 2020 (No 3)* to apply the rates exemption to eligible owners of commercial land with an AUV of \$2 million or less, for quarter 4 of 2019-20 financial year, quarters 1 and 2 as well as for the month of January 2021 of quarter 3 of 2020-21 financial year.

In March and April 2020, the Government announced two economic stimulus packages to support business, industry and our community affected by the COVID-19 pandemic. As part of the stimulus packages, the Government will provide rates assistance to commercial property owners to provide cashflow support.

Rates (Commercial Land) Exemption 2020 (No 3), NI 2020-593 provided an exemption of a ‘determined amount’ for eligible owners of commercial land with an AUV of \$2 million or less, for quarter 4 of 2019-20 financial year, quarter 1 as well as quarter 2 of 2020-21 financial year.

Given the ongoing impact on businesses, the Government announced on 9 August 2020 an extension of the rates exemption for a further three months to continue to provide assistance to eligible commercial property owners while the impacts of the COVID-19 pandemic remain significant.

Subsequently, the Government announced on 17 December 2020 a further continuation of the rates exemption to 31 January 2021.

Commencement

The Extended Rates Exemption is taken to have commenced on 1 January 2021.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that it does not operate to the disadvantage of a person by adversely affecting the person’s rights or imposing liabilities on the person. This instrument provides a concession on the rates payable

for businesses whose tenants have been affected by COVID-19 and supports economic recovery. It is non-prejudicial and promotes a purpose which will be of overall benefit to the ACT community.

Eligibility requirements

To be eligible for the Extended Rates Exemption, eligible owners must apply by 31 March 2021, and either the eligible owner or their business tenant must operate Categories 2 or 3 businesses on the eligible land. Applications under the *Rates (Commercial Land) Exemption 2020 (No 3)* where eligibility was not confirmed will be deemed to be applications under the Extended Rates Exemption.

Where the eligible owners have business tenants, those tenants must operate Categories 2 or 3 businesses and have had their rent on that land reduced (and not deferred) in accordance with the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2) (DI2020-283) (Declaration)*.

The Declaration adopts the overarching principles and leasing principles contained in the National Code of Conduct for SME Commercial Leasing Principles During COVID-19 (National Code), which was approved by the National Cabinet on 7 April 2020. The National Code requires commercial landlords and tenants to engage in good faith negotiations on amendments to existing leasing arrangements during the COVID-19 pandemic, such as rent reduction, in accordance with the leasing principles.

Whether a business falls within Categories 2 or 3 businesses depends on the percentage of business income reduction, calculated by comparing the GST turnover in 2019-2020 financial year with the same period in 2018-19 financial year, or as otherwise determined by the Commissioner for ACT Revenue.

Exemption from rates—Determined amount

The ‘determined amount’ is calculated based on the category of businesses the eligible owners or their business tenants operate.

2020 Quarter

For those with business tenants operating Category 2 businesses, for each 2020 quarter, the eligible owners will be eligible for an exemption equivalent to 25 per cent of the rent reduction, up to a cap of \$5,000 per quarter. For those with business tenants operating Category 3 businesses, the eligible owners will be eligible for an exemption equivalent to 50 per cent of the rent reduction, up to a cap of \$8,000 per quarter.

For eligible owners who operate businesses on the eligible land, if they operate Category 2 businesses, they are entitled to receive an exemption equivalent to 50 per cent of rates, up to a cap of \$5,000 or total rates per quarter (whichever is lower). For those operating Category 3 businesses, they are entitled to receive an exemption equivalent to 80 per cent of rates, up to a cap of \$8,000 or rates per quarter (whichever is lower).

2021 Quarter

For the 2021 quarter (quarter 3 of the 2020-21 financial year), eligible owners with a business tenant operating a Category 2 business during this quarter will be eligible for an exemption equivalent to 8.33 per cent of the total value of the reduction in rent for the month of January 2021, up to a cap of \$1,667.

For those with business tenants operating Category 3 businesses, the eligible owners will be eligible for an exemption equivalent to 16.67 per cent of the rent reduction, up to a cap of \$2,667.

For eligible owners who operate businesses on the eligible land, if they operate Category 2 businesses, they are entitled to receive an exemption equivalent to 16.67 per cent of the rates for the 2021 quarter, up to a cap of \$1,667 or total rates per quarter (whichever is lower). For those operating Category 3 businesses, they are entitled to receive an exemption equivalent to 26.67 per cent of rates, up to a cap of \$2,667 or rates per quarter (whichever is lower).

Example 1: Category 2 Tenant (Class A)

Retail store C rents from Landlord D for \$60,000 per quarter. Business has dropped off as customers are not going to stores to shop during this period, but online shopping has increased compared to normal. This resulted in an overall reduction in income by 50 per cent and the business falls into Category 2.

Retail store C and Landlord D agree to reduce rent to \$50,000 per quarter for quarters 2 and 3, 2020-21. The total value of rent reduction is \$10,000 per quarter. The following rebates will apply to Landlord D:

- \$2,500 ($\$10,000 \times 25\%$) will apply for quarter 2, 2020-21; and
- \$833 ($\$10,000 \times 8.33\%$) will apply for quarter 3, 2020-21.

Example 2: Category 3 Tenant (Class B)

Business E rents a ground floor unit from Landlord F for \$25,000 per quarter. Business E experiences a decrease in income of 80 per cent and falls into Category 3.

Business E and Landlord F agree to reduce rent by 80 per cent to \$5,000 per quarter for quarters 2 and 3, 2020-21. The total value of rent reduction is \$20,000 per quarter. The following rebates will apply to Landlord F:

- as 50 per cent of the rent reduction (\$10,000) is higher than the quarterly rebate cap, a rebate of \$8,000 of rates will apply for each of quarters 2, 2020-21; and
- as 16.67 per cent of the rent reduction (\$3,334) is higher than the quarterly cap, a rebate of \$2,667 will apply for quarter 3, 2020-21.

An eligible owner is entitled to more than one exemption per property, up to the applicable quarterly cap. If an eligible owner owns more than one property below the threshold, a rates exemption can be applied to each property.

If the rates for the specified quarter are less than the determined amount due to the operation of waivers, rebates or other exemptions, the remainder of the amount (either unused or, if rates have been paid but not refunded) will be credited against future rates to the owner of that land for following quarters (or financial years if the eligible owner pays rates annually).

Eligible owners are excluded from an exemption for quarter 4 2019-20, quarter 1 and/or quarter 2 2020-21 under this instrument, if they are already exempt from paying a determined amount of rates for those quarters under the *Rates (Commercial Land) Exemption 2020 (No 2)* or *Rates (Commercial Land) Exemption 2020 (No 3)*. This prevents the potential duplication of a rates exemption for quarter 4 2019-20, quarter 1 and quarter 2 2020-21, and thereby protects the integrity of the measure.

Revocation

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

Authorised by the Treasurer
Andrew Barr MLA