



Commissioner's Discretion to Exempt Land used for a Build-to-rent Development

This Commissioner's practice outlines when the Commissioner of State Revenue will apply discretion to exempt land that doesn't meet the requirements of a build-to-rent development.

Background

Under Part 3 Division 4B of the *Land Tax Assessment Act 2002* (LTA Act), eligible land used for a build-to-rent development will receive an exemption of up to 50 per cent of the taxable value of the land for up to 20 consecutive assessment years from the first year the development meets the requirements. The exemption only applies for assessments years beginning on or after 1 July 2023.

A build-to-rent development is a building or buildings which have been constructed or substantially renovated to provide self-contained dwellings for lease under residential tenancy agreements.

- For a dwelling to be *self-contained*, it must contain its own kitchen, bathroom and toilet.¹
- For a building to be *substantially renovated*, the whole or a substantial part of a building must be redeveloped from a non-residential use to a residential use. Under section 39F(2) of the LTA Act, minor works made to a building, such as those which are small in scale or scope and do not require major structural changes, do not constitute substantial renovation.

Section 39F of the LTA Act provides that a development must meet the following requirements to qualify for the exemption:

- the land containing the development must be owned by the same owner or group of owners and managed by one management entity
- the development must have been constructed or substantially renovated for the purpose of providing at least 40 self-contained dwellings for lease under residential tenancy agreements
- the dwellings in the development must become able to be lawfully occupied between 12 May 2022 and 30 June 2032, with at least 40 dwellings able to be occupied within five years of the first dwelling being occupiable
- the dwellings must be available to rent for a term of at least three years, although residents can choose a shorter lease term and
- the dwellings cannot be restricted to certain classes of person unless it is necessary to ensure public health or safety, or if the dwellings are social housing.²

If the requirements are not met for an assessment year, section 39J(2) of the LTA Act provides that the land is not considered exempt for that assessment year.

Under section 15B of the LTA Act, if land ceases to qualify for the exemption during the first 15 years of it being applied, the Commissioner will retrospectively apply tax for the years the land received the exemption. If land ceases to qualify for the exemption after the 15th year of being exempt, retrospective land tax will not be applied.

¹ The term *self-contained dwelling* is not defined in the LTA Act and takes its ordinary dictionary meaning.
www.macquariedictionary.com.au

² Other circumstances may be prescribed.

Under section 39J(3) of the LTA Act, the Commissioner may determine that land used for a development which does not meet the exemption requirements is treated as exempt for an assessment year if:

- the land was exempt in the previous assessment year as a build-to-rent development
- the reasons the development cannot meet the requirements are temporary and
- it is reasonable to do so in the circumstances.

Commissioner's practice

1. If land ceases to qualify for the exemption, the Commissioner may apply discretion to exempt the land under section 39J(3) of the LTA Act.
2. The Commissioner is likely to exercise discretion to continue the exemption if the circumstances preventing the requirements from being met are temporary and were unforeseen or outside of the owner's control, and the owner has taken steps to rectify the situation.
3. Examples of circumstances that are unforeseen or outside of the owner's control include:
 - 3.1 fire, flood or similar damage
 - 3.2 damage resulting from nearby construction
 - 3.3 damage resulting from poor workmanship
 - 3.4 government restrictions or directions and
 - 3.5 damage caused by tenants resulting in the property being unfit for occupation.
4. The Commissioner may not consider the circumstances to be outside the owner's control if an act or omission of the owner contributed to the circumstances.
5. The Commissioner will generally accept the circumstances as temporary if:
 - 5.1 the owner has taken action to resolve the issue to allow the exemption conditions to be met again and
 - 5.2 any delays in completing remedial works are beyond the owner's control and
 - 5.3 the Commissioner is satisfied the development will meet the conditions again as soon as practicable.
6. Evidence the owner has taken action to resolve the issue include:
 - 6.1 engaging contractors to rectify the damage and
 - 6.2 seeking approval for any works required.

Examples

1. A development started receiving the exemption in 2023-24. In October 2027, several dwellings within the development are damaged by fire. As at 30 June 2028, those dwellings are being repaired, resulting in less than 40 dwellings available for rent at that time. The Commissioner is likely to exercise discretion to continue the exemption for the 2028-29 assessment year even though the requirements are not met.
2. A development started receiving the exemption in 2023-24. In March 2026, several dwellings within the development are damaged as a result of nearby construction. The owner engages a contractor to fix the structural damage to the dwellings, but as at 30 June 2026, those dwellings are still unfit for habitation, resulting in less than 40 dwellings available for rent at that time. The Commissioner is likely to exercise discretion to continue the exemption for the 2026-27 assessment year even though the requirements are not met.
3. A development had been receiving an exemption for 6 years. In December 2030, flood damage to several of the dwellings left them unfit for habitation, resulting in less than 40 dwellings available for rent. As at 30 June 2031, the owner had not taken any action to resolve the issue even though the damage occurred seven months prior to that date. The Commissioner is unlikely to accept the circumstances as temporary. Unless the owner can show that the delay in commencing repairs is beyond their control, the exemption will cease and retrospective land tax will be applied to the development for the years the development received the exemption.

7. The Commissioner may exempt the land when all owners of the land make a written request for discretion and provide evidence to show the circumstances detailed in this practice. If the dwellings are not fit for habitation at 30 June of the following year, all owners of the land must make a further request for discretion to exempt the land for that assessment year.

Date of effect

This Commissioner's practice takes effect from 16 May 2024.

Chris McMahon
COMMISSIONER OF STATE REVENUE
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Document history

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