



Foreign Transfer and Landholder Duty – Extension of Time to Construct, Refurbish, Subdivide or Sell Dwellings

This Commissioner's practice explains what the Commissioner will consider when exercising discretion to allow additional time for a taxpayer to complete a requirement to build and sell dwellings, construct or refurbish ten or more dwellings, or subdivide land, when they have been granted an exemption from foreign transfer duty or foreign landholder duty.

Background

Under Chapter 3A of the *Duties Act 2008* (Duties Act):

- a foreign person who acquires residential land in Western Australia is liable to pay foreign transfer duty on the transaction and
- a foreign person who acquires an interest in a landholder which holds residential land (a residential landholder) may be liable to pay foreign landholder duty on the acquisition based on the value of the residential land held by the landholder.

General information on foreign transfer and foreign landholder duty is available in the [Foreign Transfer Duty](#) and [Foreign Landholder Duty](#) fact sheets.

An exemption from foreign transfer duty is available if the Commissioner is satisfied the acquirer of land has done, or will do, one of the following:

- create 10 or more dwellings on the land (either by building or substantial refurbishment)¹ within five years after the transaction is completed²
- subdivide the land to allow the construction of 10 or more dwellings on the land within three years after the transaction is completed³
- create dwellings (either by building or substantial refurbishment) so there are more dwellings on the land than there were before the land was acquired, and then sell those dwellings and all the land they acquired within two years after the transaction is completed.⁴

An exemption from foreign landholder duty is available if the Commissioner is satisfied the residential landholder or a linked entity has done, or will do, one of the following:

- create 10 or more dwellings on the land (either by building or substantial refurbishment) within five years after the acquisition⁵
- subdivide the land to allow the construction of 10 or more dwellings within three years after the acquisition.⁶

The Commissioner may extend each of these timeframes by up to one year if satisfied there has been a delay in the requirements being met, the delay is primarily due to exceptional

¹ *Substantial refurbishment* does not include minor works to a building or part of a building: Duties Act s 205A(1).

² Duties Act s 205ZA.

³ Duties Act s 205ZB.

⁴ Duties Act s 205ZBA.

⁵ Duties Act s 205ZO.

⁶ Duties Act s 205ZP.

circumstances beyond the control of the foreign person, and the delay could not reasonably have been avoided by that person.

Only one extension can be made, and an application for extension must be made before the original time period expires.

If the requirement is not met in the relevant timeframe (including any extension that may be allowed), the taxpayer must notify the Commissioner within two months of the period ending. The Commissioner will reassess the transaction or acquisition without the exemption applying. Failure to notify the Commissioner may result in penalties being applied.

The Commissioner has no discretion to extend the time period for an additional year if the foreign person pays foreign transfer duty or foreign landholder duty on the transaction or acquisition, satisfies the exemption criteria outside of the required timeframe and then applies for a reassessment of duty on the basis that the transaction is exempt.

Commissioner's practice

1. Each request for an extension of time will be considered on its individual facts and circumstances.
2. In each case the Commissioner will consider:
 - 2.1 whether a delay was caused by factors that were exceptional and beyond the control of the foreign person
 - 2.2 whether that delay is the primary cause of the requirements not being met and
 - 2.3 whether the delay could have reasonably been avoided by the foreign person.
3. Examples of factors the Commissioner will generally accept as being exceptional and beyond the control of the person include:
 - 3.1 damage to the relevant property caused by a natural disaster (e.g. fire, storm, flooding)
 - 3.2 insolvency or liquidation of a builder contracted to construct or refurbish dwellings
 - 3.3 significant delays in procuring building materials due to unforeseen supply constraints or transportation issues and
 - 3.4 legal action taken by nearby residents that prevents a building being completed, certified as suitable for a dwelling or sold.
4. When considering if a delay is the primary cause of the requirements not being met, the Commissioner will review the complete timeline of events from the date the transaction was completed until the extension was requested. The Commissioner will consider any delays that were not caused by exceptional factors and whether they are significant.
5. Determining if the delay could reasonably have been avoided is a separate consideration to whether the factors causing the delay were beyond the control of the person. The Commissioner will consider actions taken by the person before and after the relevant event to ascertain whether that person could reasonably have prevented or reduced the delay.
6. If an extension is allowed the Commissioner will usually grant the maximum extension of one year.

Example 1

A foreign developer purchases a large vacant lot that is zoned residential. The Commissioner is satisfied the developer will build 24 apartments on the land within five years after settlement and grants an exemption from foreign transfer duty.

Within two months of settlement, the developer commences the required excavation and site works to prepare for building the apartments. The developer expects it will take between three and four years to complete construction.

Three years after the transaction, as the apartments are nearing completion, a fire severely damages the complex. As a result, the estimated timeframe for completing the building is extended to approximately five and a half years.

The Commissioner would generally allow an extension of time of one year as the delay was caused by exceptional circumstances (the fire), and the developer did not contribute to the delay.

Example 2

A foreign investor purchases a house he intends to demolish to build three townhouses for sale within two years. He is granted an exemption from foreign transfer duty.

The investor demolishes the existing house then leaves the land vacant for 12 months while negotiating with builders to construct the townhouses.

A builder is contracted and commences construction. Three months before the deadline, a tree falls and damages the roof of one of the townhouses. The builder advises that this will delay completion of the project by about a month, meaning the townhouses will not be completed and sold before the two-year limit expires.

The Commissioner would generally not allow an extension because the primary cause of the requirements not being met was the time taken for the investor to appoint a builder rather than the damage caused by the falling tree.

Example 3

A foreign investor acquires all the shares in a company that holds vacant land in Western Australia zoned solely for residential purposes. The Commissioner is satisfied the company will develop and subdivide the land within three years to allow for at least 20 dwellings to be built, and grants an exemption from foreign landholder duty.

The company seeks approval from the local council to remove some trees from the land. The council rejects the application three months later.

The company challenges the decision in the WA State Administrative Tribunal. The Tribunal overturns the council decision, but that decision is appealed by the council. Ultimately the Supreme Court affirms the Tribunal's decision two years after the original decision by the council and the trees are removed.

Due to the time spent resolving the dispute, the subdivision is not completed within three years after the acquisition but is likely to be completed within four years. The Commissioner would generally grant an extension of one year for the subdivision to be completed.

Example 4

A company owned by foreign shareholders purchases a vacant lot that is zoned residential. The Commissioner is satisfied the company will build a new house on the lot and sell it within two years, and grants an exemption from foreign transfer duty.

A builder is contracted to build the house. One year after the transaction the builder announces it is insolvent and goes into liquidation. Work on the house stops before construction is complete.

After two months the company contracts a new builder to finish construction, but the new builder is unable to commence work for another six months due to existing commitments. Due to the delay the house is not completed and sold within the required two years.

In this scenario the Commissioner would examine the activities of the company after their original builder went into liquidation. If satisfied that the company acted promptly in finding and appointing a new builder, the Commissioner would generally grant an extension of one year for the construction to be completed and the new home sold.

Date of effect

This Commissioner's Practice takes effect from 22 October 2026.

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COMMISSIONER OF STATE REVENUE

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Document history

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