

NSW Build to Rent land tax and duty concessions

Guidelines have been released, outlining the Land tax concession, Surcharge land tax exemption and Surcharge transfer duty exemption for Build to Rent properties in New South Wales.

3 March 2021

In August 2020, the NSW Government introduced certain tax concessions for approved Build to Rent (BTR) schemes in New South Wales, being:

- A 50% reduction in the value of the land for the purposes of calculating land tax (**Land tax concession**);
- A refund or exemption from surcharge land tax for an Australian corporation where an approved BTR property has been constructed on the land or the Commissioner is satisfied that such a building will be constructed (**Surcharge land tax exemption**); and
- A refund or exemption from the foreign purchaser additional duty where an Australian corporation purchases residential land for the purpose of constructing an approved BTR property that qualifies for the land tax concession (**Surcharge transfer duty exemption**).

The 3 exemptions / concessions are interrelated as the Surcharge land tax exemption and the Surcharge transfer duty exemption depend upon the land satisfying the Land tax concession once the building is completed.

The Land tax concession and Surcharge land tax exemption apply to residential land owned by an Australian corporation at midnight on 31 December in any year commencing with midnight on 31 December 2020 and ending with midnight on 31 December 2039.

However, if within the period of 15 years after a refund or concession is first applied, the land concerned is subdivided or the ownership of the land is 'otherwise divided' then the exemptions and concessions may be revoked, and reassessments issued retrospectively for up to 15 years as if the exemptions or concessions never applied.

The Surcharge land tax exemption and Surcharge transfer duty exemptions apply only to an *Australian corporation*, which is a corporation incorporated or taken to be incorporated under the Corporations Act 2001.

Such a corporation may nevertheless be a 'foreign corporation' if it is subject to foreign control.

It is not apparent whether an Australian corporation acting as a trustee of a trust may be exempted.

In addition, the term may not include bodies incorporated under other Australian legislation (such as an incorporated association, a co-operative society or a statutory body).

Land Tax Concession

For the purpose of assessing land tax, the land value of a parcel of land is to be reduced by 50% if—

- a) a building is situated on the land, and
- b) construction of the building commenced on or after 1 July 2020, and
- c) the Chief Commissioner is satisfied that a significant proportion of the labour force hours spent on the construction of the building involves or involved work performed by persons whom the Chief Commissioner considers belong to any one or more of the following classes of worker—
 - i. apprentices or trainees,
 - ii. long-term unemployed workers,
 - iii. workers requiring upskilling,
 - iv. workers with barriers to employment (such as persons with disability),
 - v. Aboriginal jobseekers,
 - vi. graduates, and
- d) the Chief Commissioner is satisfied that the building is being used and occupied for a BTR property in accordance with guidelines approved by the Treasurer for the purposes of this section, and
- e) an application for the reduction is made in accordance with the requirements.

The Treasurer has now released the guidelines for the land tax reduction for BTR properties.

The purpose of the concession

The Guidelines state the purpose of the concession as follows:

- The purpose of this tax concession is to address one of the barriers to the institutional provision of rental services and, by doing so, improve the rental experience for tenants. By limiting the benefit to new developments, this measure is expected to help support new construction.
- The concession is expected to support the supply of large-scale rental housing that are professionally owned and managed, and that provide tenants with greater security of tenure and greater quality rental services than that typically offered by small retail investors.

Eligibility

A building (including a group of buildings or parts of buildings on the same parcel of land) must satisfy the following conditions in order to be considered as used and occupied for a BTR property:

1. Planning requirements

- All requirements of the relevant development consent must be complied with.

2. Building requirements

- **50 self-contained dwellings:** At least 50 self-contained dwellings used specifically for the purpose of BTR must be constructed on the parcel of land;
- Dwellings can be spread across multiple buildings on the same land parcel.
- Where an adjacent site is consolidated with a land parcel that already qualifies for the concession, and the adjacent site provides additional BTR dwellings to the property, the additional dwellings do not have to separately meet the 50-dwelling threshold of Requirement 2a. as these dwellings will be added to the total number of dwellings on the original land parcel.
- Where an adjacent site is not consolidated with a land parcel that already qualifies for the concession (e.g. by remaining as a separate adjacent land parcel), eligibility for the concession will be determined separately and the 50-dwelling requirement will be applicable.
- **Affordable housing policies:** properties must comply with all relevant affordable housing policies that may be imposed under the *Environmental Planning and Assessment Act 1979*;
- Note that these concessions and exemptions form part of a larger reform package which includes new state environmental planning policies under the *Environmental Planning and Assessment Act 1979* to promote the development of new

affordable housing and social housing.

- **Available to general public:** BTR dwellings must be made **available to the general public** without restriction;
- This is subject to any restrictions necessary to ensure public health and safety, to promote announced Government policy, or to ensure dwellings designated for affordable or social housing are used for that purpose.

3. Ownership structure

- **Unified Ownership structure:** The dwellings and common land that comprise the BTR property must be held within a **unified ownership structure**;
- This can include a group of entities holding joint ownership.
- The property must not be held in such a way as to constitute, in the opinion of the Chief Commissioner, a de facto subdivision or divided ownership of the land, or otherwise contrary to the intention to restrict subdivision or division of the land.

4. Management structure

- **Single management entity, with on-site access:** The dwellings that comprise the BTR property must be managed by a single management entity, with on-site access to management for tenants;
- This does not apply if those specific dwellings are made available for use as affordable housing or social housing for a continuous period of 15 years.
- The management entity can be different to the landholder. That is, the landholder may outsource the provision of the management services, provided that the services are delivered by a single entity.

5. Lease conditions

- **Option for fixed term lease of at least 3 years:** Each tenant must be provided a range of lease term choices, including a genuine option to enter into a fixed term lease of at least 3 years;
- A landlord will not be in breach of this condition if a tenant who has been provided the option of a fixed term lease of at least 3 years opts for a lease of a shorter duration instead.

- Each tenancy must be subject to a Residential Tenancy Agreement under the *Residential Tenancies Act 2010*. The requirement for tenants to be offered a Residential Tenancy Agreement likely means that the concessions will not be available for various types of "commercial residential premises" (such as rooming houses, serviced apartments, student accommodation and similar arrangements where residents are granted a licence to occupy their accommodation).

6. Other factors

- The Chief Commissioner may have regard to any other factors that he or she considers relevant in deciding whether a property is being used for BTR

If a part of a parcel of land is used for purposes other than BTR purposes, the value of land tax concession may be reduced on a proportional basis.

The Guidelines suggest that floor space and area may provide a reasonable basis of apportionment.

How ShineWing Australia can help

Should you be interested in accessing these concessions please contact your ShineWing Australia advisor regarding how you can lodge an expression of interest in the BTR Concessions with Revenue NSW.

Contact us



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