



<b>REVENUE CIRCULAR LTA001</b>
Builder's Exemption and Display Homes – <i>Land Tax Act 2004</i>
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## **Introduction**

This circular provides guidance to building and land developer companies regarding the 'builder's exemption' from land tax under the *Land Tax Act 2004* (the Act), section 11 (2).

Under section 9 (1) (b) of the Act, corporations are liable to pay land tax on residential land that they own upon becoming the owner of that land. However, if the corporation carries on business as a builder or land developer, it may be eligible for a two year land tax exemption under section 11 (2) of the Act.

An application for the builder's exemption must be approved by the ACT Revenue Office before the exemption can apply.

Clear direction of how the ACT Revenue Office applies the builder's exemption will assist taxpayers in understanding and meeting their tax obligations.

## **Builder's exemption**

Section 11 (2) of the Act states:

*A corporation carrying on business as a builder or land developer may apply, in writing, to the commissioner for a declaration that a parcel of land owned by the corporation is exempt from land tax for 2 years beginning on the 1st day of the 1st quarter after the corporation becomes the owner of the parcel if—*

- (a) the parcel is used by the corporation only to construct new residential premises; and*
- (b) the new residential premises are to be sold by the corporation when finished.*

A display home is considered 'new residential premises' in accordance with the definitions provided in section 11 (3) of the Act:

**new residential premises** include premises intended and able to be occupied as a home that—

- (a) have been created through substantial renovations of a building; or*
- (b) have been built, or contains building that has been built, to replace demolished premises on the same land.*

*new residential premises include premises intended and able to be occupied as a home*

*substantial renovations, of a building, are renovations in which all, or substantially all, of the building is removed or replaced, whether or not the renovations involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.*

Whether the premises are 'intended and able to be occupied as a home' is an objective test that does not depend on the acts or intentions of the parties, but the predominant character of the property.

### **Application process**

A builder or land developer must apply directly to the ACT Revenue Office for the builder's exemption. Upon approval, the Office will declare the property exempt from land tax for up to two years.

Companies can apply for the builder's exemption by visiting [www.revenue.act.gov.au](http://www.revenue.act.gov.au).

### **Mixed-use developments**

The ACT Revenue Office charges land tax on residential-only developments and mixed-use developments differently.

For residential-only developments, the Office encloses an 'Application for a Builder's Land Tax Exemption' form with the company's first rates and land tax assessment notices. Land tax is charged from the first full quarter after the corporation becomes the owner. The company may apply for the builder's exemption and have any paid land tax refunded.

For mixed-use developments, the Office encloses a letter with the company's first rates notice informing them of the opportunity to apply for the builder's exemption for the residential only portions of their development. The Office requests a response within 28 days. If no application is received, the Office will charge land tax as per normal.

### **Requirements for exemption**

There are four requirements for the builder's exemption. All four must be met for the exemption to apply:

1. **Sole purpose:** The company must not use the parcel of land for purposes other than the construction of new residential premises. Other purposes, including renting out the property or using it as a display home, are incompatible with the builder's exemption.
2. **New residential premises:** The company must construct premises that meet the definition of 'new residential premises' as above. This requires a full replacement of a demolished building or substantial renovations of an existing building; partial renovations are not sufficient.
3. **On completion:** The company must sell the property when it is 'finished'. The ACT Revenue Office generally considers the issuing of the Certificate of Occupancy and Use as demonstrating that the property is finished and ready for sale. The company must take steps to sell the property within a reasonable time.
4. **Sale:** Was the property listed at its market value? An excessive sale price might indicate that the corporation intends to retain use of the property under the pretext of sale.

The company cannot retain the property and use it as a display home. This would contravene the requirement that the property must be sold when finished. However, the home can be displayed if it is in connection with the sale of that specific property.

If the company fails to meet any one of the above four requirements, the builder's exemption does not apply at all. The company will be liable for land tax from the usual date. The ACT Revenue Office may issue an amended land tax assessment, and penalty tax and/or interest may apply.

This is the case even if the company has fully complied with the requirements for part of the two year period. No partial exemption is available.

If there is a change in circumstances and the exemption no longer applies, companies are asked to advise the ACT Revenue Office in writing within 30 days of the change.

## **Examples**

The following examples show how the builder's exemption will apply in various situations.

### **Example 1: home is eligible for builder's exemption**

*Bonner Builders Pty Ltd is granted a residential Crown lease for development and builds a new home. As soon as the home is completed, Bonner Builders decides to advertise the property for sale. It takes slightly longer than average to find a buyer.*

The builder's exemption applies because Bonner Builders advertised the property for sale. This indicated an intention to sell the premises on completion.

The property does not need to sell immediately; however, it must be sold by the company eventually for the builder's exemption to apply. The company must not make use of the property for other purposes during this time.

### **Example 2: home is not eligible for builder's exemption**

*Charnwood Construction Pty Ltd purchases an established house on a parcel of residential land. It rents the existing property to a tenant for a few months before demolishing the house and beginning construction of new premises.*

After completion, Charnwood Construction decides not to sell the property for the time being. It rents the property to a new tenant to recover some of its costs. Charnwood Construction applies to the ACT Revenue Office for a builder's exemption.

The builder's exemption does not apply because Charnwood Construction has not used the parcel solely for the construction of new residential premises. It has also used the property to produce a rental income. Therefore, Charnwood Construction is liable to pay land tax.

For the builder's exemption to apply, the company must not rent the property to a tenant at any time over the period of ownership.

### **Example 3: display home is eligible for builder's exemption**

*Dunlop Developments Pty Ltd starts construction of a residential dwelling with the intention to use it as a display home. When construction finishes, Dunlop Developments decides not to use the property as a display home and it advertises the property on the open market at a price equivalent to its market value. Dunlop Developments enquires with the ACT Revenue Office whether it is eligible for the builder's exemption.*

The builder's exemption applies (providing the property is successfully sold). A display home meets the definition of new residential premises 'intended and able to be occupied as a home'. Dunlop Developments took genuine steps to sell the property on completion.

The fact that the company changed its actual intention is not relevant if the requirements of section 11 (2) of the Act are fulfilled.

**Example 4: display home is not eligible for builder's exemption**

*Hackett Housing Pty Ltd constructs new residential premises on a parcel of residential land. The ACT Revenue Office declares the parcel exempt under section 11 (2) of the Act. The Office notifies Hackett Housing of its obligations under the builder's exemption.*

Two years later, after the premises are finished, Hackett Housing uses the premises as a display home for several months while expecting to sell the property in due course. After this period the parcel is advertised for sale 'as a current display home'.

The builder's exemption does not apply because Hackett Housing has been using the property for the purpose of promoting its business as a display home. This use is inconsistent with the sole purpose requirement.

Hackett Housing is liable to pay land tax for the parcel in relation to the whole two year period. Penalty tax and interest would apply because the company failed to meet its land tax obligations.

**Time limit**

There is no legislated time limit on when the application may be made for the exemption. However, section 11 (2) specifies that the parcel of land must be 'owned by the corporation'.

As such, the ACT Revenue Office takes the position that once the corporation sells the property it no longer has the opportunity to apply for an exemption.

Signed

Kim Salisbury  
Commissioner for ACT Revenue  
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