

REVENUE CIRCULAR LTA001.1

Land Tax Exemptions – *Land Tax Act 2004*

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Introduction

Land tax is imposed under the *Land Tax Act 2004* (the Act) on all parcels of rateable residential land in the ACT, unless the parcel is occupied as an owner's principal place of residence or another exemption applies.

This circular explains the circumstances in which an exemption from land tax can be applied:

- when a parcel is occupied by a person under a nil or nominal rent arrangement; or
- when a parcel is, or has become, unfit for occupation as a place of residence.

Clear direction of how the ACT Revenue Office applies these exemptions will assist taxpayers in understanding and meeting their tax obligations.

Nil or nominal rent arrangements

Section 11H of the Act states that a parcel of land is exempt from land tax if, on the first day of a quarter, the parcel is:

- owned by someone other than a corporation or trustee; and
- occupied by a person who is liable to pay:
 - an amount that is not more than the total amount required for the rates, repairs, maintenance and insurance in relation to the parcel (nominal rent); or
 - no rent in relation to the parcel.

The exemption also applies under sections 15 and 27 of the Act, in relation to a parcel with multiple dwellings.

An example of a nil rent arrangement is where parents purchase a property for their children to live in rent-free while attending university. An example of a nominal rent arrangement is where a person rents their investment property to a friend, but only charges enough rent to cover the property's yearly rates.

Form of rent

The form of rent or other payments may be in cash, in kind, or as other forms of valuable consideration. The ACT Revenue Office will examine the overall arrangement and, if necessary, deduce the monetary value of any non-monetary consideration given to the owner for use of the property.

Nominal rent

Rates, repairs, maintenance and insurance are only expenses that can constitute nominal rent under a nominal rent arrangement.

If an occupant is liable to pay amounts in addition to rates, repairs, maintenance and insurance, the excess amounts render the arrangement ineligible for a land tax exemption. However, if a bond has been paid in accordance with the *Residential Tenancies Act 1997* the value of the bond is treated as part of the nominal rent.

Nominal rent is not the same as non-market rent – an occupant may be liable to pay rent that exceeds the nominal rent, yet is still less than the full market rent that would be payable. Land tax applies in cases such as this.

The ACT Revenue Office will accept that the expenses described below constitute part of rates, repairs, maintenance or insurance.

Rates

Rates are taken to include residential general rates and other charges under the *Rates Act 2004*, as well as any interest on unpaid rates and levies.

If the nominally rented property is a secondary dwelling, the ACT Revenue Office will interpret 'rates ... in relation to the parcel' to mean some proportion of rates attributable to the dwelling, rather than the overall rates payable for the parcel. The Office will accept an apportionment based on the floor area of the nominally rented dwelling.

Repairs and maintenance

Examples of repairs and maintenance costs that can be included in nominal rent include:

- contributions to an owners corporation (body corporate) general fund;
- costs of upkeep – e.g. cleaning or lawn mowing;
- repairs and maintenance attributable to wear and tear – e.g. repainting walls, replacing curtains and blinds;
- repairs of faults – e.g. fixing leaks, failure of water heater, electrical fault, pest control; and
- security costs – e.g. replacement of locks or broken windows.

Where repairs and maintenance are of a capital nature, the full cost cannot be claimed as nominal rent. Examples of such repairs and maintenance include:

- upgrades of complete rooms – e.g. new kitchen or bathroom fitting;
- replacements – e.g. cost of new carpet, tiles, air conditioning unit, stove or dryer; and
- extensions or alterations to a home.

However, a smaller amount for capital expenses can be claimed as part of the nominal rent over time. The amount claimed must be consistent with the deductions for decline in value or capital works permitted by the Australian Taxation Office for assets or works of a similar nature.

Insurance

Insurance is taken to include the owner's premiums for insurance relating to the property, such as building insurance.

Unfit for occupation

Under section 11I of the Act, if the Commissioner is satisfied that a parcel of land is, or has become, unfit for occupation as a place of residence, the owner can seek an exemption from land tax for the parcel.

Duration of exemption

A parcel of land is exempt under section 11I after the date the parcel became unfit for occupation, until either of the following happens:

- a Certificate of Occupancy and Use is issued for the parcel under the *Building Act 2004*; or
- the Commissioner is otherwise satisfied that the parcel has become fit for occupation as a place of residence.

The timing of the exemption is governed by section 8A of the Act. Land tax applies by reference to the first day of each quarter. Thus any exemption takes effect on the first day of the quarter following the date that a parcel became unfit for occupation.

Under section 8A (3) of the Act, if the exemption stops applying land tax is payable on the first day of the quarter after the end of the exemption.

Example – period less than a quarter

A rental home is unusable due to flood damage for the period 1 February 2019 to 28 February 2019 (inclusive).

Land tax applies for the quarters beginning 1 January 2019 and 1 April 2019, as the parcel of land was still fit for occupation on the first day of each of those quarters.

Meaning of unfit for occupation

To be exempt under section 11I of the Act, the Commissioner must be satisfied a parcel is 'unfit for occupation as a place of residence'.

The *Macquarie Dictionary* defines unfit as '*not fit; not adapted or suited; unsuitable; not deserving or good enough*'. Occupation ordinarily means to reside in or live in a home with a degree of permanence (not on a short-term, temporary or intermittent basis, or for purposes other than residence).

The meanings of 'occupy' and 'place of residence' are outlined further in the latest version of Revenue Circular *Principal Place of Residence* (GEN011). All circulars are available at www.revenue.act.gov.au.

For a parcel of land (including a dwelling on the parcel) to be unfit for occupation, the parcel must be vacant and unoccupied on the first day of a quarter. The ACT Revenue Office must be satisfied that the parcel is unfit for any person to occupy over the course of the quarter.

Partially unfit for occupation

The exemption only applies if the overall parcel of land is unfit for occupation as a place of residence. If only part of the parcel is unfit, the ACT Revenue Office must be satisfied that the circumstances affecting that part influence the overall use of the parcel.

Example – not unfit for occupation

A second dwelling is being constructed on a parcel of land with an existing vacant house. The parcel is not exempt from land tax unless the construction activity prevents the existing dwelling from being occupied as a place of residence.

Construction

A parcel of residential land will be considered unfit for occupation if:

- the parcel of land is vacant (i.e. no place of residence has been built on the land);
- building(s) on the parcel are being demolished; or
- the parcel is being used solely to construct new or substantially renovated residential premises.

An exemption on this basis is available to corporations or individuals carrying out construction activity on a parcel of residential land – the exemption is not limited to building and land development corporations.

There is no time limit to the exemption; however, the exemption may be revoked if the Commissioner considers that the parcel is no longer unfit for occupation.

There is no longer a requirement to sell the property on completion of construction. However, owners will become liable for land tax upon completion, and a relevant person must notify the ACT Revenue Office that the property is liable within 30 days of completion (unless the owner is eligible for another exemption under the Act, for example, principal place of residence).

Renovation

A parcel of residential land will be considered unfit for occupation if a building on the land is being renovated to such an extent that the parcel cannot be occupied as a place of residence while renovations are underway.

Renovation is not a defined term, but may involve substantial renovations in which all, or substantially all, of a 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.

Damage

A parcel of residential land will be considered unfit for occupation if the dwelling on the land has been rendered structurally unsafe or uninhabitable due to damage, fire, flood or other natural disaster. In such cases the exemption applies until any damage is rectified and the parcel becomes fit for occupation.

Other circumstances

A parcel of residential land will be considered unfit for occupation if it is deemed to be uninhabitable for other reasons, such as health issues. The Office must be satisfied in each case that it is appropriate to exempt the parcel.

Foreign ownership surcharge

The foreign ownership surcharge under part 2A of the Act is not imposed on a parcel of land that is exempt under section 10 of the Act, other than section 10 (aa) (vi).

Therefore, the nil or nominal rent exemption is not available for the surcharge; however the unfit for occupation exemption can apply.

If a parcel of land is owned by a foreign person, and occupied under a nil or nominal rent arrangement, the foreign owner would be liable for the surcharge but exempt from land tax.

Compliance

Section 14 of the Act requires a relevant person (the owner of the parcel or an authorised agent) to tell the Commissioner within 30 days after the date a nil or nominal rent arrangement ceases or the parcel becomes fit for occupation – whichever applies – as land tax will become payable for the parcel.

Signed

Kim Salisbury
Commissioner for ACT Revenue
6 July 2018