



Treasurer's Guidelines for the Reduction in Land Value for Certain Build-to-rent Properties, for Land Tax Purposes

Part 1 Background on the concession and the guidelines

Legislative background

Section 9E of the *Land Tax Management Act 1956* (the Act) provides that, for the purposes of assessing land tax, the land value of a parcel of land is to be reduced by 50 per cent if, amongst other things, the Chief Commissioner of State Revenue (the Chief Commissioner) is satisfied that the building is being used and occupied for a build-to-rent property in accordance with guidelines approved by the Treasurer.

The purpose of the concession

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.

The guidelines

These guidelines have been approved by the Treasurer under section 9E of the Act and provide guidance to the Chief Commissioner in forming a view on whether a particular property is being used and occupied for a build-to-rent property, so that the land tax concession can be granted. The Chief Commissioner may provide further guidance material, including examples, of the operational effect of these provisions.

If the Chief Commissioner is not satisfied that the building is being used and occupied for a build-to-rent property in accordance with these guidelines, then the land value reduction provided by section 9E is not to be applied.

These guidelines will also assist in determining whether a building is '*taken to be build-to-rent property under section 9E*' for the purposes of the surcharge land tax concession under section 5CA of the *Land Tax Act 1956* and surcharge purchaser duty concession under section 104ZJB *Duties Act 1997*. Under these provisions, amongst other things, for a foreign owner to be entitled to the concessions, the Chief Commissioner must be satisfied that the building is a build-to-rent property under section 9E of the Act.

Part 2 Requirements for buildings used and occupied for a build-to-rent property

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 build-to-rent property for the purposes of section 9E(d) of the *Land Tax Management Act 1956* (the Act).

1. Planning requirements
 - a. All requirements of the relevant development consent must be complied with.
2. Building requirements
 - a. The buildings on a parcel of land must contain at least 50 self-contained dwellings used specifically for the purpose of build-to-rent.
Note: Dwellings can be spread across multiple buildings on the same land parcel.
 - b. Where an adjacent site is consolidated with a land parcel that already qualifies for the concession, and the adjacent site provides additional build-to-rent dwellings to the property, the additional dwellings do not have to separately meet the 50-dwelling threshold of Requirement 2.a. as these dwellings will be added to the total number of dwellings on the original land parcel.
Note 1: If only part of the adjacent site that is consolidated is being used and occupied for a build-to-rent property, the concession may be proportionately decreased; see the "Proportionate reduction in land value" section of these guidelines.
Note 2: 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.
 - c. Build-to-rent properties must comply with any relevant affordable housing policies that may be imposed under the *Environmental Planning and Assessment Act 1979* including any state environmental planning policies made from time to time to promote the development of new affordable housing and social housing.
 - d. Dwellings in build-to-rent properties are exempt from Requirement 4 below, which states that build-to-rent properties must be managed by a single management entity with on-site access to management for tenants, if those specific dwellings are made available for use as affordable housing or social housing for a continuous period of 15 years.
 - e. Build-to-rent dwellings must be made available to the general public, without restriction, apart from 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
 - a. The dwellings and common land that comprise the build-to-rent property must be held within a unified ownership structure, which can include a group of entities holding joint ownership, and 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 is otherwise contrary to the intent of section 9E(9) of the Act to restrict subdivision or division of the land.
4. Management structure
 - a. The dwellings that comprise the build-to-rent property must be managed by a single management entity, with on-site access to management for tenants.
 - b. 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
 - a. 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.
Note: A landlord would 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.

- b. Each tenancy must be subject to a Residential Tenancy Agreement under the *Residential Tenancies Act 2010*. The landlord must comply with all obligations under the *Residential Tenancies Act 2010*.
6. Other factors
 - a. 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 build-to-rent.

Part 3 Requirements for proportionate reductions in land value

A parcel of land may be considered wholly used and occupied for a build-to-rent property where part of the land is used not for dwellings but is nonetheless for the purpose of the build-to-rent business. For example, reasonable accommodation for on-site management and facilities necessary to operate the build-to-rent business may form part of a build-to-rent property. The land tax concession will not be reduced.

Section 9E(7) provides that, if the Chief Commissioner is satisfied that only part of a parcel of land is being used and occupied for a build-to-rent property, the reduction in land value (i.e. the tax concession) is to be proportionately decreased in accordance with guidelines approved by the Treasurer. For example, a parcel of land with a build-to-rent property may also have shops. The land tax concession is to be decreased to account for these other uses.

In determining the appropriate decrease in the concession, the Chief Commissioner may consider the following:

1. The concession is to be reduced by an amount that the Chief Commissioner considers appropriate to reflect the proportion of the land being used for build-to-rent property.
2. In determining the proportion of the land being used for build-to-rent property, the Chief Commissioner may have regard to:
 - a. The floor space allocated for build-to-rent purposes compared with the total floor space of the property;
 - b. The proportion of land area occupied by buildings used exclusively as build-to-rent property compared with the proportion of land area used for other purposes;
 - c. Any other factors that the Chief Commissioner considers necessary to ensure that the tax concession is being provided in relation to build-to-rent property only, and is not being provided to the extent that land is being used for other purposes.