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## Public Ruling Duties Act:

### AFAD CONCESSION FOR ELIGIBLE BUILD-TO-RENT (BTR) DEVELOPMENTS

*A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.*

## What this ruling is about

1. This public ruling clarifies the Commissioner's interpretation of particular terms for the purpose of determining when an additional foreign acquirer duty (AFAD) concession applies for land used, or to be used, for an eligible build-to-rent (BTR) development as defined within the *Land Tax Act 2010* (Land Tax Act).
2. Under Chapter 4 of the *Duties Act 2001* (Duties Act), an additional amount of duty, AFAD, applies to direct or indirect transactions in land that are liable to transfer duty, landholder duty and corporate trustee duty where the land is 'AFAD residential land'<sup>1</sup> and the acquirer under the transaction is a foreign person.<sup>2</sup>
3. Chapter 4, Part 4AA of the Duties Act provides an AFAD concession for particular transactions relating to land used, or to be used, for an eligible BTR development as defined within Part 6A of the Land Tax Act.<sup>3</sup>
4. The AFAD concession is a 100% discount on the dutiable value of a foreign acquirer's interest in the land for the purpose of calculating the amount of AFAD.<sup>4</sup> This means where the concession applies, no AFAD is payable on the relevant transaction.
5. To obtain the AFAD concession for land that is used for an eligible BTR development at the time of the particular transaction, various conditions must be satisfied, including:
  - (a) the transferor obtained a BTR land tax concession in relation to the land for the financial year before the acquisition year

<sup>1</sup> Section 232 of the Duties Act and Public Ruling DA232.1—*AFAD residential land*

<sup>2</sup> Section 240 of the Duties Act

<sup>3</sup> Sections 245B, 245F and 245G of the Duties Act

<sup>4</sup> Sections 245F and 245G of the Duties Act

and

- (b) the foreign acquirer will use the land and the BTR development in a way that makes the acquirer eligible to obtain a BTR land tax concession in relation to the land for at least 5 consecutive financial years.<sup>5</sup>
6. The AFAD concession is also available where there is no BTR development located on the land at the time of the particular transaction.<sup>6</sup> In this case, various conditions must also be satisfied, including the foreign acquirer will:
- (a) construct a BTR development on the land on or before 30 June 2030
  - (b) use the land and the BTR development in a way that makes the acquirer eligible to obtain a BTR land tax concession in relation to the land for at least 5 consecutive financial years.<sup>7</sup>
7. A person 'obtains a BTR land tax concession', in relation to land for a financial year, if the person's liability under the Land Tax Act for land tax for the financial year is assessed on the basis that a concession under section 58B of the Land Tax Act applies in relation to the land.<sup>8</sup>
8. Section 58B of the Land Tax Act states the BTR land tax concession that applies to land used for an eligible BTR development are:
- (a) a 50% discount on the taxable value of the land for land tax purposes
  - (b) the land tax foreign surcharge rate mentioned in s.32(1)(b)(ii) Land Tax Act will not apply.
9. Under Part 6A of the Land Tax Act the BTR land tax concession applies for a financial year to land that is 'land used for an eligible BTR development'. For land to be land used for an eligible BTR development—for a financial year—the Commissioner must be satisfied of a number of conditions<sup>9</sup>, including that during the previous financial year 'the land was used, solely or primarily, for an eligible BTR development'.<sup>10</sup>
10. To be an 'eligible BTR development' for a financial year, the BTR development must, during the previous financial year, among other things<sup>11</sup>:
- (a) comprise at least 50 dwellings that are self-contained<sup>12</sup>
  - (b) have been used solely or primarily for residential purposes.<sup>13</sup>

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<sup>5</sup> Section 245G(1)(b) and (d) of the Duties Act

<sup>6</sup> Section 245F(1)(a) of the Duties Act

<sup>7</sup> Section 245F(1)(c) of the Duties Act

<sup>8</sup> Section 245C of the Duties Act definition 'obtains a BTR land tax concession' and section 245D(1) of the Duties Act

<sup>9</sup> Section 58C of the Land Tax Act

<sup>10</sup> Section 58C(1)(a)(i) of the Land Tax Act

<sup>11</sup> Section 58E of the Land Tax Act

<sup>12</sup> Section 58E(1)(a) and 58L of the Land Tax Act

<sup>13</sup> Section 58E(1)(c) of the Land Tax Act

11. Public Ruling LTA000.5 *Eligible build-to-rent (BTR) developments* clarifies the Commissioner's interpretation of:
  - (a) when a dwelling is self-contained
  - (b) when land is 'used solely or primarily for an eligible BTR development'
  - (c) when a BTR development is 'used solely or primarily for residential purposes'.
12. To determine whether the AFAD concession will apply, it is therefore necessary to determine whether the acquirer will be eligible to obtain a BTR land tax concession.<sup>14</sup> As such, the conditions set out in paragraphs 9 and 10 above—for determining if a BTR land tax concession under the Land Tax Act apply—are also relevant for determining whether the AFAD concession will apply.
13. This ruling clarifies the Commissioner's interpretation of the following, for the purpose of determining eligibility for the AFAD concession:
  - (a) when a dwelling is self-contained
  - (b) when land is 'used solely or primarily for an eligible BTR development'
  - (c) when a BTR development is 'used solely or primarily for residential purposes'.

## **Ruling and explanation**

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14. Public Ruling LTA000.5 *Eligible build-to-rent (BTR) developments* sets out the Commissioner's interpretation of the following, for the purpose of determining eligibility to obtain a BTR land tax concession:
  - (a) when a dwelling is self-contained
  - (b) when land is 'used solely or primarily for an eligible BTR development'
  - (c) when a BTR development is 'used solely or primarily for residential purposes'.

### **AFAD concession—land used for eligible BTR development (s.245G of the Duties Act)**

15. For the purpose of determining eligibility for the AFAD concession for land used for an eligible BTR development<sup>15</sup>, refer to Public Ruling LTA000.5 *Eligible build-to-rent (BTR) developments* for the Commissioner's interpretation of:
  - (a) when a dwelling is self-contained
  - (b) when land is 'used solely or primarily for an eligible BTR development'
  - (c) when a BTR development is 'used solely or primarily for residential purposes'.

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<sup>14</sup> In addition, to obtain the AFAD concession for land used for an eligible BTR development, the transferor must have obtained a BTR land tax concession in relation to the land for the financial year before the acquisition year: section 245G(1)(b) of the Duties Act.

<sup>15</sup> Section 245G of the Duties Act

**AFAD concession—land to be used for eligible BTR development (s.245F of the Duties Act)**

16. Similarly, for the purpose of determining eligibility for the AFAD concession when a BTR development is not located on the land but the land is to be used for an eligible BTR development<sup>16</sup>, refer to Public Ruling LTA000.5 *Eligible build-to-rent (BTR) developments* for the Commissioner's interpretation of the following in relation to the BTR development to be constructed:
- (a) when a dwelling is self-contained
  - (b) when land is 'used solely or primarily for an eligible BTR development'
  - (c) when a BTR development is 'used solely or primarily for residential purposes'.

**Date of effect**

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17. This public ruling takes effect from 28 August 2023.

Amy Rosanowski  
Acting Commissioner of State Revenue  
Date of issue: 24 August 2023

**References**

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Public Ruling	Issued	Dates of effect	
		From	To
DA000.17.1	24 August 2023	28 August 2023	Current

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<sup>16</sup> Section 245F of the Duties Act