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Public Ruling Land Tax Act:

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 explains particular terms used in the *Land Tax Act 2010* (Land Tax Act), which are relevant for determining when land tax concessions apply for land used for an eligible build-to-rent (BTR) development for a financial year.
2. Part 6A of the Land Tax Act provides land tax concessions for land used for an eligible BTR development for a financial year.¹
3. Subject to satisfaction of the relevant conditions, the land tax concessions applying to land used for an eligible BTR development are:
 - (a) a 50% discount on the taxable value of the land for land tax purposes²
 - (b) the land tax foreign surcharge rate mentioned in s.32(1)(b)(ii) of the Land Tax Act will not apply.³
4. For land to be 'land used for an eligible BTR development'—for a financial year—the Commissioner must be satisfied of a number of conditions⁴, including that during the previous financial year 'the land was used, solely or primarily, for an eligible BTR development'.⁵

¹ See also Chapter 4 Part 4AA of the *Duties Act 2001* and Public Ruling DA000.17 *AFAD concession for eligible build-to-rent (BTR) developments* for details of a similar concession provided in relation to additional foreign acquirer duty (AFAD) for eligible BTR developments.

² Section 58B(2) of the Land Tax Act

³ Section 58B(3) of the Land Tax Act

⁴ Section 58C of the Land Tax Act

⁵ Section 58C(1)(a)(i) of the Land Tax Act

5. To be an 'eligible BTR development' for a financial year, a BTR development⁶ must, during the previous financial year, among other things⁷:
 - (a) comprise at least 50 dwellings that are self-contained⁸
 - (b) have been used solely or primarily for residential purposes.⁹
6. This public ruling 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'.

Ruling and explanation

Self-contained dwelling

7. A self-contained dwelling is a residence with a separate entrance that contains all amenities required for a residence, such as a kitchen, bedroom and bathroom. The dwelling must also be for the exclusive use of those occupying the dwelling. In addition, if the occupiers need to leave the dwelling to gain access to any one of these amenities, the dwelling is not self-contained.

Example of a residence that is a self-contained dwelling

An apartment block has two-, three- and four-bedroom units available for rent. Each unit has its own bathroom(s) and a kitchen. The apartment block also contains an entertaining area for residents to host social gatherings, which allows for basic food preparation. Because the residents have their own kitchens, bathrooms and bedrooms, these units are self-contained.

Example of a residence that is not a self-contained dwelling

An apartment block has two-, three- and four-bedroom units available for rent. Each floor has five units that share a common kitchen and bathroom. Although each unit has a separate entrance, because there is no kitchen and bathroom in the units, they are not self-contained dwellings.

Solely or primarily

8. 'Solely' and 'primarily' are not defined for the purposes of Part 6A of the Land Tax Act, and therefore take their ordinary meaning.
9. 'Solely' means 'exclusively' or 'only' in relation to the use or purpose.
10. 'Primarily' means 'mainly' or 'principally' in relation to the use or purpose.

⁶ Section 58D defines a 'build to rent development'.

⁷ Section 58E of the Land Tax Act

⁸ Section 58E(1)(a) and 58L of the Land Tax Act

⁹ Section 58E(1)(c) of the Land Tax Act

Land used solely or primarily for an eligible BTR development (s.58C Land Tax Act)

11. Land is used 'solely' for an eligible BTR development if the land is used exclusively or only for an eligible BTR development.
12. Similarly, land is used 'primarily' for an eligible BTR development if the land is used mainly or principally for an eligible BTR development.
13. In determining what the 'sole or primary' use of the land is, relevant factors may include (but are not limited to) the:
 - (a) overall nature and use of the land, including any buildings built on the land
 - (b) proportion of the area that the land and buildings used for an eligible BTR development bears to the total area of the land and buildings
 - (c) proportion of the construction costs attributable to the land and any buildings used for an eligible BTR development compared to total construction costs
 - (d) proportion of the area that the land and buildings used for an eligible BTR development bears to the total parcel area.
14. The relevance and weight given to each factor will depend on the facts and circumstances of each case.

Example of land used solely or primarily for an eligible BTR development

A parcel of land contains an apartment tower with 200 apartments. It is assumed the apartment tower is an 'eligible BTR development' that satisfies the requirements of section 58E of the Land Tax Act. The BTR development also contains a small, combined café and convenience store accessible by the public. The land is not used for any other purpose.

In determining whether the land is 'land used solely or primarily for an eligible BTR development' the Commissioner would consider the following:

- As noted above, the apartment tower is an eligible BTR development as required by section 58E of the Land Tax Act.
- The overall nature and use of the land is for an eligible BTR development.
- The land is still primarily used for an eligible BTR development because only the café and convenience store, which occupy a small percentage of the land area, are used for a purpose other than an eligible BTR development.
- Most construction costs were attributable to the eligible BTR development, with only a small proportion attributable to the café and convenience store.

The Commissioner would be satisfied the land is used solely or primarily for an eligible BTR development.

Example of land not used solely or primarily for an eligible BTR development

A parcel of land contains three towers. One tower is leased for commercial purposes, one is leased for retail purposes and the other is an 'eligible BTR development' under section 58E of the Land Tax Act. However, the Commissioner would not be satisfied the land is used solely or primarily for an eligible

BTR development because the retail and commercial towers mean the land is not used solely or primarily for an eligible BTR development.

BTR development used solely or primarily for residential purposes (s.58E Land Tax Act)

15. A BTR development is used 'solely' for residential purposes if the BTR development is used exclusively or only for residential purposes.
16. Similarly, a BTR development is used 'primarily' for residential purposes if the BTR development is used mainly or principally for residential purposes.
17. In determining what the 'sole or primary' use of the BTR development is, relevant factors may include (but are not limited to) the:
 - (a) overall nature and use of any buildings comprising the BTR development
 - (b) proportion of the area that the buildings comprising the BTR development that are used for residential purposes bears to the total area of the buildings
 - (c) proportion of the construction costs attributable to the buildings that are used for residential purposes comprising the BTR development compared to total construction costs.
18. The relevance and weight given to each factor will depend on the facts and circumstances of each case.

Residential purposes

19. Use for 'residential purposes' involves consideration of the use of the BTR development for normal home living, in contrast to other uses such as business or commercial purposes. Relevant factors may include, but are not limited to:
 - (a) the zoning of the land
 - (b) how any buildings or parts of buildings comprising the BTR development are used
 - (c) the degree of permanence of the use.

Example of a BTR development used solely or primarily for residential purposes

A parcel of land contains two building towers, each containing 70 apartments. The roof of each tower has an open-air garden with seating for use by residents only. The bottom floor of one of the towers has a coffee shop and small retail store accessible by residents and the public.

The towers satisfy the requirements in section 58E(1)(a) of the Land Tax Act, that there are at least 50 dwellings that are self-contained. For the purposes of this scenario, it can also be assumed the towers satisfy the further requirements in sections 58E(1)(a) and 58E(1)(b) of the Land Tax Act. However, to be an eligible BTR development, the BTR development must also be used solely or primarily for residential purposes as required by section 58E(1)(c) of the Land Tax Act. The following factors are relevant in determining the sole or primary use of the BTR development:

- The land is in a high-density residential zone.
- All apartments are used by tenants as their place of residence and not for commercial purposes.

- Only a small proportion of the overall area of both towers are used for non-residential purposes, (being the areas used as a coffee shop and retail store).
- The rooftop garden is for the exclusive use of residents and would be considered an 'associated common area' as defined in section 58C(4) of the Land Tax Act and therefore part of the land used for the eligible BTR development pursuant to section 58C(3).
- Because the overall area for both towers is mainly used for residential purposes, the construction cost of both towers was primarily attributable to the BTR development.

Based on the above, the Commissioner would be satisfied the BTR development is used solely or primarily for residential purposes.

Example of a BTR development not used solely or primarily for residential purposes

A parcel of land contains a building of which half the floors are leased out to retail shops and the other half contains apartments used solely for residential purposes. The following factors are relevant in determining the sole or primary use of the BTR development:

- The land is in an area zoned as a 'major centre', which allows for uses including offices, administrative and community services, retail and residential.
- A not insignificant proportion of the total area of the BTR development is used for a non-residential purpose, namely for retail purposes.
- A not insignificant proportion of the building construction costs is attributable to parts of the building that are not the BTR development.

The Commissioner would not be satisfied the BTR development is used solely or primarily for residential purposes.

Example of a BTR development not used solely or primarily for residential purposes

A parcel of land contains a building of which half the floors are an apartment hotel. The remaining half contains apartments that satisfy the requirements in section 58E(1)(a) of the Land Tax Act that there are at least 50 dwellings that are self-contained. For the purposes of this scenario, it can also be assumed the non-hotel apartments satisfy the further requirements in sections 58E(1)(a) and 58E(1)(b) of the Land Tax Act. However, for the BTR development to be an eligible BTR development, it must also be used solely or primarily for residential purposes as required by section 58E(1)(c) of the Land Tax Act. The following factors are relevant in determining the sole or primary use of the BTR development:

- The land is in an area zoned as a 'principal centre', which allows for uses and activities including business, administrative, professional, entertainment and residential.
- A not insignificant proportion of the total area of the BTR development is used for short-term accommodation (i.e. half the floors are used as an apartment hotel), rather than being used for normal home living arrangements.
- A not insignificant proportion of the construction costs of the building is attributable to parts of the building that are used for a commercial purpose (i.e. an apartment hotel).

The Commissioner would not be satisfied the BTR development is used solely or primarily for residential purposes.

Date of effect

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

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

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA000.5.1	24 August 2023	28 August 2023	Current